



Prisons (Scotland) Act 1989

1989 CHAPTER 45

Release on licence, etc.

22 Release on licence of persons serving determinate sentences

- (1) The Secretary of State may, if recommended to do so by the Parole Board, release on licence a person, who is serving a sentence of imprisonment, other than imprisonment for life, or a sentence of detention in a young offender institution imposed in England and Wales, after he has served not less than one-third of his sentence or the specified period, whichever expires the later.
- (2) In subsection (1) above, “the specified period” means 12 months or such period, not more than 12 months, as the Secretary of State may by order provide.
- (3) An order under subsection (2) above may make such incidental or supplementary provision (including provision amending enactments) as the Secretary of State considers appropriate.
- (4) Where a sentence of imprisonment for an offence has been passed on a person with an order under subsection (1) of section 47 of the Criminal Law Act 1977 (sentences partly suspended in England and Wales)—
 - (a) if the offender has not been released from prison since the sentence for the offence was passed, the only portion of that sentence that is to be taken into account for the purposes of subsection (1) of this section is any portion of it that he is required to serve in prison under subsection (1) or (3) of the said section 47; and
 - (b) if he is released from prison but part of his sentence for the offence is subsequently restored under subsection (3) of that section, he shall be treated for the purpose of subsection (1) of this section as if his only sentence for the offence were the part of his sentence so restored.
- (5) A person whose sentence falls to be reduced under section 67 of the Criminal Justice Act 1967 (sentences in England and Wales) shall, for the purpose of determining under subsection (1) above whether he has served one-third of his sentence, be treated as if any period spent in custody and taken into account under that section were included in his sentence and as if he had served that period as part of that sentence.

- (6) A person subject to a licence under this section shall comply with such conditions, if any, as may for the time being be specified in the licence.
- (7) The Secretary of State shall consult the Parole Board before including on release, or subsequently inserting, a condition in a licence under this section or varying or cancelling any such condition; and for the purposes of this subsection the Secretary of State shall be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.
- (8) A licence granted to any person under this section shall, unless previously revoked under section 62 of the Criminal Justice Act 1967 or section 28 of this Act, remain in force until a date specified in the licence, being the date on which he could have been discharged from prison on remission of part of his sentence under rules made under section 39 of this Act if, after the date of his release on licence, he had not forfeited remission of any part of the sentence under the rules.

23 Release on licence without recommendation of Parole Board

If, in any case falling within such class of cases as the Secretary of State may determine after consultation with the Parole Board, a local review committee recommends the release on licence of a person to whom subsection (1) of section 22 of this Act applies, the Secretary of State shall not be obliged to refer the case to the Board before releasing him under that subsection and, unless he nevertheless refers it to the Board, may so release him without any recommendation by the Board.

24 Remission for good conduct

Rules made under section 39 of this Act may make provision whereby, in such circumstances as may be prescribed by the rules, a person serving a sentence of imprisonment for such a term as may be so prescribed, may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct; and on the discharge of a person from a prison in pursuance of any such remission as aforesaid his sentence shall expire.

25 Release on licence of children convicted on indictment

- (1) Subject to subsection (2) below, the Secretary of State may release on licence, on such conditions as may for the time being be specified in the licence, a person detained under section 206 of the 1975 Act (detention of children convicted on indictment).
- (2) Where a person has been sentenced under the said section 206 to be detained for a period exceeding 18 months, the Secretary of State—
 - (a) shall not release him on licence under subsection (1) above except on the recommendation of the Parole Board; and
 - (b) shall consult the Board with regard to the inclusion or subsequent insertion of any condition in the licence or the variation or cancellation of any such condition; but for the purposes of this paragraph the Secretary of State shall be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.

- (3) A licence granted under subsection (1) above shall, unless previously revoked under subsection (4) below, remain in force until the expiry of the period of—
- (a) detention specified by the court under the said section 206, or
 - (b) 12 months from the date of release under the licence,
- whichever is the later.
- (4) The Secretary of State may—
- (a) on the recommendation of the Parole Board, or
 - (b) at his own instance, where it appears to him to be in the public interest to do so before consultation with the Board is practicable,
- revoke a licence granted under subsection (1) above and recall the person released under the licence to a place in which the Secretary of State directs that he should be detained; and on such revocation, the person shall be liable to be detained in pursuance of his sentence, and, if at large, shall be deemed to be unlawfully at large.
- (5) The Secretary of State shall inform a person recalled under subsection (4) above of the reasons for his recall, so that the person may make representations in writing to the Parole Board with respect to his recall; and the Board may, on receipt of such representations, require the Secretary of State to release him on licence forthwith.
- (6) Subject to subsection (5) above, a person detained in pursuance of subsection (4) above shall remain in detention until the expiry of the period of—
- (a) detention specified by the court under the said section 206; or
 - (b) three months from the date of the commencement of his detention in pursuance of the said subsection (4),
- whichever is the later:

Provided that the Secretary of State may, at any time before the expiry of the period referred to in paragraph (a) above, again release him on licence.

