



# Management of Offenders (Scotland) Act 2019

2019 asp 14

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th June 2019 and received Royal Assent on 30th July 2019**

An Act of the Scottish Parliament to make provision for electronic monitoring of offenders and as to certain other restrictive measures imposable on offenders; to make provision about periods and processes as regards disclosure of convictions by offenders; and to make provision concerning particular aspects of the system governing parole of offenders.

## PART 1

### ELECTRONIC MONITORING ETC.

VALID FROM 01/10/2020

#### *Monitoring in criminal proceedings*

VALID FROM 17/05/2022

#### **1 Requirement when disposing of case**

- (1) When making a person subject to a disposal listed in section 3(2), a court may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
  - (a) is to be monitored by a person designated under section 11(1)(a), and
  - (b) is bound by the obligations set out in section 12(2) and (3).

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- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
  - (a) is complying with the specified aspects of the disposal, and
  - (b) is fulfilling the obligations set out in section 12(2) and (3).
- (5) The court must—
  - (a) explain to the person the purpose mentioned in subsection (4), and
  - (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).
- (6) A requirement under subsection (1) is to be made by means of an order of the court (the form of which is to be prescribed by Act of Adjournal).
- (7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the court when disposing of the person's case.

VALID FROM 17/05/2022

## 2 Particular rules regarding disposals

- (1) If a person's agreement to a disposal mentioned in a particular paragraph of section 3(2) is necessary before the person can become subject to the disposal, the person's agreement to becoming subject to a requirement under section 1(1) is necessary before the requirement can be made in addition to the disposal.
- (2) A requirement made under section 1(1) lasts for as long as the person is subject to the associated disposal, but a court which makes a requirement under section 1(1) may vary or revoke the requirement in conjunction with the variation or revocation by it under an enactment of the associated disposal.
- (3) In subsection (1), the reference to agreement to a disposal includes agreement, consent or willingness to becoming subject to the disposal.

## 3 List of the relevant disposals

- (1) Subsection (2) contains the list referred to in section 1(1).
- (2) This is the list—
  - (a) making an order under, or in any way altering an order made under, section 209(1) of the Criminal Procedure (Scotland) Act 1995 (relating to supervised release in certain cases under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993),
  - (b) making an order under, or varying an order made under, section 245A of the Criminal Procedure (Scotland) Act 1995 (in that Act called a restriction of liberty order),
  - (c) imposing a requirement restricting movements by virtue of, or varying such a requirement imposed by virtue of, section 234CA(1) of the Criminal Procedure (Scotland) Act 1995 (relating to a drug treatment and testing order within the meaning given by section 234B(2) of that Act),

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- (d) imposing a restricted movement requirement by virtue of, or varying such a requirement imposed by virtue of, section 227A(2)(j) of the Criminal Procedure (Scotland) Act 1995 (relating to a community payback order under section 227A(1) of that Act),
- (e) making an order by virtue of, or varying or renewing an order made by virtue of, section 104(1)(b) as read with section 104(2) and (3) of the Sexual Offences Act 2003 (relating to sexual offences prevention),
- (f) making an order under, or varying or renewing an order made under, section 11 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (relating to sexual risk or harm).

#### 4 More about the list of disposals

- (1) The Scottish Ministers may by regulations modify the list in section 3(2) so as to—
  - (a) add, alter or remove an entry,
  - (b) limit an entry so as to specify a certain aspect of what a court may do.
- (2) An entry included in section 3(2) may relate to anything, at any stage in criminal proceedings—
  - (a) which can be made or imposed by a court with respect to a person, or
  - (b) to which a person can otherwise be made subject by a court,
 except something under which a person is to be detained in custody.
- (3) A general or specific reference to a disposal mentioned in section 3(2) is, in relation to a requirement under section 1(1), to be construed as being to the relevant order or other measure so far as concerning—
  - (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or
  - (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.
- (4) For the avoidance of doubt, anything listed in section 3(2) is to be regarded as a disposal for the purposes of this Part (whether or not it is the final disposal of a case).

VALID FROM 17/05/2022

### *Monitoring on release on parole*

#### 5 Requirement with licence conditions

- (1) When imposing any conditions of a sort mentioned in section 7(1) in connection with release of a person on licence, the Scottish Ministers may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
  - (a) is to be monitored by a person designated under section 11(2)(a), and
  - (b) is bound by the obligations set out in section 12(2) and (3).

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- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
  - (a) is complying with the specified aspects of the conditions, and
  - (b) is fulfilling the obligations set out in section 12(2) and (3).
- (5) The Scottish Ministers must—
  - (a) explain to the person the purpose mentioned in subsection (4), and
  - (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).
- (6) The terms of a requirement made under subsection (1) are to be stated in the licence on which the person is released (with the licence being as referred to in the enactment under which the person is released).
- (7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the Scottish Ministers when imposing the conditions.

## **6 Particular rules regarding conditions**

- (1) Where a recommendation of the Parole Board for Scotland is necessary before any conditions mentioned in a particular paragraph of section 7(1) can be imposed on a person, the Parole Board's recommendation that there should be a requirement under section 5(1) in the person's case is necessary before the requirement can be made in addition to the conditions.
- (2) A requirement made under section 5(1) lasts for as long as the person is subject to the associated conditions, but the Scottish Ministers may vary or revoke the requirement in conjunction with the variation or revocation by them under an enactment of the associated conditions.

## **7 List of the relevant conditions**

- (1) These are the conditions referred to in section 5(1)—
  - (a) a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which relates to release on licence under section 3AA of that Act),
  - (b) conditions under section 12(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (on release on licence under Part 1 of that Act (where sentencing is on or after 1 October 1993)),
  - (c) conditions under section 22(6) of the Prisons (Scotland) Act 1989 (on release on licence regarding certain sentences (where sentencing is before 1 October 1993)),
  - (d) conditions relating to temporary release in accordance with rules made under section 39 of the Prisons (Scotland) Act 1989 (known as prison rules),
  - (e) conditions relating to release from imprisonment or detention which arise on the basis prescribed in regulations made by the Scottish Ministers.
- (2) A general or specific reference to any conditions mentioned in subsection (1) is, in relation to a requirement under section 5(1), to be construed as being to the relevant conditions so far as concerning—
  - (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or

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- (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.

VALID FROM 01/10/2020

### *Devices, use and information*

## **8 Approved devices to be prescribed**

- (1) An approved device, in relation to a requirement under—
  - (a) section 1(1), or
  - (b) section 5(1),
 is an electronic device of a type prescribed in regulations made by the Scottish Ministers.
- (2) A type of device that may be prescribed in regulations under subsection (1) includes—
  - (a) a device for monitoring a person's whereabouts in some manner (including of being at, or not being at, a particular place), or
  - (b) a device for—
    - (i) detecting whether a person has consumed, taken or ingested alcohol, drugs or other substances, or
    - (ii) measuring the level of alcohol, drugs or other substances consumed, taken or ingested by a person.
- (3) Regulations under subsection (1) may include provision as to any apparatus to be linked to a device as well as prescribing the device itself.

## **9 Use of devices and information**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the use of an approved device in connection with a requirement made under—
    - (i) section 1(1), or
    - (ii) section 5(1),
  - (b) the use of information obtained through monitoring of a person by means of such a device for the purpose mentioned in section 1(4) or 5(4).
- (2) Subsections (3) to (5) give examples of what regulations under subsection (1) may do.
- (3) Regulations may set out how or when a device is to be—
  - (a) worn by a person subject to a requirement made under section 1(1) or 5(1), or
  - (b) used in some other way by a person subject to such a requirement.
- (4) Regulations may provide for—
  - (a) circumstances in which a particular type of device is, or is not, to be used,
  - (b) what information may, or may not, be gathered—
    - (i) at particular times,

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(ii) in particular circumstances.

(5) Regulations may—

- (a) allow or restrict the use or sharing of information obtained through monitoring,
- (b) fix periods—
  - (i) during which such information may be retained,
  - (ii) after which such information must be destroyed.

VALID FROM 17/05/2022

### *Arrangements and designation*

#### **10 Arrangements for monitoring system**

- (1) The Scottish Ministers must make contractual or other arrangements to secure the monitoring of a person—
  - (a) by means of an approved device, and
  - (b) in connection with a requirement made under—
    - (i) section 1(1), or
    - (ii) section 5(1).
- (2) The Scottish Ministers must keep the Scottish Courts and Tribunals Service informed of the identity of whoever is eligible for designation by a court under section 11(1)
  - (a) (including by reference to eligibility in all or some circumstances).
- (3) Different arrangements may be made under subsection (1) for different purposes (including arrangements of temporary or local effect).

