

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON PARTS**

#### **Part 1 – the Parole Board for Scotland**

##### ***Section 1 - The Parole Board for Scotland***

5. This section provides for the continuation of the Parole Board for Scotland. It was established by section 18 of the Prisons (Scotland) Act 1989 and continued by section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Subsection (2) sets out its key function as being to direct the Scottish Ministers in relation to the confinement and release of prisoners under Part 2 of the Act. Provision is also made at subsection (3) for the Board to carry out other functions given to it in other provisions of the Act or in any other legislation.
6. Subsection (4) requires the Board to have regard to the risk management plan when considering the case of a person for whom one has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003. Section 6(1) of the 2003 Act requires that a Risk Management Plan be prepared for an offender who is made subject of an Order for Lifelong Restriction (OLR). OLRs became available to the courts on 19 June 2006. The OLR is a sentence for serious sexual and violent offenders and is broadly equivalent to a life sentence insofar as the offender remains on licence for the remainder of his or her life.
7. Subsection (5) provides that further provisions concerning the Parole Board (constitutional issues, membership, etc) are set out at Schedule 1.

**Schedule 1** (*introduced by section 1(5)*)

##### ***The Parole Board for Scotland***

#### **Membership**

8. **Paragraph 1** provides that the Parole Board must consist of a minimum of 5 members, one of whom will be the convenor. The members will be appointed by the Scottish Ministers. Paragraph 2 specifies the five categories of person who must be included in the Board's membership.
9. **Paragraph 3** allows the Scottish Ministers to make regulations specifying the procedure, including requirements as to consultation, to be followed in appointing members to the Board. The Scottish Ministers must comply with any such regulations. The regulations may make different provisions for different kinds of members.

## **Tenure of appointments**

10. Paragraphs 4 and 5 provide that members must be appointed for a period of between 6 and 7 years, though a member will cease to be such as soon as he or she has reached the age of 75.
11. Paragraph 6 provides that if the member who is a High Court Judge ceases to hold that office, he or she also ceases to be a member of the Board. Similarly, paragraph 7 provides that if the member appointed as a psychiatrist ceases to be a registered medical practitioner or ceases to be a psychiatrist (even if the person is still registered as a medical practitioner), he or she ceases to be a member of the Board.
12. Paragraph 8 provides that a member may resign at any time by giving the Scottish Ministers written notice. Members may also be removed from office under paragraph 14 of this schedule (as explained below), and in that case paragraph 9 provides that the person ceases to be a member on the day on which an order is made under paragraph 14.
13. Paragraphs 10 to 12 deal with reappointment. They provide that a member may be reappointed to the Board so long as he or she has not been a member for the previous 3 years and has not previously been reappointed. Members who have previously resigned from the Board can be reappointed, but a person who has been removed from office by virtue of an order under paragraph 14 (as explained below) may not be reappointed.

## **Carrying out functions**

14. Paragraph 13 requires the convenor to have regard to the desirability of ensuring that all members are given the opportunity to participate in the Board's functions on not fewer than 20 days in each successive period of 12 months. The 12 month period begins on the first day of the member's appointment.

## **Removal of members**

15. Paragraphs 14 to 17 deal with the removal of members from the Parole Board. Members may only be removed from the Board by order of a tribunal constituted under paragraph 16. This is to consist of either a Court of Session judge or a sheriff principal (who will preside over the proceedings), an advocate or a solicitor with at least 10 years' standing, and one other person who is not an advocate or a solicitor.
16. The tribunal may only act if it has been requested to carry out an investigation by the Scottish Ministers. It may then only order a member's removal if, following investigation, it finds that member unfit to continue to be a member of the Board by reason of inability, neglect of duty or misbehaviour.
17. The Scottish Ministers may make regulations to enable the tribunal to suspend a member from the Board during the investigation. These regulations may also make provision for the effect and duration of that suspension, and for any other matters pertaining to the tribunal, including the procedure to be followed by and before it, that the Scottish Ministers may deem appropriate.

## **Remuneration, allowances and other expenses**

18. Paragraphs 18 and 19 provide that Board members are to be remunerated for their service and also receive reimbursement of any reasonable expenses incurred in carrying out their duties. Rates of pay and repayment of expenses are determined and paid for by the Scottish Ministers.

## **Reporting and planning**

19. Paragraph 20 provides that the Board must, as soon as practicable after the end of each reporting year (as defined in paragraph 22), submit a report to the Scottish Ministers on the performance of its functions during the year. Paragraph 21 requires that the Board

also submit, as soon as practicable at the beginning of each planning period (as defined in paragraph 22), a plan providing details as to how it will carry out its functions and setting performance targets in relation to those functions.

20. Paragraph 22(1) provides that the reporting period is the period beginning when section 1 of Part 1 of this Act comes into force and ending on the following 31 March, and then each 12 month period ending 31 March.
21. Paragraph 22(2) provides that the planning period is the period beginning when section 1 of Part 1 of this Act comes into force and ending on the third occurrence thereafter of 31 March, and then each successive 3 year period ending 31 March.
22. Paragraph 23 requires the Scottish Ministers to lay a copy of the annual report and the plan before the Scottish Parliament.

## **Section 2 - Parole Board rules**

23. Subsection (1) provides that the Scottish Ministers may make rules to regulate the Parole Board's proceedings. Subsection (2) details some of the particular types of provisions which may be included in the rules. There is the power, amongst other things, to:
  - authorise cases to be dealt with, in whole or in part, by a specified number of members of the Board;
  - enable the Board to require persons, other than the prisoner whose case the Board is dealing with, to
    - attend a Board hearing,
    - give evidence to the Board, or
    - produce documents;
  - prescribe time limits for the determination of cases and for the performance of other actions; and
  - specify the matters which may be taken into account by the Board when dealing with cases.
24. Subsection (3) allows the Parole Board Rules to apply the terms of subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973:
  - Subsection 210(4) of that Act provides the power to request a person to attend (as mentioned above) provided that any expenses incurred are paid and provided that the person is entitled to refuse to produce documents or answer questions, on grounds of privilege or confidentiality, if this could have been done were the matter to have been raised in proceedings in a court of law.
  - Subsection 210(5) of that Act provides that any person who refuses or wilfully neglects to attend a hearing to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he is required or is liable to be required to produce shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale (though this may be raised to level 2 in the rules). It also provides for a penalty of imprisonment for a term not exceeding three months but this penalty cannot apply when section 210(5) is applied to hearings before the Parole Board by virtue of the Parole Board Rules.

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

### **Chapter 1**

## **Introductory**

### **Section 3 - Application of Part 2**

25. Other than a life prisoner, this Part only applies to a sentence imposed on a person for an offence committed after the coming into force of this Part. Section 54 deals with the application to those imprisoned other than following conviction of an offence.

### **Section 4 - Basic Definitions**

26. This section provides definitions of various terms used in the Act.
27. Subsection (2) gives Scottish Ministers the power to amend, by order, the definitions of “custody and community sentence” and “custody-only sentence” by substituting a different period for the period mentioned (which is 15 days).
28. Subsections (3) and (4) provide that:
- release on community licence is a reference to the release on licence of a custody and community prisoner; and
  - release on life licence is a reference to the release on licence of a life prisoner.

