



Bail and Release from Custody (Scotland) Act 2023

2023 asp 4

PART 2

RELEASE FROM CUSTODY

PROSPECTIVE

9 Release on licence of long-term prisoners

- (1) The 1993 Act is amended as follows.
- (2) In section 1A (application to certain persons serving more than one sentence), in subsection (1)(c), after “3AA” insert “or 3AB”.
- (3) In section 1B (prisoners serving consecutive sentences including at least one terrorism sentence), in subsection (11), after “3AA” insert “or 3AB”.
- (4) In section 3AA (further powers to release prisoners)—
 - (a) subsection (1)(b) and “or” immediately preceding it are repealed,
 - (b) in subsection (4)—
 - (i) in paragraph (a), after “large” insert “(including any identifiable group of people)”,
 - (ii) after that paragraph insert—
 - “(aa) protecting a victim or any member of a victim’s family,”
 - (c) subsection (7) is repealed,
 - (d) after subsection (7) insert—
 - “(7A) In subsection (4)(aa), “victim” means a person against or in respect of whom an offence has been committed by the prisoner.”
 - (e) in the section title, after “release” insert “short-term”.
- (5) After that section insert—

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“3AB Further powers to release long-term prisoners

- (1) The Scottish Ministers may release on licence under this section a long-term prisoner whose release under section 1 has not been recommended by the Parole Board.
- (2) Before releasing a long-term prisoner by virtue of subsection (1), the Scottish Ministers must consult the Parole Board.
- (3) If directed to do so by the Parole Board, the Scottish Ministers must release on licence under this section a long-term prisoner whose release on having served one half of the prisoner’s sentence has been recommended by the Board.
- (4) In deciding whether to release a long-term prisoner by virtue of subsection (1) or direct the release of a prisoner by virtue of subsection (3), the Scottish Ministers or, as the case may be, the Parole Board must have regard to considerations of—
 - (a) protecting the public at large (including any identifiable group of people),
 - (b) protecting a victim or any member of a victim’s family,
 - (c) preventing re-offending by the prisoner, and
 - (d) securing the successful re-integration of the prisoner into the community.
- (5) A long-term prisoner may not be released on licence under this section before the beginning of the period of 180 days ending with the day on which the prisoner will have served one half of the prisoner’s sentence.
- (6) The period for which a long-term prisoner is to be released on licence under this section (the “release period”)—
 - (a) may not exceed 180 days on any one occasion,
 - (b) is to be specified—
 - (i) where subsection (1) applies, by the Scottish Ministers,
 - (ii) where subsection (3) applies, by the Parole Board.
- (7) Subject to subsection (6)(a), the Scottish Ministers or, as the case may be, the Parole Board may extend the release period specified by virtue of subsection (6)(b)(i) or, as the case may be, (ii).
- (8) For the avoidance of doubt, nothing in this section requires the Scottish Ministers or the Parole Board to make a decision by a particular date about whether to release or, as the case may be, direct the release of a prisoner on licence under this section.
- (9) Subsection (1) does not apply where—
 - (a) the prisoner's sentence was imposed under section 210A of the 1995 Act,
 - (b) the prisoner is subject to a hospital direction imposed under section 59A of that Act or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003,

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(c) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act).

(10) In subsection (4)(b), “victim” means a person against or in respect of whom an offence has been committed by the prisoner.

(11) This section does not apply where the long-term prisoner is a person in relation to whom section 1AB applies.

3AC Further powers to release long-term prisoners: supplementary

(1) The Scottish Ministers may by regulations do any or all of the following—

- (a) amend the number of days for the time being specified in section 3AB(5),
- (b) amend the number of days for the time being specified in section 3AB(6)(a),
- (c) amend any paragraph of section 3AB(9), add a further paragraph to that subsection or repeal any of its paragraphs.

(2) Regulations under subsection (1)—

- (a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) are subject to the affirmative procedure.”.

(6) In section 11 (duration of licence)—

- (a) in subsection (3A), after “3AA” insert “or 3AB”,
- (b) after subsection (3B) insert—

“(3C) A licence granted under section 3AB remains in force (unless revoked)—

- (a) in the case of a person released by virtue of section 3AB(1), until whichever comes first—
 - (i) the date on which the release period specified by virtue of section 3AB(6)(b)(i) comes to an end,
 - (ii) where the Parole Board decides not to recommend the person’s release on licence, the date of that decision,
 - (iii) where the Parole Board decides to recommend the person’s release on licence or the person otherwise falls to be released by virtue of section 1, the date on which the person would, but for their release under section 3AB(1), fall to be released on licence under section 1,
- (b) in the case of a person released by virtue of section 3AB(3), until the date on which the person would, but for their release under section 3AB(3), fall to be released on licence under section 1.

(3D) On a licence under section 3AB ceasing to have effect as mentioned in subsection (3C)(a)(i) or (ii), the released person is liable to be detained in pursuance of the person’s sentence and, if at large, is deemed to be unlawfully at large.”.

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- (7) In section 12 (conditions in licence), in subsection (4A)—
- (a) for “3AA” substitute “3AB(1)”,
 - (b) for “for the purposes of section 1(3) of this Act” substitute “by virtue of section 3AB(2)”.
- (8) In section 12AA (conditions for persons released on licence under section 3AA)—
- (a) in subsection (1), for “of this Act,” to the end substitute “—
 - (a) any licence granted under section 3AA or 3AB(1) must include—
 - (i) the standard conditions, and
 - (ii) a curfew condition complying with section 12AB,
 - (b) any licence granted under section 3AB(3) must include such a curfew condition.”,
 - (b) in subsection (5), after “prescribed” insert “—
 - (a) for licences granted under section 3AA and for licences granted under section 3AB(1),
 - (b)”,
 - (c) in subsection (6)(a), after “above” insert “in relation to licences granted under section 3AA”,
 - (d) after subsection (6) insert—

“(7) Subsection (4) of section 3AB applies in relation to—

 - (a) the exercise of the power of prescription conferred by subsection (3) in relation to licences granted under section 3AB(1),
 - (b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AB,

as it applies in relation to the exercise of the power conferred by subsection (1) or, as the case may be, (3) of that section.”,

 - (e) in the section title, after “3AA” insert “or 3AB”.
- (9) In section 12B (certain licences to be replaced by one), in subsection (4), after “3AA” insert “or 3AB”.
- (10) In section 17 (revocation of licence), in subsection (7), after “3AA” insert “or 3AB(1)”.
- (11) In section 17A (recall of prisoners released under section 3AA)—
- (a) in subsection (1), after “3AA” insert “or 3AB(1)”,
 - (b) in subsection (5B), after “3AA” insert “or, as the case may be, 3AB(1)”,
 - (c) in the section title, after “3AA” insert “or 3AB(1)”.
- (12) In section 21A (operating protocol for release on licence under section 3AA)—
- (a) in subsection (1), after “3AA” in each place it occurs insert “or 3AB”,
 - (b) in the section title, after “3AA” insert “or 3AB”.
- (13) In section 32A of the Prisons (Scotland) Act 1989 (offence where person unlawfully at large), in subsection (1)(a), after “section” insert “11(3D)”.
- (14) In section 7 of the Management of Offenders (Scotland) Act 2019 (list of relevant conditions which may be monitored electronically), in subsection (1)(a)—

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- (a) for “12AA(1)(b)” substitute “12AA(1)”,
- (b) after “3AA” insert “or 3AB”.

Commencement Information

II S. 9 not in force at Royal Assent, see **s. 18(2)**

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