26 Release on licence of persons sentenced to imprisonment for life, etc

- (1) The Secretary of State may, if recommended to do so by the Parole Board, release on licence a person serving a sentence of imprisonment for life, or a sentence of custody for life imposed in England and Wales, or a person detained under section 205(2) or (3) of the 1975 Act (persons under 21 convicted of murder); but shall not release on licence such a person except after consultation with the Lord Justice-General together with the trial judge, if available.
- (2) Subsections (6) and (7) of section 22 of this Act shall apply in relation to a licence under this section as they apply in relation to a licence under that section.

27 Power of Secretary of State to discharge prisoners temporarily on account of their health

- (1) If the Secretary of State is satisfied that by reason of the condition of a prisoner's health it is undesirable to detain him in prison, but that, such condition of health being due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only, the Secretary of State may, if he thinks fit, having regard to all the circumstances of the case, by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order.

- (2) Where an order of temporary discharge is made in the case of a prisoner not under sentence, the order shall contain conditions requiring the attendance of the prisoner at any further proceedings on his case at which his presence may be required.
- (3) Any prisoner discharged under this section shall comply with any conditions stated in the order of temporary discharge, and shall return to prison at the expiration of the period stated in the order, or of such extended period as may be fixed by any subsequent order of the Secretary of State, and, if the prisoner fails so to comply or return, he may be arrested without warrant and taken back to prison.
- (4) Where a prisoner under sentence is discharged in pursuance of an order of temporary discharge, the currency of the sentence shall be suspended from the day on which he is discharged from prison under the order to the day on which he is received back into prison, so that the former day shall be reckoned and the latter shall not be reckoned as part of the sentence.
- (5) Nothing in this section shall affect the duties of the medical officer of a prison in respect of a prisoner whom the Secretary of State does not think fit to discharge under this section.

28 Revocation of licences and conviction of prisoners on licence

- (1) Where the Parole Board recommends the recall of any person who is subject to a licence under section 22 or 26 of this Act, the Secretary of State may revoke that person's licence and recall him to prison.
- (2) The Secretary of State may revoke the licence of any such person and recall him as aforesaid without consulting the Board, where it appears to him that it is expedient in the public interest to recall that person before such consultation is practicable.
- (3) A person recalled to prison under the foregoing provisions of this section may make representations in writing with respect to his recall and shall on his return to prison be informed of the reasons for his recall and of his right to make such representations.
- (4) The Secretary of State shall refer to the Parole Board the case of a person recalled under subsection (1) above who makes representations under the last foregoing subsection and shall in any event so refer the case of a person returned to prison after being recalled under subsection (2) above.
- (5) Where the Board recommends the immediate release on licence of a person whose case is referred to it under this section, the Secretary of State shall give effect to the recommendation, and where it is necessary for that purpose to release that person under subsection (1) of section 26 of this Act, the Secretary of State shall do so without the consultation required by that subsection.
- (6) If a person subject to a licence under section 60 or 61 of the Criminal Justice Act 1967 or section 22 or 26 of this Act is convicted by the High Court of Justiciary, or by a sheriff, whether summarily or on indictment, of an offence punishable on indictment with imprisonment, the court by which he is convicted may, whether or not it passes any other sentence on him, revoke the licence.
- (7) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence, and, if at large, shall be deemed to be unlawfully at large.

- (8) If, in the case of a person subject to a licence under section 60 of the Criminal Justice Act 1967 (release on licence) or section 22 of this Act, a Crown Court or the High Court of Justiciary or a sheriff revokes that licence under section 62 of the Criminal Justice Act 1967 or, as the case may be, under this section, the Secretary of State shall not thereafter release him under subsection (1) of the said section 22 before the expiration of the specified period from the date of revocation or before the expiration of one-third of the period during which the licence would have remained in force, whichever is the later; but the foregoing provision shall not affect any power to release him otherwise than under that subsection.
- (9) In subsection (8) above, “the specified period” has the same meaning as in section 22(2) above.
- (10) This section shall have effect, in its application to a person sentenced in England and Wales to detention in a young offender institution or sentenced to be detained under section 205(2) of the 1975 Act (punishment of person under 18 for murder), as if for any reference to a prison there were substituted a reference to any place in which that person was detained immediately before he was released on licence.
- (11) This section shall have effect, in its application to a person sentenced to be detained under section 205(3), 207 or 415 of the 1975 Act (detention of young offenders) as if for any reference to a prison there were substituted a reference to a young offenders institution.

29 Determination of age

Without prejudice to section 43(7) of this Act, for the purposes of the provisions of this Act relating to licences or persons on licence, the age of any person at the time when sentence was passed on him shall be deemed to have been that which appears to the Secretary of State to have been his age at that time.