## **Chapter 2**

### **Confinement, Review and Release of Prisoners**

#### **Custody-only prisoners**

### **Section 5 - Release on completion of sentence**

29. This section provides that a custody-only prisoner (i.e. a prisoner sentenced to a term of less than 15 days) will spend the entire sentence in prison and then be released unconditionally.

#### **Custody and community prisoners**

### **Section 6 - Setting of custody part**

30. This section describes the arrangements for setting the custody part of a custody and community sentence. This is a sentence for a term of 15 days or more. Subsection (2) provides that, for custody and community sentences, the court must make an order specifying the custody part. Subsection (3) defines the custody part as being the part of the sentence which satisfies the requirements for retribution (or punishment) and deterrence ignoring any period of confinement which may be necessary for the protection of the public since that is already a matter for the court to consider when setting the overall sentence. The decision on whether the prisoner should be released at the expiry of the custody part will depend on the assessment of the risk of serious harm posed and, if necessary, a final decision will be taken by the Parole Board for Scotland.
31. Subsection (4) provides that the custody part will be a minimum of one half of the overall sentence. However, subsection (5) enables the court to specify a greater proportion of the sentence as the custody part taking into account the matters mentioned in subsection (6), namely:
- the seriousness of the offence or of the offence combined with other offences of which the person is being convicted of on the same indictment or complaint,
  - the fact that the offence was committed while still serving a sentence of imprisonment for a previous offence; and
  - any previous convictions.

Subsection (7) prevents the court from setting a custody part in excess of three-quarters of the sentence. Subsection (8) requires the court to specify the custody part as a period of time e.g. 2 years and 6 months. Subsection (9) requires that where a custody part would be expressed as a period including a fraction of a day, that it be rounded up to a whole day (with the community part of the sentence reducing respectively). Subsection (10) provides that when setting a custody part in excess of 50%, the court must explain its reasons for doing so in open court. Subsection (11) provides that the custody part forms part of the sentence for appeal purposes.

### ***Section 7 - Power to amend section 6(4)***

32. **Section 7** gives the Scottish Ministers the power to amend, by order, the minimum custody part specified in section 6(4)(a).

### ***Section 8 – Provision of information by court***

33. **Section 8** requires a court to produce a report when imposing custody and community sentence. In terms of subsection (2), the court must provide the Scottish Ministers with information about the person and the circumstances of the case as soon as is reasonably practicable. Subsection (3) provides that the court provide the information in a format it deems appropriate.

### ***Section 9 - Joint arrangements between Scottish Ministers and local authorities***

34. Subsections (1) and (2) require joint working arrangements to be put in place between the Scottish Ministers and local authorities in relation the assessment and management of the risks posed by custody and community prisoners. The Scottish Ministers and each local authority shall jointly assess whether an individual prisoner is likely to cause serious harm to members of the public if he or she were to be released on community licence on the expiry of the custody part of the sentence.
35. Subsection (4) defines the appropriate local authority as either the one in which the offender resided immediately prior to being sentenced or the one the offender intends to reside in upon beginning the community part of his or her sentence on licence. Subsection (5) provides that in the event of the two authorities being different they can agree between them which one should carry out the functions conferred on them under this section or section 31(4) (which also confers a function on the Scottish Ministers and local authorities to work together).

### ***Section 10 - Review by Scottish Ministers***

36. This section provides that the Scottish Ministers must determine, before the expiry of the custody part of the sentence, whether or not a custody and community prisoner is likely to cause serious harm to members of the public if he or she were released on community licence.

### ***Section 11 - Consequences of review***

37. This section requires that where the Scottish Ministers have assessed that a prisoner would not be likely to cause serious harm to the public if released then he or she must be released on community licence on the expiry of the custody part of the sentence (this is done without the prisoner's case being referred to the Parole Board). Where a prisoner has been assessed as likely to cause serious harm to the public, subsection (3) requires the Scottish Ministers to refer his or her case to the Parole Board.

### ***Section 12 - Review by Parole Board***

38. This section places a duty on the Parole Board to review the case of a prisoner, referred to it by the Scottish Ministers under section 11(3), before the custody part of the prisoner's sentence expires.

### ***Section 13 – Release on community licence following review by Parole Board***

39. This section provides that where the Parole Board has determined that a prisoner is not likely to cause serious harm to the public if released when the court-imposed custody part of the sentence expires or after a further review by the Board, the Board shall direct that the prisoner be released on community licence and shall specify the conditions to be included in the licence. Subsection (3) provides that where the Parole Board has made such a direction, the Scottish Ministers must release the prisoner on a community licence. In the case of a determination to release after the first referral by the Scottish Ministers, subsection (4) obliges the Scottish Ministers to give effect to the Parole Board's direction by releasing the prisoner on the expiry of the custody part of the sentence.

### ***Section 14 - Determination that section 10(2) applicable: consequences***

40. This section applies where the Parole Board has determined, as a result of an initial referral or of a further review, that a prisoner is likely to cause serious harm to the public on release. Subsection (2) requires that the Parole Board give its reasons in writing.
41. Subsection (3) provides that if, on the day of determination, less than 4 months of the prisoner's sentence remains before reaching the three-quarters point of the sentence, the prisoner must be confined until that point and the Parole Board must specify conditions to be included on the prisoner's community licence.
42. Subsection (4) provides that if, on the day of determination, between 4 months and 2 years remain to be served before reaching the three-quarters point, the Parole Board may fix a date for next considering the prisoner's case during the period specified in subsection (5). Subsection (5) provides that the period begins with the day that falls 4 months after the date of the determination and ends at the three-quarters point. Subsection (6) provides that if the Parole Board decides not to hold another hearing the prisoner must be confined until the three-quarters point and the Parole Board must set a date falling within the period provided for at subsection (5) in order to specify conditions to be included on the prisoner's community licence.
43. Subsection (7) provides that if, on the day of determination, more than 2 years remain before the three-quarters point, the Parole Board must fix a date for when it will next consider the prisoner's case. This must fall within the period provided for at subsection (8), which begins with the day that falls 4 months after the date of the determination and before the second anniversary of the determination.
44. Subsection (9) provides that the "three-quarters" point is the day on which the prisoner will have served three-quarters of his sentence.

### ***Section 15 - Prisoner's right to request early consideration by Parole Board***

45. **Section 15** provides that a prisoner may request earlier consideration of his/her case by the Parole Board to that fixed under section 14(4) or (7). Subsection (4) also enables a prisoner to request that a date be fixed for next considering his or her case where the Parole Board has not fixed a date under section 14(4). This section applies to those offenders who have been detained in custody following a review by the Parole Board.

### ***Section 16 - Referral to Parole Board for the purposes of specifying conditions***

46. **Section 16** requires Scottish Ministers before the date fixed by the Board under section 14(6)(b) to refer cases to the Parole Board to enable it to set community licence

conditions. This refers to those offenders with between 4 months and 2 years to serve before reaching the three-quarters point and for whom the Board had directed they remain in custody up to the three-quarters point.

### ***Section 17 - Further referral to Parole Board***

47. This section applies where the Parole Board has fixed a date under sections 14(4) or (7) to determine whether or not the prisoner would cause the public serious harm if not confined. Subsection (2) provides that the Scottish Ministers must refer the prisoner's case to the Parole Board before that date and subsection (3) requires the Parole Board to determine whether or not the prisoner would be likely to cause serious harm to the public if not confined.

