

BAIL AND RELEASE FROM CUSTODY (SCOTLAND) ACT 2023

EXPLANATORY NOTES

THE ACT: SECTION BY SECTION

Part 2: Release from custody

Section 9—Release on licence of long-term prisoners

39. Section 9 makes a change to the regime for release of long-term prisoners under Part 1 of the 1993 Act. Currently, long-term prisoners, recommended by the Parole Board for release on parole licence at the half-way point of their sentences (the “parole qualifying date”), can be released on licence under section 3AA for a period of time before that date. Short-term prisoners can also be released on licence under section 3AA. A licence under section 3AA must include a “curfew condition” as set out in section 12AB of the 1993 Act (as well as “standard conditions” prescribed under section 12AA¹ and may include other conditions the Scottish Ministers consider appropriate, having regard to any recommendations by the Parole Board). A curfew condition is one which requires the person to remain in a specified place for specified periods of time (often the person’s home), or which requires the person to stay away from a specified place or class of place at specified times or for periods of time. Release under section 3AA is known as release on “home detention curfew”.
40. Section 9(5) will insert a new section 3AB into the 1993 Act making different provision for the temporary release of long-term prisoners. Section 9(4) amends section 3AA so that long-term prisoners are no longer covered by that section and will no longer be eligible for release on home detention curfew. Section 3AA will continue to apply to short-term prisoners.
41. New section 3AB will provide for the temporary release of long-term prisoners on licence in two circumstances. First, it will permit the Scottish Ministers (in practice, the Scottish Prison Service) to release a long-term prisoner on temporary licence at any point from 180 days before the prisoner’s parole qualifying date, provided the Parole Board has not recommended the prisoner be released on parole licence. See section 3AB(1) and (5). Secondly, it will require the Scottish Ministers to release a long-term prisoner on licence where the Parole Board, having recommended the prisoner’s release on parole licence, directs them to do so. See section 3AB(3) and (5).
42. Before releasing a prisoner under section 3AB(1), the Scottish Ministers must have regard to the matters mentioned in section 3AB(4)² and consult the Parole Board under section 3AB(2). An amendment of section 12(4A) of the 1993 Act (made by section 9(7)(b)) will require Ministers to have regard to any recommendations the Board makes

¹ See the Home Detention Curfew (Prescribed Standard Conditions) (Scotland) (No. 2) Order 2008 ([SSI 2008/125](#)) - [here](#).

² Those matters are largely the same as the matters previously listed in section 3AA(4) of the 1993 Act but with two changes. First, the reference to protecting the public at large is revised to make clear that this includes identifiable groups of people. Secondly, express reference to protecting victims and their families is added. Section 9(4) amends section 3AA(4) to bring it into line with new section 3AB(4).

*These notes relate to the Bail and Release from Custody (Scotland)
Act 2023 (asp 4) which received Royal Assent on 1 August 2023*

when consulted under section 3AB(2) as to the conditions which should be included in the licence under which the prisoner will be released.

