



Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

PART 2

CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 2

CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

PROSPECTIVE

Custody-only prisoners

5 Release on completion of sentence

As soon as a custody-only prisoner has served the term of imprisonment specified in the prisoner's sentence the Scottish Ministers must release the prisoner unconditionally.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2), 5(2)**; S.S.I. 2012/249, art. 2

Status: This version of this chapter contains provisions that are prospective.

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PROSPECTIVE

Custody and community prisoners

6 Setting of custody part

- (1) This section applies where the court imposes on a person a custody and community sentence.
- (2) After imposing the sentence, the court must make an order specifying the custody part of the sentence.
- (3) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).
- (4) An order specifying a custody part must specify that the custody part is—
 - (a) one-half of the sentence, or
 - (b) if subsection (5) applies, such greater proportion of the sentence as the court specifies.
- (5) This subsection applies if, taking into account in particular the matters mentioned in subsection (6), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.
- (6) Those matters are—
 - (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,
 - (b) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and
 - (c) any previous conviction of the person.
- (7) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.
- (8) An order specifying a custody part must specify the custody part by reference to a fixed period of time.
- (9) Where (but for this subsection) a custody part would fall to be specified as a period including a fraction of a day, the custody part must be specified in whole days (any such fraction being rounded up to a whole day).
- (10) Where, by virtue of subsection (4)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.
- (11) An order specifying a custody part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

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7 Power to amend section 6(4)

The Scottish Ministers may by order amend section 6(4)(a) by substituting for the proportion for the time being specified there a different proportion specified in the order.

8 Provision of information by court

- (1) This section applies where—
 - (a) a court imposes a custody and community sentence on a person, and
 - (b) the court is not required by—
 - (i) section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7), or
 - (ii) section 210H(2) of the 1995 Act,to prepare a report.
- (2) As soon as is reasonably practicable after imposing the sentence, the court must provide the Scottish Ministers with such information about—
 - (a) the person, and
 - (b) the circumstances of the case,as the court considers appropriate.
- (3) Information provided by virtue of subsection (2) is to be provided in such form as the court considers appropriate.

9 Joint arrangements between Scottish Ministers and local authorities

- (1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risks posed in the local authority's area by custody and community prisoners.
- (2) For the purposes of assisting the Scottish Ministers in making a determination under section 10(1), the Scottish Ministers and the appropriate local authority must during the custody part of a custody and community prisoner's sentence assess in accordance with arrangements established under subsection (1) whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if the prisoner would, were the prisoner released on community licence on the expiry of the custody part, be likely to cause serious harm to members of the public.
- (4) In this section, “appropriate local authority”, in relation to a custody and community prisoner, means the local authority for the area in which the prisoner—
 - (a) resided immediately before the imposition of the custody and community sentence, or
 - (b) intends to reside on release on community licence.
- (5) If, by virtue of subsection (4), two or more local authorities are the appropriate local authority in relation to a custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (2) and section 31(4) may be carried out by only one of them.

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10 Review by Scottish Ministers

- (1) Before the expiry of the custody part of a custody and community prisoner's sentence the Scottish Ministers must determine whether subsection (2) applies in respect of the prisoner.
- (2) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

11 Consequences of review

- (1) This section applies where the Scottish Ministers make a determination under subsection (1) of section 10 in respect of a prisoner.
- (2) If the Scottish Ministers determine that subsection (2) of that section does not apply in respect of the prisoner, they must release the prisoner on community licence on the expiry of the custody part of the prisoner's sentence.
- (3) If the Scottish Ministers determine that subsection (2) of that section applies in respect of the prisoner, they must, before the expiry of the custody part of the prisoner's sentence, refer the prisoner's case to the Parole Board.

12 Review by Parole Board

- (1) Subsection (2) applies where a custody and community prisoner's case is referred to the Parole Board under section 11(3).
- (2) Before the expiry of the custody part of the prisoner's sentence, the Parole Board must determine whether section 10(2) applies in respect of the prisoner.

13 Release on community licence following review by Parole Board

- (1) Subsection (2) applies where the Parole Board determines under section 12(2) or 17(3) that section 10(2) does not apply in respect of a prisoner.
- (2) The Parole Board must—
 - (a) direct the Scottish Ministers to release the prisoner on community licence, and
 - (b) specify conditions to be included in the licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on community licence.
- (4) In the case of a determination under section 12(2) the direction must be implemented on the expiry of the custody part of the prisoner's sentence.