#### **11 Designation of person to do monitoring**

- (1) When a requirement is made under section 1(1), the court must—
  - (a) designate a person to be responsible for monitoring the monitored person by means of an approved device for the purpose mentioned in section 1(4),
  - (b) notify the monitored person that a person has been designated under paragraph (a),
  - (c) send to the designated person—
    - (i) intimation of the fact of designation,
    - (ii) the date on which monitoring of the monitored person is to begin,
    - (iii) details of the requirement and the specified aspects of the associated disposal, and
    - (iv) any further information that it considers appropriate.
- (2) When a requirement is made under section 5(1), the Scottish Ministers must—
  - (a) designate a person to be responsible for monitoring the monitored person by means of an approved device for the purpose mentioned in section 5(4),
  - (b) notify the monitored person that a person has been designated under paragraph (a),

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- (c) send to the designated person—
  - (i) intimation of the fact of designation,
  - (ii) the date on which monitoring of the monitored person is to begin,
  - (iii) details of the requirement and the specified aspects of the associated conditions, and
  - (iv) any further information that they consider appropriate.
- (3) The designated person's responsibility for monitoring the monitored person—
  - (a) is suspended if the disposal is or (as the case may be) the conditions are suspended,
  - (b) ends—
    - (i) when the disposal ceases or (as the case may be) the conditions cease to have effect, or
    - (ii) if someone else is designated under subsection (1)(a) or (as the case may be) (2)(a) as a replacement.
- (4) If the designated person can no longer discharge the person's responsibility for monitoring the monitored person—
  - (a) someone else must be designated under subsection (1)(a) or (as the case may be) (2)(a) as a replacement, and
  - (b) subsection (1)(b) and (c) or (as the case may be) (2)(b) and (c) applies again.
- (5) See section 10(2) for who is eligible for designation by the court under subsection (1)(a).
- (6) In subsections (1) to (4)—
  - (a) a reference to the designated person is to whoever is for the time being designated under subsection (1)(a) or (as the case may be) (2)(a),
  - (b) a reference to the monitored person is to the person subject to the requirement made under section 1(1) or (as the case may be) 5(1),
  - (c) a reference to the specified aspects of the disposal or the conditions in question has the same meaning as is given by section 1(7) or (as the case may be) 5(7).

VALID FROM 17/05/2022

### *Obligations and compliance*

## **12 Standard obligations put on offenders**

- (1) The obligations in subsections (2) and (3) are set out in relation to a requirement made under—
  - (a) section 1(1), or
  - (b) section 5(1).
- (2) The monitored person must obey instructions given by the designated person on how or when an approved device allocated to the monitored person is to be—
  - (a) worn, or
  - (b) used in some other way,



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so as to facilitate monitoring of the monitored person by means of the approved device for the purpose mentioned in section 1(4) or (as the case may be) 5(4).

(3) The monitored person must not—

- (a) tamper with the approved device, or cause or permit someone else to tamper with the device, or
- (b) intentionally damage or destroy the approved device, or cause or permit someone else so to damage or destroy the device.

(4) In subsection (2), the reference to the designated person is to whoever is for the time being designated under section 11(1)(a) or (as the case may be) (2)(a).

(5) In subsections (2) and (3)—

- (a) the references to an approved device include any apparatus linked to the device as well as meaning the device itself,
- (b) the references to the monitored person are to the person subject to the requirement made under section 1(1) or (as the case may be) 5(1).

### **13 Deemed breach of disposal or conditions**

(1) In the operation of a disposal mentioned in section 3(2)—

- (a) an additional requirement made under section 1(1) is to be regarded as if part of the disposal,
- (b) the disposal is therefore to be taken as breached with respect to the requirement if the person subject to it contravenes section 12(2) or (3).

(2) Any provisions of an enactment as to breach of the disposal are engaged by virtue of subsection (1) accordingly (so far as relevant in the case).

(3) No offence constituted by reason of breaching the disposal (where there is such an offence) can be committed by virtue of subsection (1).

(4) In the operation of any conditions mentioned in section 7(1)—

- (a) an additional requirement made under section 5(1) is to be regarded as if part of the conditions,
- (b) the conditions are therefore to be taken as breached with respect to the requirement if the person subject to it contravenes section 12(2) or (3).

(5) Any provisions of an enactment—

- (a) as to breach of the conditions or the licence in which they are contained, or
- (b) as to recall to a prison or another place in consequence of breach of the conditions or the licence in which they are contained,

are engaged by virtue of subsection (4) accordingly (so far as relevant in the case).

(6) In subsections (2) and (5), the references to provisions relating to breach of something include provisions relating to variation or revocation of it in consequence of breach of it.

### **14 Documentary evidence at breach hearings**

(1) As regards a requirement made under section 1(1), subsection (3) applies in relation to a hearing on the issue of whether the person subject to the requirement has—

- (a) contravened the specified aspects of the associated disposal, or



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- (b) contravened section 12(2) or (3).
- (2) As regards a requirement made under section 5(1), subsection (3) applies in relation to a hearing on the issue of whether the person subject to the requirement has—
  - (a) contravened the specified aspects of the associated conditions, or
  - (b) contravened section 12(2) or (3).
- (3) Evidence may be given by way of a document bearing to comprise (both)—
  - (a) a statement—
    - (i) produced by an approved device (or any apparatus linked to the device), and
    - (ii) showing information relevant to the issue, and
  - (b) a certificate signed by or on behalf of the designated person that the information is accurate.
- (4) Examples are information about—
  - (a) the device's whereabouts at a particular time (including when being at, or not being at, a particular place),
  - (b) the—
    - (i) connectivity of the device or working of the device in some other way,
    - (ii) wearing of the device or use of the device in some other manner, at a particular time,
  - (c) the presence or level of alcohol, drugs or other substances in the wearer's or user's body at a particular time.
- (5) The document—
  - (a) is sufficient evidence of everything contained in it,
  - (b) is admissible only if a copy of it is served, prior to the start of the hearing, on the person whose alleged contravention is the subject of the hearing.
- (6) In subsections (1) to (3)—
  - (a) a reference to a hearing includes a court or administrative hearing,
  - (b) a reference to the specified aspects of the disposal or the conditions in question has the same meaning as is given by section 1(7) or (as the case may be) 5(7),
  - (c) the reference to the designated person is to someone who at the time of the signing of the certificate is designated under section 11(1)(a) or (as the case may be) (2)(a).

### *SSI procedure and schedule*

VALID FROM 01/10/2020

## **15 Procedure for making regulations**

- (1) Regulations under this Part may—
  - (a) make different provision for different purposes (including provision of temporary or local effect),

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- (b) include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under this Part—
  - (a) if enabled by section 9(1), are subject to the affirmative procedure,
  - (b) otherwise, are subject to the negative procedure.

## 16 Additional and consequential provisions

- (1) Part 1 of schedule 1 amends provisions relating to particular restrictive measures.
- (2) Part 2 of schedule 1 contains consequential amendments in relation to electronic monitoring.

### Commencement Information

- II** [S. 16\(1\)](#) in force at 11.10.2019 for specified purposes by [S.S.I. 2019/309](#), [reg. 2](#), [sch.](#)

## PART 2

### DISCLOSURE OF CONVICTIONS

VALID FROM 30/11/2020

#### *Rules relating to disclosure*

### 17 Effect of expiry of disclosure periods

- (1) The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) is amended as follows.
- (2) In section 1, for subsection (1) there is substituted—
  - “(1) Subsections (1A) and (1B) apply where—
    - (a) an individual has at any time been convicted of any offence, and
    - (b) an excluded sentence was not imposed on the individual in respect of the conviction.
  - (1A) After the expiry of the disclosure period applicable to the conviction in accordance with section 6 (including any extension under subsection (4) of that section)—
    - (a) the individual is, for the purposes of this Act, to be treated as a protected person in respect of the conviction, and
    - (b) the conviction is, for the purposes of this Act, to be treated as spent.
  - (1B) But where the disclosure period so applicable expired before commencement of this Act, the individual and conviction are to be treated as mentioned in subsection (1A) from the date of commencement of this Act.
  - (1C) Subsections (1) to (1B) are subject to subsections (2), (5) and (6).”.

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## **18 Excluded sentences: convictions prevented from becoming spent**

- (1) The 1974 Act is amended as follows.
- (2) In section 5, in subsection (1)—
  - (a) in paragraph (b)—
    - (i) the words “, youth custody” are repealed,
    - (ii) for “thirty” there is substituted “ 48 ”,
  - (b) in paragraph (d)—
    - (i) the words from “under” in the first place where it occurs to “or” in the third place where it occurs are repealed,
    - (ii) for the words “1975” in the first place where they occur there is substituted “ 1995 ”,
    - (iii) the words “section 91 of the said Act of 2000 or” are repealed,
    - (iv) the words from “or under section 206” to the end are repealed,
  - (c) after paragraph (d) there is inserted—
    - “(da) a sentence of detention for a term exceeding 48 months passed under section 207 (detention of young offenders) or 208 (detention of children convicted on indictment) of the Criminal Procedure (Scotland) Act 1995;”.

## **19 Disclosure periods for particular sentences**

- (1) The 1974 Act is amended as follows.
- (2) In section 5, for subsections (2) to (10) there is substituted—
  - “(2A) For the purposes of this Act, the disclosure period applicable to a sentence specified in the first column of Table A is—
    - (a) where the sentence was imposed on a person who was 18 years of age or older at the date of the conviction in respect of which the sentence was imposed, the period specified in the second column of Table A in relation to that sentence,
    - (b) where the sentence was imposed on a person who was under 18 years of age at the date of the conviction in respect of which the sentence was imposed, the period specified in the third column of Table A in relation to that sentence.
  - (2B) For the purposes of subsection (2A), the disclosure period applicable to a sentence is to be reckoned from the date of the conviction in respect of which the sentence was imposed.
  - (2C) Subsection (2A) applies to Table B as it applies to Table A.
  - (2D) This subsection applies to a sentence which is—
    - (a) not dealt with in—
      - (i) subsections (1) to (2C) (including in Table A or Table B), or
      - (ii) any of sections 5C to 5J,
    - (b) imposed on a person in respect of a conviction, and
    - (c) given by way of an order—
      - (i) imposing on the person any disqualification, disability, prohibition, requirement or restriction, or

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(ii) which is otherwise intended to regulate the person's behaviour.

