

# **CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON PARTS**

#### **Part 2 - Confinement and Release of Prisoners** **CHAPTER 3**

#### *Community and Life Licences*

#### **Revocation**

#### *Section 37 - Revocation of licence*

78. Subsection (1) enables the Scottish Ministers to revoke a prisoner's licence and recall him or her to custody. Subsection (4) deals with the situation in which a prisoner is still on licence but is detained in custody for any reason. In such a situation, Ministers must revoke the licence.
79. Subsections (2), (3) and (5) provide that, whether or not the prisoner is in custody at the time, the licence may only be revoked if two conditions are met: first, that the prisoner either has breached a licence condition or is considered to be likely to do so; and secondly that Ministers consider that it is in the public interest to revoke the licence.

#### *Section 38 - Compassionate release: additional ground for revocation of licence*

80. Subsection (1) provides that this section applies if a prisoner has been given compassionate release on licence and Scottish Ministers are satisfied that those grounds for granting such release are no longer justified e.g. a reversal of the medical condition. Subsection (2) requires Scottish Ministers to revoke the licence and subsection (3) requires that if the offender is not already detained, that he or she is recalled to prison.

#### *Section 39 - Prisoners unlawfully at large*

81. This section provides that where a prisoner's licence has been revoked by virtue of section 37(1) or 38(2) and that prisoner is not in custody, he or she is taken to be unlawfully at large. The effect of this is any period of time spent unlawfully at large will still have to be served as part of the sentence. This section also applies to those released on compassionate grounds who have been recalled to custody.

#### *Section 40 – Compassionate release: effect of revocation in certain circumstances*

82. Subsection (1) provides that subsection (2) applies where a prisoner is released on compassionate grounds is recalled to custody following revocation of his or her licence and the revocation occurs before the expiry of the relevant period described in subsection (3). These are: the prisoner's sentence if a custody-only prisoner; the custody part of the sentence if a custody and community prisoner; or the punishment part of

the sentence if a life sentence prisoner. The effect of subsection (2) is that the prisoner reverts to being treated as if he or she had not been released on compassionate grounds i.e. the remainder of the sentence will follow the relevant procedures as prescribed by Part 2 of the Act.

#### ***Section 41 - Referral to Parole Board following revocation of licence***

83. This section provides that where the Scottish Ministers have revoked a prisoner's licence (including compassionate release licences) by virtue of section 37(1) or (4) or 38(2), they must inform the prisoner of the reasons for doing so and, subject to section 40, refer the case to the Parole Board.

#### ***Section 42 - Consideration by Parole Board***

84. This section applies where a prisoner whose licence has been revoked has his or her case referred to the Parole Board by virtue of section 41(2)(b), 43(9) or 44(5). Subsection (2) provides that the Board must determine under subsection (3) whether or not it is in the public interest that the prisoner be confined. Subsection (4) provides that where the Board considers subsection (3) does not apply, it must direct the Scottish Ministers to release the prisoner on licence and must specify licence conditions for inclusion in the licence. Subsection (5) provides that where the Parole Board have made such a direction the Scottish Ministers must release the prisoner on a community licence or a life licence as appropriate.

#### ***Section 43 - Determination that section 42(3) applicable: consequences for custody and community prisoners***

85. Subsection (1) provides that this section applies where the Parole Board considers under section 42(3) that it is in the public interest that a recalled custody and community prisoner be confined. Subsection (2) requires the Board to provide the prisoner with its reasons for making its determination in writing. Subsection (3) provides that if there is less than 4 months of the prisoner's sentence remaining, the prisoner must remain in custody for the remainder of the sentence. Subsection (4) provides, however, that if there are between 4 months and 2 years of the prisoner's sentence remaining, the Board must fix a date when it will next review the prisoner's case within the period mentioned in subsection (5). Subsection (5) specifies that the period begins 4 months after the date of the determination and ends on the expiry of the prisoner's sentence. Subsection (6) provides that if no date is set under subsection (4) the prisoner must remain in prison to the end of the sentence.
86. Subsection (7) provides that if at least 2 years remain of the prisoner's sentence then the Parole Board must, subject to section 26, fix a date for when it will next hear the prisoner's case within the period mentioned in subsection (8). Subsection (8) provides that the period begins 4 months after the date of the determination and ends immediately before the second anniversary of the determination. Subsection (9) requires Scottish Ministers to refer the case to the Parole Board before any date set by the Parole Board under subsection (4) or (7).

#### ***Section 44 - Determination that section 42(3) applicable: consequences for life prisoners***

87. Subsection (1) provides that this section applies where the Parole Board under section 42(2) considers it to be in the public interest that a recalled life sentence prisoner be confined. Subsection (2) requires the Board to provide the prisoner with its reasons for not re-releasing the prisoner in writing. Subsection (3) provides that the Board must, subject to section 26, set a date for when it will next consider the prisoner's case within the period mentioned in subsection (4). Subsection (4) provides that the period begins 4 months after the date of the determination and ends immediately before the second

*These notes relate to the Custodial Sentences and Weapons (Scotland)  
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anniversary of the determination. Subsection (5) requires Scottish Ministers to refer the case to the Parole Board before the date set under subsection (3).

***Section 45 - Prisoner's right to request early reconsideration by Parole Board***

88. **Section 45** provides that prisoners who have had a date set for a further review under sections 43(4), 43(7) or section 44(3) can ask for early consideration of their case by the Parole Board. Subsection (2) provides that the Board may, if it considers it appropriate, to fix an earlier date. In terms of subsection (3) and (4), where the Board does not fix a date under section 43(4), it may, on the prisoner's request, consider it appropriate, to do so and will fix a date when it will next consider the prisoner's case.