### ***Section 18 - Cases where custody part specified as three-quarters of prisoner's sentence***

48. Subsection (1) provides that this section applies to custody and community prisoners whose custody part has been set at three-quarters of the overall sentence by the court. Subsection (2), by disapplying section 10(1) provides that there is no requirement for Scottish Ministers to determine whether or not the prisoner presents a risk of serious harm to the public prior to the end of the custody part with a view to referring the case to the Parole Board. Subsection (3) provides, however, that Scottish Ministers must, before the expiry of the custody part, refer the prisoner's case to the Board and that the Board must specify the conditions to be included on the prisoner's community licence.

### ***Section 19 - Release after three-quarters of sentence served***

49. Subsection (1) provides that the Scottish Ministers must release the prisoner on a community licence once three-quarters of the sentence have been served. Subsection (2) provides that the obligation to release at the three-quarter point does not apply in the case of an offender who has been recalled to custody in consequence of the revocation of a community licence by virtue of section 37(1) or (4) of the Act.

## **Life Prisoners**

### ***Section 20 - Setting of punishment part***

50. This section sets out the provisions for setting the punishment part of a life sentence. The period will be specified in an order made by the court. Subsection (1) provides that this section applies where the court imposes on a person a life sentence. Subsection (2) requires the court to specify the punishment part in an order after imposing the sentence. Subsection (3) defines the punishment part as being that part of the sentence which, taking into account certain specified matters, the court considers appropriate to satisfy the requirements for retribution and deterrence but ignoring any period of confinement that the court feels may be necessary for protection of the public. It is only once this period has been served in full that the offender can be released on life licence, but this will only happen following a direction from the Parole Board, as explained below.
51. Subsection (4) details the matters the court must take account of when setting a punishment part for someone with a mandatory life sentence (for murder), namely
- the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment;
  - any previous convictions;
  - where appropriate, the timing of any guilty plea;

Subsection (5) deals with the relevant matters for those with a discretionary life sentence (for offence other than murder) or an order for lifelong restriction. They are:

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- the determinate period of imprisonment the court considers would have been appropriate had the court not imposed a discretionary life sentence or an order for lifelong restriction; and
  - the part of that period of imprisonment which the court would have specified as the custody part, by reference to the matters set out in section 6(4)
52. Subsections (6), (7) and (8) provide that the punishment part, which must be expressed in years and months, may exceed the person's life expectancy, and forms part of the person's sentence for the purposes of any appeal or review.

### ***Section 21 - Referral to Parole Board***

53. This section requires the Scottish Ministers to refer a life prisoner's case to the Parole Board before the expiry of the punishment part.

### ***Section 22 - Review by Parole Board***

54. This section requires the Parole Board, on referral of the case by the Scottish Ministers under section 21, to determine before the expiry of the punishment part of the sentence whether or not the life prisoner, if not confined, would be likely to cause serious harm to the public.

### ***Section 23 - Release on life licence following review by Parole Board***

55. Where the Parole Board is satisfied (either at the first review before the punishment of the sentence expires or at a subsequent review) that it is no longer necessary to confine a life prisoner for the protection of the public, it must direct the Scottish Ministers to release him or her on life licence and must specify conditions to be included in the licence. Where the direction is given at the first review before the punishment part expires, the Scottish Ministers are obliged to give effect to that direction on the expiry of the punishment part. Subsection (3) provides that where the Parole Board has directed that a life prisoner be released, the Scottish Ministers must release the prisoner on a life licence.

### ***Section 24 - Determination that section 22(3) applicable: consequences***

56. This section provides that where the Parole Board is satisfied that it is necessary to continue to confine a life prisoner for the protection of the public, it must give the prisoner reasons in writing and fix a date for a further review of the case. Subsection (3) provides that this must be within the period beginning 4 months after the day of the determination and ending immediately before the second anniversary of the determination. Subsection (4) provides that where the Parole Board has set a date for further review under subsection (2)(b), subsection (5) gives the Parole Board the discretion of replacing that date with an earlier one if the prisoner requests this.

### ***Section 25 - Further referral to Parole Board***

57. This section provides that where the Parole Board fixes a date under section 24(2)(b) the Scottish Ministers must, subject to section 26 (which is explained below), refer the case before that date to allow the Board to consider the case. The Board is to determine whether the prisoner would be likely to cause the public serious harm if not confined.

## **Referral to Parole Board: postponement**

### ***Section 26 - Referral to Parole Board: postponement***

58. Subsections (1) and (2) require the Parole Board to postpone the date which it would otherwise have fixed for the review of a prisoner's case where he or she receives a subsequent sentence of imprisonment after the case has been referred to the Board but



before the Board has fixed a date for considering the referral. This applies where the prisoner would not be eligible for release from the subsequent sentence on the date which would otherwise have been fixed. In such circumstances, subsection (2) obliges the Board to fix a different date.

59. Subsections (3) and (4) deal with the situation in which the Board has fixed a date to review a particular case and the prisoner subsequently receives a further sentence from which he or she would not be eligible for release at that date. In this event, the Board must fix a different date for considering the case.
60. Subsection (5) provides that, in either of these scenarios, the date fixed must be the date which would have been set if the prisoner were only subject to the subsequent sentence. It replaces any other dates fixed previously.

## **Compassionate release on licence**

### ***Section 27 - Compassionate release on licence***

61. Subsection (1) enables the Scottish Ministers to release prisoners on licence at any time if they are satisfied there are compassionate grounds for doing so.
62. Subsections (2) and (3) require the Scottish Ministers, before releasing a prisoner other than a custody-only prisoner under this section, to consult the Parole Board, unless it is impracticable to do so.

## **CHAPTER 3**

## ***Community and Life Licences***

### **The standard conditions**

#### ***Section 28 – Release on licence: the standard conditions***

63. **Section 28** provides that where a prisoner is released on licence under the provisions of Part 2 of the Act (in practice custody and community prisoners, including those serving an extended sentence, and life sentence prisoners) the prisoner will be subject to certain standard conditions. Subsection (2) provides these as being (a) that the prisoner must be of good behaviour; and (b) that the prisoner is prohibited from leaving the United Kingdom without permission. Subsections (3) and (4) provides that the prohibition on leaving the United Kingdom does not apply if the prisoner is to be deported or is liable to removal under the relevant immigration legislation (as specified in subsection (4)) or the Scottish Ministers or a person designated by them permit the prisoner to leave the United Kingdom.

### **The supervision conditions**

#### ***Section 29 - Release on licence of certain prisoners: the supervision conditions***

64. This section (see, in particular, subsection (2)) requires the Scottish Ministers to include a supervision condition in the 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 with a sentence of 6 months or more or who is detained in custody beyond the court-imposed custody part of the sentence; a custody and community prisoner with a custody part set at the maximum three-quarters by the court at the point of sentencing; a prisoner released on compassionate grounds; an extended sentence prisoner; a sex offender; or a child,.
65. Subsection (4) states that a supervision conditions are that (a) the prisoner is to be supervised by a relevant officer of the local authority specified in the licence, (b) the prisoner comply with any other requirements imposed by the supervising officer, (c) the prisoner maintains contact with the supervising officer as directed, and (d) the

prisoner informs the supervising officer of any change of address and any change of employment.

66. Subsection (5) provides that the “relevant officer” referred to in subsection (3), in relation to a local authority, is an officer of that local authority employed by it as a social worker.