(2E) The disclosure period applicable to a sentence to which subsection (2D) applies is—

(a) in the case of an order—

(i) containing provision enabling the date on which the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) ceases or ceased to have effect to be determined, or

(ii) containing provision for the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) to have effect for an indefinite period (including the lifetime of a person) or without limit of time,

the period beginning with the date of the conviction and ending on the date on which the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) ceases or ceased to have effect,

(b) in the case of any other order, a period of 2 years beginning with the date of the conviction.

(2F) For the purposes of this section—

(a) consecutive terms of—

(i) imprisonment or other custodial sentences, or

(ii) detention under section 209 of the Armed Forces Act 2006, are to be treated as a single term,

(b) terms of imprisonment, or of detention, which are—

(i) wholly or partly concurrent, and

(ii) imposed in respect of offences of which a person was convicted in the same proceedings,

are to be treated as a single term,

(c) no account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed, and

(d) a sentence imposed by a court outwith Scotland is to be treated as the sentence mentioned—

(i) in this section,

(ii) in Table A or Table B, or

(iii) in any of sections 5C to 5J,

to which it most closely corresponds.

(2G) References in this section, Table A, sections 5D to 5H and section 5J to a sentence provided for in a particular enactment include references to any sentence of a kind superseded (whether directly or indirectly) by such a sentence.”.

(3) In subsection (11)—

(a) in paragraph (a), for “(8) above” there is substituted “ (2E), in Table A or Table B or in any of sections 5C, 5D, 5H and 5I; ”,

(b) in paragraph (b), for “(2)(a) above” there is substituted “ (2A) ”.

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(4) After subsection (11) there is inserted—

“(12) In this section—

“Table A” means the table in section 5A,

“Table B” means the table in section 5B,

“custodial sentence” means—

(a) a sentence of imprisonment,

(b) a sentence of detention under section 44, 207 or 208 of the Criminal Procedure (Scotland) Act 1995,

(c) a sentence of Borstal training,

(d) a sentence of corrective training,

“sentence of imprisonment” includes a sentence of penal servitude (and references to terms of imprisonment are to be read accordingly).”.

## 20 Table A – disclosure periods: ordinary cases

(1) The 1974 Act is amended as follows.

(2) After section 5 there is inserted—

### “5A Table A – disclosure periods: ordinary cases

(1) This is Table A as referred to in section 5(2A)—

TABLE A

#### DISCLOSURE PERIODS: ORDINARY CASES

<i>Sentence</i>	<i>Disclosure period – aged 18 or over</i>	<i>Disclosure period – aged under 18</i>
A custodial sentence not exceeding 12 months	The term of the sentence plus 2 years	The term of the sentence plus 1 year
A custodial sentence exceeding 12 months but not exceeding 30 months	The term of the sentence plus 4 years	The term of the sentence plus 2 years
A custodial sentence exceeding 30 months but not exceeding 48 months	The term of the sentence plus 6 years	The term of the sentence plus 3 years
A fine	12 months	6 months
A compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995	12 months	6 months
An order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years

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Any sentence—	12 months	6 months
(a) not mentioned above in this Table or in Table B, or		
(b) other than one to which section 5(2D), or any of sections 5C to 5J, applies		

(2) In Table A, “custodial sentence” and “Table B” have the same meanings as given by section 5(12).”.

## 21 Table B – disclosure periods: service sentences

- (1) The 1974 Act is amended as follows.
- (2) After section 5A (inserted by section 20) there is inserted—

### “5B Table B – disclosure periods: service disciplinary sentences

This is Table B as referred to in section 5(2C)—

## 22 Disclosure period: caution for good behaviour

- (1) The 1974 Act is amended as follows.
- (2) After section 5B (inserted by section 21) there is inserted—

### “5C Disclosure period: caution for good behaviour

- (1) Subsection (2) applies where, in respect of a conviction, a person was ordained to find caution for good behaviour in respect of a period (“the caution period”).
- (2) The disclosure period applicable to the sentence is—
  - (a) where the person was 18 years of age or older at the date of the conviction, whichever is the longer of—
    - (i) 6 months from the date of the conviction,
    - (ii) the length of the caution period,
  - (b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—
    - (i) 3 months from the date of the conviction,
    - (ii) the length of the caution period.”.

## 23 Disclosure period: particular court orders

- (1) The 1974 Act is amended as follows.
- (2) After section 5C (inserted by section 22) there is inserted—

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### **“5D Disclosure period: particular court orders**

- (1) Where, in respect of a conviction, an order listed in subsection (2) was imposed on a person, the disclosure period applicable to the sentence is—
  - (a) where the person was 18 years of age or older at the date of the conviction, whichever is the longer of—
    - (i) one year from the date of the conviction,
    - (ii) a period beginning with that date and ending when the order ceases to have effect,
  - (b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—
    - (i) six months from the date of the conviction,
    - (ii) a period beginning with that date and ending when the order ceases to have effect.
- (2) The orders are—
  - (a) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,
  - (b) a drug treatment and testing order under section 234B of that Act,
  - (c) a restriction of liberty order under section 245A of that Act.
- (3) In subsection (1)(a)(ii) and (b)(ii), the reference to when the order ceases to have effect is—
  - (a) in the case of a community payback order, a reference to when the requirement imposed by the order ceases or ceased to have effect or otherwise requires or required to be complied with,
  - (b) in the case of a drug treatment and testing order or restriction of liberty order, a reference to when the order ceases or ceased to have effect.”.

## **24 Disclosure period: adjournment or deferral**

- (1) The 1974 Act is amended as follows.
- (2) After section 5D (inserted by section 23) there is inserted—

### **“5E Disclosure period: adjournment or deferral**

- (1) Where, after convicting a person, a court adjourns a case under section 201 of the Criminal Procedure (Scotland) Act 1995 or defers sentence under section 202 of that Act, the adjournment or deferral is to be treated as a sentence for the purposes of this Act.
- (2) The disclosure period applicable to a sentence mentioned in subsection (1) is a period beginning with the date of the conviction and ending on the date a relevant sentence in respect of the conviction is imposed on the person.
- (3) In subsection (2), a “relevant sentence” is any sentence other than an adjournment or deferral (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.”.



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## **25 Disclosure period: mental health orders**

- (1) The 1974 Act is amended as follows.
- (2) After section 5E (inserted by section 24) there is inserted—

### **“5F Disclosure period for certain mental health orders**

- (1) Subsection (2) applies where, further to the making of a compulsion order as mentioned in subsection (1) of section 59 of the Criminal Procedure (Scotland) Act 1995 in relation to a person, a restriction order under that section is made in respect of the person.
- (2) The disclosure period applicable to the restriction order is a period beginning with the date of the person's conviction in respect of which the compulsion order was made and ending on the date the restriction order ceases or ceased to have effect.
- (3) Subsection (4) applies where, by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995—
  - (a) a compulsion order is made under subsection (2)(a) of that section in relation to a person authorising the person's detention in a hospital, and
  - (b) a restriction order under subsection (2)(b) of that section is, in addition to the compulsion order, made in respect of the person.
- (4) The disclosure period applicable to the restriction order is a period beginning with the date of the person's conviction in respect of which the compulsion order was made and ending on the date the restriction order ceases or ceased to have effect.
- (5) Where, in respect of a conviction, an order listed in subsection (6) was made in relation to a person, the disclosure period applicable to the sentence is a period beginning with the date of the conviction and ending on the date a relevant sentence in respect of the conviction is imposed on the person.
- (6) The orders are—
  - (a) an assessment order under section 52D or 52E of the Criminal Procedure (Scotland) Act 1995,
  - (b) a treatment order under section 52M or 52N of that Act, or
  - (c) an interim compulsion order—
    - (i) under section 53 of that Act, or
    - (ii) if arising by virtue of subsection (1)(b) of section 57 of that Act, under subsection (2)(bb) of that section.
- (7) In subsection (5), a “relevant sentence” is any sentence other than an order mentioned in subsection (6) (or, where applicable, a further such order).”.

## **26 Disclosure period: compulsion orders**

- (1) The 1974 Act is amended as follows.
- (2) After section 5F (inserted by section 25) there is inserted—

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### **“5G Disclosure period: compulsion orders**

- (1) The disclosure period applicable to a compulsion order—
  - (a) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(a) of that section, or
  - (b) under section 57A of that Act,
 is a period beginning with the date of the conviction in respect of which the order was made and ending on the date the order ceases or ceased to have effect.
- (2) Subsection (1) is subject to sections 164A and 167A of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (3) Where the Mental Health Tribunal for Scotland makes a determination under section 167A(3) of that Act in relation to a person—
  - (a) the person is, with effect from the date on which the disclosure period applicable to the compulsion order ends by virtue of that section, to be treated for the purposes of this Act as a protected person, and
  - (b) the person's conviction in respect of which the compulsion order was made is for those purposes to be treated as spent.
- (4) Subsection (3) is subject to section 6(2).”.
- (3) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (4) After section 164 there is inserted—

### **“164A Application to end disclosure period for compulsion order**

- (1) This section applies where a patient is subject to a relevant compulsion order.
- (2) Either of the persons mentioned in subsection (3) may make an application under this section to the Tribunal for a determination under section 167A that the disclosure period applicable to the compulsion order is to come to an end.
- (3) The persons referred to in subsection (2) are—
  - (a) the patient, and
  - (b) the patient's named person.
- (4) An application under this section may not be made until the expiry of the period of 12 months beginning with the day on which the order is made (or is deemed under section 198(2) to be made).
- (5) Where an application under this section relating to a compulsion order has already been refused by the Tribunal, a further such application relating to the order may not be made until the expiry of the period of 12 months beginning with the date of such refusal (or, where applicable, the date of the most recent such refusal).
- (6) An application under this section must be accompanied by such documents as may be prescribed by regulations.”.

