



# Management of Offenders etc. (Scotland) Act 2005

2005 asp 14

*Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993*

## **15 Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993**

- (1) The 1993 Act is amended as follows.
- (2) In section 1(1) (release of short-term prisoners), after “short-term prisoner” insert “, not being a prisoner to whom section 1AA of this Act applies,”.
- (3) After section 1 insert—

### **“1AA Release of certain sexual offenders**

- (1) As soon as a prisoner to whom this section applies has served one-half of his sentence the Scottish Ministers are to release him on licence.
- (2) This section applies to any short-term prisoner—
  - (a) sentenced to a term of 6 months or more; and
  - (b) who, by virtue of the conviction in respect of which that sentence was imposed, is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42).
- (3) It is immaterial, for the purposes of subsections (1) and (2) above, when the offence of which the prisoner was convicted was committed.
- (4) But this section does not apply to a prisoner who was released under section 1(1) of this Act in relation to the sentence mentioned in subsection (2) (a) above before the date on which section 15(3) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14) came into force (except that where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term, the reference in the preceding provisions of this subsection to his being released in relation to the sentence mentioned in subsection (2)(a) above is to be construed as a reference to his being released in relation to the single term).

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- (5) Section 17 of this Act applies to such short-term prisoners as are mentioned in subsection (2) above as that section applies to long-term prisoners.
- (6) Where a prisoner is released on licence under this section, the licence (unless revoked) remains in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed; but this subsection is subject to subsections (7) and (8) below.
- (7) Where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term the licence (unless revoked) remains in force until the relevant period (reckoned from the commencement of the single term) has elapsed.
- (8) The “relevant period” mentioned in subsection (7) above is—
- (a) the single term after deduction of half the number of days (if any) by which that term exceeds what it would be were there disregarded in determining it such terms (if any) as are imposed for a conviction other than one by virtue of which the prisoner is subject to the notification requirements mentioned in subsection (2)(b) above; or
  - (b) if to disregard such terms as are so imposed would have the consequence—
    - (i) that there would not remain two or more terms to treat as a single term; or
    - (ii) that though two or more terms would remain they would no longer be consecutive or wholly or partly concurrent,
 the single term after deduction of half the number of days (if any) by which that term exceeds the term imposed for the conviction, or as the case may be the terms imposed for the convictions, by virtue of which the prisoner is subject to those requirements.”.
- (4) In section 1A(1)(c) (release of persons serving more than one sentence to be on a single licence), after the word “Act” where it first occurs insert “, other than on licence under section 3AA ”.
- (5) After section 3 insert—

**“3AA Further powers to release prisoners**

- (1) Subject to subsections (2) to (5) below, the Scottish Ministers may release on licence under this section—
  - (a) a short-term prisoner serving a sentence of imprisonment for a term of three months or more; or
  - (b) a long-term prisoner whose release on having served one-half of his sentence has been recommended by the Parole Board.
- (2) The power in subsection (1) above is not to be exercised before the prisoner has served whichever is the greater of—
  - (a) one quarter of his sentence; and
  - (b) four weeks of his sentence.
- (3) Without prejudice to subsection (2) above, the power in subsection (1) above is to be exercised only during that period of 121 days which ends on the day

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14 days before that on which the prisoner will have served one half of his sentence.

- (4) In exercising the power conferred by subsection (1) above, the Scottish Ministers must have regard to considerations of—
- (a) protecting the public at large;
  - (b) preventing re-offending by the prisoner; and
  - (c) securing the successful re-integration of the prisoner into the community.
- (5) Subsection (1) above does not apply where—
- (a) the prisoner's sentence was imposed under section 210A of the 1995 Act;
  - (b) the prisoner is subject to a supervised release order made under section 209 of that Act;
  - (c) the prisoner is subject to a hospital direction imposed under section 59A of that Act or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
  - (d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42);
  - (e) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act);
  - (f) the prisoner has been released on licence under this Part of this Act or under the 1989 Act but—
    - (i) has been recalled to prison other than by virtue of section 17A(1)(b) of this Act; or
    - (ii) before the date on which he would but for his release have served his sentence in full, has received a further sentence of imprisonment; or
  - (g) the prisoner has been released (whether or not on licence) during the currency of his sentence but has been returned to custody under section 16(2) or (4) of this Act.
- (6) The Scottish Ministers may by order do any or all of the following—
- (a) amend the number of months for the time being specified in subsection (1)(a) above;
  - (b) amend the number of weeks for the time being specified in subsection (2)(b) above;
  - (c) amend a number of days for the time being specified in subsection (3) above;
  - (d) amend any paragraph of subsection (5) above, add a further paragraph to that subsection or repeal any of its paragraphs.”.
- (6) In section 5(1) (fine defaulters and persons in contempt of court), after the words “except sections” insert “ 3AA, ”.
- (7) In section 9(3) (persons liable to removal from the United Kingdom)—
- (a) in paragraph (d), for the word “immigrant” there is substituted “ entrant ”; and
  - (b) (the word “or” immediately preceding that paragraph being omitted) after that paragraph there is added “or

