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PROSPECTIVE

SCHEDULE 3 SHORT-TERM CUSTODY AND COMMUNITY SENTENCES: CONSEQUENTIAL AMENDMENTS

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

- 1 The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended in accordance with paragraphs 2 to 14.
- 2 In section 34 (period during which licence in force), for subsection (1) substitute—
 - “(1) Where a short-term custody and community prisoner is released on short-term community licence by virtue of section 5, 27(1) or, as the case may be, 42(4)(a), the licence remains in force until the expiry of the prisoner's sentence.”.
- 3 In the following places after “section” insert “ 5, ”
 - (a) section 35 (prisoner to comply with licence conditions),
 - (b) subsection (1)(a) of section 36 (suspension of licence conditions while detained), and
 - (c) subsections (1)(a) and (4)(a) of section 37 (revocation of licence).
- 4 In section 40 (compassionate release: effect of revocation in certain circumstances), in subsection (3), for paragraph (a) substitute—
 - “(a) in the case of a short-term custody and community prisoner, one-half of the prisoner's sentence,”.
- 5 (1) Section 42 (consideration by Parole Board) is amended as follows.
 - (2) In subsection (1), after “41(2)(b)” insert “ , 42A(9) ”.
 - (3) In subsection (5), after “on” insert “ short-term community licence, ”.
- 6 After section 42 insert—

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

- (1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a short-term custody and community prisoner.
- (2) The Parole Board must give the prisoner reasons in writing for its determination.
- (3) If on the day of the determination less than 4 months of the prisoner's sentence remain to be served, the prisoner must be confined until the expiry of the prisoner's sentence.
- (4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner's sentence remain to be served, the Parole Board may,

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- subject to section 26, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner's case.
- (5) That period is the period—
- (a) beginning with the day falling 4 months after the day of the determination, and
 - (b) ending on the expiry of the prisoner's sentence.
- (6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner's sentence.
- (7) If on the day of the determination at least 2 years of the prisoner's sentence remain to be served, the Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner's case.
- (8) That period is the period—
- (a) beginning with the day falling 4 months after the day of the determination, and
 - (b) ending immediately before the second anniversary of the day of the determination.
- (9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.”.
- 7 (1) Section 45 (prisoner's right to request early reconsideration by Parole Board) is amended as follows.
- (2) In subsection (1), after “under—” insert—
- “(za) section 42A(4),
 - (zb) section 42A(7),”.
- (3) In subsection (2), after “section” insert “ 42A(4), 42A(7), ”.
- (4) In subsection (3), after “section” insert “ 42A(4) or ”.
- (5) In subsection (4), after “section” insert “ 42A(4) or, as the case may be, ”.
- 8 In section 46 (multiple licences to be replaced by single licence), in subsection (1) (a), after “section” insert “ 5, ”.
- 9 (1) Section 51 (prisoners serving extended sentences) is amended as follows.
- (2) In subsection (1), for “(2)” substitute “ (1A) ”.
- (3) After that subsection insert—
- “(1A) In section 5, the reference to the prisoner's short-term custody and community sentence is to be read as a reference to the confinement term of the prisoner's extended sentence.”.
- 10 (1) Section 55 (application to young offenders and children) is amended as follows.
- (2) In subsection (1), for “custody-only” substitute “ short-term custody and community ”.
- (3) In subsection (2)(a), for “15 days” substitute “ the prescribed period ”.
- (4) In subsection (4)(a), for “15 days or more” substitute “ at least the prescribed period ”.

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

“(4) In section 47(3A)—

 - (a) references to the expiry of one-half of the prisoner's sentence are to be read as references to the expiry of one-half of the short-term custody and community sentence that expires after the expiry of one-half of the other short-term custody and community sentence (or sentences),
 - (b) in paragraph (a)(i), the reference to the expiry of the prisoner's sentence is to be read as a reference to the longer (or longest) of the sentences imposed on the prisoner.”.
- (4) Before paragraph 3, in the italic heading, for “custody-only” substitute “ short-term custody and community ”.
- (5) In paragraph 3—
 - (a) in sub-paragraph (1)(a), for “custody-only” substitute “ short-term custody and community ”,
 - (b) in sub-paragraph (3), for “and 34(1)” substitute “ , 34(1), 42A and subsections (3A) and (8)(a) of section 47 ”,
 - (c) in sub-paragraph (4)—
 - (i) for “the custody-only” substitute “ one-half of the short-term custody and community ”, and
 - (ii) in paragraph (a), for “any other custody-only” substitute “ one-half of any other short-term custody and community ”, and
 - (d) in sub-paragraph (5)(b)(ii) and (6)(b), for “the custody-only” substitute “ at least one-half of the short-term custody and community ”.
- (6) In paragraph 5—
 - (a) in sub-paragraph (1), in both paragraphs (a) and (b), for “custody-only” substitute “ short-term custody and community ”,
 - (b) in sub-paragraph (3)—
 - (i) after “19” insert “ , 29A, 29B ”, and
 - (ii) after “(2)” insert “ , 42A ”, and
 - (c) in sub-paragraph (4)—

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

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(6) In paragraph 5—

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

(d) after sub-paragraph (4) insert—

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

- (a) the prisoner's “previous sentence” are to be read as references to the “previous confinement term” of the prisoner's sentence,
- (b) the prisoner's “further sentence” are to be read as references to the “further confinement term” of the prisoner's sentence.”, and

(e) after sub-paragraph (5) insert—

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

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