

Custodial Sentences and Weapons (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 80-EN. A Policy Memorandum is printed separately as SP Bill 80-PM.

Custodial Sentences and Weapons (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

PART 1

THE PAROLE BOARD FOR SCOTLAND

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1 The Parole Board for Scotland

- (1) There shall continue to be a body to be known as the Parole Board for Scotland (the “Parole Board”).
- (2) The Parole Board has the function of advising the Scottish Ministers in relation to any matter referred to it by them in relation to the release of prisoners.
- (3) The Parole Board has such other functions as are conferred on it by virtue of this Act and any other enactment.
- (4) In carrying out any of its functions in relation to a person in respect of whom a risk management plan has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003 (asp 7), the Parole Board must have regard to the plan.
- (5) Schedule 1 makes further provision about the Parole Board.

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2 Parole Board rules

- (1) The Scottish Ministers may make rules about the practice and procedure of the Parole Board.
- (2) Rules under subsection (1) may, in particular, include provision for or in connection with—
 - (a) authorising cases referred to the Parole Board by virtue of this Act to be dealt with, in whole or in part, by a specified number of members of the Board in accordance with such procedure as may be specified in the rules,
 - (b) enabling the Parole Board to require any person, other than a prisoner whose case the Board is dealing with, to—

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- (i) attend a hearing before the Board,
(ii) give evidence to it, or
(iii) produce documents,
- (c) requiring cases referred to the Board, or matters specified in the rules that are preliminary or incidental to the determination of cases, to be determined, or other actions so specified to be taken, within periods so specified,
- (d) specifying matters which may be taken into account by the Parole Board in dealing with cases.
- (3) Rules under subsection (1) which include provision such as is mentioned in subsection (2)(b) may also include provision applying subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973 (c.65) with such modifications as may be set out in the rules but subject to the limitation that any penalty under subsection (5) of that section as so applied must be restricted to a fine not exceeding level 2 on the standard scale.

PART 2

CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 1

INTRODUCTORY

3 Application of Part 2

This Part does not apply in relation to a sentence (other than a life sentence) imposed on a person for an offence committed before the coming into force of the Part.

4 Basic definitions

(1) In this Part—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46),

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

“custody and community sentence” means a sentence of imprisonment for a term of 15 days or more,

“custody-only prisoner” means a person serving a custody-only sentence,

“custody-only sentence” means a sentence of imprisonment for a term of less than 15 days; and includes a sentence of detention imposed under section 206(2) of the 1995 Act (detention for up to 4 days in summary case),

“custody part” has the meaning given by section 6(2),

“life prisoner” means a person on whom a life sentence is imposed,

“life sentence” means—

- (a) a sentence of life imprisonment for an offence for which that sentence is not the sentence fixed by law (a “discretionary life sentence”),

(b) a sentence of life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law (a “mandatory life sentence”), or

(c) a sentence of imprisonment for an indeterminate period constituted by an order for lifelong restriction under section 210F of the 1995 Act,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“Parole Board” means the Parole Board for Scotland, and

“punishment part” has the meaning given by section 15(2).

(2) The Scottish Ministers may by order amend the definitions of “custody and community sentence” and “custody-only sentence” in subsection (1) by substituting a different term for the term mentioned in those definitions.

(3) References in this Part to release on community licence are references to the release on licence of a custody and community prisoner.

(4) References in this Part to release on life licence are references to the release on licence of a life prisoner.

CHAPTER 2

CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

Custody-only prisoners

5 Release on completion of sentence

As soon as a custody-only prisoner has served the term of imprisonment specified in the prisoner’s sentence the Scottish Ministers must, subject to section 22, release the prisoner unconditionally.

Custody and community prisoners

6 Setting of custody part

(1) When imposing on a person a sentence of imprisonment for a term of 15 days or more for an offence, the court must make an order specifying a custody part.

(2) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence.

(3) An order specifying a custody part must specify that the custody part is one-half of the sentence unless the court considers it appropriate, taking into account the matters mentioned in subsection (4), to specify a greater proportion of the sentence.

(4) Those matters are—

(a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,

(b) any previous conviction of the person, and

(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.

- (5) In specifying a custody part the court must ignore any period of confinement which may be necessary for the protection of the public.
- (6) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.
- 5 (7) An order specifying a custody part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.
- (8) This section applies to a person sentenced to an extended sentence as if any reference to a sentence were a reference to the confinement term of the extended sentence.
- 10 (9) In subsection (8), "confinement term" and "extended sentence" have the meanings given by section 210A(2) of the 1995 Act.
- (10) The Scottish Ministers may by order amend subsection (3) by substituting a different proportion of the sentence for the proportion mentioned in that subsection.

7 Joint arrangements between Scottish Ministers and local authorities

- 15 (1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risks posed in the local authority's area by custody and community prisoners.
- (2) For the purposes of assisting the Scottish Ministers in making a determination under section 8(1), the Scottish Ministers and the appropriate local authority must during the custody part of a custody and community prisoner's sentence assess in accordance with arrangements established under subsection (1) whether subsection (3) applies in respect of the prisoner.
- 20 (3) This subsection applies if the prisoner would, were the prisoner released on community licence on the expiry of the custody part, be likely to cause serious harm to members of the public.
- 25 (4) In this section, "appropriate local authority", in relation to a custody and community prisoner, means the local authority for the area in which the prisoner—
- (a) resided immediately before the imposition of the custody and community sentence, or
- (b) intends to reside on release on community licence.
- 30 (5) If, by virtue of subsection (4), two or more local authorities are the appropriate local authority in relation to a custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (2) and section 25(3) may be carried out by only one of them.

8 Review by Scottish Ministers

- 35 (1) Before the expiry of the custody part of a custody and community prisoner's sentence the Scottish Ministers must, subject to section 22, determine whether subsection (2) applies in respect of the prisoner.
- (2) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

9 Consequences of review

- (1) This section applies where the Scottish Ministers make a determination under subsection (1) of section 8 in respect of a prisoner.
- (2) If the Scottish Ministers determine that subsection (2) of that section does not apply in respect of the prisoner, they must release the prisoner on community licence on the expiry of the custody part of the prisoner's sentence.
- (3) If the Scottish Ministers determine that subsection (2) of that section applies in respect of the prisoner, they must, before the expiry of the custody part of the prisoner's sentence, refer the prisoner's case to the Parole Board.
- (4) This section is subject to section 22.

