



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 1

SENTENCING

Short sentences

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

- (1) The Custodial Sentences and Weapons (Scotland) Act 2007 ([asp 17](#)) is amended as follows.
- (2) In section 4 (basic definitions)—
 - (a) in subsection (1)—
 - (i) the definitions of “custody-only prisoner” and “custody-only sentence” are repealed,
 - (ii) in the definition of “custody and community sentence” for “15 days or more” substitute “at least the prescribed period”,
 - (iii) after the definition of “Parole Board” insert—

““prescribed period” means such period as the Scottish Ministers may by order specify,” and
 - (iv) after the definition of “punishment part” insert—

““short-term custody and community prisoner” means a person serving a short-term custody and community sentence,
“short-term custody and community sentence” means a sentence of imprisonment for an offence for a term of less than the prescribed period,” and
 - (b) subsection (2) is repealed.
- (3) For section 5 (release of custody-only prisoners on completion of sentence) substitute—

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

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

- (4) In Chapter 3 of Part 2, in the chapter title, for “Community” substitute “Short-term community, community”.
- (5) In section 29 (release on licence of certain prisoners: the supervision conditions), in subsection (2)(a)—
 - (a) in sub-paragraph (ii), the words from “serving” to the end are repealed,
 - (b) sub-paragraph (iii) is repealed,
 - (c) in sub-paragraphs (iv) and (v), for “person” substitute “short-term custody and community prisoner”,
 - (d) in sub-paragraph (vi), for “person” substitute “short-term custody and community prisoner serving a sentence of imprisonment of 6 months or more and”, and
 - (e) in sub-paragraph (vii), at the beginning insert “a short-term custody and community prisoner who is”.
- (6) After section 29 insert—

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

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

- (6) Before exercising any of the powers conferred by subsection (3) or (4), the Scottish Ministers must, in pursuance of arrangements established under section 46A(1), co-operate with the appropriate local authority.
 - (7) In this section, “appropriate local authority”, in relation to a short-term custody and community prisoner, means the local authority for the area in which the prisoner—
 - (a) resided immediately before the imposition of the short-term custody and community sentence, or
 - (b) intends to reside on release on short-term community licence.
 - (8) If, by virtue of subsection (7), two or more local authorities are the appropriate local authority in relation to a short-term custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (5) and section 46A(2) may be carried out by only one of them.”.
- (7) After section 46 insert—

“Assessment of conditions for short-term community licences

46A Joint arrangements between Scottish Ministers and local authorities

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

Status: This is the original version (as it was originally enacted).

- (i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner's sentence, or
 - (ii) the day falling 166 days before the expiry of one-half of the prisoner's sentence, and
 - (b) before the day falling 14 days before the expiry of one-half of the prisoner's sentence.”,
 - (d) in subsection (4)—
 - (i) after “a” insert “custody and community”, and
 - (ii) in paragraph (a)(ii), for “135” substitute “166”, and
 - (e) in subsection (8), for “the custody part of the prisoner's sentence” substitute—
 - “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,
 - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”.
- (9) Schedule 3 amends the Custodial Sentences and Weapons (Scotland) Act (asp 17) and the 1995 Act in consequence of amendments made by this section.