



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 1

### SENTENCING

#### *Short sentences*

PROSPECTIVE

#### **18 Amendments of Custodial Sentences and Weapons (Scotland) Act 2007**

(1) The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended as follows.

(2) In section 4 (basic definitions)—

(a) in subsection (1)—

(i) the definitions of “custody-only prisoner” and “custody-only sentence” are repealed,

(ii) in the definition of “custody and community sentence” for “15 days or more” substitute “at least the prescribed period”,

(iii) after the definition of “Parole Board” insert—

““prescribed period” means such period as the Scottish Ministers may by order specify,” and

(iv) after the definition of “punishment part” insert—

““short-term custody and community prisoner” means a person serving a short-term custody and community sentence,

“short-term custody and community sentence” means a sentence of imprisonment for an offence for a term of less than the prescribed period,” and

*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 18. (See end of Document for details)*

(b) subsection (2) is repealed.

(3) For section 5 (release of custody-only prisoners on completion of sentence) substitute—

*“Short-term custody and community prisoners*

**5 Release of short-term custody and community prisoners**

As soon as a short-term custody and community prisoner has served one-half of the prisoner's short-term custody and community sentence the Scottish Ministers must release the prisoner on short-term community licence.”.

(4) In Chapter 3 of Part 2, in the chapter title, for “Community” substitute “ Short-term community, community ”.

(5) In section 29 (release on licence of certain prisoners: the supervision conditions), in subsection (2)(a)—

- (a) in sub-paragraph (ii), the words from “serving” to the end are repealed,
- (b) sub-paragraph (iii) is repealed,
- (c) in sub-paragraphs (iv) and (v), for “person” substitute “ short-term custody and community prisoner ”,
- (d) in sub-paragraph (vi), for “person” substitute “ short-term custody and community prisoner serving a sentence of imprisonment of 6 months or more and ”, and
- (e) in sub-paragraph (vii), at the beginning insert “ a short-term custody and community prisoner who is ”.

(6) After section 29 insert—

*“Short-term community licences*

**29A Release on short-term community licence: conditions**

- (1) This section applies where, by virtue of section 5, the Scottish Ministers release a prisoner on short-term community licence.
- (2) The Scottish Ministers must include in the prisoner's short-term community licence—
  - (a) the standard conditions, and
  - (b) where the prisoner falls within section 29(2), the supervision conditions.
- (3) The Scottish Ministers may include in the prisoner's short-term community licence—
  - (a) where the prisoner does not fall within section 29(2), any of the supervision conditions,
  - (b) such other conditions as they consider appropriate.
- (4) The Scottish Ministers may—
  - (a) vary any condition mentioned in subsection (2) or (3),
  - (b) cancel any condition mentioned in subsection (3),

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- (c) include any further conditions in the licence.
  - (5) The Scottish Ministers may not cancel any condition mentioned in subsection (2).
  - (6) Before exercising any of the powers conferred by subsection (3) or (4), the Scottish Ministers must, in pursuance of arrangements established under section 46A(1), co-operate with the appropriate local authority.
  - (7) In this section, “appropriate local authority”, in relation to a short-term custody and community prisoner, means the local authority for the area in which the prisoner—
    - (a) resided immediately before the imposition of the short-term custody and community sentence, or
    - (b) intends to reside on release on short-term community licence.
  - (8) If, by virtue of subsection (7), two or more local authorities are the appropriate local authority in relation to a short-term custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (5) and section 46A(2) may be carried out by only one of them.”.
- (7) After section 46 insert—

*“Assessment of conditions for short-term community licences*

**46A 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 risk posed in the local authority's area by short-term custody and community prisoners released on licence subject to the supervision conditions.
  - (2) For the purposes of assisting the Scottish Ministers in deciding whether, under section 29A(3)(a), to include any of the supervision conditions in a prisoner's short-term community licence, the Scottish Ministers and the appropriate local authority must, during the first half of a short-term custody and community prisoner's sentence, assess, in accordance with arrangements established under subsection (1), whether any of those conditions are appropriate.
  - (3) In this section, “appropriate local authority” is to be construed in accordance with section 29A(7) and (8).”.
- (8) In section 47 (curfew licences)—
- (a) in subsection (1), after “to” insert “ a short-term custody and community prisoner or ”,
  - (b) in subsection (2) for “the custody part of the prisoner's sentence” substitute—
    - “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,
    - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”,
  - (c) after subsection (3) insert—

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“(3A) The Scottish Ministers may release a short-term custody and community prisoner on curfew licence only—

(a) after the later of—

(i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner's sentence, or

(ii) the day falling 166 days before the expiry of one-half of the prisoner's sentence, and

(b) before the day falling 14 days before the expiry of one-half of the prisoner's sentence.”,

(d) in subsection (4)—

(i) after “a” insert “ custody and community ”, and

(ii) in paragraph (a)(ii), for “135” substitute “ 166 ”, and

(e) in subsection (8), for “the custody part of the prisoner's sentence” substitute—

“(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”.

(9) Schedule 3 amends the Custodial Sentences and Weapons (Scotland) Act (asp 17) and the 1995 Act in consequence of amendments made by this section.

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 18.