



Management of Offenders (Scotland) Act 2019

2019 asp 14

PART 4

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

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).

Changes to legislation: There are currently no known outstanding effects for the Management of Offenders (Scotland) Act 2019, Cross Heading: Persons unlawfully at large. (See end of Document for details)

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
 - (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

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- (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.

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

II 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 ”.

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(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

I2 S. 60 in force at 11.10.2019 by [S.S.I. 2019/309](#), reg. 2, sch.

Changes to legislation:

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