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(5) After section 167 there is inserted—

**“167A Duties of Tribunal on application under section 164A**

- (1) This section applies where an application is made under section 164A in respect of a patient.
- (2) If the Tribunal is satisfied that, without the provision of medical treatment of the kind mentioned in section 139(4)(b) to the patient, there would be a significant risk to the safety of other persons, it must refuse the application.
- (3) If the Tribunal is not satisfied as mentioned in subsection (2), it must determine that the disclosure period applicable to the compulsion order ends with immediate effect.
- (4) Before refusing an application under subsection (2) or making a determination under subsection (3), the Tribunal must afford the persons mentioned in subsection (5) the opportunity—
  - (a) of making representations (whether orally or in writing), and
  - (b) of leading, or producing, evidence.
- (5) Those persons are—
  - (a) the patient,
  - (b) the patient's named person,
  - (c) any guardian of the patient,
  - (d) any welfare attorney of the patient,
  - (e) the mental health officer,
  - (f) the patient's responsible medical officer,
  - (g) the patient's primary carer,
  - (h) any curator ad litem appointed in respect of the patient by the Tribunal, and
  - (i) any other person appearing to the Tribunal to have an interest in the application.
- (6) In this section and section 164A—
  - (a) “disclosure period”, in relation to a compulsion order, is to be construed in accordance with the Rehabilitation of Offenders Act 1974,
  - (b) references to the disclosure period applicable to a compulsion order are to be construed in accordance with section 5G(1) of that Act.

**167B Duty to notify outcome of applications under section 164A**

- (1) The Scottish Ministers may require the Tribunal to provide the information mentioned in subsection (3) in respect of a person.
- (2) Where a requirement is made under subsection (1), the Tribunal must, before the expiry of the period of 15 working days beginning with the day on which the requirement is made, provide the Scottish Ministers with the information.

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(3) The information is whether a refusal under subsection (2) of section 167A has been given, or a determination under subsection (3) of that section has been made, in relation to the person to whom the request relates.

(4) In subsection (2), “working day” has the meaning given by section 47(8).”.

(6) In section 257A (ability to act if no named person), in subsection (3), after “164(2)” there is inserted “164A, ”.

## **27 Disclosure period: juvenile offenders**

(1) The 1974 Act is amended as follows.

(2) After section 5G (inserted by section 26) there is inserted—

### **“5H Disclosure period: orders relating to juvenile offenders**

(1) Where, in respect of a conviction, an order mentioned in subsection (2) was imposed on a person, the disclosure period applicable to the sentence is 1 year from the date of the conviction.

(2) The order is an order under section 61 of the Children and Young Persons (Scotland) Act 1937—

- (a) to send the person to an approved school, or
- (b) to commit the person to the care of a fit person.”.

## **28 Disclosure period: service discipline**

(1) The 1974 Act is amended as follows.

(2) After section 5H (inserted by section 27) there is inserted—

### **“5I Disclosure period: service disciplinary orders**

(1) Where, in respect of a conviction, a service community order, or an overseas community order, under the Armed Forces Act 2006 was made, the disclosure period applicable to the sentence is—

- (a) where the person was 18 years of age or older at the date of the conviction, 5 years from the date of the conviction,
- (b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—
  - (i) 2½ years from the date of the conviction,
  - (ii) a period beginning with that date and ending when the order in question ceases or ceased to have effect.

(2) Where, in respect of a conviction, a community supervision order under schedule 5A of the Army Act 1955 or the Air Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957 was imposed, the disclosure period applicable to the sentence is whichever is the longer of—

- (a) 1 year from the date of the conviction,
- (b) a period beginning with that date and ending when the order ceases or ceased to have effect.

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(3) Where, in respect of a conviction, an order under section 211 of the Armed Forces Act 2006 was made in respect of a person, the disclosure period applicable to the sentence is—

- (a) where the person was 15 years of age or older at the date of the conviction—
  - (i) 5 years if the order was for a term exceeding 6 months,
  - (ii) 3½ years if the order was for a term of 6 months or less,
- (b) where the person was under 15 years of age at the date of the conviction, a period beginning with that date and ending 1 year after the date on which the order ceases to have effect.”.

## **29 Sentences to which no disclosure period applies**

- (1) The 1974 Act is amended as follows.
- (2) After section 5I (inserted by section 28) there is inserted—

### **“5J Sentences to which no disclosure period applies**

- (1) There is no disclosure period applicable to—
  - (a) an order discharging a person absolutely for an offence,
  - (b) the dismissal of a person with an admonition,
  - (c) a guardianship order—
    - (i) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(c) of that section, or
    - (ii) under section 58(1A) or (3) of the Criminal Procedure (Scotland) Act 1995,
  - (d) the discharge by a children's hearing under section 69(1)(b) and (12) of the Children (Scotland) Act 1995 of the referral of a child's case,
  - (e) a supervision requirement under any provision of that Act,
  - (f) the discharge by a children's hearing or, as the case may be, by the sheriff of the referral of a child's case to a children's hearing under section 91(3)(b), 93(2)(b) or 119(3)(b) of the Children's Hearings (Scotland) Act 2011, or
  - (g) a compulsory supervision order under any provision of that Act.
- (2) In relation to any of the cases mentioned in subsection (1), references in this Act to any disclosure period are to be read as if the period of time were nil.”.

## **30 Disclosure periods applicable to convictions**

- (1) The 1974 Act is amended as follows.
- (2) In section 6, for the words “section 5” where occurring in each of subsections (1) and (2) there is substituted “ sections 5 to 5I ”.
- (3) Subsection (3) of section 6 is repealed.
- (4) After subsection (3) of section 6 there is inserted—

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“(3ZA) Subsection (3ZB) applies where—

- (a) an order listed in subsection (3ZC) is imposed on a person in respect of a conviction for an offence,
- (b) after the expiry of the disclosure period applicable to the conviction in accordance with subsection (1) or (2) (“the original disclosure period”), a further sentence for the offence is imposed on the person in consequence of breaching the order, and
- (c) by virtue of the further sentence, the disclosure period applicable to the conviction in accordance with subsection (2) (“the new disclosure period”) ends later than the original disclosure period.

(3ZB) Despite the expiry of the original disclosure period, the person is not to be treated for the purposes of this Act as a protected person in respect of the conviction until the expiry of the new disclosure period (and accordingly the conviction is not to be treated as spent until that period has expired).

(3ZC) The list is—

- (a) an order for conditional discharge,
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,
- (c) a drug treatment and testing order under section 234B of that Act,
- (d) a restriction of liberty order under section 245A of that Act.

(3ZD) The Scottish Ministers may by regulations modify the list in subsection (3ZC) by—

- (a) amending an entry,
- (b) removing an entry,
- (c) adding an entry.

(3ZE) Regulations under subsection (3ZD) are subject to the affirmative procedure.”.

(5) For subsection (4) of section 6 there is substituted—

“(4) Where—

- (a) during the disclosure period applicable to a conviction, the person convicted is convicted of a further offence, and
- (b) the disclosure periods applicable to the two convictions under this section would end on different dates,

the disclosure period which would end earlier is extended so as to end at the same time as the other disclosure period (but this rule is subject to subsections (4A) to (5B)).”.

(6) After subsection (4) of section 6 there is inserted—

“(4A) Subsection (4B) applies where—

- (a) in relation to the conviction of a person (“the first conviction”) the court adjourns the case, or defers sentence,
- (b) during the disclosure period applicable to the adjournment or deferral, the person is convicted of a further offence,
- (c) a relevant sentence is imposed on the person in respect of the first conviction, and



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- (d) there is, by virtue of section 5J, no disclosure period applicable to that sentence.
- (4B) Section 4 does not operate so as to extend the disclosure period applicable to the first conviction.
- (4C) In subsection (4A)—
  - (a) references to adjournments and deferrals are to those matters as mentioned in section 5E(1),
  - (b) a “relevant sentence” is any sentence other than an adjournment or deferral (as mentioned in section 5E(1)) or, where applicable, a further such adjournment or deferral.”
- (7) For subsection (5) of section 6 there is substituted—
 

“(5) A disclosure period is not extended in accordance with subsection (4) so as to end at the same time as another disclosure period if—

  - (a) the other disclosure period is applicable in accordance with section 5(2E) to an order—
    - (i) imposing on a person any disqualification, disability, prohibition, requirement or restriction, or
    - (ii) which is otherwise intended to regulate behaviour, and
  - (b) that order is the only sentence imposed in respect of the conviction to which the other disclosure period is applicable.
- (5A) Subsection (5B) applies where—
  - (a) more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings),
  - (b) none of the sentences is an excluded sentence, and
  - (c) one of the sentences is an order mentioned in subsection (5) in respect of which the disclosure period is applicable in accordance with section 5(2E).
- (5B) In determining whether the disclosure period applicable to another conviction is, in accordance with subsection (4), extended by virtue of the disclosure period applicable to the conviction mentioned in subsection (5A)
  - (a), the disclosure period applicable to the order is to be disregarded.”
- (8) In subsection (6) of section 6—
  - (a) for the words “For the purposes of subsection (4)(a) above there shall be disregarded—” there is substituted “ In subsection (4)(a), the reference to a conviction for a further offence does not include— ”,
  - (b) for paragraph (b) there is substituted—
 

“(b) any conviction by or before a criminal court in summary proceedings;”,
  - (c) in paragraph (c)—
    - (i) for the words “Great Britain” there is substituted “ Scotland ”,
    - (ii) for the words “any part of Great Britain” there is substituted “ Scotland ”,
    - (iii) for the words “that part of Great Britain” there is substituted “ Scotland ”.



