

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 4 – Prisoners

Release of prisoners

Section 35 – Suspension of licence conditions under 1993 Act

161. **Section 35** amends section 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) and adds a new section 12A to the Act, to suspend certain conditions in a prisoner’s licence when, notwithstanding the issuing of a licence, he or she is then lawfully detained in custody. This may be because the prisoner:
- continues to be detained because he or she is serving a non-offence term of imprisonment or detention (for non-payment of a fine or for contempt of court) which is consecutive or partly concurrent with the sentence from which he or she has been released on licence; or
 - is detained after release on licence while the licence remains in force, for example, because of a remand warrant or a subsequent sentence.
162. In such circumstances, some of the licence conditions will either be impossible to fulfil or will no longer be appropriate, because of the prisoner’s detention in prison.
163. It also inserts a new section 12B. Its effect is that where a person is released on licence from a sentence under either the Prisons (Scotland) Act 1989 or under the 1993 Act and is then given a further sentence while the licence is still in force, the subsequent release will be on a single licence. This is to prevent the possibility that the person is released from the subsequent sentence on licence and that the licence in respect of the original sentence is also still in force.
164. **Section 35(2)** provides that section 12 of the 1993 Act, which obliges a licence holder to comply with the conditions in the licence, is to be subject to section 12A.
165. **Section 35(3)** inserts new sections 12A and 12B into the 1993 Act.
166. Subsection (1) of the new section provides that where a person is detained in custody, having been previously released on licence the licence is still in force, the effect of certain conditions of the licence is to be suspended.
167. Subsection (2) of the new section provides that the suspension of the conditions will take effect when the prisoner is detained and will continue throughout the period for which he or she is liable to be detained or remanded. Immediately upon release, all of the conditions will come back into force, provided that the licence has not already expired.
168. Subsection (3) of the new section specifies the conditions which will not be suspended and which will still remain in force while the prisoner is detained. These are, that the

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

offender shall be of good behaviour and keep the peace, and – if such a condition has been imposed – shall not have contact with any named person or class of person from whom he or she is prohibited from having contact by virtue of the licence.

169. Subsection (4) of the new section provides that the Scottish Ministers may by order add to the conditions referred to in subsection (3) as they consider appropriate or remove or vary them.
170. [Section 35\(3\)](#) also inserts a new section 12B into the 1993 Act.
171. Subsection (1) of new section 12B provides that subsection (2) applies where a person has been released on licence and, while the licence is still in force, receives another sentence of imprisonment.
172. Subsection (2) provides that, in such a situation, the prisoner is to be released from the subsequent sentence on a single licence under Part 1 of the 1993 Act. This licence will be in respect of both the original and the subsequent sentences.
173. Subsection (3) provides that the single licence will take the place of the original licence and any licence which would otherwise have been granted in respect of the subsequent sentence, and that its conditions shall be those contained in the original licence immediately prior to the single licence taking effect. In addition, the single licence shall remain in force until both the original licence and a licence in respect of the subsequent sentence would have expired.