

2019 No. 309 (C. 14)

CRIMINAL LAW

CRIMINAL PROCEDURE

OFFENDER MANAGEMENT

**The Management of Offenders (Scotland) Act 2019
(Commencement No. 1, Saving and Transitional Provisions)
Regulations 2019**

Made - - - - - *30th September 2019*

Laid before the Scottish Parliament *1st October 2019*

Coming into force - - - *11th October 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 63(2) and (3) of the Management of Offenders (Scotland) Act 2019^(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Management of Offenders (Scotland) Act 2019 (Commencement No. 1, Saving and Transitional Provisions) Regulations 2019 and come into force on 11 October 2019.

(2) In these Regulations—

“the Act” means the Management of Offenders (Scotland) Act 2019,

“the 1989 Act” means the Prisons (Scotland) Act 1989^(b),

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993^(c).

Appointed day

2.—(1) Subject to paragraph (2), 11 October 2019 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of the table in the schedule (the subject matter of which is described in the corresponding entry in column 2 of the table).

(2) Where a purpose is specified in column 3 of the table in the schedule, the corresponding provision in column 1 comes into force in accordance with paragraph (1) only for that purpose.

(a) 2019 asp 14.
(b) 1989 c.45.
(c) 1993 c.9.

Saving provision

3. The amendment of section 17A(1) of the 1993 Act^(a) by section 50(2) of the Act has no effect in relation to a prisoner released on licence under section 3AA of the 1993 Act^(b) before the day appointed in regulation 2(1).

Transitional provision

4. Section 59 of the Act comes into force subject to the following transitional provisions—

- (a) in section 32C(2) of the 1989 Act (as inserted by section 59(2) of the Act), all references to temporary release are references to temporary release granted to a prisoner on or after the day appointed in regulation 2(1),
- (b) in section 32C(3) of the 1989 Act (as inserted by section 59(2) of the Act), all references to notification are references to notification given on or after the day appointed in regulation 2(1).

H YOUSAF

A member of the Scottish Government

St Andrew's House,
Edinburgh
30th September 2019

(a) Section 17A was inserted into the 1993 Act by section 15(13) of the Management of Offenders etc. (Scotland) Act 2005.
(b) Section 3AA was inserted into the 1993 Act by section 15(5) of the Management of Offenders etc. (Scotland) Act 2005 and has been amended by S.S.I. 2008/126 and S.S.I. 2016/416.

SCHEDULE

Regulation 2

<i>Column 1</i> <i>(provisions of the Act)</i>	<i>Column 2</i> <i>(subject matter)</i>	<i>Column 3</i> <i>(purpose)</i>
Section 16(1)	Additional and consequential provisions	For the purposes of commencing paragraphs 1, 3, 4 and 5 of schedule 1.
Section 48	Release on licence under section 3AA of the 1993 Act	
Section 49	Release timed to benefit re-integration	
Section 50(1), (2) and (4)	Representations by certain recalled prisoners	
Section 53(1) and (3)(a)	Re-release after revocation of licences generally	
Section 55	Temporary release on licence under prison rules	
Section 56	Co-operation between public authorities	
Section 57	Operating protocol for release on licence under section 3AA of the 1993 Act	
Section 59	Offence of remaining unlawfully at large	
Section 60	Arrest where unlawfully at large	
Section 61	Meaning of the 1993 Act	
The following paragraphs of schedule 1—	Court orders and electronic monitoring	
Paragraph 1	Supervised release orders	
Paragraph 3	Non-harassment orders	
Paragraph 4	Multiple orders	
Paragraph 5	Suitability of the place of supervision	

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring Part 4 and Schedule 1 of the Management of Offenders (Scotland) Act 2019 (“the Act”) partially into force.

Regulation 3 makes saving provision for the commencement of section 50(2) of the Act. Section 50(2) repeals the existing grounds on which the Scottish Ministers may recall a prisoner to prison from a period of home detention curfew (HDC) and substitutes one new ground of recall where it is expedient in the public interest to do so. Regulation 3 provides that for prisoners who have been released on HDC prior to the day appointed in regulation 2(1) (“the appointed day”), the new ground of recall in section 50(2) of the Act does not apply and the existing grounds continue to apply.

Regulation 4 makes transitional provision for the commencement of section 59 of the Act. Section 59 introduces the new offence of remaining unlawfully at large by inserting new sections 32A to 32C into the Prisons (Scotland) Act 1989. There are two main circumstances in which a person can be unlawfully at large: (1) following the expiry of a period of temporary release; and (2) following their recall to prison from a period of temporary release, HDC or parole.

The first aspect of the new offence is where a person, without reasonable excuse, fails to take all necessary steps to return to prison as soon as possible following the expiry of a period of temporary release. If this aspect of the new offence was applied to those who have been granted temporary release prior to the appointed day, it could criminalise behaviour retrospectively. A person who, on the appointed day, is unlawfully at large following the expiry of their temporary release could automatically be committing the new offence when section 59 of the Act comes into force.

Regulation 4(a) prevents the offence of remaining unlawfully at large following the expiry of temporary release from applying retrospectively by providing that the offence will only apply to those prisoners who have been granted temporary release on or after the appointed day.

The second aspect of the offence is where a person, without reasonable excuse, fails to take all necessary steps to return to prison as soon as possible following being notified of being deemed to be unlawfully at large. If this aspect of the new offence was applied to every person serving their prison sentence in the community on the appointed day, it could criminalise behaviour retrospectively. A person who, on the appointed day, is unlawfully at large following their recall to prison, and has been advised that they are unlawfully at large, could automatically be committing the new offence when section 59 of the Act comes into force.

Regulation 4(b) prevents the offence of remaining unlawfully at large following notification of recall to prison from applying retrospectively by providing that the offence will only apply where notification has been provided to the prisoner on or after the appointed day.

The Bill for the Act received Royal Assent on 30 July 2019. Sections 62, 63 and 64 of the Act came into force on the day after Royal Assent by operation of section 63(1) of the Act.

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