## **Community Licences**

### ***Section 30 - Release on community licence on Parole Board’s direction***

67. Where the Parole Board specifies conditions to be included in a community licence by virtue of sections 13(2)(b), 14(3)(b), 16(3), 18(3)(b) or 42(4)(b), the Scottish Ministers must include these conditions in the community licence. Subsection (2) provides that the Scottish Ministers must also include the standard conditions specified at section 28 and, if applicable, the supervision conditions. Subsection (3) provides that the Scottish Ministers may only vary or cancel the conditions or include further conditions, if directed by the Parole Board to do so.

### ***Section 31 - Community licences in which Scottish Ministers may specify conditions***

68. This section provides that, in a case where the Scottish Ministers release a prisoner without referring the case to the Parole Board, the Scottish Ministers can include such conditions as they consider appropriate upon the prisoner being released on community licence either on the expiry of the custody part or as a result of being granted compassionate release. Subsection (2) also provides that the Scottish Ministers must include the standard conditions specified at section 28 and, if applicable, the supervision conditions. Subsection (3) allows Scottish Ministers to vary or cancel conditions or include such further conditions as they consider appropriate. Subsection (4) provides that in exercising such powers they must co-operate with the appropriate local authority, as defined in section 9.

## **Life licences**

### ***Section 32 - Release on life licence: conditions***

69. Where the Parole Board specifies the conditions to be included in a prisoner’s life licence, the Scottish Ministers must include these conditions in the life licence. Subsection (2) also provides that the Scottish Ministers must include the standard conditions specified at section 28 and, if applicable, the supervision conditions specified at section 29. Subsection (3) provides that, the Scottish Ministers may vary or cancel the conditions or include further conditions but only if directed to do so by the Parole Board.

### ***Section 33 - Compassionate release on life licence: conditions***

70. This section applies where Scottish Ministers have granted compassionate release to a life sentence prisoner. Subsection (2) provides that the Scottish Ministers must include the standard conditions specified at section 28 and, if applicable, the supervision conditions and such other conditions as they consider appropriate. Subsection (3) provides that the Scottish Ministers may vary or cancel conditions or include further conditions.

## **Duration of licence**

### ***Section 34 – Period during which licence in force***

71. Subsection (1) provides that where a custody-only prisoner has been granted compassionate release, the licence remains in force until the sentence expires.

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which received Royal Assent on 19 April 2007*

72. Subsection (2) provides that, where a custody and community prisoner is released on community licence, the licence remains in force until the sentence expires.
73. Subsection (3) provides that, where a life prisoner has been released on life licence, the licence remains in force for the remainder of the prisoner's life.

## **Prisoner to comply with licence conditions**

### ***Section 35 - Prisoner to comply with licence conditions***

74. This section requires a prisoner to comply with all conditions included in his or her licence.

## **Suspension**

### ***Section 36 - Suspension of licence conditions while detained***

75. This section provides that if a custody and community prisoner or a life prisoner is detained in custody, for whatever reason, during a period when their licence is still in force, then the licence conditions - with certain exceptions - are suspended. As provided for at subsections (4)(a) and (b), the suspension remains in place for so long as the prisoner is confined in prison and for so long as the licence remains in force.
76. The exceptions are set out in subsection (3), namely, the condition that the prisoner be of good behaviour and keep the peace and any condition that the prisoner must not contact a named person or class of persons. These conditions continue in force, and breach of them can lead to the licence being revoked.
77. Subsection (5) allows Scottish Ministers, by order, to add to these conditions and to cancel or vary them.

## **Revocation**

### ***Section 37 - Revocation of licence***

78. Subsection (1) enables the Scottish Ministers to revoke a prisoner's licence and recall him or her to custody. Subsection (4) deals with the situation in which a prisoner is still on licence but is detained in custody for any reason. In such a situation, Ministers must revoke the licence.
79. Subsections (2), (3) and (5) provide that, whether or not the prisoner is in custody at the time, the licence may only be revoked if two conditions are met: first, that the prisoner either has breached a licence condition or is considered to be likely to do so; and secondly that Ministers consider that it is in the public interest to revoke the licence.

### ***Section 38 - Compassionate release: additional ground for revocation of licence***

80. Subsection (1) provides that this section applies if a prisoner has been given compassionate release on licence and Scottish Ministers are satisfied that those grounds for granting such release are no longer justified e.g. a reversal of the medical condition. Subsection (2) requires Scottish Ministers to revoke the licence and subsection (3) requires that if the offender is not already detained, that he or she is recalled to prison.

### ***Section 39 - Prisoners unlawfully at large***

81. This section provides that where a prisoner's licence has been revoked by virtue of section 37(1) or 38(2) and that prisoner is not in custody, he or she is taken to be unlawfully at large. The effect of this is any period of time spent unlawfully at large will still have to be served as part of the sentence. This section also applies to those released on compassionate grounds who have been recalled to custody.

***Section 40 – Compassionate release: effect of revocation in certain circumstances***

82. Subsection (1) provides that subsection (2) applies where a prisoner is released on compassionate grounds is recalled to custody following revocation of his or her licence and the revocation occurs before the expiry of the relevant period described in subsection (3). These are: the prisoner's sentence if a custody-only prisoner; the custody part of the sentence if a custody and community prisoner; or the punishment part of the sentence if a life sentence prisoner. The effect of subsection (2) is that the prisoner reverts to being treated as if he or she had not been released on compassionate grounds i.e. the remainder of the sentence will follow the relevant procedures as prescribed by Part 2 of the Act.

***Section 41 - Referral to Parole Board following revocation of licence***

83. This section provides that where the Scottish Ministers have revoked a prisoner's licence (including compassionate release licences) by virtue of section 37(1) or (4) or 38(2), they must inform the prisoner of the reasons for doing so and, subject to section 40, refer the case to the Parole Board.

***Section 42 - Consideration by Parole Board***

84. This section applies where a prisoner whose licence has been revoked has his or her case referred to the Parole Board by virtue of section 41(2)(b), 43(9) or 44(5). Subsection (2) provides that the Board must determine under subsection (3) whether or not it is in the public interest that the prisoner be confined. Subsection (4) provides that where the Board considers subsection (3) does not apply, it must direct the Scottish Ministers to release the prisoner on licence and must specify licence conditions for inclusion in the licence. Subsection (5) provides that where the Parole Board have made such a direction the Scottish Ministers must release the prisoner on a community licence or a life licence as appropriate.

***Section 43 - Determination that section 42(3) applicable: consequences for custody and community prisoners***

85. Subsection (1) provides that this section applies where the Parole Board considers under section 42(3) that it is in the public interest that a recalled custody and community prisoner be confined. Subsection (2) requires the Board to provide the prisoner with its reasons for making its determination in writing. Subsection (3) provides that 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. Subsection (4) provides, however, that 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 subsection (5). Subsection (5) specifies that the period begins 4 months after the date of the determination and ends on the expiry of the prisoner's sentence. Subsection (6) provides that if no date is set under subsection (4) the prisoner must remain in prison to the end of the sentence.
86. Subsection (7) provides that if at least 2 years remain of the 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 subsection (8). Subsection (8) provides that the period begins 4 months after the date of the determination and ends immediately before the second anniversary of the determination. Subsection (9) requires Scottish Ministers to refer the case to the Parole Board before any date set by the Parole Board under subsection (4) or (7).

