



Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

PART 2

CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 3

COMMUNITY AND LIFE LICENCES

PROSPECTIVE

Revocation

37 Revocation of licence

- (1) If—
- (a) a prisoner is released on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a),
 - (b) the prisoner is not detained as mentioned in section 36(1)(b), and
 - (c) subsections (2) and (3) apply,
- the Scottish Ministers must revoke the licence and recall the prisoner to prison.
- (2) This subsection applies if—
- (a) the prisoner breaches a licence condition, or
 - (b) the Scottish Ministers consider that the prisoner is likely to breach a licence condition.
- (3) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence and recall the prisoner to prison.
- (4) If—

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

Changes to legislation: Custodial Sentences and Weapons (Scotland) Act 2007, Cross Heading: Revocation is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) a prisoner is released on licence by virtue of section 11(2), 13(2)(a), 19(1), 23(2)(a), 27(1) or 42(4)(a),
 - (b) the prisoner is detained as mentioned in section 36(1)(b), and
 - (c) subsections (2) and (5) apply,
- the Scottish Ministers must revoke the licence.
- (5) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence.

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

38 Compassionate release: additional ground for revocation of licence

- (1) This section applies if—
- (a) a prisoner is released on licence by virtue of section 27(1), and
 - (b) the Scottish Ministers are satisfied that there are no longer compassionate grounds justifying the prisoner's release on licence by virtue of that section.
- (2) The Scottish Ministers must revoke the licence.
- (3) If the prisoner is not detained as mentioned in section 36(1)(b), the Scottish Ministers must recall the prisoner to prison.

39 Prisoners unlawfully at large

Where—

- (a) a prisoner's licence is revoked by virtue of section 37(1) or 38(2), and
 - (b) the prisoner is at large,
- the prisoner is unlawfully at large.

40 Compassionate release: effect of revocation in certain circumstances

- (1) Subsection (2) applies where—
- (a) a prisoner is released on licence by virtue of section 27(1),
 - (b) the licence is revoked by virtue of section 37(1) or (4) or 38(2), and
 - (c) the revocation occurs before the expiry of the relevant period.
- (2) This Part applies to the prisoner as if the prisoner had not been released on licence by virtue of section 27(1).
- (3) The relevant period is—
- (a) in the case of a custody-only prisoner, the prisoner's sentence,
 - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence,
 - (c) in the case of a life prisoner, the punishment part of the prisoner's sentence.

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41 Referral to Parole Board following revocation of licence

- (1) Subsection (2) applies where the Scottish Ministers revoke a licence by virtue of section 37(1) or (4) or 38(2).
- (2) The Scottish Ministers must—
 - (a) inform the prisoner of the reasons for the revocation, and
 - (b) subject to section 40, refer the prisoner's case to the Parole Board.

42 Consideration by Parole Board

- (1) This section applies where a prisoner's case is referred to the Parole Board by virtue of section 41(2)(b), 43(9) or 44(5).
- (2) The Parole Board must determine whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if it is in the public interest that the prisoner be confined.
- (4) If the Parole Board determines that subsection (3) does not apply it must—
 - (a) direct the Scottish Ministers to release the prisoner on licence, and
 - (b) specify conditions to be included in the licence.
- (5) Where a direction is given under subsection (4)(a) the Scottish Ministers must release the prisoner on community licence or, as the case may be, life licence.

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

- (1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a custody and community 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, the prisoner must be confined until the expiry of the prisoner's sentence.
- (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, the Parole Board may, subject to section 26, 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 on the expiry of the prisoner's sentence.
- (6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner's sentence.
- (7) If on the day of the determination at least 2 years of the prisoner's sentence remain to be served, the Parole Board must, subject to section 26, 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

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(b) ending immediately before the second anniversary of the day of the determination.

(9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.

44 Determination that section 42(3) applicable: consequences for life prisoners

(1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a life prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) The Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (4) on which it will next consider the prisoner's case.

(4) 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.

(5) The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (3).

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

(1) Subsection (2) applies where the Parole Board fixes a date under—

- (a) section 43(4),
- (b) section 43(7), or
- (c) section 44(3),

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 43(4), 43(7) or, as the case may be, 44(3).

(3) Subsection (4) applies where the Parole Board does not fix a date under section 43(4).

(4) On the prisoner's request, the Board may, if it considers it appropriate to do so, fix a date under section 43(4) when it will next consider the prisoner's case.

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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\(6\)\(e\)](#)