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### Regulation-making and other powers

VALID FROM 30/11/2020

#### 31 Powers as to alternatives to prosecution

- (1) The 1974 Act is amended as follows.
- (2) After section 8B there is inserted—

##### “8C Modification of section 8B and schedule 3: Scotland

- (1) The Scottish Ministers may by regulations modify the list of circumstances in section 8B(1) in which a person is given an alternative to prosecution by—
  - (a) amending an entry,
  - (b) removing an entry,
  - (c) adding an entry.
- (2) The Scottish Ministers may by regulations modify paragraph 1 of schedule 3 by—
  - (a) amending provision specifying when an alternative to prosecution becomes spent,
  - (b) removing provision specifying when an alternative to prosecution becomes spent,
  - (c) adding provision specifying when an alternative to prosecution becomes spent.
- (3) Regulations under this section—
  - (a) may make different provision for different purposes,
  - (b) are subject to the affirmative procedure.”.

#### 32 How particular powers are exercisable

- (1) The 1974 Act is amended as follows.
- (2) After section 10 there is inserted—

##### “10A Order-making powers: Scottish Ministers

- (1) Any power exercisable by the Scottish Ministers to make an order under this Act includes power—
  - (a) to make different provision for different purposes,
  - (b) to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) To the extent that the power to make an order under section 5(11) is exercisable by the Scottish Ministers, that power includes power exercisable by the Scottish Ministers to make consequential provision modifying any enactment (including this Act).”.

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## Commencement Information

**I2** S. 32 in force at 21.12.2019 by S.S.I. 2019/413, reg. 2(a)

VALID FROM 30/11/2020

### *Applications for certain convictions to be treated as spent*

#### **33 Excluded sentences: applications for convictions to be treated as spent**

- (1) The Scottish Ministers may make regulations for or in connection with the purpose mentioned in subsection (2).
- (2) The purpose is allowing a person on whom a relevant sentence was imposed in respect of a conviction to apply (both)—
  - (a) to be treated as a protected person in respect of the conviction for the purposes of the 1974 Act, and
  - (b) for the conviction to be treated as spent for the purposes of the 1974 Act.
- (3) A relevant sentence is—
  - (a) a sentence mentioned in section 5(1)(b) or (da) of the 1974 Act, or
  - (b) a sentence imposed by a court outwith Scotland which, by virtue of section 5(2F)(d) of the 1974 Act, falls to be treated as such a sentence.
- (4) The regulations must contain provision—
  - (a) for—
    - (i) an application to be made to a specified reviewer, and
    - (ii) the application to be determined by the specified reviewer,
  - (b) excluding someone who is, for whatever reason, subject to notification requirements under Part 2 of the Sexual Offences Act 2003 from making an application,
  - (c) preventing an application from being made until the expiry of the appropriate period, and
  - (d) setting, or for ascertaining, the relevant date.
- (5) In subsection (4)—
  - (a) in paragraph (c), “the appropriate period” is—
    - (i) in the case of an applicant who was 18 years of age or older on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 6 years,
    - (ii) in the case of an applicant who was under 18 years of age on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 3 years,
  - (b) in paragraph (d), “the relevant date” is the date from which (both)—
    - (i) an applicant's conviction is to be treated as spent, and
    - (ii) the applicant is to be treated as a protected person.
- (6) In this section and section 34, the references to—
  - (a) a protected person, or

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- (b) a conviction being treated as spent,  
are to be construed in accordance with the 1974 Act.

### 34 Regulations under section 33: general details

- (1) Regulations under section 33 may contain provision about (in particular)—
  - (a) the process for applications, including as to—
    - (i) the way of applying,
    - (ii) information to be supplied by applicants,
  - (b) eligibility to make applications, including exceptions and exclusions,
  - (c) fees payable in connection with applications,
  - (d) the functions of the specified reviewer concerning applications, including as to—
    - (i) giving notifications,
    - (ii) obtaining information,
  - (e) the procedure for determining applications, including matters—
    - (i) to which the specified reviewer is to have regard,
    - (ii) which the specified reviewer is to take particularly into account,
  - (f) the types of determinations to be available in respect of applications, and the functions of the specified reviewer concerning determinations,
  - (g) the issuing of, and making of requests for, reasons for determinations,
  - (h) notifications of determinations,
  - (i) time limits in relation to—
    - (i) notifications of applications and determinations,
    - (ii) supplying information in connection with applications,
  - (j) second or subsequent applications relating to the same conviction, including setting a period that must expire before such applications may be made,
  - (k) reconsideration, or consideration afresh, of determinations,
  - (l) reports to be produced by the specified reviewer, or guidance to be given to the reviewer by the Scottish Ministers, on the exercise of the reviewer's functions concerning applications and determinations,
  - (m) appeals against determinations, including—
    - (i) entitlement to appeal,
    - (ii) grounds, time limits and procedure for appeal,
  - (n) the legal effect of determinations, arrived at initially or on appeal, including the result that (both)—
    - (i) a person is to be treated as a protected person, and
    - (ii) a conviction is to be treated as spent.
- (2) In relation to a conviction that is, by virtue of the operation of regulations made under section 33, to be treated as a spent conviction, provision which may be made about the legal effect of determinations extends to (any of)—
  - (a) provision that the conviction is to be, or is not to be, treated as a protected conviction within the meaning of—
    - (i) section 126ZA of the Police Act 1997,
    - (ii) section 57A of the Protection of Vulnerable Groups (Scotland) Act 2007, or

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(iii) article 2A of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50),

- (b) provision as to the time from which the conviction is to be, or before which the conviction is not to be, treated as a protected conviction, and
- (c) provision that the conviction is to be treated as if it were a conviction for an offence of a particular kind prescribed in the provision.

(3) In this section and section 33, “the specified reviewer” means whoever is specified as such in regulations made under section 33.

### **35 Regulations under section 33: appropriate period**

The Scottish Ministers may by regulations modify section 33(5)(a) by amending—

- (a) an age stated in sub-paragraph (i) or (ii),
- (b) a number of years stated in sub-paragraph (i) or (ii).

### **36 Regulations under sections 33 and 35: procedure etc.**

(1) Regulations under section 33 may—

- (a) modify any enactment (including the 1974 Act),
- (b) make different provision for different purposes.

(2) Regulations under sections 33 and 35 are subject to the affirmative procedure.

### *Transitional, schedule and definition*

VALID FROM 30/11/2020

### **37 Transitional provision**

(1) Any amendment of the 1974 Act by a provision of this Part referring in any way to a sentence applies in relation to a sentence imposed in respect of a conviction before the date on which the provision comes into force (as well as in respect of a conviction on or after that date).

(2) Any amendment of the 1974 Act by a provision of this Part referring to a conviction applies in relation to a conviction before the date on which the provision comes into force (as well as in relation to a conviction on or after that date).

(3) Subsection (2) applies to the court's convicting of a person as it applies to a conviction.

(4) The 1974 Act applies as if the amendments mentioned in subsections (1) and (2) had always had effect (but see the remaining provisions of this section).

(5) Subsection (6) applies where, by virtue of subsection (4), a person—

- (a) would have been treated as a rehabilitated person for the purposes of the 1974 Act, and
- (b) would have been so treated by virtue of an amendment of that Act made by a provision mentioned in subsection (1) or (2) before the date on which the provision comes into force.

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- (6) The person is, subject to any order made under section 4(4) or 7(4) of the 1974 Act, to be treated on and after that date as a protected person (within the meaning of that Act as amended by this Act).
- (7) Subsection (8) applies where, by virtue of subsection (4), a conviction—
- (a) would have been treated as spent for the purposes of the 1974 Act, and
  - (b) would have been so treated by virtue of an amendment of that Act made by a provision mentioned in subsection (1) or (2) before the date on which the provision comes into force.
- (8) The conviction is, subject to any order made under section 4(4) or 7(4), to be treated on and after that date as a spent conviction.
- (9) In subsections (5)(b) and (7)(b), the references to subsection (2) include references to that subsection as applied in subsection (3).

VALID FROM 30/11/2020

### 38 Remainder of amendments

Schedule 2 makes minor and consequential amendments to the 1974 Act (including changes to certain terminology).

### 39 Meaning of the 1974 Act

In this Part, “the 1974 Act” means the Rehabilitation of Offenders Act 1974.

#### Commencement Information

**I3** [S. 39](#) in force at 21.12.2019 by [S.S.I. 2019/413](#), [reg. 2\(b\)](#)

VALID FROM 31/12/2019

## PART 3

### THE PAROLE BOARD

VALID FROM 01/10/2020

#### *Independence and governance*

### 40 Continued independence of action

- (1) The Parole Board is to continue to act as an independent tribunal when exercising decision-making functions by virtue of Part 1 of the 1993 Act (or decision-making functions by virtue of another enactment relating to the same things).

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(2) In this section, the reference to the Parole Board is to the Parole Board for Scotland.

#### **41 Administrative arrangements**

- (1) The Scottish Ministers may by regulations authorise the chairperson of the Parole Board to make provision about administrative arrangements within the Board.
- (2) Examples of what may be covered in regulations under this section are arrangements as to—
  - (a) the operational structure within the Parole Board, including the use of committees (and sub-committees),
  - (b) the management set-up within the Board, including for—
    - (i) the formation of a management committee,
    - (ii) the leadership and membership of such a committee,
    - (iii) the role of such a committee in budgetary, accounting and business matters.
- (3) Regulations under this section may allow the chairperson to delegate responsibility for arrangements (and allow for sub-delegation afterwards).
- (4) Before making regulations under this section, the Scottish Ministers must consult the Parole Board.
- (5) Regulations under this section are subject to the affirmative procedure.
- (6) In this section, the references to the Parole Board are to the Parole Board for Scotland.