10 Review by Parole Board

- (1) Subsection (2) applies where a custody and community prisoner's case is referred to the Parole Board under section 9(3).
- (2) Before the expiry of the custody part of the prisoner's sentence, the Parole Board must determine whether section 8(2) applies in respect of the prisoner.

11 Release on community licence following review by Parole Board

- (1) Subsection (2) applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) does not apply in respect of a prisoner.
- (2) If section 22 does not apply the Parole Board must—
- (a) direct the Scottish Ministers to release the prisoner on community licence, and
- (b) specify conditions to be included in the licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on community licence.
- (4) In the case of a determination under section 10(2) the direction must be implemented on the expiry of the custody part of the prisoner's sentence.

12 Determination that section 8(2) applicable: consequences

- (1) This section applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) applies in respect of a prisoner.
- (2) The Parole Board must—
- (a) give the prisoner reasons in writing for its determination, and
- (b) fix the date on which it will next consider the prisoner's case.
- (3) If on the day of the determination at least 4 months of the prisoner's custody and community sentence remain to be served before the three-quarter point then, subject to subsection (5), the date fixed under subsection (2)(b) must occur during the relevant period.
- (4) In subsection (3)—
- “relevant period” means—

(a) where more than 2 years of the prisoner's sentence remain to be served before the three-quarter point, the period of 20 months ending immediately before the second anniversary of the determination (or, in a case where the determination was made under section 13(3), the last determination),

5 (b) where the three-quarter point occurs during the period of 20 months ending immediately before the second anniversary of the determination ("the 20 month period"), the period of 4 months ending with the three-quarter point, "three-quarter point", in relation to a prisoner's custody and community sentence, means the day on which a prisoner will have served three-quarters of the
 10 prisoner's sentence.

(5) If the Parole Board considers it appropriate, the date fixed under subsection (2)(b) may, in a case where the relevant period is that mentioned in paragraph (b) of the definition of that expression in subsection (4), be some other date during the 20 month period.

15 (6) If on the day of the determination less than 4 months of the prisoner's sentence remain to be served before the three-quarter point, the Parole Board must specify conditions to be included in the prisoner's community licence.

(7) Subsection (8) applies where the Parole Board has fixed a date under subsection (2)(b).

20 (8) On the prisoner's request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner's case.

(9) This section is subject to section 21.

13 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 12(2)(b) for considering a prisoner's case.

25 (2) The Scottish Ministers must, subject to section 22, refer the prisoner's case to the Parole Board before that date.

(3) The Parole Board must determine whether section 8(2) applies in respect of the prisoner.

14 Release on community licence on completion of custody part

30 (1) Before a custody and community prisoner has served three-quarters of the prisoner's custody and community sentence, the Scottish Ministers must refer the prisoner's case to the Parole Board.

(2) As soon as a custody and community prisoner has served three-quarters of the prisoner's custody and community sentence, the Scottish Ministers must, subject to section 22, release the prisoner on community licence.

35 (3) The Parole Board must specify conditions to be included in the prisoner's community licence.

(4) Subsection (2) does not apply in relation to a prisoner whose licence has been revoked by virtue of section 31(1) or (4).

Life prisoners

15 Setting of punishment part

- (1) When imposing a life sentence on a person the court must make an order specifying a punishment part.
- 5 (2) The punishment part is that part of the person's life sentence which, taking into account—
- (a) in the case of a mandatory life sentence, the matters mentioned in subsection (3),
- (b) in the case of a discretionary life sentence or an order for lifelong restriction under section 210F of the 1995 Act, the matters mentioned in subsection (4),
- 10 the court considers appropriate to satisfy the requirements for retribution and deterrence.
- (3) Those matters are—
- (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment as that offence,
- (b) any previous conviction of the person, and
- 15 (c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.
- (4) Those matters are—
- (a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not imposed a sentence, or made an order, such as is mentioned in subsection (2)(b) for it, and
- 20 (b) the part of that period of imprisonment which, by virtue of section 6, the court would have specified as the custody part.
- (5) In specifying a punishment part the court must ignore any period of confinement which may be necessary for the protection of the public.
- 25 (6) An order specifying a punishment part must specify the punishment part in years and months.
- (7) It does not matter that a punishment part so specified may exceed the remainder of the person's natural life.
- 30 (8) An order specifying a punishment part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

16 Referral to Parole Board

Before the expiry of the punishment part of a life prisoner's sentence, the Scottish Ministers must, subject to section 22, refer the prisoner's case to the Parole Board.

17 Review by Parole Board

- 35 (1) Subsection (2) applies where a life prisoner's case is referred to the Parole Board under section 16.
- (2) Before the expiry of the punishment part of the life prisoner's sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.

- (3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

18 Release on life licence following review by Parole Board

- (1) Subsection (2) applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) does not apply in respect of a life prisoner.
- (2) The Parole Board must—
- (a) direct the Scottish Ministers to release the prisoner on life licence, and
 - (b) specify conditions to be included in the prisoner’s licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.
- (4) In the case of a determination under section 17(2) the direction must be implemented on the expiry of the punishment part of the prisoner’s sentence.

19 Determination that section 17(3) applicable: consequences

- (1) This section applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) applies in respect of a life prisoner.
- (2) The Parole Board must—
- (a) give the prisoner reasons in writing for its determination, and
 - (b) fix the date on which it will next consider the prisoner’s case.
- (3) Subject to section 21, the date fixed under subsection (2)(b) must occur before the expiry of the period of 2 years beginning with the Parole Board’s determination.
- (4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).
- (5) On the prisoner’s request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner’s case.

20 Further referral to Parole Board

- (1) This section applies where the Parole Board fixes a date under section 19(2)(b) for considering a prisoner’s case.
- (2) The Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board before that date.
- (3) The Parole Board must determine whether section 17(3) applies in respect of the prisoner.

Referral to Parole Board: postponement

21 Referral to Parole Board: postponement

- (1) Subsection (2) applies where—
- (a) a prisoner’s case is referred to the Parole Board under this Part (the “referred case”),

(b) after the referral another sentence of imprisonment is imposed on the prisoner (the “new sentence”),

(c) when that sentence is imposed, the Board has not fixed a date for considering the prisoner’s case, and

5 (d) the prisoner would not be eligible for release in relation to the new sentence on the date which would (apart from this section) have been fixed for considering the referred case.

(2) The Parole Board must fix in accordance with subsection (5) a different date for considering the referred case.

