

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON PARTS

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