

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005

EXPLANATORY NOTES

INTRODUCTION

Integrated Management Of Offenders

Section 21 – Further amendments and repeal

137. This section makes a number of amendments connected with the provisions in section 1 to 20 of this Act. Amendments in relation to Home Detention Curfew provisions relate to enactments concerned with cross-border transfer of prisoners, repatriation of prisoners, the International Criminal Court, and remote monitoring of prisoners released on licence.
138. Subsection (1)(a)(i) amends section 27(1) of the Social Work (Scotland) Act 1968 to take account of any transfer of functions from local authorities to a community justice authority under section 8 of this Act.
139. Subsection (1)(a)(ii) and (1)(b) amend section 27(1) of the Social Work (Scotland) Act 1968. That section sets out the duties of local authorities in respect of criminal justice social work services. The amendments ensure that it is a duty to provide any background reports requested by Scottish Ministers in relation to the release of prisoners under Part 1 of the 1993 Act, including release on Home Detention Curfew. The amendments also ensure that references to “enactment” include Acts of the Scottish Parliament to ensure that the section covers persons under supervision as a result of an Act of the Scottish Parliament. Section 27A of the 1968 Act then allows the Scottish Ministers to make grants to local authorities in respect of their expenditure in providing a service for the purposes set out in section 27(1).
140. Subsection (1)(b) amends the Social Work (Scotland) Act 1968 in such a way as to allow the Scottish Ministers to amend by order local authority functions specified in section 27(1) of that Act. This enables alterations to be made to the list of functions local authorities may undertake without primary legislation being required. The order is made by affirmative resolution procedure by virtue of the amendment to section 90 of the 1968 Act introduced by subsection (4).
141. Subsection (2) introduces amendments to Section 27A of the Social Work (Scotland) Act 1968 to enable Scottish Ministers to provide funds to the community justice authority while retaining the power to provide funds directly to local authorities for the purposes of providing services under section 27 of that Act for complying with area plans or for other similar purposes that Scottish Ministers may prescribe. Provision is added to enable Scottish Ministers to attach such conditions to the payment of grant as they think fit.
142. Subsection (3) introduces similar amendments, as in subsection (2), to Section 27B of the Social Work (Scotland) Act 1968.

*These notes relate to the Management of Offenders etc. (Scotland)
Act 2005 (asp 14) which received Royal Assent on 8 December 2005*

143. Subsection (5) amends the Schedule to the Repatriation of Prisoners Act 1984. Prisoners repatriated to Scotland are eligible for early release, and the Schedule make provision about the calculation of appropriate parts of the sentence. The amendments ensure that these provisions apply appropriately to consideration for release on Home Detention Curfew and to the new arrangements for the release of certain sexual offenders, both provided for in section 15 of the Act.
144. Subsection (6) enables Scottish Ministers to make provision in the Rules, made under section 39 of the Prisons (Scotland) Act 1989, for the appointment of members of Prison Visiting Committees and Visiting Committees of Legalised Police Cells by specified community justice authorities or local authorities (or a combination of the two), in place of the existing arrangements whereby appointment is by specified local authorities.
145. Subsection (7) corrects a provision contained in section 32 of the Criminal Justice (Scotland) Act 2003 which will, when commenced, insert a new subsection into section 27 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The new subsection defines “wholly concurrent” and “partly concurrent” terms of imprisonment or detention.
146. Subsection (8) amends Schedule 1 to the Crime (Sentences) Act 1997. That Schedule deals with the transfer of prisoners and those subject to supervision between England and Wales, Scotland and Northern Ireland. Many of these transfers are “restricted” transfers, that is the prisoner remains subject to the law on early release as it applies in the sending jurisdiction. The amendments made here are to the provisions dealing with restricted transfers from Scotland to England and Wales and to Northern Ireland, and ensure that when necessary arrangements are in place with the corresponding jurisdictions, such prisoners will be eligible to be considered for release on Home Detention Curfew by the Scottish Ministers to an address in that jurisdiction to which they have been transferred, (it is noted that Northern Ireland currently has no system in place to carry out the remote monitoring of offenders released from custody). A minor error in paragraph 11(2) of the schedule is also corrected. The amendments also deal with the new arrangements for the release of certain sexual offenders provided for in section 15 of the Act, to ensure that new section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 applies as appropriate
147. Subsections (9), (11), and (12) bring in minor amendments to ensure that references to “community justice authority” are compatible with local government references in existing legislation.
148. Section 24 of the International Criminal Court (Scotland) Act 2001 disapplies various provisions about release of prisoners in relation to persons detained in Scottish prisons serving a sentence imposed by the International Criminal Court. Subsection (10) adds sections 1AA and 3AA to the list, so that ICC prisoners are not eligible for Home Detention Curfew or release under section 1AA (release of certain sexual offenders).
149. Section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 makes special provision about the early release of children sentenced to detention following conviction on indictment. Although similar to the arrangements for release of adult prisoners, the Parole Board may recommend/direct the release of the child at any time, and all such releases are on licence. Given the existence of this early release provision, Home Detention Curfew is not available for section 7 cases. Section 40(1) of the Criminal Justice (Scotland) Act 2003 provides for the inclusion of remote monitoring conditions in licences under Part I of the 1993 Act (parole, non-parole, compassionate) However subsection (1) currently provides that such conditions can only be included if the person has reached the age of 16 at the point of release. It therefore prevents remote monitoring from being used for children released under section 7 of the 1993 Act. Subsection (13) amends subsection (1) of the 2003 Act to remove this age limit. Similar age limits in respect of Restriction of Liberty Orders were removed by section 121 of the Antisocial Behaviour etc. (Scotland) Act 2004.