

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 - Confinement and Release of Prisoners Chapter 7

Application of Part 2 to Certain Persons

Section 54 - Persons detained under mental health provisions

119. This section provides that Part 2 of the Act applies to the following categories of prisoner as if they had continued to serve their sentence in prison rather than in a hospital:
- those transferred to hospital under a transfer direction made in accordance with section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003; and
 - those conveyed to and detained in a hospital for treatment of a mental disorder in accordance with section 59A of the Criminal Procedure (Scotland) Act 1995.

Section 55 - Application to young offenders and children

120. This section deals with the application of the provisions of Part 2 to young offenders and children. A young offender is a person who is under 21 years old at the point of sentence (and who is not a child). A child is a person who is under 16 years old or who is under 18 years old and in respect of whom a supervision requirement is in force.
121. Where the sentence on a young person or child is of less than 15 days, Part 2 applies to them as if they were a custody-only prisoner. Where the sentence is of 15 days or more, it applies as if they were a custody and community prisoner. And where the sentence is indeterminate, it applies as if they were a life prisoner.
122. Subsection (7) provides that references to “imprisonment” in Part 2 are to be read as references to detention and cognate expressions are to be construed accordingly. This is because young offenders and children are sentenced to detention and not to imprisonment.

Section 56 – Fine defaulters and persons in contempt of court

123. This section provides that Part 2 of the Act will apply as it applies to custody-only prisoners to:
- those who are in custody as a result of a failure to pay a fine, and
 - to persons who are in custody having been found in contempt of court.

*These notes relate to the Custodial Sentences and Weapons (Scotland)
Act 2007 (asp 17) which received Royal Assent on 19 April 2007*

124. This means that these categories of person will serve their full sentence in custody regardless of the length of the period of custody imposed on such a person.
125. Subsection (3) states that this section will only apply where the relevant act which leads to imprisonment or detention occurs after the coming into force of Part 2.