#### *Membership and appointment*

VALID FROM 01/10/2020

#### **42 Mandatory categories of member**

- (1) The 1993 Act is amended as follows.
- (2) In schedule 2, in paragraph 2—
  - (a) sub-paragraph (a) is repealed,
  - (b) sub-paragraph (b) is repealed.

VALID FROM 01/10/2020

#### **43 Appointment to be for fixed period**

- (1) The 1993 Act is amended as follows.
- (2) In paragraph 2A of schedule 2, for the words from “such” to “is” there is substituted “the period of 5 years beginning with the date of appointment”.

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#### **44 Further appointment to membership**

- (1) The 1993 Act is amended as follows.
- (2) After paragraph 2D of schedule 2 there is inserted—

“2DA (1) A person who has been a member of the Parole Board is eligible for appointment to the membership on a subsequent occasion.

- (2) The exception to this is where the person's membership has previously ceased by virtue of—
  - (a) paragraph 2C, or
  - (b) paragraph 2D.”.

- (3) Paragraphs 2E to 2H of schedule 2 are repealed.
- (4) After paragraph 2H of schedule 2 there is inserted—

##### **“Automatic reappointment**

2HA (1) A member of the Parole Board is to be reappointed to the membership on the expiry of the period of the member's appointment, unless—

- (a) in any case, sub-paragraph (2) applies, or
- (b) where the member is not the chairperson, sub-paragraph (3) applies.

(2) This sub-paragraph applies if the member has declined to be reappointed.

(3) This sub-paragraph applies if the Scottish Ministers have accepted a recommendation made to them by the chairperson that the other member should not be reappointed.

(4) A recommendation of that kind may be made to the Scottish Ministers only if the chairperson is satisfied that—

- (a) the other member has failed to comply with any of the terms and conditions of membership by which the member is bound, or
- (b) the number of members required for the Board to carry out its functions is such that the services of the other member are no longer needed.

(5) The instrument of appointment of the member may be annotated or reissued so as to show that the member is reappointed under sub-paragraph (1).

2HB (1) Sub-paragraphs (2) and (3) apply in connection with paragraph 2HA(1).

(2) The reference in paragraph 2HA(1) to the period of the appointment includes each period of reappointment under that paragraph.

(3) In addition—

- (a) the provisions of paragraphs 1 to 2D apply in relation to reappointment under paragraph 2HA(1) as well as applying otherwise, and



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- (b) the references in paragraphs 1 to 2D to appointment are so far as necessary for this purpose to be read as including reappointment,  
which in particular means that reappointment is for 5 years at a time.”.

VALID FROM 01/10/2020

#### **45 References to the chairperson**

- (1) The 1993 Act is amended as follows.
- (2) In schedule 2—
  - (a) in paragraph 1, for the word “chairman” there is substituted “ chairperson ”,
  - (b) in paragraph 2J, for the word “Chairman” there is substituted “ chairperson ”.
- (3) In addition, a reference in an enactment, instrument or document to the chairman of the Parole Board for Scotland is to be read as if the reference were to the chairperson of the Parole Board for Scotland.

VALID FROM 01/10/2020

#### *Miscellaneous*

#### **46 Amendment of oversight provisions**

- (1) The Public Appointments and Public Bodies etc. (Scotland) Act 2003 is amended as follows.
- (2) In schedule 2, the entry relating to the Parole Board for Scotland is repealed.
- (3) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.
- (4) In section 10, after paragraph (fzb) of subsection (1) there is inserted—
 

“(fzc) the office of member of the Parole Board for Scotland (including the chairperson of the Parole Board),”.

#### **47 Repeal of statutory provisions**

- (1) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (2) Part 1 (including schedule 1) is repealed.
- (3) In section 65, the word “rules,” where occurring in each of subsections (1) and (3) is repealed.

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## PART 4

### PRISONERS: CONTROL OF RELEASE, BEING UNLAWFULLY AT LARGE, ETC.

#### *Control of release, etc.*

#### **48 Release on licence under section 3AA of the 1993 Act**

- (1) The 1993 Act is amended as follows.
- (2) In section 3AA, in subsection (2), for the words from “whichever” to the end there is substituted “ one quarter of the prisoner's sentence ”.
- (3) In section 3AA, for subsection (6)(b) there is substituted—
  - “(b) amend a period for the time being specified in subsection (2) above (which may be done by amending the subsection to describe a period as a particular length of time or a proportion of a prisoner's sentence),”.
- (4) In section 3AA, after subsection (6) there is inserted—
  - “(7) For the avoidance of doubt, nothing in this section requires the Parole Board to make a decision by a particular date about whether to recommend that a long-term prisoner be released having served one-half of the prisoner's sentence.”.

#### **Commencement Information**

**I4** [S. 48](#) in force at 11.10.2019 by [S.S.I. 2019/309](#), [reg. 2](#), [sch.](#)

#### **49 Release timed to benefit re-integration**

- (1) The 1993 Act is amended as follows.
- (2) In section 26C, in subsection (3), for the word “days” there is substituted “ working days (that is, days other than a Saturday or Sunday or a public holiday as described in section 27(8)) ”.

#### **Commencement Information**

**I5** [S. 49](#) in force at 11.10.2019 by [S.S.I. 2019/309](#), [reg. 2](#), [sch.](#)

#### **50 Representations by certain recalled prisoners**

- (1) The 1993 Act is amended as follows.
- (2) In section 17A, for subsection (1) there is substituted—
  - “(1) Where a prisoner has been released on licence under section 3AA, the Scottish Ministers may revoke the licence and recall the person to prison if in their opinion the revocation and recall are expedient in the public interest.”.
- (3) In section 17A, after subsection (2) there is inserted—

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“(2A) Such representations must be made by a person—

- (a) within 6 months from when the person is informed as mentioned in subsection (2)(a), or
- (b) later as allowed by the Parole Board on cause shown by the person.”.

(4) In section 17A—

- (a) subsection (5) is repealed,
- (b) after subsection (5) there is inserted—

“(5A) Despite the cancellation of the revocation of a person's licence by virtue of subsection (4), the person's recall to prison remains effective.

(5B) Where a person's recall to prison remains effective under subsection (5A), the Scottish Ministers must consider whether the person should again be released under section 3AA.”.

#### Commencement Information

**I6** S. 50(1)(2)(4) in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch. (with reg. 3)

PROSPECTIVE

## 51 Frequency of review of particular decisions

(1) The 1993 Act is amended as follows.

(2) In section 3A, after subsection (3) there is inserted—

“(3A) The Parole Board must give a prisoner to whom this section applies written notification of the process for having the prisoner's case referred to it under subsection (2) (including as subject to subsections (2A) to (3)).”.

(3) After section 3A there is inserted—

### “3B Review of decisions as to determinate sentences

(1) This section applies to—

- (a) a prisoner serving a determinate sentence (apart from an extended sentence), and
- (b) a prisoner serving an extended sentence (except such a sentence in relation to which a licence has been revoked under section 17(1) to (1B)).

(2) A prisoner to whom this section applies is entitled to have a relevant decision in relation to the sentence reviewed by the Parole Board within 12 months from the date of the relevant decision.

(3) Here, a relevant decision is a decision of the Parole Board not to recommend the release of the prisoner on licence although the prisoner is otherwise eligible for release on licence.

(4) A prisoner—

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- (a) to whom this section applies, and
- (b) who has been recalled to prison in respect of the sentence in accordance with the specified provisions (except where the recall relates to an extended sentence),

is entitled to have the prisoner's case reviewed by the Parole Board within 12 months from the date of the prisoner's return to prison.

- (5) Here, the specified provisions are those in section 17(1) to (1B).
- (6) It is for the Parole Board to fix a date considered by it as appropriate for a review by virtue of subsection (2) or (4).
- (7) Neither subsection (2) nor (4) gives rise to an entitlement to a review if—
  - (a) the prisoner has less of the sentence to serve than the 12 months mentioned in the particular subsection, or
  - (b) the prisoner has received another sentence of imprisonment, and the prisoner is not eligible for release from the other sentence until after the end of the 12 months mentioned in the particular subsection.
- (8) The Parole Board must—
  - (a) in connection with subsection (2), give the prisoner reasons in writing for the relevant decision, and
  - (b) in connection with subsection (2) or (4), inform the prisoner in writing of the entitlement to a review (including as subject to subsections (6) and (7)).”.

VALID FROM 01/10/2020

## **52 Parole Board decisions: consideration of impact on prisoner's family**

- (1) The 1993 Act is amended as follows.
- (2) In section 20, after subsection (4A) there is inserted—
  - “(4B) Provision mentioned in subsection (4)(c) may in particular include provision about the taking into account by the Board of the likely impact of its decision on a prisoner's family.”.

## **53 Re-release after revocation of licences generally**

- (1) The 1993 Act is amended as follows.
- (2) In subsection (3)(b) of section 10A, the word “immediately” is repealed.
- (3) In section 17—
  - (a) in subsection (2), for the words “revocation of a person's licence” there is substituted “ return to prison of a person whose licence is revoked ”,
  - (b) in subsection (4)—
    - (i) the word “immediate” is repealed,

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- (ii) for the words from “the Secretary of State” to the end there is substituted “ the Scottish Ministers must give effect to the direction without undue delay ”.