14 Determination that section 10(2) applicable: consequences

- (1) This section applies where the Parole Board determines under section 12(2) or 17(3) that section 10(2) applies in respect of a prisoner.
- (2) The Parole Board must give the prisoner reasons in writing for its determination.
- (3) If on the day of the determination less than 4 months of the prisoner's sentence remain to be served before the three-quarter point—
 - (a) the prisoner must be confined until the three-quarter point, and

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- (b) the Parole Board must specify conditions to be included in the prisoner's community licence.
- (4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner's sentence remain to be served before the three-quarter point, the Parole Board may fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner's case.
- (5) That period is the period—
 - (a) beginning with the day falling 4 months after the day of the determination, and
 - (b) ending with the three-quarter point.
- (6) If no date is fixed under subsection (4)—
 - (a) the prisoner must be confined until the three-quarter point, and
 - (b) the Parole Board must fix a date falling within the period mentioned in subsection (5) on which it must specify conditions to be included in the prisoner's community licence.
- (7) If on the day of the determination more than 2 years of the prisoner's sentence remain to be served before the three-quarter point, the Parole Board must fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner's case.
- (8) That period is the period—
 - (a) beginning with the day falling 4 months after the day of the determination, and
 - (b) ending immediately before the second anniversary of the day of the determination.
- (9) In this section, “three-quarter point”, in relation to a prisoner's custody and community sentence, means the day on which the prisoner will have served three-quarters of the prisoner's sentence.
- (10) This section is subject to section 26.

15 Prisoner's right to request early reconsideration by Parole Board

- (1) Subsection (2) applies where the Parole Board has fixed a date under section 14(4) or (7) for considering a prisoner's case.
- (2) On the prisoner's request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner's case by fixing that earlier date under section 14(4) or, as the case may be, (7).
- (3) Subsection (4) applies where the Parole Board does not fix a date under section 14(4).
- (4) On the prisoner's request, the Board may, if it considers it appropriate to do so, fix a date under section 14(4) when it will next consider the prisoner's case.
- (5) This section is subject to section 26.

16 Referral to Parole Board for the purposes of specifying conditions

- (1) This section applies where the Parole Board fixes a date under section 14(6)(b).

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- (2) The Scottish Ministers must refer the prisoner's case to the Parole Board before that date.
- (3) On that date, the Parole Board must specify conditions to be included in the prisoner's community licence.

17 Further referral to Parole Board

- (1) This section applies where the Parole Board fixes a date under section 14(4) or (7) for considering a prisoner's case.
- (2) The Scottish Ministers must refer the prisoner's case to the Parole Board before that date.
- (3) The Parole Board must determine whether section 10(2) applies in respect of the prisoner.

18 Cases where custody part specified as three-quarters of prisoner's sentence

- (1) This section applies where, by virtue of section 6(4)(b), the court specifies a custody part which is three-quarters of a prisoner's custody and community sentence.
- (2) Section 10(1) does not apply.
- (3) Before the expiry of the custody part—
 - (a) the Scottish Ministers must refer the prisoner's case to the Parole Board, and
 - (b) the Parole Board must specify conditions to be included in the prisoner's community licence.

19 Release after three-quarters of sentence served

- (1) As soon as a custody and community prisoner has served three-quarters of the prisoner's custody and community sentence, the Scottish Ministers must release the prisoner on community licence.
- (2) Subsection (1) does not apply in relation to a prisoner whose licence has been revoked by virtue of section 37(1) or (4).

Life prisoners

PROSPECTIVE

20 Setting of punishment part

- (1) This section applies where the court imposes on a person a life sentence.
- (2) After imposing the sentence, the court must make an order specifying the punishment part of the sentence.
- (3) The punishment part is that part of the person's life sentence which, taking into account—