***Section 44 - Determination that section 42(3) applicable: consequences for life prisoners***

87. Subsection (1) provides that this section applies where the Parole Board under section 42(2) considers it to be in the public interest that a recalled life sentence prisoner

be confined. Subsection (2) requires the Board to provide the prisoner with its reasons for not re-releasing the prisoner in writing. Subsection (3) provides that the Board must, subject to section 26, set a date for when it will next consider the prisoner's case within the period mentioned in subsection (4). Subsection (4) provides that the period begins 4 months after the date of the determination and ends immediately before the second anniversary of the determination. Subsection (5) requires Scottish Ministers to refer the case to the Parole Board before the date set under subsection (3).

### ***Section 45 - Prisoner's right to request early reconsideration by Parole Board***

88. **Section 45** provides that prisoners who have had a date set for a further review under sections 43(4), 43(7) or section 44(3) can ask for early consideration of their case by the Parole Board. Subsection (2) provides that the Board may, if it considers it appropriate, to fix an earlier date. In terms of subsection (3) and (4), where the Board does not fix a date under section 43(4), it may, on the prisoner's request, consider it appropriate, to do so and will fix a date when it will next consider the prisoner's case.

## **Single licence**

### ***Section 46 - Multiple licences to be replaced by single licence***

89. Subsection (1) provides that this section applies to offenders who have been released on licence under this Part and who have received another sentence of imprisonment while that licence remains in force. Subsection (2) provides that, if the original licence is still in force at the time when the prisoner is to be released on licence from the subsequent sentence, then he or she is to be released on a single licence covering both sentences. Subsection (3) provides that the single licence replaces the original one while subsection (4) requires that the single licence includes all conditions from the previous licence.
90. Subsection (5) provides that the new single licence will remain in force, unless revoked, until all licences which would otherwise have been imposed would have expired. Subsection (6) provides that in the case of a prisoner being released unconditionally from a subsequent sentence the licence from the original sentence will remain in place, unless revoked, in the same way as it would have done had the subsequent sentence not been imposed.

## **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.

## **Chapter 5**

### ***General***

### ***Section 50 - No release on weekends or public holidays***

98. This section provides that where a prisoner is due to be released on a Saturday, Sunday or a public holiday, then he or she will instead be released on the day immediately preceding that day. The reference to "public holiday" is to be read by reference to any holidays in the area in which the prisoner is likely to be upon release.

## **Chapter 6**

## ***Extended and Multiple Sentences***

### ***Section 51 – Prisoners serving extended sentences: application of Part 2***

99. [Section 51](#) provides that Part 2 applies to prisoners given an extended sentence by the court. Subsection (2) to (6) explain that references to a custody and community sentence, where appropriate, can be read as a reference to the confinement term of an extended sentence.

### ***Section 52 – Prisoners serving more than one sentence: application of Part 2***

100. [Section 52](#) provides that Schedule 2 (which makes provisions in relation to prisoners serving more than one sentence) has effect.  
[Schedule 2](#)(introduced by [section 52](#))

## ***Prisoners Serving More Than One Sentence: Application of Part 2***

### **Multiple custody-only sentences**

101. [Paragraph 1\(1\)](#) provides that paragraph 1 applies where a prisoner is serving, or is likely to serve, two or more custody-only sentences and is not serving, or is not likely to serve, any other custodial sentence. Paragraph 1(2) provides that Part 2 of the Act applies subject to the modifications specified in paragraph 1(3) i.e. that a reference to a prisoner's sentence in sections 5 and 28(1) are to be read as a reference to the sentence with the latest date of expiry.

### **Multiple custody and community sentences**

102. [Paragraph 2\(1\)](#) provides that paragraph 2 applies where a prisoner is serving, or is likely to serve, two or more custody and community sentences and is not serving, or is not likely to serve, any other custodial sentence.
103. Where a prisoner is serving two or more custody and community sentences, references in Part 2 to the expiry of the custody part will be to the latest expiry date. This prevents the case being referred to the Parole Board until shortly before the expiry of all custody parts. The prisoner will only be released on licence on expiry of the latest custody part.
104. [Paragraph 2\(5\)](#) provides that the prisoner can, following review by the Parole Board, be detained on the grounds of risk until he or she has served at least three-quarters of each of the sentences. Paragraph 2(6) provides that the sentence end date is the latest expiry date of the sentences.

### **Combinations of custody-only and custody and community sentences**

105. [Paragraph 3\(1\)](#) provides that paragraph 3 has effect where a prisoner is serving, or is likely to serve, a combination of at least one custody-only and one custody and community sentence.
106. References in Part 2 to the expiry of the custody part will be to the expiry of whichever is the later (or latest) of the custody parts and custody-only sentences imposed on the prisoner. This prevents the case being referred to the Parole Board until shortly before the expiry of all custody parts and custody-only sentences.
107. [Paragraph 3\(5\)](#) provides that the prisoner can, following review by the Parole Board, be detained on the grounds of risk until he or she has served at least three-quarters of each of the sentences and the custody-only sentence. Paragraph 5(6) provides that the sentence end date is the latest expiry date of the sentences.

### **Multiple life sentences**

108. [Paragraph 4\(1\)](#) provides that paragraph 4 has effect where a prisoner is serving, or is likely to serve, two or more life sentences. Where a prisoner is serving two or more life sentences, his case will not be able to be referred to the Parole Board until shortly before the expiry of the latest punishment part.

### **Combinations of life sentences and other sentences**

109. [Paragraph 5\(1\)](#) provides that paragraph 5 has effect where a prisoner is serving, or is likely to serve, a combination of at least one life sentence and any number or combination of custody-only or custody and community sentences.
110. Where a prisoner is serving such a combination of sentences. This prevents the case being referred to the Parole Board until shortly before the expiry of the latest custody only sentence, custody part of a custody and community sentence or punishment part of a life sentence. The prisoner will only be released on licence on expiry of the latest custody only sentence, custody part or punishment part.

### **Single licence for released prisoner serving multiple sentences**

111. [Paragraph 6](#) provides that where paragraph 2, 3, 4 or 5 applies to a prisoner, he will be released on a single licence covering all sentences of imprisonment.

### **Special case: extended sentences**

112. [Paragraph 7](#) provides that where a custody and community sentence mentioned in paragraphs 2 and 3 is an extended sentence, references to the prisoner's sentences are to be read as references to the confinement period/s of the extended sentence/s.

### ***Section 53 – Sentences framed to run consecutively***

113. [Section 53](#) provides that Schedule 3 (which makes provisions in relation to sentences framed to take effect on the expiry of another sentence) has effect.  
[Schedule 3](#) (introduced by [section 53](#))

### ***Sentences Framed to Be Run Consecutively***

#### **Power to impose sentence to take effect on expiry of other sentence**

114. [Paragraph 1](#) provides the main power to impose a sentence to run consecutively to other sentences. It is intended to apply to the case where the prisoner is already serving another sentence and the court wants the new sentence to run consecutively to that existing sentence; and to the case where the court is imposing more than one sentence and it wants them to run consecutively.

#### **Postponement of sentencing where previous punishment part or custody part not specified**

115. [Paragraph 2](#) provides that where the court is required to sentence a person who is awaiting the setting of a custody or punishment part for a previous offence, the court may not set the custody or punishment part of the subsequent offence until the previous custody or punishment part has been set.

