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PROSPECTIVE

## SCHEDULE 3 **S**

(introduced by section 18(9))

### SHORT-TERM CUSTODY AND COMMUNITY SENTENCES: CONSEQUENTIAL AMENDMENTS

#### *Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)*

1 The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended in accordance with paragraphs 2 to 14.

2 In section 34 (period during which licence in force), for subsection (1) substitute—

“(1) Where a short-term custody and community prisoner is released on short-term community licence by virtue of section 5, 27(1) or, as the case may be, 42(4)(a), the licence remains in force until the expiry of the prisoner's sentence.”.

3 In the following places after “section” insert “ 5, ”

- (a) section 35 (prisoner to comply with licence conditions),
- (b) subsection (1)(a) of section 36 (suspension of licence conditions while detained), and
- (c) subsections (1)(a) and (4)(a) of section 37 (revocation of licence).

4 In section 40 (compassionate release: effect of revocation in certain circumstances), in subsection (3), for paragraph (a) substitute—

“(a) in the case of a short-term custody and community prisoner, one-half of the prisoner's sentence,”.

5 (1) Section 42 (consideration by Parole Board) is amended as follows.

(2) In subsection (1), after “41(2)(b)” insert “ , 42A(9) ”.

(3) In subsection (5), after “on” insert “ short-term community licence, ”.

6 After section 42 insert—

#### **“42A Determination that section 42(3) applicable: consequences for short-term custody and community prisoners**

- (1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a short-term custody and community prisoner.
- (2) The Parole Board must give the prisoner reasons in writing for its determination.
- (3) If on the day of the determination less than 4 months of the prisoner's sentence remain to be served, the prisoner must be confined until the expiry of the prisoner's sentence.

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- (4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner's sentence remain to be served, the Parole Board may, subject to section 26, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner's case.
- (5) That period is the period—
- (a) beginning with the day falling 4 months after the day of the determination, and
  - (b) ending on the expiry of the prisoner's sentence.
- (6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner's sentence.
- (7) If on the day of the determination at least 2 years of the prisoner's sentence remain to be served, the Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner's case.
- (8) That period is the period—
- (a) beginning with the day falling 4 months after the day of the determination, and
  - (b) ending immediately before the second anniversary of the day of the determination.
- (9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.”.
- 7 (1) Section 45 (prisoner's right to request early reconsideration by Parole Board) is amended as follows.
- (2) In subsection (1), after “under—” insert—
- “(za) section 42A(4),
  - (zb) section 42A(7),”.
- (3) In subsection (2), after “section” insert “ 42A(4), 42A(7), ”.
- (4) In subsection (3), after “section” insert “ 42A(4) or ”.
- (5) In subsection (4), after “section” insert “ 42A(4) or, as the case may be, ”.
- 8 In section 46 (multiple licences to be replaced by single licence), in subsection (1) (a), after “section” insert “ 5, ”.
- 9 (1) Section 51 (prisoners serving extended sentences) is amended as follows.
- (2) In subsection (1), for “(2)” substitute “ (1A) ”.
- (3) After that subsection insert—
- “(1A) In section 5, the reference to the prisoner's short-term custody and community sentence is to be read as a reference to the confinement term of the prisoner's extended sentence.”.
- 10 (1) Section 55 (application to young offenders and children) is amended as follows.
- (2) In subsection (1), for “custody-only” substitute “ short-term custody and community ”.

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- (3) In subsection (2)(a), for “15 days” substitute “ the prescribed period ”.
- (4) In subsection (4)(a), for “15 days or more” substitute “ at least the prescribed period ”.
- 11 In section 56 (fine defaulters and persons in contempt of court), in subsection (1), for “custody-only” substitute “ short-term custody and community ”.
- 12 In section 65 (rules, regulations and orders), in subsection (4)(a), for “4(2), 7, 47(1)(b)” substitute “ 4(1), 7, 47(1)(b), 55(2) or (4) ”.
- 13 (1) Schedule 2 (prisoners serving more than one sentence) is amended as follows.
- (2) Before paragraph 1, in the italic heading, for “custody-only” substitute “ short-term custody and community ”.
- (3) In paragraph 1—
- (a) in sub-paragraph (1)(a), for “custody-only” substitute “ short-term custody and community ”,
  - (b) in sub-paragraph (3)—
    - (i) for “and 34(1)” substitute “ , 34(1) and 42A ”, and
    - (ii) for “custody-only” in both places where it occurs substitute “ short-term custody and community ”, and
  - (c) after sub-paragraph (3) add—
 