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- (e) if he is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c. 33).”.
- (8) In section 11 (duration of licence), after subsection (3) insert—
- “(3A) Subsections (1) to (3) above do not apply in relation to release on licence under section 3AA of this Act.
- (3B) A licence granted under section 3AA of this Act remains in force (unless it is revoked) until the date on which the released person would, but for his release under that section, fall to be released under section 1 of this Act.”.
- (9) In section 12 (conditions in licence)—
- (a) after subsection (2) insert—
- “(2A) In its application to a licence granted under section 3AA of this Act, subsection (2) above is to be construed as if, for the words “shall include” there were substituted “ may include ”.”; and
- (b) after subsection (4) insert—
- “(4A) Subsection (3)(b) above does not apply in relation to a condition in a licence granted under section 3AA of this Act; but in exercising their powers under this section in relation to a long-term prisoner released on such a licence the Scottish Ministers must have regard to any recommendations which the Parole Board has made for the purposes of section 1(3) of this Act as to conditions to be included on release.”.
- (10) After section 12 insert—

**“12AA Conditions for persons released on licence under section 3AA**

- (1) Without prejudice to the generality of section 12(1) of this Act, any licence granted under section 3AA of this Act must include—
- (a) the standard conditions; and
- (b) a curfew condition complying with section 12AB of this Act.
- (2) Subsection (1) above is without prejudice to any power exercisable under section 12 of this Act.
- (3) In this section, “the standard conditions” means such conditions as may be prescribed as such for the purposes of this section.
- (4) In subsection (3) above, “prescribed” means prescribed by order by the Scottish Ministers.
- (5) Different standard conditions may be so prescribed for different classes of prisoner.
- (6) Subsection (4) of section 3AA of this Act applies in relation to—
- (a) the exercise of the power of prescription conferred by subsection (3) above; and
- (b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AA of this Act,

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as it applies in relation to the exercise of the power conferred by subsection (1) of that section.

### **12AB Curfew condition**

- (1) For the purposes of this Part, a curfew condition is a condition which—
    - (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and
    - (b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.
  - (2) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (1) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).
  - (3) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a condition specified by virtue of subsection (1) above as that section applies in relation to the making of, and compliance with, a restriction of liberty order.
  - (4) A curfew condition is to be monitored remotely and the Scottish Ministers must designate in the licence a person who is to be responsible for the remote monitoring and must, as soon as practicable after they do so, send that person a copy of the condition together with such information as they consider requisite to the fulfilment of the responsibility.
  - (5) Subject to subsection (6) below, the designated person's responsibility—
    - (a) commences on that person's receipt of the copy so sent;
    - (b) is suspended during any period in which the curfew condition is suspended; and
    - (c) ends when the licence is revoked or otherwise ceases to be in force.
  - (6) The Scottish Ministers may from time to time designate a person who, in place of the person designated under subsection (4) above (or last designated under this subsection), is to be responsible for the remote monitoring; and on the Scottish Ministers amending the licence in respect of the new designation, that subsection and subsection (5) above apply in relation to the person designated under this subsection as they apply in relation to the person replaced.
  - (7) If a designation under subsection (6) above is made, the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced accordingly.”.
- (11) In section 12B (certain licences to be replaced by one), after subsection (3) insert—
- “(4) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.
- (12) In section 17 (revocation of licence), at the end add—

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“(7) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(13) After section 17 insert—

**“17A Recall of prisoners released under section 3AA**

- (1) If it appears to the Scottish Ministers as regards a prisoner released on licence under section 3AA of this Act that—
  - (a) he has failed to comply with any condition included in his licence; or
  - (b) his whereabouts can no longer be monitored remotely at the place for the time being specified in the curfew condition included in the licence,
 they may revoke the licence and recall the person to prison under this section.
- (2) A person whose licence is revoked under subsection (1) above—
  - (a) must, on his return to prison, be informed of the reasons for the revocation and of his right under paragraph (b) below; and
  - (b) may make representations in writing with respect to the revocation to the Scottish Ministers.
- (3) The Scottish Ministers are to refer to the Parole Board the case of any person who makes such representations.
- (4) After considering the case the Parole Board may direct, or decline to direct, the Scottish Ministers to cancel the revocation.
- (5) Where the revocation of a person's licence is cancelled by virtue of subsection (4) above, the person is to be treated for the purposes of section 3AA of this Act as if he had not been recalled to prison under this section.
- (6) On the revocation under this section of a person's licence, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.”.

(14) In section 45 (making of rules and orders)—

- (a) in subsection (2), after the word “Any” insert “ order made under section 12AA(3) or ”; and
- (b) in subsection (3), after the word “section” insert “ 3AA(6), ”.

**Commencement Information**

- II** S. 15 wholly in force at 21.3.2008; s. 15 not in force at Royal Assent, see s. 24; s. 15(1)-(3)(7)(14) fully in force and s. 15(10) in force for certain purposes at 8.2.2006 by S.S.I. 2006/48, **art. 3**, Sch.; s. 15(4)-(6)(8)-(13) in force for certain purposes at 3.7.2006 by S.S.I. 2006/331, **art. 3(4)(5)**; s. 15(5)(10) in force for certain further purposes at 11.2.2008 by S.S.I. 2008/21, **art. 2(1)**; s. 15(4)-(6)(8)-(13) in force so far as not already commenced at 21.3.2008 by S.S.I. 2008/21, **art. 2(2)**

**Changes to legislation:**

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