#### **Effect of sentences framed to take effect consecutively**

116. The provisions in paragraphs 3 and 4 deal with the situations where consecutive sentences are intended to intertwine rather than run purely consecutively. There are two circumstances where this might happen. The table below sets out how this schedule deals with the various permutations of sentences running consecutively.



<b>Previous Sentence (PS)</b>	<b>Further Sentence (FS)</b>	<b>Order to be served</b>	<b>Relevant provisions of schedule</b>
Custody-only	Custody-only	Custody-only PS – Custody-only FS	Para 1
Custody-only	Custody and community	Custody-only PS – Custody part of FS – Community part of FS	Para 1
Custody-only	Life	Custody-only PS – Punishment Part of FS – Life licence	Para 1

Custody and community	Custody-only	Custody part of PS – Custody-only FS – Community part of PS	Paras 1 and 3
Custody and community	Custody and community	Custody part of PS – Custody part of FS – Community part of PS – Community part of FS	Paras 1 and 4
Custody and community	Life	Custody Part of PS – Punishment Part of FS – Life licence	Para 1
Life	Custody-only	Punishment part of PS – Custody-only FS – Life licence	Para 1 (the multiple sentence provisions make it clear when the life licence is due to begin)
Life	Custody and community	Punishment part of PS – Custody Part of FS – Life licence	Para 1
Life	Life	Punishment part of PS – Punishment Part of FS – Life licence	Para 1

### **Effect of sentences framed to take effect consecutively on extension periods**

117. [Paragraph 5](#) provides the arrangements for the effects of extended sentences to be framed consecutively. The table below sets out how this schedule deals with the various permutations of sentences running consecutively.

<b>Previous Sentence (PS)</b>	<b>Further Sentence (FS)</b>	<b>Order to be served</b>	<b>Relevant provisions of schedule</b>
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Custody community (Extended)	and	Custody-only		Custody part of PS – Custody-only FS – Community part of PS – Extension period of PS	Paras 1, 3 and 5(1)
Custody community (Extended)	and	Custody community	and	Custody part of PS – Custody part of FS – Community part of PS – Community part of FS – Extension period of PS	Paras 1, 4 and 5(2)
Custody community	and	Custody community (Extended)	and	Custody part of PS – Custody part of FS – Community part of PS – Community part of FS – Extension period of FS	Paras 1, 4 and 5(3)
Custody community (Extended)	and	Custody community (Extended)	and	Custody part of PS – Custody part of FS – Community part of PS – Community part of FS – Aggregated extension period for PS and FS (limited to a maximum of ten years)	Paras 1, 4 and 5(4)

### **Application of schedule where previous sentence imposed by court outwith Scotland**

118. [Paragraph 6](#) provides Scottish Ministers with an order making power to make provision to apply this section where a previous sentence has been passed in a court in any part of the United Kingdom outwith Scotland.

#### [Chapter 7](#)

### **Application of [Part 2](#) to Certain Persons**

#### **[Section 54](#) - Persons detained under mental health provisions**

119. This section provides that [Part 2](#) of the Act applies to the following categories of prisoner as if they had continued to serve their sentence in prison rather than in a hospital:
- those transferred to hospital under a transfer direction made in accordance with section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003; and
  - those conveyed to and detained in a hospital for treatment of a mental disorder in accordance with section 59A of the Criminal Procedure (Scotland) Act 1995.

#### **[Section 55](#) - Application to young offenders and children**

120. This section deals with the application of the provisions of [Part 2](#) to young offenders and children. A young offender is a person who is under 21 years old at the point of

*These notes relate to the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) which received Royal Assent on 19 April 2007*

sentence (and who is not a child). A child person who is under 16 years old or who is under 18 years old and in respect of whom a supervision requirement is in force.

121. Where the sentence on a young person or child is of less than 15 days, Part 2 applies to them as if they were a custody-only prisoner. Where the sentence is of 15 days or more, it applies as if they were a custody and community prisoner. And where the sentence is indeterminate, it applies as if they were a life prisoner.
122. Subsection (7) provides that references to “imprisonment” in Part 2 are to be read as references to detention and cognate expressions are to be construed accordingly. This is because young offenders and children are sentenced to detention and not to imprisonment.

### ***Section 56 – Fine defaulters and persons in contempt of court***

123. This section provides that Part 2 of the Act will apply as it applies to custody-only prisoners to:
  - those who are in custody as a result of a failure to pay a fine, and
  - to persons who are in custody having been found in contempt of court.
124. This means that these categories of person will serve their full sentence in custody regardless of the length of the period of custody imposed on such a person.
125. Subsection (3) states that this section will only apply where the relevant act which leads to imprisonment or detention occurs after the coming into force of Part 2.

## **Chapter 8**

### ***Cross-Border Transfer of Prisoners***

#### ***Section 57 – Cross-border transfer of prisoners***

126. Subsection (1) provides that the Scottish Ministers may, by order, make provisions dealing with the transfer of a person serving a custodial sentence in Scotland to a place outwith Scotland, and for the transfer to and confinement in Scotland of a person serving a sentence outwith Scotland.

### **Part 3 – Weapons**

127. **Part 3** of the Bill contains two sets of provisions relating to the control of swords, non-domestic knives and other weapons. The first set of provisions relates to the licensing of sellers of knives etc. while the second introduces new provisions relating to restricting the sale etc. of swords and other weapons; increasing the age limit for purchase or possession of crossbows; and making it an offence to possess an offensive weapon in prisons.

### **Licensing of Knives, swords etc.**

#### ***Section 58 - Licensing of knife dealers***

128. This section inserts new provisions on the licensing of sellers of knives etc. into the Civic Government (Scotland) Act 1982 and amends existing provisions of the 1982 Act to accommodate this new regime. The provisions should be read alongside the 1982 Act.

### **The 1982 Act**

129. The 1982 Act makes provision for a civic government licensing system, operated by local authorities (as the “licensing authority”). Sections 1 to 8 of, and Schedule 1 to,

the 1982 Act contain general provisions which apply to the licensing of all activities covered by the 1982 Act. These include-

- procedures for application and renewal, variation and suspension of licences;
- powers of entry and search of both licensed and unlicensed premises; and
- offences in connection with carrying out unlicensed activities, failure to comply with licence conditions, making false statements and failure to notify changes of circumstances.