#### Commencement Information

**I7** [S. 53\(1\)\(3\)\(a\)](#) in force at 11.10.2019 by [S.S.I. 2019/309](#), reg. 2, [sch.](#)

VALID FROM 01/10/2020

#### **54 Long-term prisoners due for removal from the UK**

- (1) The 1993 Act is amended as follows.
- (2) In subsection (3) of section 1, for the words from “his” to the end there is substituted “ the prisoner's sentence, the Scottish Ministers must release the prisoner on licence if recommended to do so by the Parole Board ”.
- (3) Subsection (1) of section 9 is repealed.

#### **55 Temporary release on licence under prison rules**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) In subsection (6) of section 39, after the word “release” there is inserted “ on licence ”.

#### Commencement Information

**I8** [S. 55](#) in force at 11.10.2019 by [S.S.I. 2019/309](#), reg. 2, [sch.](#)

#### **56 Co-operation between public authorities**

- (1) The Management of Offenders etc. (Scotland) Act 2005 is amended as follows.
- (2) In subsection (1) of section 1—
  - (a) for the words “Scottish Ministers, and local authorities” there is substituted “ following public authorities ”,
  - (b) after “persons” there is inserted “—
    - (a) the Scottish Ministers,
    - (b) local authorities,
    - (c) the Scottish Courts and Tribunals Service,
    - (d) the chief constable of the Police Service of Scotland”.
- (3) In subsection (3) of section 1, after “(c.45)” there is inserted “ and Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) ”.

#### Commencement Information

**I9** [S. 56](#) in force at 11.10.2019 by [S.S.I. 2019/309](#), reg. 2, [sch.](#)

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## 57      **Operating protocol for release on licence under section 3AA of the 1993 Act**

- (1) The 1993 Act is amended as follows.
- (2) After section 21 there is inserted—

### “21A Operating protocol for release on licence under section 3AA

- (1) The Scottish Ministers must prepare a document that describes—
  - (a) the process of risk assessment that is carried out before a prisoner is released on licence under section 3AA,
  - (b) the factors taken into account in carrying out such risk assessments,
  - (c) the procedures for monitoring a prisoner while released on licence under section 3AA,
  - (d) the process for investigating a suspected failure to comply with a condition included in a licence under section 3AA,
  - (e) the process by which a licence under section 3AA is revoked and a prisoner recalled to prison as a result.
- (2) The Scottish Ministers must—
  - (a) keep the document under review, and
  - (b) revise it to reflect any changes in the things it describes.
- (3) When preparing the first version of the document, or a revised version, the Scottish Ministers must consult—
  - (a) the Scottish Courts and Tribunals Service,
  - (b) the Parole Board,
  - (c) the chief constable of the Police Service of Scotland,
  - (d) local authorities,
  - (e) the Risk Management Authority.
- (4) Having prepared the first version of the document, or a revised version, the Scottish Ministers must—
  - (a) make it publicly available, and
  - (b) lay a copy of it before the Scottish Parliament.
- (5) A copy of the first version of the document must be laid before the Scottish Parliament within 6 months of the Bill for the Management of Offenders (Scotland) Act 2019 receiving Royal Assent.”.

#### Commencement Information

**I10**    **S. 57** in force at 11.10.2019 by [S.S.I. 2019/309](#), [reg. 2](#), [sch.](#)

VALID FROM 03/07/2023

## 58      **Parole Board recommendations: publication of test**

- (1) The 1993 Act is amended as follows.
- (2) In section 1, after subsection (3A) there is inserted—

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“(3B) The Parole Board must publish, in such manner as it considers appropriate, the test it will apply in making a recommendation under subsection (3).”.

### *Persons unlawfully at large*

## **59 Offence of remaining unlawfully at large**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) After section 32 there is inserted—

### *“Remaining unlawfully at large*

#### **32A Offence where unlawfully at large**

- (1) A person commits an offence if, having been deemed to be unlawfully at large by virtue of—
  - (a) section 17(5) or 17A(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (b) section 28(7) of this Act, or
  - (c) section 40(4) of this Act,
 the person remains unlawfully at large.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

#### **32B Certification of being unlawfully at large**

- (1) Subsections (2) and (3) relate to proceedings for an offence under section 32A(1).
- (2) A qualifying document is sufficient evidence of the fact that a person has been deemed to be unlawfully at large by virtue of a particular section mentioned in section 32A(1).
- (3) A document is a qualifying document if it—
  - (a) certifies with respect to the person, by reference to the particular section mentioned in section 32A(1)—
    - (i) the matter of being deemed to be unlawfully at large, and
    - (ii) the date from which the deeming took effect, and
  - (b) bears to be signed and dated by or on behalf of the Scottish Ministers.

#### **32C Meaning of remaining unlawfully at large**

- (1) Section 32A(1) is to be construed as provided for in (as applicable)—
  - (a) subsection (2), or



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- (b) subsection (3) (as read with subsections (4) to (7)).
- (2) In a case of a person to whom section 32A(1)(c) relates, the person remains unlawfully at large if the person—
  - (a) has been, orally or in writing—
    - (i) informed of the period of temporary release that is the subject of the person's licence, and
    - (ii) warned of the requirement to return to prison after the expiry of the period and of the offence and punishment available for failing to do so, and
  - (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after the period of temporary release expires.
- (3) In a case of a person to whom section 32A(1)(a), (b) or (c) relates, the person remains unlawfully at large if the person—
  - (a) is given notification of the matter of being deemed to be unlawfully at large, and
  - (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after notification of the matter is given to the person.
- (4) Notification of the matter to a person is to, as far as practicable—
  - (a) state the date from which the matter has arisen,
  - (b) state that the person has been recalled to prison (and record the reason for recall), and
  - (c) state—
    - (i) that the person must take all necessary steps in order to return to prison at the relevant time (as described in accompanying words), and
    - (ii) that prosecution for an offence punishable by imprisonment or a fine (or both) could result if the person fails to do so.
- (5) Notification of the matter is given to a person where the person—
  - (a) is actually notified of the matter orally or in writing, or
  - (b) is to be regarded as notified of the matter.
- (6) A person is to be regarded as notified of the matter if—
  - (a) written notice of the matter—
    - (i) is sent or delivered to an appropriate address,
    - (ii) prescribes a specific period for the purposes of this subsection, and
    - (iii) bears to be signed and dated by or on behalf of the Scottish Ministers, and
  - (b) the specific period so prescribed in the notice expires.
- (7) An appropriate address is—
  - (a) an address at which the person is, in accordance with the person's licence, permitted to reside or stay, or
  - (b) an address nominated, in accordance with the person's licence, for the purposes of this section.

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### 32D Definition of associated expressions

- (1) This section defines certain expressions used in section 32C.
- (2) A reference to a licence is to a licence under which a person is released from prison under the licence provisions.
- (3) A reference to prison is to such prison or other institution from which a person can be released on licence under the licence provisions.
- (4) Here, the licence provisions are—
  - (a) section 22 of this Act,
  - (b) rules for temporary release made under section 39 of this Act, or
  - (c) Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.”.

#### Commencement Information

**I11** S. 59 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch. (with reg. 4)

## 60 Arrest where unlawfully at large

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) In section 40—
  - (a) in subsection (1), after the word “required” there is inserted “ or liable ”,
  - (b) in subsection (4), for the words “For the purposes of this section, a” there is substituted “ A ”,
 and the title of section 40 becomes “ Arrest of and rules for absent prisoners ”.
- (3) In section 40A—
  - (a) in subsection (1), after the word “application” there is inserted “ by a constable ”,
  - (b) after subsection (1) there is inserted—
 

“(1A) A warrant for a person's arrest under this section confers power on a constable—

    - (a) to enter and search any premises or other places specified in the warrant, and
    - (b) to use reasonable force in doing so.”.
- (4) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (5) In paragraph 4 of schedule 6, in the provision numbered as if inserted as section 9C(4) of the 1993 Act, the words “for the purposes of section 40 of the Prisons (Scotland) Act 1989 (c.45) (persons unlawfully at large)” are repealed.

#### Commencement Information

**I12** S. 60 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

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## PART 5

### FINAL PROVISIONS

#### 61 Meaning of the 1993 Act

In this Act, “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993.

#### Commencement Information

**I13** S. 61 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

#### 62 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
  - (a) modify any enactment (including this Act),
  - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, are subject to the negative procedure.

#### 63 Commencement

- (1) The following provisions come into force on the day after Royal Assent—
  - (a) section 62,
  - (b) this section and section 64.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

#### 64 Short title

This short title of this Act is the Management of Offenders (Scotland) Act 2019.

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## SCHEDULE 1

(introduced by section 16)

### COURT ORDERS AND ELECTRONIC MONITORING

#### PART 1

##### ADDITIONAL PROVISIONS

##### *Certain restrictive measures*

- 1 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 209, after subsection (7A) there is inserted—
  - “(7B) A supervised release order made in relation to a person is to be taken to be of no effect if the person becomes a long-term prisoner, as defined in section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, because of the treating of—
    - (a) a sentence in association with which the order is made, and
    - (b) any other sentence (whenever imposed on the person),
 together as a single term by virtue of section 27(5) of that Act.”.

#### Commencement Information

**I14** Sch. 1 para. 1 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

VALID FROM 17/05/2022

- 2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 227A, after paragraph (i) of subsection (2) there is inserted—
  - “(j) a restricted movement requirement.”.
- (3) In section 227G—
  - (a) in subsection (2), in paragraph (b)—
    - (i) in sub-paragraph (iv), after the word “health” there is inserted “treatment”,
    - (ii) the word “or” immediately preceding sub-paragraph (vii) is repealed,
    - (iii) after sub-paragraph (vii) there is inserted “, or  
(viii) a restricted movement requirement.”,
  - (b) in subsection (4), for the words “subsection (5) and section 227ZE(4)” there is substituted “subsections (4A) and (5)”,
  - (c) after subsection (4) there is inserted—
    - “(4A) Where an offender supervision requirement is imposed because of the imposition of a restricted movement requirement—
      - (a) the minimum period in subsection (3) does not apply,

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- (b) the court must ensure that the specified period does not expire before the expiry of the period during which the restricted movement requirement has effect by virtue of section 227ZF(5)(b).”.

