



Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 15th March 2007 and received Royal Assent on 19th April 2007

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.

PROSPECTIVE

^{F1}PART 1

THE PAROLE BOARD FOR SCOTLAND

Textual Amendments

- F1** Pt. 1 repealed (1.10.2020) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), ss. 47(2), 63(2); S.S.I. 2020/283, reg. 2(1)

^{F1} The Parole Board for Scotland

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^{F1} Parole Board rules

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PART 2

CONFINEMENT AND RELEASE OF PRISONERS

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

Changes to legislation: *Custodial Sentences and Weapons (Scotland) Act 2007 is up to date with all changes known to be in force on or before 22 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PROSPECTIVE

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.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2), 5(2)**; [S.S.I. 2012/249](#), art. 2

4 Basic definitions

(1) In this Part—

- “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46),
- “curfew condition” has the meaning given by section 48,
- “custody and community prisoner” means a person serving a custody and community sentence,
- “custody and community sentence” means a sentence of imprisonment for an offence 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(3),
- “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,
- “punishment part” has the meaning given by section 20(3),
- “standard conditions” means the conditions mentioned in section 28(2), and
- “supervision conditions” means the conditions mentioned in section 29(4).

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- (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 for the time being 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.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2)**, 5(2); S.S.I. 2012/249, art. 2

CHAPTER 2

CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

PROSPECTIVE

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 release the prisoner unconditionally.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2)**, 5(2); S.S.I. 2012/249, art. 2

PROSPECTIVE

Custody and community prisoners

6 Setting of custody part

- (1) This section applies where the court imposes on a person a custody and community sentence.
- (2) After imposing the sentence, the court must make an order specifying the custody part of the sentence.

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- (3) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).
- (4) An order specifying a custody part must specify that the custody part is—
 - (a) one-half of the sentence, or
 - (b) if subsection (5) applies, such greater proportion of the sentence as the court specifies.
- (5) This subsection applies if, taking into account in particular the matters mentioned in subsection (6), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.
- (6) 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) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and
 - (c) any previous conviction of the person.
- (7) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.
- (8) An order specifying a custody part must specify the custody part by reference to a fixed period of time.
- (9) Where (but for this subsection) a custody part would fall to be specified as a period including a fraction of a day, the custody part must be specified in whole days (any such fraction being rounded up to a whole day).
- (10) Where, by virtue of subsection (4)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.
- (11) 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.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), ss. **2(2)**, 5(2); S.S.I. 2012/249, art. 2

7 Power to amend section 6(4)

The Scottish Ministers may by order amend section 6(4)(a) by substituting for the proportion for the time being specified there a different proportion specified in the order.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), ss. **2(2)**, 5(2); S.S.I. 2012/249, art. 2

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8 Provision of information by court

- (1) This section applies where—
 - (a) a court imposes a custody and community sentence on a person, and
 - (b) the court is not required by—
 - (i) section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7), or
 - (ii) section 210H(2) of the 1995 Act,to prepare a report.
- (2) As soon as is reasonably practicable after imposing the sentence, the court must provide the Scottish Ministers with such information about—
 - (a) the person, and
 - (b) the circumstances of the case,as the court considers appropriate.
- (3) Information provided by virtue of subsection (2) is to be provided in such form as the court considers appropriate.

Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2), 5(2)**; [S.S.I. 2012/249](#), **art. 2**

9 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 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 10(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.
- (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.
- (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.
- (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 31(4) may be carried out by only one of them.