43. As for licences granted under section 3AA, licences granted on release of a prisoner under section 3AB(1) must include the standard conditions and a curfew condition (as a result of amendments made by section 9(8) to section 12AA of the 1993 Act).
44. The Scottish Ministers are to specify the period for which the prisoner is to be released on licence under section 3AB(1) (the “release period”) up to a maximum of 180 days. Where they specify a shorter period, they may extend the period later up to that maximum. A long-term prisoner released on licence under section 3AB(1) will be required to return to prison on the expiry of the release period (as a result of amendments made by section 9(6) to section 11 of the 1993 Act). Such a prisoner will also be obliged to return to prison if, while released on licence, the Parole Board decide not to recommend that the prisoner be released on parole licence. That might happen where the Board considers the prisoner’s case in the period leading up to the prisoner’s parole qualifying date or, where the prisoner was not recommended for release at that date, at a subsequent review.³
45. A person who fails to return to prison in those circumstances is, by virtue of new subsection (3D) (added to section 11 of the 1993 Act by section 9(6)(b)), deemed to be unlawfully at large and commits an offence (as a result of an amendment made by section 9(13) to section 32A of the Prisons (Scotland) Act 1989).
46. A person released under section 3AB(1) need not return to prison on the expiry of the release period where the person is otherwise released under Part 1 of the 1993 Act. For instance, a prisoner might be released on licence under section 3AB(1) before the prisoner’s parole qualifying date. While so released, the Parole Board may decide to recommend that the prisoner be released on licence under section 1(3) from the parole qualifying date. As new section 11(3C)(a)(iii) of the 1993 Act provides (as added by section 9(6)(b)), the person’s release on section 3AB licence will come to an end but be replaced by release on licence under section 1(3) from the parole qualifying date.
47. Certain long-term prisoners are excluded from release on licence under section 3AB(1), namely, prisoners subject to extended sentences under section 210A of the 1995 Act,⁴ prisoners subject to certain mental health orders and prisoners liable to be deported on their release from prison (see section 3AB(9)(a) to (c)), as well as terrorist prisoners (see section 3AB(11)).
48. The Scottish Ministers must also release a long-term prisoner on licence under section 3AB(3) where the Parole Board directs them to do so, having recommended the release of the prisoner on parole licence, the prisoner having served one half of the prisoner’s sentence. In so directing the release, the Parole Board must have regard to the matters mentioned in section 3AB(4). As for release under section 3AB(1), the prisoner cannot be released before the point 180 days before the prisoner’s parole qualifying date. Licences granted on release of a prisoner under section 3AB(3) must include a curfew condition but not the standard conditions (as a result of amendments made by section 9(8) to section 12AA of the 1993 Act). The Parole Board will determine what the other licence conditions are (as a result of section 12(3)(b) of the 1993 Act). The Parole Board will also specify the release period, and may extend that period, up to the maximum of 180 days (see section 3AB(6) and (7)). Unless revoked, the licence granted by virtue of section 3AB(3) will come to an end on the date on which the Parole Board recommends the person be released on parole licence (see section 11(3C)(b)), as it will be effectively replaced from that date by the parole licence.

³ Including on a review undertaken by virtue of section 3B of the 1993 Act, when it is brought into force. Section 3B was inserted by the Management of Offenders (Scotland) Act 2019, section 51(3).

⁴ Such as prisoners convicted of certain sexual, violent or terrorism offences – see section 210A(10) of the 1995 Act.

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49. Terrorist prisoners are excluded from release on licence under section 3AB(3), as they are from release under section 3AB(1) (see section 3AB(11)). The other exclusions in section 3AB(9) do not apply, however, to release under section 3AB(3).
50. Section 9(5) also inserts new section 3AC into the 1993 Act, giving the Scottish Ministers power, by regulations, to change a number of matters mentioned in section 3AB, namely, the period before a prisoner's parole qualifying date during which a prisoner cannot be released on licence under section 3AB, the maximum period for which a prisoner can be released, and the prisoners excluded from release under section 3AB(1).⁵
51. Section 9(10) and (11) amend, respectively, sections 17 and 17A of the 1993 Act, which deal with revocation of licences and recall of persons released on licence to prison on such revocation. The effect of these amendments is that section 17 will apply to licences granted in relation to prisoners released under section 3AB(3) and section 17A will apply to licences granted to prisoners released under section 3AB(1).
52. Section 9(12) amends section 21A of the 1993 Act, which requires the Scottish Ministers to prepare and keep under review an operating protocol covering the risk assessments and other matters that are involved before a prisoner is released on home detention curfew under section 3AA and the procedures for monitoring persons so released. That protocol will now also be required to cover release of prisoners under new section 3AB.
53. In relation to monitoring of persons released on licence, section 9(14) will amend section 7 of the Management of Offenders (Scotland) Act 2019 so that prisoners released under section 3AB can be made subject to a requirement to submit to electronic monitoring in accordance with Part 1 of that Act.

⁵ But the power does not extend to modifying section 3AB(11), so terrorist prisoners will remain excluded from release under section 3AB.