10 (3) Subsection (4) applies where—

(a) the Parole Board fixes a date for considering the referred case,

(b) before that date, a new sentence is imposed on the prisoner, and

(c) the prisoner would not be eligible for release in relation to the new sentence on that date.

15 (4) The Parole Board must—

(a) fix in accordance with subsection (5) a different date for considering the referred case, and

20 (b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, the Board must fix in accordance with that subsection a further different date.

(5) A date is fixed in accordance with this subsection if—

(a) it is a date which would have been fixed in relation to the new sentence if that were the only sentence imposed on the prisoner, and

(b) it replaces any date previously fixed for considering the referred case.

25 *Effect of multiple sentences*

22 Effect of multiple sentences

(1) This section applies where a person is serving, or liable to serve, two or more sentences of imprisonment (a “multiple sentence prisoner”).

30 (2) A multiple sentence prisoner must not be released by virtue of this Part until the prisoner has served—

(a) any custody-only sentence,

(b) the custody part of any custody and community sentence, and

(c) the punishment part of any life sentence,

imposed on the prisoner.

35 (3) Where a multiple sentence prisoner is released on licence by virtue of this Part, the prisoner is released—

(a) if none of the sentences the prisoner is serving is a life sentence, on a single community licence,

(b) if any of those sentences is a life sentence, on a single life licence.

(4) A multiple sentence prisoner's case must not be referred to the Parole Board under this Part before the date on which the case would have been so referred in relation to the sentence referred to in subsection (5).

5 (5) That sentence is whichever of any—

(a) custody and community sentence, or

(b) life sentence,

imposed on the prisoner includes the custody part or, as the case may be, punishment part which expires after the expiry of any other custody part or punishment part so imposed.

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Compassionate release on licence

23 Compassionate release on licence

(1) Where the Scottish Ministers are satisfied that there are compassionate grounds justifying the release on licence of a person, the Scottish Ministers may release the person on licence.

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(2) Before releasing a custody and community prisoner or a life prisoner under subsection (1) the Scottish Ministers must consult the Parole Board.

(3) The Scottish Ministers need not consult the Parole Board if it is impracticable to do so.

CHAPTER 3

COMMUNITY AND LIFE LICENCES

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Community licences

24 Release on community licence on Parole Board's direction

(1) This section applies where by virtue of section 11(2)(b), 12(6), 14(3) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner's community licence.

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(2) The Scottish Ministers—

(a) must include those conditions in the prisoner's community licence,

(b) on the direction of the Parole Board, may—

(i) vary or cancel conditions, or

(ii) include further conditions in the licence,

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(c) may not include in the licence conditions other than those mentioned in paragraphs (a) and (b).

25 Community licences in which Scottish Ministers may specify conditions

(1) This section applies where by virtue of section 9(2) or 23(1) the Scottish Ministers release a prisoner on community licence.

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(2) The Scottish Ministers may—

- (a) include in the licence such conditions as they consider appropriate,
 - (b) vary or cancel conditions,
 - (c) include in the licence such further conditions as they consider appropriate.
- 5 (3) Before exercising any of the powers conferred by subsection (2), the Scottish Ministers must, in pursuance of arrangements established under section 7(1), co-operate with the appropriate local authority.
- (4) In subsection (3) “appropriate local authority” has the same meaning as in section 7.

Life licences

26 Release on life licence: conditions

- 10 (1) This section applies where by virtue of section 18(2)(b) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner’s life licence.
- (2) The Scottish Ministers—
- (a) must include those conditions in the prisoner’s life licence,
 - (b) on the direction of the Parole Board, may—
- 15 (i) vary or cancel conditions, or
- (ii) include further conditions in the licence,
- (c) may not include in the licence conditions other than those mentioned in paragraphs (a) and (b).

Supervision

27 Release on licence of certain prisoners: supervision

- 20 (1) Where a person (other than a person liable to removal from the United Kingdom) falling within subsection (2) is released on licence by virtue of this Part, the Scottish Ministers must make the release subject to the supervision condition.
- (2) A person falls within this subsection if the person is—
- 25 (a) a life prisoner,
- (b) a custody and community prisoner serving a custody and community sentence of 6 months or more,
- (c) any other custody and community prisoner in respect of whom the Parole Board determines under section 13(3), that section 8(2) applies,
- 30 (d) a person released on licence by virtue of section 23(1),
- (e) a person subject to an extended sentence (as defined in section 210A of the 1995 Act),
- (f) a person subject to the notification requirements in Part 2 of the Sexual Offences Act 2003 (c.42), or
- 35 (g) a child (as defined in section 307(1) of the 1995 Act) subject to a sentence of detention under section 208 of that Act.
- (3) The supervision condition is a condition requiring the prisoner—

- (a) to be under the supervision of a relevant officer of the local authority specified in the licence, and
- (b) to comply with requirements imposed in relation to the supervision by the relevant officer.
- 5 (4) The reference in subsection (1) to a person liable to removal from the United Kingdom is a reference to—
- (a) a person liable to deportation under section 3(5) of the Immigration Act 1971 (c.77) who has been notified of a decision to make a deportation order,
- (b) a person liable to deportation under section 3(6) of that Act,
- 10 (c) a person who has been notified of a decision to refuse the person leave to enter the United Kingdom,
- (d) a person who is an illegal entrant within the meaning of section 33(1) of that Act,
- (e) a person liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33).
- 15 (5) In subsection (3) “relevant officer”, in relation to a local authority, means an officer of the authority employed by it in the discharge of its functions under section 27(1) of the Social Work (Scotland) Act 1968 (c.49).

Duration of licence

28 Period during which licence in force

- 20 (1) Where a custody-only prisoner is released on licence by virtue of section 23(1), the licence remains in force until the expiry of the prisoner’s sentence.
- (2) Where a custody and community prisoner is released on community licence by virtue of section 9(2), 11(2)(a), 14(2), 23(1) or, as the case may be 33(4)(a), the licence remains in force until the expiry of the prisoner’s sentence.
- 25 (3) Where a life prisoner is released on life licence by virtue of section 18(2)(a), 23(1) or, as the case may be 33(4)(a), the licence remains in force until the prisoner dies.

Prisoner to comply with licence conditions

29 Prisoner to comply with licence conditions

- 30 Where a prisoner is released on licence by virtue of this Part, the prisoner must, while the licence is in force, comply with the conditions specified in the licence.

Suspension

30 Suspension of licence conditions while detained

- (1) Subsection (2) applies where—
- 35 (a) the Scottish Ministers release a prisoner on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a), and
- (b) while the licence is in force the prisoner continues to be, or is, detained in prison by virtue of this Part, any other enactment or any rule of law.

