

# **CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON PARTS**

#### **Part 2 - Confinement and Release of Prisoners** Chapter 4

#### *Curfew Licences*

#### *Section 47 - Curfew licences*

91. Under this section the Scottish Ministers may release, on licence, a 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. Subsection (3) provides that the licence must include a curfew condition, which is described in section 48.
92. Subsections (2) and (4) specify the period during which a prisoner may be released on a curfew licence. Subsection (2) states that it shall be before the expiry of the custody part of the sentence. Subsection (4) provides that the Scottish Ministers may only release a prisoner 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 135 days before the expiry of the custody part of the sentence. In addition, release must be before the day falling 14 days before the expiry of the custody part. So the window for release on curfew licence is between 135 days and 14 days before the expiry of the custody 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.
93. Subsection (5) provides that in determining whether to release a prisoner under this section, the Scottish Ministers must have regard to the need to protect the public, prevent re-offending and secure the successful re-integration of the prisoner into the community. Subsections (6) to (8) provide that the Scottish Ministers may include in a curfew licence any other conditions they consider appropriate; that prisoners released on curfew licence must comply with any conditions on it; and that the curfew licence remains in force until the expiry of the custody part of the sentence.
94. Subsection (9) provides that an order made under subsection (1)(b) may apply, with or without modification, relevant provisions of Part 2 of the Act to curfew licences. It may also amend the periods of time mentioned in subsection (4).

#### *Section 48 - Curfew conditions*

95. Subsection (1) defines a curfew condition as being one that requires a person to remain at the place specified in the condition for the periods which are specified. Subsection (2) provides that it may also require the person not to be in a particular place, or class of place, at a specified time or during a specified period and may also specify different

places and periods for different days. However, subsection (3) states that it cannot specify, in respect of the condition to remain at a certain place, periods amounting to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

***Section 49 - Monitoring of curfew conditions***

96. Subsection (1) provides that an offender's compliance with a curfew condition will be monitored remotely. Subsection (2) applies section 245C of the Criminal Procedure (Scotland) Act 1995 in relation to the imposition of, and compliance with, a curfew condition as that section applies to the monitoring of restriction of liberty orders. Section 245C, read with section 38(2) and also with section 118 of the Scotland Act 1998, requires the Scottish Ministers to make regulations specifying the devices which may be used for the remote monitoring of compliance with the curfew condition.
97. Subsection (3) requires the Scottish Ministers to designate in the licence who will be responsible for the remote monitoring, and subsection (4) provides that the Scottish Ministers may replace the responsible person with another person. Subsection (5) requires the Scottish Ministers to send, as soon as practicable after designating any person as the responsible person, a copy of the curfew condition to that person, together with any other relevant information which Ministers consider the person may need for the fulfilment of the remote monitoring responsibility. Subsection (6) provides that, where the Scottish Ministers exercise their power under subsection (4) to designate a new responsible person, they must, where practicable, notify the person who has been replaced.