“(4) In section 47(3A)—

    - (a) references to the expiry of one-half of the prisoner's sentence are to be read as references to the expiry of one-half of the short-term custody and community sentence that expires after the expiry of one-half of the other short-term custody and community sentence (or sentences),
    - (b) in paragraph (a)(i), the reference to the expiry of the prisoner's sentence is to be read as a reference to the longer (or longest) of the sentences imposed on the prisoner.”.
- (4) Before paragraph 3, in the italic heading, for “custody-only” substitute “ short-term custody and community ”.
- (5) In paragraph 3—
- (a) in sub-paragraph (1)(a), for “custody-only” substitute “ short-term custody and community ”,
  - (b) in sub-paragraph (3), for “and 34(1)” substitute “ , 34(1), 42A and subsections (3A) and (8)(a) of section 47 ”,
  - (c) in sub-paragraph (4)—
    - (i) for “the custody-only” substitute “ one-half of the short-term custody and community ”, and
    - (ii) in paragraph (a), for “any other custody-only” substitute “ one-half of any other short-term custody and community ”, and
  - (d) in sub-paragraph (5)(b)(ii) and (6)(b), for “the custody-only” substitute “ at least one-half of the short-term custody and community ”.
- (6) In paragraph 5—
- (a) in sub-paragraph (1), in both paragraphs (a) and (b), for “custody-only” substitute “ short-term custody and community ”,

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- (b) in sub-paragraph (3)—
    - (i) after “19” insert “, 29A, 29B ”, and
    - (ii) after “(2)” insert “, 42A ”, and
  - (c) in sub-paragraph (4)—
    - (i) for “the custody-only” substitute “ one-half of the short-term custody and community ”, and
    - (ii) in paragraph (a), for “any other custody-only” substitute “ one-half of any other short-term custody and community ”.
- (7) In paragraph 6, in sub-paragraph (1)(b), after “section” insert “ 5, ”.
- (8) In paragraph 7, after sub-paragraph (1) insert—
- “(1A) Where a short-term custody and community sentence imposed on a prisoner is an extended sentence, the modifications in paragraphs 1(3) and (4) and 3(4), (5)(b)(ii), (6) and (8A) are to be read subject to sub-paragraph (2).”.
- 14 (1) Schedule 3 (sentences framed to run consecutively) is amended as follows.
- (2) In paragraph 1(4)(a), for “custody-only sentence, that sentence” substitute “ short-term custody and community sentence, one-half of that sentence ”.
- (3) Before paragraph 3 insert—
- “2A (1) This paragraph applies where—
- (a) the court imposes a short-term custody and community sentence as a further sentence,
  - (b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
  - (c) the prisoner's previous sentence (or one of the prisoner's previous sentences) is a short-term custody and community sentence.
- (2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.
- (3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.”.
- (4) In paragraph 3—
- (a) in sub-paragraph (1)(a), for “custody-only” substitute “ short-term custody and community ”, and
  - (b) after sub-paragraph (2) insert—
- “(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.”.
- (5) After paragraph 3 insert—
- “3A (1) This paragraph applies where—
- (a) the court imposes a custody and community sentence as a further sentence,
  - (b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
  - (c) the prisoner's previous sentence (or one of the prisoner's previous sentences) is a short-term custody and community sentence.

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(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.

(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.”.

(6) In paragraph 5—

- (a) sub-paragraph (1) is repealed,
- (b) in sub-paragraphs (2) and (3), for “paragraph 4” substitute “ the relevant paragraph ”,
- (c) in sub-paragraph (4)—
  - (i) in paragraph (a), for “4(2) and (3)” substitute “ sub-paragraphs (2) and (3) of the relevant paragraph ”, and
  - (ii) in paragraph (c), for “paragraph 4(3)” substitute “ sub-paragraph (3) of the relevant paragraph ”,
- (d) after sub-paragraph (4) insert—

“(4A) Where a short-term custody and community sentence or custody and community sentence imposed on a prisoner is an extended sentence, references in this schedule to—

- (a) the prisoner's “previous sentence” are to be read as references to the “previous confinement term” of the prisoner's sentence,
- (b) the prisoner's “further sentence” are to be read as references to the “further confinement term” of the prisoner's sentence.”, and
- (e) after sub-paragraph (5) insert—

“(6) In this paragraph “the relevant paragraph” means paragraph 2A, 3, 3A or 4 (whichever applies in the circumstances described).”.

#### *The 1995 Act*

15 The 1995 Act is amended in accordance with paragraphs 16 and 17.

16 (1) Section 167 (forms of finding and sentence in summary proceedings) is amended as follows.

- (2) In subsection (7D), for “any previous custody-only” substitute “ one-half of any previous short-term custody and community ”.
- (3) In subsection (7E), for “custody-only” substitute “ short-term custody and community ”.

17 (1) Section 210A (extended sentences for sex and violent offenders) is amended as follows.

- (2) In subsections (1)(b) and (2)(b), after “a” insert “ short-term community or ”.
- (3) In subsection (10), after the definition of “sexual offence” insert—

““short-term community licence” has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17);”.

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