- (2) Any condition in the licence other than a condition mentioned in subsection (3) is suspended for the relevant period.
- (3) Those conditions are any conditions (however expressed) requiring the prisoner—
- 5 (a) to be of good behaviour and to keep the peace,
- (b) to refrain from contacting a person, or class of person, specified in the licence (or to refrain from doing so without the approval of a person specified in the licence).
- (4) The relevant period is—
- (a) the period during which the prisoner remains detained in prison, and
- (b) the licence remains in force.
- 10 (5) The Scottish Ministers may by order amend subsection (3) by amending conditions or adding or removing conditions.

Revocation

31 Revocation of licence

- (1) If—
- 15 (a) a prisoner is released on licence by virtue of this Part,
- (b) the prisoner is not detained as mentioned in section 30(1)(b), and
- (c) subsections (2) and (3) apply,
- the Scottish Ministers must revoke the licence and recall the prisoner to prison.
- (2) This subsection applies if—
- 20 (a) the prisoner breaches a licence condition, or
- (b) the Scottish Ministers consider that the prisoner is likely to breach a licence condition.
- (3) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence and recall the prisoner to prison.
- 25 (4) If—
- (a) a prisoner is released on licence by virtue of this Part,
- (b) the prisoner is detained as mentioned in section 30(1)(b), and
- (c) subsections (2) and (5) apply,
- the Scottish Ministers must revoke the licence.
- 30 (5) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence.
- (6) Where—
- (a) a prisoner's licence is revoked by virtue of subsection (1), and
- (b) the prisoner is at large,
- 35 the prisoner is deemed to be unlawfully at large.

32 Referral to Parole Board following revocation of licence

- (1) Subsection (2) applies where the Scottish Ministers revoke a licence by virtue of section 31(1) or (4).
- (2) The Scottish Ministers must—
- 5 (a) inform the prisoner of the reasons for the revocation, and
- (b) subject to section 22, refer the prisoner's case to the Parole Board.

33 Consideration by Parole Board

- (1) This section applies where a prisoner's case is referred to the Parole Board by virtue of section 32(2)(b) or subsection (10).
- 10 (2) The Parole Board must determine whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.
- (4) If the Parole Board determines that subsection (3) does not apply it must—
- 15 (a) direct the Scottish Ministers to release the prisoner on licence, and
- (b) specify conditions to be included in the licence.
- (5) Where a direction is given under subsection (4)(a) the Scottish Ministers must release the prisoner on community licence or, as the case may be, life licence.
- (6) If the Parole Board determines that subsection (3) applies, it must fix the date on which it will next consider the prisoner's case.
- 20 (7) The date fixed under subsection (6) must, subject to section 21, fall within the period of 2 years beginning with the Parole Board's last consideration of the prisoner's case.
- (8) Subsection (9) applies where the Parole Board has fixed a date under subsection (6).
- (9) On the prisoner's request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner's case.
- 25 (10) The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (6).

34 Effect of revocation

- 30 (1) Where a prisoner's community licence is revoked by virtue of section 31(1) or (4), the prisoner must be confined until the expiry of the prisoner's sentence.
- (2) Where a prisoner's life licence is revoked by virtue of section 31(1) or (4), the prisoner must be confined until the prisoner dies.
- (3) This section is subject to section 33(4)(a).

Single licence

35 Multiple licences to be replaced by single licence

- (1) This section applies where a prisoner—
- 35

- (a) is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a) as respects any sentence of imprisonment (the “original sentence”), and
- (b) while the licence remains in force, another sentence of imprisonment is imposed on the prisoner (the “subsequent sentence”).

5 (2) Where—

- (a) the prisoner is to be released on licence by virtue of this Part as respects the subsequent sentence, and
- (b) the licence as respects the original sentence remains in force,

10 the prisoner must be released on a single licence as respects both the original sentence and the subsequent sentence.

(3) The single licence replaces the licence as respects both the original sentence and the subsequent sentence.

(4) The single licence must include the conditions which were in the licence as respects the original sentence immediately before that licence was replaced.

15 (5) The single licence remains in force (unless revoked) for the longer of the periods for which the licences as respects—

- (a) the original sentence, or
- (b) the subsequent sentence,

would (apart from this section and if not revoked) have remained in force.

20 (6) Where—

- (a) the prisoner is to be released unconditionally under this Part as respects the subsequent sentence, and
- (b) the licence as respects the original sentence remains in force,

the licence as respects the original sentence continues in force (unless revoked).

25 **CHAPTER 4**

CURFEW LICENCES

36 Curfew licences

(1) Subsection (2) applies in relation to a custody and community prisoner who—

- (a) is serving a sentence of imprisonment for a term of 3 months or more, and
- (b) is of a description specified by the Scottish Ministers by order.

30 (2) The Scottish Ministers may release the prisoner on licence (a “curfew licence”) before the expiry of the custody part of the prisoner’s sentence.

(3) A curfew licence must include a curfew condition.

(4) The Scottish Ministers may release a prisoner on curfew licence only—

35 (a) after the later of—

- (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 135 days before the expiry of the custody part of the sentence, and

(b) before the day falling 14 days before the expiry of the custody part.

(5) In determining whether to release a prisoner on curfew licence, the Scottish Ministers must have regard to the need to—

(a) protect the public at large,

(b) prevent re-offending by the prisoner, and

(c) secure the successful re-integration of the prisoner into the community.

(6) The Scottish Ministers may include in a curfew licence such other conditions as they consider appropriate.

(7) Where a prisoner is released on curfew licence, the prisoner must, while the licence is in force, comply with the conditions specified in the licence.

(8) A curfew licence remains in force until the expiry of the custody part of the prisoner's sentence.

(9) An order under subsection (1)(b) may include provision—

(a) applying provisions of this Part to curfew licences subject to modifications specified in the order,

(b) amending the periods of time mentioned in subsection (4).

37 Curfew conditions

(1) A curfew condition is a condition which requires the person to whom it relates to remain at a place specified in the condition for periods so specified.

(2) A curfew condition may—

(a) require the person not to be in a place, or class of place, so specified at a time or during a period so specified,

(b) specify different places, or different periods, for different days.

(3) A curfew condition may not specify periods which amount to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

38 Monitoring of curfew conditions

(1) A person's compliance with a curfew condition is to be monitored remotely.

(2) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a curfew condition as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(3) The Scottish Ministers must designate in a curfew licence a person who is to be responsible for the remote monitoring.