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- (a) in the case of a mandatory life sentence, the matters mentioned in subsection (4),
 - (b) in the case of a discretionary life sentence or an order for lifelong restriction under section 210F of the 1995 Act, the matters mentioned in subsection (5),
- the court considers appropriate to satisfy the requirements for retribution and deterrence ^{F1}....
- (4) Those matters are—
- (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment as that offence,
 - (b) any previous conviction of the person, and
 - (c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.
- [^{F2}(4A) As respects the punishment part in the case to which subsection (4) relates, the court is to ignore any period of confinement which may be necessary for the protection of the public.]
- (5) Those matters are—
- (a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not imposed a sentence, or made an order, such as is mentioned in subsection (3)(b) for the offence, ^{F3}...
 - (b) the part of that period of imprisonment which [^{F4}would represent an appropriate period to satisfy the requirements of retribution and deterrence,][^{F5}and]
 - [^{F5}(c) where appropriate, the ones mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.]
- [^{F6}(5A) But—
- (a) in the application of subsection (5)(a), the court is to ignore any period of confinement which may be necessary for the protection of the public,
 - (b) subsection (5)(b) is subject to section 20A,
 - (c) subsection (5)(c) is inapplicable until the court has made the assessment required by virtue of subsection (5)(a) and (b).]
- (6) An order specifying a punishment part must specify the punishment part in years and months.
- (7) It does not matter that a punishment part so specified may exceed the remainder of the person's natural life.
- (8) An order specifying a punishment part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

Textual Amendments

- F1** Words in s. 20(3) repealed (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), ss. 1(5)(a), 5(2); S.S.I. 2012/249, art. 2
- F2** S. 20(4A) inserted (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), ss. 1(5)(b), 5(2); S.S.I. 2012/249, art. 2
- F3** Word in s. 20(5)(a) repealed (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), ss. 1(5)(c)(i), 5(2); S.S.I. 2012/249, art. 2

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- F4** Words in s. 20(5)(b) substituted (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\), ss. 1\(5\)\(c\)\(ii\), 5\(2\); S.S.I. 2012/249, art. 2](#)
- F5** S. 20(5)(c) and word preceding it inserted (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\), ss. 1\(5\)\(c\)\(iii\), 5\(2\); S.S.I. 2012/249, art. 2](#)
- F6** S. 20(5A) inserted (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\), ss. 1\(5\)\(d\), 5\(2\); S.S.I. 2012/249, art. 2](#)

[^{F7}20A Assessment under section 20(5)(a) and (b)

- (1) The part mentioned in subsection (5)(b) of section 20 in relation to the period mentioned in subsection (5)(a) of that section is—
 - (a) one-half of that period, or
 - (b) if subsection (2) applies, such greater proportion of that period as the court specifies.
- (2) This subsection applies if, taking into account in particular the matters mentioned in subsection (5), the court considers that it would be appropriate to specify as that part a greater proportion of that period.
- (3) In subsections (1)(b) and (2), the references to a greater proportion extend so as to include the whole of that period.
- (4) In subsections (1) to (3), the references to the period mentioned in subsection (5)(a) of section 20 are to that period as informed by subsection (5A)(a) of that section.
- (5) For the purpose of subsection (2), the matters are (continuing to ignore any period of confinement which may be necessary for the protection of the public)—
 - (a) the seriousness of the offence, or of the offence combined with other offences of which the prisoner is convicted on the same indictment as that offence,
 - (b) where the offence was committed when the prisoner was serving a period of imprisonment for another offence, that fact, and
 - (c) any previous conviction of the prisoner.]

Textual Amendments

- F7** S. 20A inserted (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\), ss. 1\(6\), 5\(2\); S.S.I. 2012/249, art. 2](#)

PROSPECTIVE

21 Referral to Parole Board

Before the expiry of the punishment part of a prisoner's life sentence, the Scottish Ministers must refer the prisoner's case to the Parole Board.

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PROSPECTIVE

22 Review by Parole Board

- (1) Subsection (2) applies where a life prisoner's case is referred to the Parole Board under section 21.
- (2) Before the expiry of the punishment part of the prisoner's life sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

PROSPECTIVE

23 Release on life licence following review by Parole Board

- (1) Subsection (2) applies where the Parole Board determines under section 22(2) or 25(3) that section 22(3) does not apply in respect of a life prisoner.
- (2) The Parole Board must—
 - (a) direct the Scottish Ministers to release the prisoner on life licence, and
 - (b) specify conditions to be included in the prisoner's licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.
- (4) In the case of a determination under section 22(2) the direction must be implemented on the expiry of the punishment part of the prisoner's sentence.

