



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 1

### SENTENCING

#### *Short sentences*

#### 16 Short periods of detention

- (1) The 1995 Act is amended as follows.
- (2) Section 169 (detention in precincts of court) is repealed.
- (3) In section 206 (minimum periods of detention)—
  - (a) in subsection (1), for “five” substitute “ 15 ”, and
  - (b) subsections (2) to (6) are repealed.

#### Commencement Information

II [S. 16](#) in force at 13.12.2011 by [S.S.I. 2010/413](#), art. 2, [Sch.](#) (with [Sch.](#))

#### 17 Presumption against short periods of imprisonment

In section 204 of the 1995 Act (restrictions on passing sentence of imprisonment or detention), after subsection (3) insert—

“(3A) A court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.

(3B) Where a court passes such a sentence, the court must—

- (a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and

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- (b) have those reasons entered in the record of the proceedings.
- (3C) The Scottish Ministers may by order made by statutory instrument substitute for the number of months for the time being specified in subsection (3A) another number of months.
- (3D) An order under subsection (3C) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.”.

#### Commencement Information

**I2** S. 17 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

PROSPECTIVE

### 18 Amendments of Custodial Sentences and Weapons (Scotland) Act 2007

- (1) The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended as follows.
- (2) In section 4 (basic definitions)—
  - (a) in subsection (1)—
    - (i) the definitions of “custody-only prisoner” and “custody-only sentence” are repealed,
    - (ii) in the definition of “custody and community sentence” for “15 days or more” substitute “ at least the prescribed period ”,
    - (iii) after the definition of “Parole Board” insert—
 

““prescribed period” means such period as the Scottish Ministers may by order specify,” and
    - (iv) after the definition of “punishment part” insert—
 

““short-term custody and community prisoner” means a person serving a short-term custody and community sentence,

“short-term custody and community sentence” means a sentence of imprisonment for an offence for a term of less than the prescribed period,” and
  - (b) subsection (2) is repealed.
- (3) For section 5 (release of custody-only prisoners on completion of sentence) substitute—

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### *“Short-term custody and community prisoners*

#### **5 Release of short-term custody and community prisoners**

As soon as a short-term custody and community prisoner has served one-half of the prisoner's short-term custody and community sentence the Scottish Ministers must release the prisoner on short-term community licence.”.

- (4) In Chapter 3 of Part 2, in the chapter title, for “Community” substitute “ Short-term community, community ”.
- (5) In section 29 (release on licence of certain prisoners: the supervision conditions), in subsection (2)(a)—
  - (a) in sub-paragraph (ii), the words from “serving” to the end are repealed,
  - (b) sub-paragraph (iii) is repealed,
  - (c) in sub-paragraphs (iv) and (v), for “person” substitute “ short-term custody and community prisoner ”,
  - (d) in sub-paragraph (vi), for “person” substitute “ short-term custody and community prisoner serving a sentence of imprisonment of 6 months or more and ”, and
  - (e) in sub-paragraph (vii), at the beginning insert “ a short-term custody and community prisoner who is ”.
- (6) After section 29 insert—

### *“Short-term community licences*

#### **29A Release on short-term community licence: conditions**

- (1) This section applies where, by virtue of section 5, the Scottish Ministers release a prisoner on short-term community licence.
- (2) The Scottish Ministers must include in the prisoner's short-term community licence—
  - (a) the standard conditions, and
  - (b) where the prisoner falls within section 29(2), the supervision conditions.
- (3) The Scottish Ministers may include in the prisoner's short-term community licence—
  - (a) where the prisoner does not fall within section 29(2), any of the supervision conditions,
  - (b) such other conditions as they consider appropriate.
- (4) The Scottish Ministers may—
  - (a) vary any condition mentioned in subsection (2) or (3),
  - (b) cancel any condition mentioned in subsection (3),
  - (c) include any further conditions in the licence.
- (5) The Scottish Ministers may not cancel any condition mentioned in subsection (2).

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- (6) Before exercising any of the powers conferred by subsection (3) or (4), the Scottish Ministers must, in pursuance of arrangements established under section 46A(1), co-operate with the appropriate local authority.
- (7) In this section, “appropriate local authority”, in relation to a short-term custody and community prisoner, means the local authority for the area in which the prisoner—
  - (a) resided immediately before the imposition of the short-term custody and community sentence, or
  - (b) intends to reside on release on short-term community licence.
- (8) If, by virtue of subsection (7), two or more local authorities are the appropriate local authority in relation to a short-term custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (5) and section 46A(2) may be carried out by only one of them.”.