(4) The Scottish Ministers may replace the person designated under subsection (3) (or last designated under this subsection) with another person designated with the responsibility for the remote monitoring.

- (5) As soon as is practicable after designating a person under subsection (3) or (4), the Scottish Ministers must send the person—
- (a) a copy of the curfew condition, and
 - (b) any other information they consider necessary for the fulfilment of the person's responsibility.
- (6) If a designation is made under subsection (4), the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced.

CHAPTER 5

GENERAL

39 No release on weekends or public holidays

- (1) Where (but for this subsection) a prisoner would fall to be released by virtue of this Part on a day which is a Saturday, Sunday or public holiday, the prisoner must instead be released on the last preceding day which is not a Saturday, Sunday or public holiday.
- (2) In subsection (1), “public holiday” means any day on which, in the opinion of the Scottish Ministers, public offices or other facilities likely to be of use to the prisoner in the area in which the prisoner is likely to be following release will be closed.

CHAPTER 6

APPLICATION OF PART 2 TO CERTAIN PERSONS

40 Persons detained under mental health provisions

- (1) Where a transfer for treatment direction under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) has been made in respect of a person serving a sentence of imprisonment, this Part applies to that person as if—
- (a) the person continues to serve the sentence while detained in hospital, and
 - (b) the person had not been removed to hospital.
- (2) Where a person is conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act, this Part applies to that person as if, while so detained, the person were serving a sentence of imprisonment imposed at the time the direction was made.

41 Application to young offenders and children

- (1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.
- (2) Those persons are—
- (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of less than 15 days,
 - (b) a person sentenced to be detained under section 208 of that Act for such a period.
- (3) This Part applies in relation to the persons mentioned in subsection (4) as it applies in relation to custody and community prisoners.

- (4) Those persons are—
- (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of 15 days or more,
 - (b) a person sentenced to be detained under section 208 of that Act for such a period.
- 5 (5) This Part applies in relation to the persons mentioned in subsection (6) as it applies in relation to life prisoners.
- (6) Those persons are—
- (a) a person sentenced under section 205(2) or (3) of the 1995 Act to be detained without limit of time or for life,
 - 10 (b) a person on whom detention without limit of time or for life is imposed under section 207(2) of that Act,
 - (c) a person sentenced to be detained without limit of time under section 208 of that Act.
- 15 (7) In this Part as applied by subsections (1), (3) and (5), references to imprisonment are to be read as references to detention; and cognate expressions are to be construed accordingly.

42 Fine defaulters and persons in contempt of court

- (1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.
- 20 (2) Those persons are—
- (a) a person serving by virtue of section 219(1) of the 1995 Act a period of imprisonment or, as the case may be, a period of detention in a young offenders institution,
 - 25 (b) a person serving a period of imprisonment or, as the case may be, a period of detention in a young offenders institution for contempt of court.
- (3) Subsection (1) does not apply in relation to—
- (a) a person on whom the court imposes before the coming into force of this Part—
 - 30 (i) a period of imprisonment in default of payment of a fine under paragraph (a) of section 219(1) of the 1995 Act, or
 - (ii) imprisonment for failure to pay a fine, or any part or instalment of a fine, under paragraph (b) of that section, or
 - (b) a person found in contempt of court, where the conduct which is treated as contempt of court occurs (or first occurs) before the coming into force of this Part.

PART 3

WEAPONS

Licensing of knives, swords etc.

43 Licensing of knife dealers

After section 27 of the Civic Government (Scotland) Act 1982 (c.45) insert—

“Licensing and regulation of knife dealers

27A Knife dealers’ licences

(1) A licence, to be known as a “knife dealer’s licence”, is required for carrying on business as a dealer in any article mentioned in subsection (2).

(2) Those articles are—

(a) knives (other than those designed for domestic use);

(b) knife blades (other than those designed for domestic use);

(c) swords;

(d) any other article—

(i) which has a blade; or

(ii) which is sharply pointed,

and which is made or adapted for use for causing injury to the person.

(3) In subsection (1), “dealer” means a person carrying on a business which consists wholly or partly of—

(a) selling;

(b) hiring;

(c) offering for sale or hire;

(d) exposing for sale or hire;

(e) lending; or

(f) giving,

to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer’s licence).

(4) In subsection (3), “selling”, in relation to an article mentioned in subsection (2)—

(a) includes—

(i) selling such an article by auction;

(ii) accepting goods or services in payment (whether in part or in full) for such an article; but

(b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;

and “sale” is to be construed accordingly.

- (5) For the purposes of subsection (3), an article is not to be treated as being exposed for sale if it is exposed for sale (by auction or otherwise) by a person other than the owner.
- (6) The Scottish Ministers may by order modify subsection (2) so as to—
- (a) add articles or classes of article;
 - (b) amend descriptions of articles or classes of article;
 - (c) remove articles or classes of article.

27B Applications for knife dealers' licences: notice

- (1) A licensing authority must cause public notice to be given of every application made to them for the grant or renewal of a knife dealer's licence.
- (2) Sub-paragraph (8) of paragraph 2 of Schedule 1 applies to the giving of public notice under subsection (1) as it applies to the giving of public notice under sub-paragraph (7) of that paragraph.

27C Knife dealers' licences: conditions

- (1) In granting or renewing a knife dealer's licence, a licensing authority—
- (a) must attach to the licence such conditions as are specified (in particular or in general) by order by the Scottish Ministers;
 - (b) may, without prejudice to paragraph 5 of Schedule 1, attach to the licence different conditions in relation to different articles or different classes of article;
 - (c) may, without prejudice to that paragraph, attach to the licence conditions for or in connection with—
 - (i) the keeping of records by the holder of the licence;
 - (ii) the storage of articles mentioned in section 27A(2); and
 - (iii) the display of such articles.
- (2) An order under subsection (1)(a) may provide for different conditions to apply to different articles or different classes of article.