PROSPECTIVE

24 Determination that section 22(3) applicable: consequences

- (1) This section applies where the Parole Board determines under section 22(2) or 25(3) that section 22(3) applies in respect of a life prisoner.
- (2) The Parole Board must—
 - (a) give the prisoner reasons in writing for its determination, and
 - (b) fix the date on which it will next consider the prisoner's case.
- (3) Subject to section 26, the date fixed under subsection (2)(b) must fall within the period—
 - (a) beginning with the day falling 4 months after the day of the determination, and
 - (b) ending immediately before the second anniversary of the day of the determination.
- (4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).

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- (5) On the prisoner's request, the Board may, if it considers it appropriate to do so, replace that date by fixing under subsection (2)(b) an earlier date when it will next consider the prisoner's case.

PROSPECTIVE

25 Further referral to Parole Board

- (1) This section applies where the Parole Board fixes a date under section 24(2)(b) for considering a prisoner's case.
- (2) The Scottish Ministers must refer the prisoner's case to the Parole Board before that date.
- (3) The Parole Board must determine whether section 22(3) applies in respect of the prisoner.

PROSPECTIVE

Referral to Parole Board: postponement

26 Referral to Parole Board: postponement

- (1) Subsection (2) applies where—
 - (a) a prisoner's case is referred to the Parole Board under this Part (the “referred case”),
 - (b) after the referral another sentence of imprisonment is imposed on the prisoner (the “new sentence”),
 - (c) when that sentence is imposed, the Board has not fixed a date for considering the prisoner's case, and
 - (d) the prisoner would not be eligible for release in relation to the new sentence on the date which would (apart from this section) have been fixed for considering the referred case.
- (2) The Parole Board must—
 - (a) fix in accordance with subsection (5) a different date for considering the referred case, and
 - (b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.
- (3) Subsection (4) applies where—
 - (a) the Parole Board fixes a date for considering the referred case,
 - (b) before that date, a new sentence is imposed on the prisoner, and
 - (c) the prisoner would not be eligible for release in relation to the new sentence on that date.
- (4) The Parole Board must—

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- (a) fix in accordance with subsection (5) a different date for considering the referred case, and
 - (b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.
- (5) A date is fixed in accordance with this subsection if—
- (a) it is a date which would have been fixed in relation to the new sentence if that were the only sentence imposed on the prisoner, and
 - (b) it replaces any date previously fixed for considering the referred case.

PROSPECTIVE

Compassionate release on licence

27 Compassionate release on licence

- (1) Where the Scottish Ministers are satisfied that there are compassionate grounds justifying the release on licence of a prisoner, the Scottish Ministers may release the prisoner on licence.
- (2) Before releasing a custody and community prisoner or a life prisoner under subsection (1) the Scottish Ministers must consult the Parole Board.
- (3) The Scottish Ministers need not consult the Parole Board if it is impracticable to do so.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 29A inserted by [2010 asp 13 s. 18\(6\)](#)
- s. 42A inserted by [2010 asp 13 Sch. 3 para. 6](#)
- s. 45(1)(za)(zb) inserted by [2010 asp 13 Sch. 3 para. 7\(2\)](#)
- s. 46A inserted by [2010 asp 13 s. 18\(7\)](#)
- s. 47(3A) inserted by [2010 asp 13 s. 18\(8\)\(c\)](#)
- s. 47(8)(a)(b) substituted for words by [2010 asp 13 s. 18\(8\)\(e\)](#)
- s. 51(1A) inserted by [2010 asp 13 Sch. 3 para. 9\(3\)](#)
- Sch. 2 para. 1(4) added by [2010 asp 13 Sch. 3 para. 13\(3\)\(c\)](#)
- Sch. 2 para. 7(1A) inserted by [2010 asp 13 Sch. 3 para. 13\(8\)](#)
- Sch. 3 para. 2A inserted by [2010 asp 13 Sch. 3 para. 14\(3\)](#)
- Sch. 3 para. 3(3) inserted by [2010 asp 13 Sch. 3 para. 14\(4\)\(b\)](#)
- Sch. 3 para. 3A inserted by [2010 asp 13 Sch. 3 para. 14\(5\)](#)
- Sch. 3 para. 5(4A) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(d\)](#)
- Sch. 3 para. 5(6) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(e\)](#)