(4) In section 227ZE—

- (a) before subsection (1) there is inserted—

“(A1) Despite the generality of sections 227Z(2) and 227ZC(7)(d) for variation of a community payback order—

- (a) a restricted movement requirement put or kept in the order must be accompanied in the order by an offender supervision requirement, and
- (b) the court must ensure that the offender supervision requirement does not cease to have effect before the restricted movement requirement ceases to have effect.”,
- (b) subsections (1) to (4) are repealed,
- (c) in subsection (5)—
  - (i) for the words “varies the order” there is substituted “ makes or varies a community payback order ”,
  - (ii) for the words “the order making the variation” there is substituted “ the order imposing the requirement ”.

(5) In section 227ZF, in subsection (7)—

- (a) in the opening text, for the words from “in the case of” to “requirement of” there is substituted “ as follows in relation to ”,
- (b) in paragraph (a), at the beginning there is inserted “in the case of any restricted movement requirement imposed by the order.”,
- (c) in paragraph (b), for the words “where the only requirement” there is substituted “ in the case of a restricted movement requirement imposed under section 227ZC(7)(d), where the only requirement (apart from the restricted movement requirement) ”.

3 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

- (2) In section 234AZA, in paragraph (a) of subsection (4), after the word “consider” there is inserted “ the question of ”.

**Commencement Information**

**I15** Sch. 1 para. 3 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

*Notification, reports and addresses*

4 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

- (2) After section 245D there is inserted—

**“245DA Further provision about multiple orders**

- (1) Subsection (2) applies where the court—

- (a) makes any of the listed orders in relation to an offender, and

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- (b) knows that the offender is already subject to another of the listed orders.
- (2) The clerk of court must send a copy of whichever of the listed orders is then made to—
  - (a) any person responsible for monitoring the offender's compliance with whichever of the other listed orders the offender is already subject to (so far as the person's identity can reasonably be ascertained), and
  - (b) the local authority within whose area the offender resides.
- (3) The listed orders are—
  - (a) a restriction of liberty order,
  - (b) a community payback order,
  - (c) a drug treatment and testing order.
- (4) In the listed orders, the reference to a community payback order does not include such an order if imposed under section 227M(2)."

#### Commencement Information

**I16** Sch. 1 para. 4 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

- 5 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 227ZG, in subsection (2)—
  - (a) in the opening text, before the word “report” there is inserted “written”,
  - (b) after paragraph (a) there is inserted—
    - “(aa) the suitability of the place (particularly with a view to maximising the prospect of the offender's compliance with the requirement and minimising the risk of reoffending by the offender),”.
- (3) In section 227ZH, in subsection (2)—
  - (a) in the opening text, before the word “report” there is inserted “written”,
  - (b) after paragraph (a) there is inserted—
    - “(aa) the suitability of the new place (particularly with a view to maximising the prospect of the offender's compliance with the requirement and minimising the risk of reoffending by the offender),”.
- (4) In section 245A, in paragraph (a) of subsection (6)—
  - (a) in the opening text, before the word “report” there is inserted “written”,
  - (b) after sub-paragraph (i) there is inserted—
    - “(ia) the suitability of what is proposed (particularly with a view to maximising the prospect of the offender's compliance with the order and minimising the risk of reoffending by the offender),”.
- (5) In section 245E—
  - (a) in paragraph (a) of subsection (4A)—

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- (i) in the opening text, before the word “report” there is inserted “written”,
- (ii) after sub-paragraph (i) there is inserted—
  - “(ia) the suitability of what is proposed (particularly with a view to maximising the prospect of the offender's compliance with the order and minimising the risk of reoffending by the offender);”,
- (b) in sub-paragraph (i) of paragraph (a) of subsection (6), for the words from “the place” to the end there is substituted “ the same matters as are to be included in a report under subsection (4A)(a); ”.

#### Commencement Information

**I17** Sch. 1 para. 5 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

VALID FROM 17/05/2022

## PART 2

### CONSEQUENTIAL PROVISIONS

- 6 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
  - (2) In section 12AB, subsections (3) to (7) are repealed.
- 7 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
  - (2) These sections are repealed—
    - (a) section 227ZI,
    - (b) section 227ZK,
    - (c) section 245B,
    - (d) section 245C,
    - (e) section 245H.
  - (3) In addition—
    - (a) in the title of section 227ZE, the word “: rules” is added at the end,
    - (b) in section 234CA, in subsection (5)—
      - (i) for the word “Sections” there is substituted “ Section ”,
      - (ii) the words “, 245B and 245C” are repealed”,
    - (c) in the title of section 234CA, the word “remote” is repealed,
    - (d) in section 245A, in paragraph (a) of subsection (4), the words from “, including” to the end are repealed.
- 8 (1) The Crime and Punishment (Scotland) Act 1997 is amended as follows.
  - (2) In section 63, paragraph (a)(i) of subsection (1) is repealed.
- 9 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.



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- (2) Section 40 is repealed.
- 10 (1) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (2) Section 49 is repealed.

VALID FROM 30/11/2020

## SCHEDULE 2

(introduced by section 38)

### REHABILITATION OF OFFENDERS ACT 1974

- 1 (1) The 1974 Act is amended as follows.
- (2) In section 1—
- (a) in subsection (2), for the word “rehabilitated” in both places where it occurs there is substituted “protected”;
  - (b) in subsection (3), after paragraph (za) there is inserted—
    - “(zb) a hospital direction under section 59A of the Criminal Procedure (Scotland) Act 1995;
    - (zc) a victim surcharge imposed under section 253F of the Criminal Procedure (Scotland) Act 1995;”;
  - (c) in subsection (4), for the word “rehabilitated” there is substituted “protected”;
  - (d) after subsection (4) there is inserted—
 

“(4A) In this Act, an “excluded sentence” is a sentence listed in section 5(1).”.
- (3) In the title of section 1, for the word “Rehabilitated” there is substituted “Protected”.
- (4) In the title of section 2, the words “Rehabilitation of” are repealed.
- (5) In the title of section 3, the words “under the Social Work (Scotland) Act 1968” are repealed.
- (6) In section 4, in subsection (1), for the word “rehabilitated” there is substituted “protected”.
- (7) In the title of section 4, for the word “rehabilitation” there is substituted “becoming a protected person”.
- (8) In section 5—
- (a) in subsection (1)—
    - (i) for the words “excluded from rehabilitation under” there is substituted “which are excluded sentences for the purposes of”;
    - (ii) for the words “sentence subject to rehabilitation under this Act” there is substituted “disclosable sentence”;
  - (b) after subsection (1A) there is inserted—

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- “(1B) In subsection (1), “disclosable sentence” means a sentence imposed in relation to a conviction in respect of which a person may, under this Act, become a protected person.”.
- (9) In the title of section 5, for the word “Rehabilitation” there is substituted “Disclosure”.
- (10) In section 6—
- (a) in subsection (1)—
    - (i) the words from “(not” to “Act)” are repealed,
    - (ii) for the word “rehabilitation” in the second place where it occurs there is substituted “disclosure”,
  - (b) in subsection (2)—
    - (i) the words from “and” to “Act,” are repealed,
    - (ii) for “rehabilitation” in the second place where it occurs there is substituted “disclosure”,
  - (c) after subsection (2) there is inserted—

“(2A) In subsections (1) and (2), the references to sentences do not include excluded sentences.”,
  - (d) in subsection (3A)—
    - (i) for the word “rehabilitation” in each place where it occurs there is substituted “disclosure”,
    - (ii) for the word “rehabilitated” there is substituted “protected”.
- (11) In the title of section 6, for the word “rehabilitation” there is substituted “disclosure”.
- (12) In section 7, in subsection (1)(d)—
- (a) for the words “or other penalty” there is substituted “requirement, restriction or other way of regulating the person's behaviour”,
  - (b) for the word “rehabilitation” there is substituted “disclosure”.
- (13) In the title of section 7, for the words “rehabilitation under this Act, etc.” there is substituted “protection under section 4(1)”.
- (14) In section 8, in subsection (1), for the word “rehabilitated” there is substituted “protected”.
- (15) In section 9—
- (a) in subsection (1), for the words “rehabilitated living person” there is substituted “living protected person”,
  - (b) in subsection (3)—
    - (i) in paragraph (a), for the word “rehabilitated” in both places where it occurs there is substituted “protected”,
    - (ii) in paragraph (b), for the word “rehabilitated” in both places where it occurs there is substituted “protected”.
- (16) In schedule 1, in paragraph 1, for the words “period of rehabilitation” there is substituted “disclosure period”.
- (17) In schedule 2—

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- (a) in paragraph 1(3)(a) and (b), for the word “rehabilitation” in each place where it occurs there is substituted “ disclosure ”,
  - (b) in paragraph 5(b), for the word “rehabilitation” there is substituted “ disclosure ”.
- (18) In schedule 3, in paragraph 1—
- (a) in sub-paragraph (5), for the word “rehabilitation” in both places where it occurs there is substituted “ disclosure ”,
  - (b) in sub-paragraph (6), for the word “rehabilitation” in both places where it occurs there is substituted “ disclosure ”.

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