130. Sections 10 to 43 of the 1982 Act make specific provision in relation to the licensing of e.g. taxis and private hire cars, public entertainment, second hand dealers, metal dealers, street trading and window cleaning. These supplement the general provisions and, with the exception of those for metal dealers, are “optional provisions” (defined in section 9 of the 1982 Act) – they do not apply in an area unless the licensing authority decides that they should. Section 44 of the 1982 Act allows further activities to be designated and brought within the licensing scheme.
131. [Section 58](#) of the Bill inserts new sections 27A to 27S into the 1982 Act. These new provisions are not “optional provisions”, and will apply automatically in every local authority area. Section numbers 27I and 27O are omitted deliberately.
132. [Section 27A](#) (Knife dealers’ licences) provides that a “knife dealer’s licence” is required to carry on business as a dealer in knives and other specified articles. A licence is not therefore required for private sales between individuals.
133. [Section 27A\(2\)](#) provides that the section applies to knives, knife blades, swords or other bladed or pointed articles designed or adapted for causing injury (e.g. arrows or crossbow bolts). Knives and knife blades designed for domestic use are excluded. [Section 27A\(6\)](#) allows the list of articles covered by the section to be altered by an order made by Scottish Ministers.
134. [Section 27A\(3\)](#) provides that a knife dealer’s licence shall specify the premises to which it relates.
135. [Section 27A\(4\)](#) gives a wide definition of a “dealer” and includes those whose business involves not only selling knives etc. but also hiring, lending, giving and offering or exposing for sale or hire such items. The subsection only applies to businesses which sell to private purchasers and therefore sales etc. to persons acting in the course of business or a profession are excluded from these licensing provisions. [Sections 27A\(7\) & \(8\)](#) allows the definition of dealer to be altered by an order made by Scottish Ministers.
136. [Sections 27A\(5\) and \(6\)](#) clarify the meaning of “selling”, particularly in relation to sale by auction. These provisions ensure that the requirements for a licence apply to the owner of the goods rather than to any intermediary such as an auction house or online marketplace.
137. [Section 27B](#) (Applications for knife dealers’ licences: notice) requires the licensing authority to publicise applications for the grant or renewal of knife dealers’ licences. This replaces the general public notice provisions in paragraphs 2(7) and (9) of Schedule 1 to the 1982 Act, which require notice to be given only for certain classes of licence application. [Section 27B\(2\)](#) applies paragraph 2(8) of the Schedule to the 1982 Act, which requires the notice to be published in a newspaper stating the particulars of the application and the process for making objections and representations.
138. [Section 27C](#) (Knife dealers’ licences: conditions) makes provision for the conditions to be attached to knife dealers’ licences. Under paragraph 5 of Schedule 1 to the 1982 Act, the licensing authority has a general power to grant or renew licences subject to such “reasonable conditions” as it thinks fit. [Section 27C](#) allows the licensing authority to include conditions in relation to record-keeping and the storage and display of knives

etc. It also gives Scottish Ministers the power to specify minimum conditions which must be included in all licences. These conditions may be specified in either particular or general terms, and different conditions may be specified for different classes of article, e.g. different conditions for swords and for knives.

139. [Section 27D](#) (Provision of information to holder of knife dealer's licence) provides for a new offence of providing false information to the holder of a knife dealer's licence. Section 27D provides that where the dealer requests information from a person (either the customer or a third party) and that person knowingly or recklessly provides false information, then that person is guilty of an offence. The maximum penalty on summary conviction is a fine of up to level 3 on the standard scale (currently £1,000).
140. [Sections 27E](#) (Knife dealers' licences: warrants to enter, search and seize articles) to [27H](#) ([Sections 27E to 27G](#): interpretation) provide powers of entry, inspection, search and seizure in relation to licensed and unlicensed premises.
141. [Sections 27E](#) and [27F](#) (Powers of constables and authorised officers) replace section 6 of the 1982 Act, which is disapplied in relation to knife dealers' licences by section 59(2) of this Bill. They provide that a justice of the peace or sheriff may grant a warrant authorising entry and search of premises and the seizure and removal of relevant articles. The power is broader than that contained in section 6 of the 1982 Act in that it includes power to seize and remove articles and that authority may be given to an authorised officer of the licensing authority (e.g. a trading standards officer) as well as to a police constable. Section 27F(6) provides that it shall be an offence to obstruct or fail to permit such a search, with a maximum penalty on summary conviction of a fine of up to of level 3 on the standard scale.
142. [Section 27G](#) (Power to inspect documents) provides that where it is suspected that unlicensed activity is taking place, police constables and authorised officers of the licensing authority have the power to inspect and copy records held by persons having access to such documents. It is an offence for such persons to fail to produce records or documents requested without reasonable excuse. That offence is punishable on summary conviction with a fine of up to level 3 on the standard scale. Section 5 of the 1982 Act already provides, among other things, a power of entry and inspection in respect of licensed premises.
143. [Sections 27J](#) (Forfeiture orders) and [27K](#) (Effect of forfeiture order) provide for the forfeiture of articles where an offender is convicted of offences of dealing without a licence or failure to comply with licence conditions. Following conviction, the court may make a forfeiture order, forfeiting any items seized under warrant or which the offender had at the time of arrest or when cited in respect of the offence. The order deprives the offender of any rights he has in the property. Rights of third parties are protected by the inclusion of provisions for owners of goods to recover them.
144. [Section 27L](#) (Offences by partnerships) contains provisions about offences committed by partnerships which supplement the standard provisions of the 1982 Act.
145. [Section 27M](#) (Appropriate licence required) and [27Q](#) (Duty to avoid conflict between conditions of licences) deal with the interaction between the new knife dealer licensing provisions and the existing provisions on second-hand dealers' licences in the 1982 Act. Section 27M makes it clear that where a person carries on business as a dealer in second-hand knives etc., then both a knife dealer's licence and a second-hand dealer's licence will be required (assuming that the licensing authority requires second-hand dealers' licences for these classes of item). Section 27P avoids any conflict between the requirements of these licences, effectively providing that the terms of the knife dealer's licence take precedence.
146. The licensing provisions in the 1982 Act are generally based on the location of business premises and the responsible local authority will therefore be clear where licensable activity takes place within Scotland. Section 27N (Remote sales of knives, etc.) deals

with licensing requirements for remote sales, e.g. by mail order, telephone or internet. Section 27N provides that where orders are taken and articles are despatched from separate premises, and only the place of despatch is in Scotland, then that place is treated as the place where the sale happens and for which a licence is required.

147. **Section 27P** (Sales and dispatches in different local authority areas) provides that, where the sale and despatch of an item take place in Scotland but in separate premises in different local authority areas, the sale takes place at both locations. This means that a knife dealer's licence will be required for both locations.
148. **Section 27R** (Offences in relation to knife dealers' licences: exceptions) provides a power for Ministers, by order, to provide for exceptions to the new offences created in the Bill and to the existing offences in sections 5 and 7 of the 1982 Act as they relate to knife dealers' licences.
149. **Section 27S** (*Orders under sections 27A to 27R*) sets out the Parliamentary procedure for the five new order-making powers:
- 27A(7) – power to modify the articles or classes of article for which a knife dealer's licence is required;
  - 27A(8) – power to modify the definition of “dealer” in section 27A(3);
  - 27C(1)(a) – power to specify conditions to be attached to a knife dealer's licence;
  - 27K(7) – power to make provision for the disposal of property forfeited under a forfeiture order; and
  - 27R – power to specify exceptions to the offences.

All orders under these powers are to be made by statutory instrument and are subject to negative resolution procedure in the Scottish Parliament, with the exception of orders made under section 27Q which are subject to affirmative resolution.

