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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring Part 4 and Schedule 1 of the Management of Offenders (Scotland) Act 2019 (“the Act”) partially into force.

Regulation 3 makes saving provision for the commencement of section 50(2) of the Act. Section 50(2) repeals the existing grounds on which the Scottish Ministers may recall a prisoner to prison from a period of home detention curfew (HDC) and substitutes one new ground of recall where it is expedient in the public interest to do so. Regulation 3 provides that for prisoners who have been released on HDC prior to the day appointed in regulation 2(1) (“the appointed day”), the new ground of recall in section 50(2) of the Act does not apply and the existing grounds continue to apply.

Regulation 4 makes transitional provision for the commencement of section 59 of the Act. Section 59 introduces the new offence of remaining unlawfully at large by inserting new sections 32A to 32C into the Prisons (Scotland) Act 1989. There are two main circumstances in which a person can be unlawfully at large: (1) following the expiry of a period of temporary release; and (2) following their recall to prison from a period of temporary release, HDC or parole.

The first aspect of the new offence is where a person, without reasonable excuse, fails to take all necessary steps to return to prison as soon as possible following the expiry of a period of temporary release. If this aspect of the new offence was applied to those who have been granted temporary release prior to the appointed day, it could criminalise behaviour retrospectively. A person who, on the appointed day, is unlawfully at large following the expiry of their temporary release could automatically be committing the new offence when section 59 of the Act comes into force.

Regulation 4(a) prevents the offence of remaining unlawfully at large following the expiry of temporary release from applying retrospectively by providing that the offence will only apply to those prisoners who have been granted temporary release on or after the appointed day.

The second aspect of the offence is where a person, without reasonable excuse, fails to take all necessary steps to return to prison as soon as possible following being notified of being deemed to be unlawfully at large. If this aspect of the new offence was applied to every person serving their prison sentence in the community on the appointed day, it could criminalise behaviour retrospectively. A person who, on the appointed day, is unlawfully at large following their recall to prison, and has been advised that they are unlawfully at large, could automatically be committing the new offence when section 59 of the Act comes into force.

Regulation 4(b) prevents the offence of remaining unlawfully at large following notification of recall to prison from applying retrospectively by providing that the offence will only apply where notification has been provided to the prisoner on or after the appointed day.

The Bill for the Act received Royal Assent on 30 July 2019. Sections 62, 63 and 64 of the Act came into force on the day after Royal Assent by operation of section 63(1) of the Act.