27D Provision of information to holder of knife dealer's licence

- (1) Subsection (2) applies where the holder of a knife dealer's licence ("the dealer")—
- (a) is required by the licence to obtain information of a type specified in the licence from a person; and
 - (b) the dealer requests (whether orally, in writing or otherwise) the information from the person.
- (2) A person, or any person acting on behalf of the person, who knowingly or recklessly provides false information in response to a request under subsection (1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

27E Knife dealers' licences: warrants to enter, search and seize articles

- (1) Subsection (2) applies if a justice of the peace or sheriff is satisfied by evidence on oath that—
- (a) subsection (3) applies; and
 - (b) subsection (4) or (5) applies.
- (2) The justice of the peace or sheriff may grant a warrant authorising a constable or an authorised officer—
- (a) to enter and search the premises specified in the warrant; and
 - (b) to seize and remove any relevant article.
- (3) This subsection applies if there are reasonable grounds for suspecting that a person (the “suspect”) is carrying on in any premises an activity in respect of which a knife dealer’s licence is required under section 27A.
- (4) This subsection applies if no knife dealer’s licence is in force in respect of the activity.
- (5) This subsection applies if a knife dealer’s licence is in force in respect of the activity but there are reasonable grounds for suspecting that the suspect has failed, or is failing, to comply with a condition of the licence.

27F Powers of constables and authorised officers

- (1) A constable or an authorised officer may use reasonable force in executing a warrant granted under section 27E(2).
- (2) Where a constable who is not in uniform is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his identification.
- (3) Where an authorised officer is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his authorisation.
- (4) If a constable has been required to produce his identification under subsection (2) he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
- (5) If an authorised officer has been required to produce his authority under subsection (3), he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
- (6) Any person who—
- (a) fails without reasonable excuse to permit a constable, or an authorised officer, acting in pursuance of a warrant granted under section 27E(2) to enter and search any premises; or
 - (b) obstructs the entry to, or search of, any premises by a constable or an authorised officer so acting,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- 5
- (7) Any relevant article which has been seized and removed under a warrant granted under section 27E(2) may be retained until the conclusion of proceedings against the suspect.
- (8) For the purposes of subsection (7), proceedings in relation to a suspect are concluded if—
- 10
- (a) he is found guilty and sentenced or otherwise dealt with for the offence;
- (b) he is acquitted;
- (c) proceedings for the offence are discontinued;
- (d) it is decided not to prosecute him.
- (9) In this section, “suspect” is to be construed in accordance with section 27E(3).

27G Power to inspect documents

- 15
- (1) Subsection (2) applies where—
- (a) a constable or an authorised officer has reasonable grounds for suspecting that an activity in respect of which a knife dealer’s licence is required under section 27A is being carried on; and
- (b) no such licence is in force in respect of the activity.
- (2) The constable or authorised officer may—
- 20
- (a) require a relevant person to produce any records or other documents connected with the activity,
- (b) inspect any such records or documents, and
- (c) take copies of, or extracts from, any such records or documents.
- (3) A relevant person who—
- 25
- (a) is required under subsection (2) to produce records or documents; and
- (b) fails without reasonable excuse to do so,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Before exercising the power conferred by subsection (2)—
- 30
- (a) a constable who is not in uniform must produce his identification to the relevant person;
- (b) an authorised officer must produce his authorisation to the relevant person.
- (5) For the purposes of this section, a person is “relevant” if the constable or
- 35
- authorised officer has reasonable grounds for believing that the person has access to the records or documents.

27H Sections 27E to 27G: interpretation

- (1) In sections 27E and 27F—

“premises” includes a vehicle or vessel;

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A.

- 5 (2) In sections 27E to 27G, “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of section 27E, 27F or, as the case may be, 27G.

27J Forfeiture orders

- 10 (1) Subsection (2) applies where a person (“the offender”) is convicted of an offence under subsection (A1) or (2) of section 7 in relation to a relevant article—

- (a) seized by virtue of a warrant granted under section 27E(2); or
(b) in the offender’s possession or control at the relevant time.

- 15 (2) The court by which the offender is convicted may make an order for forfeiture (a “forfeiture order”) in respect of the relevant article.

- 30 (3) The court may make a forfeiture order—

- (a) whether or not it also deals with the offender in respect of the offence in any other way; and
(b) without regard to any restrictions on forfeiture in any enactment.

- 20 (4) In considering whether to make a forfeiture order, the court must have regard to—

- (a) the value of the relevant article; and
(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

- 25 (5) In this section—

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A;

“relevant time” means—

- 30 (a) the time of the offender’s arrest for the offence; or
(b) the time of his being cited as an accused in respect of the offence.

27K Effect of forfeiture order

- (1) A forfeiture order under section 27J(2) operates to deprive the offender of any rights he has in the property to which it relates.

- 35 (2) The property to which a forfeiture order relates must be taken into the possession of the police.

- (3) The court by which the offender is convicted may, on the application of a person who—

- (a) claims property to which a forfeiture order relates; but

(b) is not the offender from whom it was forfeited,
make an order (a “recovery order”) for delivery of the property to the applicant
if it appears to the court that he owns it.

(4) An application under subsection (3) must be made—

- (a) in such manner as may be prescribed by Act of Adjournal; and
(b) before the end of the period of 6 months beginning with the date on
which the forfeiture order was made.

(5) An application may be granted only if the applicant satisfies the court that—

- (a) he had not consented to the offender’s having possession of the property;
or
(b) he did not know, and had no reason to suspect, that the offence was
likely to be committed.

(6) If a person has a right to recover property which, by virtue of a recovery order,
is in the possession of another, that right—

- (a) is not affected by the making of the recovery order at any time before the
end of the period of 6 months beginning with the day on which the order
is made;
(b) is lost at the end of that period.

(7) The Scottish Ministers may by order make provision for or in connection with
the disposal of property forfeited under a forfeiture order in cases where—

- (a) no application under subsection (3) has been made before the end of the
6 month period beginning with the day on which the forfeiture order was
made; or
(b) no such application has succeeded.

(8) An order under subsection (7) may in particular make provision for—

- (a) dealing with any proceeds from the disposal;
(b) investing money; and
(c) auditing accounts.

27L Offences by partnerships

Where an offence committed by a partnership under—

- (a) section 5 (in so far as the offence relates to a knife dealer’s licence);
(b) section 7 (in so far as the offence so relates);
(c) section 27D;
(d) section 27F; or
(e) section 27G,

is proved to have been committed with the consent or connivance of, or to be
attributable to any neglect on the part of, a partner, the partner as well as the
partnership is guilty of the offence and is liable to be proceeded against and
punished accordingly.

27M Appropriate licence required

Where a person carries on a business which—

- (a) by virtue of section 24 requires a second-hand dealer's licence; and
- (b) by virtue of section 27A requires a knife dealer's licence,

the person requires the appropriate licence in respect of each activity.

27N Remote sales of knives, etc.

