



# Management of Offenders (Scotland) Act 2019

2019 asp 14

## 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

II 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.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Management of Offenders (Scotland) Act 2019, PART 4. (See end of Document for details)*

- (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**

**I2** 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—
- “(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- (a) subsection (5) is repealed,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**

**I3** S. 50(1)(2)(4) in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch. (with reg. 3)

**I4** S. 50(3) in force at 1.10.2020 by S.S.I. 2020/283, reg. 2(m) (with reg. 4)

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—

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“(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—

- (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)).”.

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## 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.”.

### Commencement Information

**I5** S. 52 in force at 1.10.2020 by S.S.I. 2020/283, reg. 2(n)

## 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,
    - (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

**I6** S. 53(1)(3)(a) in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

**I7** S. 53(2)(3)(b) in force at 1.10.2020 by S.S.I. 2020/283, reg. 2(o) (with reg. 5)

## 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.

### Commencement Information

**I8** S. 54 in force at 1.10.2020 by S.S.I. 2020/283, reg. 2(p)

## 55 Temporary release on licence under prison rules

- (1) The Prisons (Scotland) Act 1989 is amended as follows.

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- (2) In subsection (6) of section 39, after the word “release” there is inserted “ on licence ”.

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**Commencement Information**

**I9** 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) ”.

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**Commencement Information**

**I10** S. 56 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

**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.

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- (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**

**I11** S. 57 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

**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—
 

“(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).”.

**Commencement Information**

**I12** S. 58 in force at 3.7.2023 by S.S.I. 2023/182, reg. 2

*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—

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- (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
  - (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

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- (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.

### **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.<sup>??</sup>.



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#### **Commencement Information**

**I13** 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**

**I14** S. 60 in force at 11.10.2019 by S.S.I. 2019/309, reg. 2, sch.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Management of Offenders (Scotland) Act 2019, PART 4.