(7) After section 46 insert—

*“Assessment of conditions for short-term community licences*

#### **46A Joint arrangements between Scottish Ministers and local authorities**

- (1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risk posed in the local authority's area by short-term custody and community prisoners released on licence subject to the supervision conditions.
- (2) For the purposes of assisting the Scottish Ministers in deciding whether, under section 29A(3)(a), to include any of the supervision conditions in a prisoner's short-term community licence, the Scottish Ministers and the appropriate local authority must, during the first half of a short-term custody and community prisoner's sentence, assess, in accordance with arrangements established under subsection (1), whether any of those conditions are appropriate.
- (3) In this section, “appropriate local authority” is to be construed in accordance with section 29A(7) and (8).”.
- (8) In section 47 (curfew licences)—
  - (a) in subsection (1), after “to” insert “ a short-term custody and community prisoner or ”,
  - (b) in subsection (2) for “the custody part of the prisoner's sentence” substitute—
    - “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,
    - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”,
  - (c) after subsection (3) insert—
    - “(3A) The Scottish Ministers may release a short-term custody and community prisoner on curfew licence only—
    - (a) after the later of—

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- (i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner's sentence, or
      - (ii) the day falling 166 days before the expiry of one-half of the prisoner's sentence, and
    - (b) before the day falling 14 days before the expiry of one-half of the prisoner's sentence.”,
  - (d) in subsection (4)—
    - (i) after “a” insert “ custody and community ”, and
    - (ii) in paragraph (a)(ii), for “135” substitute “ 166 ”, and
  - (e) in subsection (8), for “the custody part of the prisoner's sentence” substitute—
    - “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,
    - (b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence”.
- (9) Schedule 3 amends the Custodial Sentences and Weapons (Scotland) Act (asp 17) and the 1995 Act in consequence of amendments made by this section.

## **19 Early removal of certain short-term prisoners from the United Kingdom**

For schedule 6 to the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) substitute—

### **“SCHEDULE 6**

*(introduced by section 66(3))*

#### **TRANSITORY AMENDMENTS**

- 1 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), that Part has effect in accordance with paragraphs 2 to 4.
- 2 In section 1 (release of short-term and long-term prisoners), subsection (3) has effect as if for paragraphs (a) and (b) there were substituted “ must, ”
- 3 Section 9 (persons liable to removal from the United Kingdom) has effect as if—
  - (a) subsection (1) were repealed, and
  - (b) in subsection (3), after “section”, where it first occurs, there were inserted “ and sections 9A and 9B ”.
- 4 That Part has effect as if after section 9 there were inserted—

### **“9A Persons eligible for removal from the United Kingdom**

- (1) For the purposes of this Part, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Scottish Ministers, that the condition in subsection (2) is met.

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- (2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 9B.
- (3) The person must not be one who is liable to removal from the United Kingdom.

### **9B Early removal of certain short-term prisoners from the United Kingdom**

- (1) Subject to subsection (2), where a short-term prisoner is liable to, or eligible for, removal from the United Kingdom, the Scottish Ministers may remove the prisoner from prison under this section at any time during the period of 180 days ending with the day on which the prisoner will have served one-half of the prisoner's sentence.
- (2) Subsection (1) does not apply in relation to a prisoner unless the prisoner has served one-quarter of the sentence.
- (3) A prisoner removed from prison under this section—
  - (a) if liable to removal from the United Kingdom, is so removed only for the purpose of enabling the Secretary of State to remove the prisoner from the United Kingdom under powers conferred by—
    - (i) Schedule 2 or 3 to the Immigration Act 1971 (c.77), or
    - (ii) section 10 of the Immigration and Asylum Act 1999 (c.33),
  - (b) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and
  - (c) in either case, so long as remaining in the United Kingdom, remains liable to be detained in pursuance of the prisoner's sentence until the prisoner has served one-half of the sentence.
- (4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Scottish Ministers under section 1(1), 1AA or 3 is exercisable in relation to the prisoner as if the prisoner were in prison.
- (5) The Scottish Ministers may by order amend the number of days for the time being specified in subsection (1).
- (6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

### **9C Re-entry into United Kingdom of prisoner removed from prison early**

- (1) This section applies in relation to a person (referred to in this section as “the removed person”) who, after being removed from prison under section 9B, has been removed from the United Kingdom before serving one-half of the sentence.

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- (2) Where the removed person re-enters the United Kingdom at any time before the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B), the person is liable to be detained in pursuance of the person's sentence until the earlier of the following—
    - (a) the date of the expiry of the outstanding custodial period,
    - (b) the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B).
  - (3) In the case of a person liable to be detained under subsection (2), the duty to release the person under section 1(1) or 1AA(1) applies only after the expiry of the outstanding custodial period.
  - (4) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 40 of the Prisons (Scotland) Act 1989 (c.45) (persons unlawfully at large) to be unlawfully at large.
  - (5) Subsection (2) does not prevent—
    - (a) the further removal from prison under section 9B(1) of a person falling within that subsection, or
    - (b) the further removal from the United Kingdom of such a person.
  - (6) In this section, the “outstanding custodial period” means, in relation to a removed person, a period of time equal to the period beginning with the date of removal from the United Kingdom and ending with the date on which the person would, but for the removal, have served one-half of the sentence.”.
- 5 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), paragraph (c) of section 24 of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disapplication of certain provisions relating to sentences) has effect as if—
- (a) after “9” there were inserted “ , 9A, 9B, 9C ”, and
  - (b) after “transfer” there were inserted “ , removal ”.”.

#### Commencement Information

**I3** [S. 19](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

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