

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Sentencing

Section 18 - Amendments of Custodial Sentences and Weapons (Scotland) Act 2007

81. Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (“2007 Act”) deals with the confinement and release of prisoners. These provisions of the 2007 Act have not yet been commenced. Section 18 makes amendments to a number of statutory provisions in the 2007 Act to change the framework relating to the release of prisoners from custody.
82. Subsections (2) and (3) repeal the provisions providing for custody-only sentences and prisoners in the 2007 Act and make provision for a new type of sentence called a short-term custody and community sentence. A short-term custody and community sentence is a sentence of imprisonment for less than the period prescribed in an order made by the Scottish Ministers. A custody and community sentence is a sentence of imprisonment for at the least the period prescribed by the Scottish Ministers in an order. For example a short-term custody and community sentence may be a sentence of imprisonment for less than one year and a custody and community sentence a sentence of imprisonment for a year or more. A prisoner serving a short-term custody and community sentence (a “short-term custody and community prisoner”) is released after he or she has served one-half of his or her sentence of imprisonment and is released on licence for the remainder of the sentence. Subsection (2) also makes provision for the order making power prescribing the period sentence of imprisonment that determines a short-term custody and community sentence and a custody and community sentence is subject to the affirmative resolution procedure.
83. Subsection (4) makes a consequential amendment to the chapter title in Chapter 3 of Part 2 of the 2007 Act so that it refers to short-term custody and community prisoners.
84. Subsection (5) amends section 29 of the 2007 Act to require the Scottish Ministers to include supervision conditions in a prisoner’s licence where the prisoner being released (other than one liable to removal from the United Kingdom) falls into the following categories: a life prisoner; a custody and community prisoner; a short-term custody and community prisoner released on compassionate grounds, a short-term custody and community prisoner subject to an extended sentence, a short-term custody and community prisoner who is a sex offender and is serving 6 months or more, or short-term custody and community prisoner who is a child.
85. Subsection (6) inserts a new provision relating to the licence conditions to which a short-term custody and community prisoner is to be subject to. The Scottish Ministers must include the standard conditions in the licence. The Scottish Ministers must also include the supervision conditions in the licence if the prisoner is a person to whom

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section 29(1) of the 2007 Act applies i.e. a prisoner released on compassionate grounds; a prisoner serving an extended sentence; a sex offender serving 6 months or more; or a child sentenced to detention. The Scottish Ministers may include other licence conditions if they consider this appropriate.

86. Subsection (7) inserts a new provision for the assessment of conditions for short-term community licences (the licence that a short-term custody and community prisoner is released on). The Scottish Ministers and local authorities are required to put in place joint working arrangements in relation the assessment and management of the risks posed by short-term custody and community prisoners. In deciding whether to include non-mandatory supervision conditions in a short-term community licence for a particular prisoner, the Scottish Ministers and the appropriate local authority must jointly assess whether any of such conditions are appropriate.
87. The appropriate local authority is defined as either the local authority in whose area the offender resided immediately prior to being sentenced or the local authority in whose area the offender intends to reside in upon his or her release on licence.
88. Subsection (8) amends section 47 of the 2007 Act to provide that Scottish Ministers may release, on a curfew licence, a short-term custody and community prisoner who is serving a sentence of 3 months or more and is of a description to be specified by the Ministers by order. Such an order is subject to the affirmative resolution procedure. Section 47(3) of the 2007 Act provides that the curfew licence must include a curfew condition, which is described in section 48 of the 2007 Act.
89. Subsection (8)(c) amends section 47 of the 2007 Act to specify the period during which a short-term custody and community prisoner may be released on a curfew licence. The Scottish Ministers may only release a short-term custody and community prisoner on curfew licence after the later of: the day on which the prisoner has served one-quarter or four weeks of the sentence (whichever is the greater), or the day falling 166 days before the expiry of one-half of the sentence. In addition, release must be before the day falling 14 days before the expiry of one-half of the sentence. So the window for release on curfew licence is between 166 days and 14 days before the expiry of one-half of the sentence so long as the prisoner has served at least one-quarter (or 4 weeks if this is more than one quarter) of his or her sentence at the proposed time of release.
90. Subsection (8)(e) amends section 47(8) of the 2007 Act to provide that a curfew licence for a short-term custody and community prisoner remains in force until the expiry of the first half of that prisoner's sentence.
91. Paragraphs 2 to 5 of Schedule 3 make consequential amendments to sections 34, 35, 36, 37, 40 and 42 of the 2007 Act.
92. Paragraph 6 of Schedule 3 inserts a new section 42A into the 2007 Act. Section 42A applies where the Parole Board considers under section 42(3) of the 2007 Act that it is in the public interest that a recalled short-term custody and community prisoner be confined. The parole Board are required to provide the prisoner with the reasons for its determination in writing. 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. 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 section 42A(5). Section 42A(5) specifies that the period begins 4 months after the date of the determination and ends on the expiry of the prisoner's sentence. Subparagraph (6) provides that if no date is set under section 42A(4) the prisoner must remain in prison to the end of the sentence.
93. Section 42A(7) of the 2007 Act provides that if at least 2 years remain of the short-term custody and community 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 section 42A(8). Section 42A(8) provides that the period begins 4 months

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after the date of the determination and ends immediately before the second anniversary of the determination. Section 42A(9) requires Scottish Ministers to refer the case to the Parole Board before any date set by the Parole Board under section 42A(4) or (7).

94. Paragraphs 7 to 14 of Schedule 3 make consequential amendments to sections 45, 46, 51, 55, 56 and Schedules 2 and 3 of the 2007 Act. Paragraphs 15 to 17 make minor consequential amendments to sections 167 and 210A of the Criminal Procedure (Scotland) Act 1995.