### ***Section 59 - Knife dealers' licences: further provision***

150. This section makes a number of amendments to the provisions of the Civic Government (Scotland) Act 1982 to accommodate the new licensing provisions inserted by section 58.
151. **Section 59(2)** disapplies section 6 (powers of entry to and search of unlicensed premises) of the 1982 Act, as alternative provision has been made in new sections 27E to 27H.
152. **Section 59(3)** increases the penalties for offences set out in section 7 of the 1982 Act:
- Paragraph (a) provides that dealing without a knife dealer's licence is an offence punishable on summary conviction by imprisonment for up to 12 months or a fine up to the statutory maximum or both. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000. The maximum penalty, on conviction on indictment, is imprisonment for up to 2 years or an unlimited fine or both. Paragraph (b) disapplies the general section 7(1) offence which is triable only summarily and for which the maximum penalty is a fine of level 4 on the standard scale (currently £2,500).
  - Paragraph (c) provides that a licence holder guilty of failure to comply with a condition attached to a knife dealer's licence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) rather than the usual maximum of level 3.
  - Paragraph (d) provides that a person who, in making an application for a knife dealer's licence, knowingly or recklessly makes a false statement is liable, on

summary conviction, to a fine not exceeding level 5 on the standard scale rather than the usual maximum of level 4.

## **Sale etc. of weapons**

### ***Section 60 – Sale etc. of weapons***

153. **Section 60** amends section 141 of the Criminal Justice Act 1988 in two ways. Section 60(1)(a) alters the statutory defences to an offence under section 141 of the 1988 Act by requiring an accused to ‘show’ that they have a defence, rather than prove it on a balance of probabilities.
154. **Section 60(1)(b)** inserts subsections (11A) to (11J) into section 141 of the 1988 Act. Subsections (11A) to (11E) provide for further statutory defences to an offence under section 141(1) and ensure that the new defences interface effectively with the import regime. Subsection (11F) supplements the changes made by section 60(1)(a) to make clear that the burden of proof in relation to a defence to an offence under section 141 of the 1988 Act will be placed on the Crown.
155. Subsection (11G) provides that Scottish Ministers may make an order which modifies the application of section 141 of the 1988 Act in respect of specified weapons (for instance to provide for exceptions, exemptions and defences to an offence under that section). In terms of subsection (11J), all such orders are subject to affirmative resolution procedure in the Scottish Parliament.

## **Swords**

### ***Section 61 – Sale etc. of swords***

156. **Section 61** contains new provisions relating to restricting the sale etc. of swords. It adds a new section into the Criminal Justice Act 1988 which is to be read alongside section 141 of that Act. Section 141 contains the power to make restrictions on offensive weapons.
157. Section 141(1) of the 1988 Act provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person, a specified offensive weapon is guilty of an offence. Section 141(4) also prohibits the importation of these weapons. The weapons to which the section applies are specified in the [Criminal Justice Act 1988 \(Offensive Weapons\) \(Scotland\) Order 2005 \(SSI 2005/483\)](#), and include knuckledusters, swordsticks, handclaws, stealth knives and push daggers. Antique items are excluded.
158. **Section 61(2)** of the Bill inserts a new section 141ZA (Application of section 141 to swords: further provision) into the 1988 Act. This new section provides that where Ministers make an order under section 141 directing that it shall apply to swords, they may include provision in the order to modify the effect of section 141. Section 141ZA(3) expands on the power to modify provided by section 141ZA(2) by setting out some of the modifications that may be made. The list of potential modifications in subsection (3) is not exhaustive.
159. **Section 141ZA(3)(a)** provides that the order may provide for defences to the offences under section 141(1), including in particular defences relating to religious, cultural or sporting purposes. Section 141ZA(5) provides that the defences may relate to swords in general or to classes of swords.
160. **Section 141ZA(3)(b)** provides that the order may increase the penalties specified in section 141(1). Currently this section provides that a person found guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months and/or to a fine not exceeding level 5 on the standard scale. Subsection

(3)(b) allows the order to provide for penalties of up to 12 months imprisonment and/or a fine not exceeding the statutory maximum on summary conviction, or up to 2 years imprisonment and/or an unlimited fine on conviction on indictment. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000.

161. [Section 141ZA\(3\)\(c\)](#) provides that the order may create an offence where a person acquiring a sword provides false information. This will allow creation of an offence similar to that in section 27D(2) of the 1982 Act (inserted by section 58 of this Bill) where a person gives false information to a knife dealer. However, the offence that may be created by the order is not restricted to the seller being a knife dealer. The maximum penalty which may be provided by the order is specified by section 141ZA(6).
162. [Section 141ZA\(4\)](#) enables Scottish Ministers to make provision in relation to a defence under section 141ZA(3)(a) for authorisation to be granted by Ministers. Such authorisation may be made subject to conditions and breach of those conditions may be made an offence. The maximum penalty which may be provided by the order is specified by section 141ZA(6).
163. [Section 141ZA\(6\)](#) provides that the maximum penalty which may be provided for an offence under the powers granted by sections 141ZA(3)(c) and (4)(c) is 12 months imprisonment and/or a fine of level 5 fine on the standard scale on summary conviction.
164. [Section 61\(3\)](#) amends section 172 (extent) of the 1988 Act to provide that new section 141ZA extends only to Scotland.

## **Crossbows**

### ***Section 62 – Sale etc. of crossbows***

165. [Section 62](#) amends sections 1, 2 and 3 of the Crossbows Act 1987 so as to raise from seventeen to eighteen the age at which a person may be sold or hired a crossbow, and at which a person may buy, hire or possess (in the latter case without supervision by a person aged 21 or over) a crossbow. This replicates for Scotland section 44 of the Violent Crime Reduction Act 2006, bringing the age of sale for crossbows into line with the age of sale for non-domestic knives, fireworks etc.

## **Possession of weapons in prisons etc.**

### ***Section 63 – Possession of weapons in prisons etc.***

166. [Section 63](#) amends the Criminal Law (Consolidation) (Scotland) Act 1995 by inserting a new section 49C to provide for a new offence of having offensive weapons or articles with a blade or point (including knives) in a prison (as defined in section 49C(7)). Section 49C(2) provides a defence of ‘good reason or lawful authority’, which is exemplified by section 49C(3). Sections 49C(4) and 49C(5) replicate for prisons the provisions in sections 47(2) and 49(6) of the 1995 Act on forfeiture and disposal of weapons. Section 49C(6) provides for a maximum penalty, on summary conviction, of imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000. The maximum penalty, on conviction on indictment, is imprisonment for a term not exceeding 4 years or an unlimited fine or both. The provisions of this section are modelled on sections 49 and 49A of the 1995 Act which deal with possession of similar weapons in public and in schools.

### ***Schedule 4 (introduced by section 66)***



*These notes relate to the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)  
which received Royal Assent on 19 April 2007*

***Minor and Consequential Amendments***

167. [Schedule 4](#) provides details of minor and consequential amendments made to the Criminal Procedure (Scotland) Act 1995, the Criminal Justice (Scotland) Act 2003 and the Police, Public Order and Criminal Justice (Scotland) Act 2006.

[Schedule 5](#)(introduced by [section 66](#))

168. [Schedule 5](#) provides details of the sections of various enactments repealed by this Act. [Schedule 6](#)(introduced by [section 66\(3\)](#))

***Transitory Amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993***

169. [Paragraph 1](#) provides that until they are repealed by the Act, section 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 have the effect as provided for at paragraphs 2 and 3. Paragraph 2 replaces subsections 1(3)(a) and (b) with the word shall. Paragraph 3 repeals subsection 9(1). The effect of this is to require Scottish Ministers to refer the cases of all long-term prisoners, including those liable to removal from the United Kingdom under immigration legislation, to the Parole Board for Scotland once they have served one-half of their sentence, so that the Board can consider whether they should be released on licence.