- (1) This section applies where, in connection with the sale of an article mentioned in section 27A(2)—

- (a) the premises (“the relevant premises”) from which the article is despatched in pursuance of the sale are not the same as those where the order for the article is taken, and
- (b) the relevant premises are in Scotland.

- (2) For the purposes of this Act, the sale of the article is to be treated as taking place on the relevant premises.

27P Duty to avoid conflict between conditions of licences

- (1) Subsection (2) applies where an application is made to a licensing authority for the grant or renewal of a second-hand dealer's licence by the holder of a knife dealer's licence issued by that authority.

- (2) In granting the application, the licensing authority must not impose any condition which conflicts, or is inconsistent, with a condition of the knife dealer's licence.

- (3) Subsection (4) applies where an application is made to a licensing authority for the grant or renewal of a knife dealer's licence by the holder of a second-hand dealer's licence issued by that authority.

- (4) In granting the application, the licensing authority must, in accordance with paragraph 10 of Schedule 1, vary the terms and conditions of the second-hand dealer's licence to avoid any conflict or inconsistency with the terms or conditions of the knife-dealer's licence.

27Q Offences in relation to knife dealers' licences: exceptions

The Scottish Ministers may by order provide that an offence under—

- (a) section 5 (in so far as the offence relates to a knife dealer's licence);
- (b) section 7 (in so far as the offence so relates);
- (c) section 27D;
- (d) section 27F; or
- (e) section 27G,

is subject to such exceptions as may be specified in the order.

27R Orders under sections 27A to 27Q

- (1) Any power conferred by section 27A(6), 27C(1)(a), 27K(7) or 27Q to make orders is exercisable by statutory instrument.
- (2) A statutory instrument containing an order under any of those sections is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

44 Knife dealers’ licences: further provision

- (1) The Civic Government (Scotland) Act 1982 (c.45) is amended in accordance with subsections (2) and (3).
- (2) In section 6(1)(a) (powers of entry to and search of unlicensed premises), after “Act” insert “(other than a knife dealer’s licence)”.
- (3) In section 7 (offences etc.)—
- (a) before subsection (1) insert—
- “(A1) Any person who without reasonable excuse does anything for which a licence is required under section 27A without having such a licence is guilty of an offence and 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.”,
- (b) in subsection (1)—
- (i) after “under” insert “any provision of”, and
- (ii) after “Act” insert “other than section 27A”,
- (c) in subsection (2)—
- (i) the word “and” immediately after paragraph (a) is repealed, and
- (ii) after that paragraph, insert—
- “(aa) in a case where the licence is a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and”,
- (d) in subsection (4), after “conviction,” insert—
- (a) in a case where the application is for a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and
- (b) in any other case,”.

*Sale etc. of weapons***45 Sale etc. of weapons**

In section 141 of the Criminal Justice Act 1988 (c.33) (prohibition on sale etc. of certain weapons), after subsection (11) insert—

- “(11A)The Scottish Ministers may by order made by statutory instrument—
- (a) provide for exceptions and exemptions from an offence under subsection (1) above;

(b) provide for it to be a defence in proceedings for such an offence to show the matters specified or described in the order.

(11B) An order under subsection (11A) may make different provision for different purposes.

(11C) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

Swords

46 Sale etc. of swords

(1) The Criminal Justice Act 1988 (c.33) is amended in accordance with subsections (2) and (3).

(2) After section 141 insert—

“141ZA Application of section 141 to swords: further provision

(1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.

(2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.

(3) The Scottish Ministers may in particular—

(a) provide for defences to offences under subsection (1) of section 141 (or offences under that subsection as modified),

(b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—

(i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both,

(ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both,

(c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—

(a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords,

(b) enabling them to specify conditions in such authorisations,

(c) requiring persons to whom authorisations are granted to comply with such conditions,

(c) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.

- (5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.
- (6) The penalty is—
- (a) imprisonment for a term not exceeding 12 months, or
- (b) a fine not exceeding level 5 on the standard scale, or both.”
- (3) In subsection (4) of section 172 (extent), after “124” insert—
“section 141ZA;”.

PART 4

GENERAL

47 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.
- (2) An order under subsection (1) may modify any enactment (including this Act), instrument or document.

48 Rules, regulations and orders

- (1) The powers conferred by this Act on the Scottish Ministers to make rules, regulations and orders are exercisable by statutory instrument.
- (2) Each of those powers includes power to make—
- (a) different provision for different purposes,
- (b) supplementary, incidental, consequential, transitory, transitional or saving provision.
- (3) Subject to subsection (4), a statutory instrument containing rules, regulations or an order under this Act (other than an order under section 50) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) A statutory instrument containing—
- (a) an order under section 4(2) or 36(1)(b), or
- (b) regulations under paragraph 3(1) or 17 of schedule 1,
- may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

49 Minor and consequential amendments and repeals

- (1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) has effect.
- (2) The enactments mentioned in the first column in schedule 3 are repealed to the extent set out in the second column.

50 Short title and commencement

- (1) This Act may be cited as the Custodial Sentences and Weapons (Scotland) Act 2007.
- (2) This Act (other than this section and section 48) shall come into force on such day as the Scottish Ministers may by order appoint.
- 5 (3) Different days may be appointed under subsection (2) for different purposes.

SCHEDULE 1
(introduced by section 1(5))

THE PAROLE BOARD FOR SCOTLAND

Membership

- 5 1 The Parole Board is to consist of no fewer than 5 members (including a convener) appointed by the Scottish Ministers.
- 2 2 The membership of the Parole Board must include—
- (a) a Lord Commissioner of Justiciary,
- (b) a registered medical practitioner who is a psychiatrist,
- 10 (c) a person who the Scottish Ministers consider has knowledge and experience of the supervision or aftercare of released prisoners,
- (d) a person who the Scottish Ministers consider has knowledge and experience of the assessment of the likelihood of offenders causing serious harm to members of the public,
- 15 (e) a person who the Scottish Ministers consider has knowledge and experience of—
- (i) the way in which, and
- (ii) the degree to which,
- offences perpetrated against members of the public affect those persons.
- 20 3 (1) The Scottish Ministers must comply with any provision about the procedure, including requirements as to consultation, to be followed in appointing members of the Parole Board as they may, by regulations, prescribe.
- (2) Without prejudice to the generality of section 48(2), such regulations may make different provision for different kinds of member of the Parole Board, including the kinds of member holding an office or, as the case may be, possessing a qualification
- 25 mentioned in paragraph 2.

Tenure of appointments

- 4 Subject to paragraphs 5 to 9, a person is appointed as a member of the Parole Board for such period (being a period of at least 6 years and no more than 7 years) as is specified in the person's instrument of appointment.
- 30 5 A person ceases to be a member on the day the person attains the age of 75 years.
- 6 6 If a member such as is mentioned in paragraph 2(a) ceases to hold the office of Lord Commissioner of Justiciary, that person ceases to be a member of the Parole Board.
- 7 7 If a member such as is mentioned in paragraph 2(b) ceases to be—
- (a) a registered medical practitioner, or
- 35 (b) a psychiatrist,
- that person ceases to be a member of the Parole Board.
- 8 8 A member may at any time resign by giving notice in writing to that effect to the Scottish Ministers.

9 A person ceases to be a member on the day an order is made under paragraph 14 removing the member from the Parole Board.

10 A person may be reappointed as a member of the Parole Board only if the person—

(a) has ceased to be a member for a period of not less than 3 years, and

5 (b) has not previously been reappointed under this paragraph.

11 A person who has resigned from the Parole Board may be reappointed under paragraph 10.

12 A person who ceases to be a member by virtue of an order under paragraph 14 must not be reappointed under paragraph 10.

10 *Carrying out of functions*

13 The convener of the Parole Board is to have regard to the desirability of securing that every member is given the opportunity to participate appropriately in the carrying out of the Parole Board's functions on not fewer than 20 days in each successive period of 12 months beginning with the day of the member's appointment.

15 *Removal of members*

14 A member may be removed from the Parole Board only by order of the tribunal constituted under paragraph 16.

15 The tribunal may order the removal of a member only if—

(a) an investigation is carried out at the request of the Scottish Ministers, and

20 (b) following the investigation, the tribunal finds that the member is unfit to be a member of the Parole Board by reason of inability, neglect of duty or misbehaviour.

16 The tribunal is to consist of the following persons appointed by the Lord President of the Court of Session—

25 (a) either a Senator of the College of Justice or a sheriff principal (who is to preside),

(b) a person who is, and has been for at least 10 years—

(i) an advocate, or

(ii) a solicitor, and

(c) one other person who is not an advocate or a solicitor.

30 17 The Scottish Ministers may, by regulations—

(a) make provision—

(i) enabling the tribunal, at any time during an investigation, to suspend a member from the Parole Board, and

(ii) as to the effect and duration of a suspension,

35 (b) make further provision about the tribunal as the Scottish Ministers consider necessary or expedient, including provision about the procedure to be followed by and before it.

Remuneration, allowances and other expenses

18 Members of the Parole Board are to be paid such—

- (a) remuneration, and
- (b) expenses,

5 as the Scottish Ministers may determine.

19 The expenses of the Parole Board under paragraph 18 and any other expenses incurred by the Parole Board in carrying out its functions are to be defrayed by the Scottish Ministers.

Reporting and planning

10 20 The Parole Board must, as soon as practicable after the end of the reporting year, send to the Scottish Ministers a report on the performance of the Parole Board's functions during that year.

21 The Parole Board must, as soon as practicable after the beginning of each planning period, send to the Scottish Ministers a plan in relation to that planning period—

- 15 (a) providing details as to how the Parole Board intends to carry out its functions,
- (b) setting out performance objectives and targets in relation to its functions.

22 (1) The reporting year of the Parole Board is—

- (a) the period beginning with the day on which section 1(1) comes into force and ending with 31 March next following that day, and
- 20 (b) each successive period of 12 months ending with 31 March.

(2) The planning period of the Parole Board is—

- (a) the period beginning with the day on which section 1(1) comes into force and ending with the third occurrence of 31 March following that day, and
- (b) each successive period of 3 years ending with 31 March in the third year.

25 23 The Scottish Ministers must lay a copy of—

- (a) a report sent to them under paragraph 20,
- (b) a plan sent to them under paragraph 21,

before the Scottish Parliament.

SCHEDULE 2

(introduced by section 49)

30

MINOR AND CONSEQUENTIAL AMENDMENTS

Criminal Procedure (Scotland) Act 1995 (c.46)

1 (1) Section 210A of the 1995 Act (extended sentences for sex and violent offenders) is amended as follows.

35 (2) In subsection (1)(b), before “licence” insert “community”.

(3) In subsection (2)—

- (a) in paragraph (a), for “custodial” substitute “confinement”,
 - (b) in paragraph (b), before “licence” insert “community”.
- (4) In subsection (6), for “custodial” substitute “confinement”.
- (5) In subsection (10), for the words from ““licence”” to “1993” substitute—

5 “community licence” has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00);

10 “relevant officer”, in relation to a local authority, means an officer of that authority employed by them in the discharge of their functions under section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.);”.

Criminal Justice (Scotland) Act 2003 (asp 7)

- 2 (1) Section 40 of the Criminal Justice (Scotland) Act 2003 (remote monitoring of released prisoners) is amended as follows.

- (2) In subsection (1)—

15 (a) for the words from “licence” to the end of paragraph (b) substitute “community licence or life licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”, and

(b) for the words from “7(5)” to “proceedings)” substitute “41 of that Act (application of that Part to young offenders and children)”.

- 20 (3) In subsection (8), for paragraphs (a) and (b) substitute—

“(a) section 24(2) of the Custodial Sentences and Weapons (Scotland) Act 2007 (community licences: Scottish Ministers to include only licence conditions specified by Parole Board), or

25 (b) section 26(2) of that Act (life licences: Scottish Ministers to include only licence conditions specified by Parole Board).”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

- 3 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.

- 30 (2) In section 91 (assistance by offender: reduction in sentence), in subsection (8)(b), for “section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “section 15(2) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”.

- 35 (3) In section 92 (assistance by offender: review of sentence), in subsection (5), for the words from “(whether” to the end of the subsection substitute “on licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00) is to be treated as still serving the sentence for so long as the licence remains in force.”

- (4) In section 94 (section 92: further provision), in subsection (3)(b)—

40 (a) for “or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”, and

(b) the words from “before” to “full” are repealed.

SCHEDULE 3
(introduced by section 49)

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
5 Criminal Justice Act 1988 (c.33)	Section 141(3).
Prisons (Scotland) Act 1989 (c.45)	In section 39, subsections (7), (7A) and (7B).
Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)	Part 1.
Crime and Disorder Act 1998 (c.37)	In Schedule 8, paragraph 71.

Custodial Sentences and Weapons (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

Introduced by: Cathy Jamieson
On: 2 October 2006
Supported by: Hugh Henry
Bill type: Executive Bill

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