

This document has been prepared as a “Keeling schedule” to set out the amendments to be made to Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 by Part 2 (release from custody) of the Bail and Release from Custody (Scotland) Bill (“the Bill”). It is provided to assist in the Stage 1 scrutiny of the Bill. Although every effort has been made to ensure the accuracy of the information, it is for illustrative purposes only. For instance, not all the provisions of Part 1 of the 1993 Act are included. Only provisions being amended, or which are necessary to understand those provisions or the amendments to them, are included.

Amendments proposed by the Bill are shown in blue.

Text in red/purple represents amendments made by other legislation, e.g. the Management of Offenders (Scotland) Act 2019, but not yet in force.

Prisoners and Criminal Proceedings (Scotland) Act 1993 (as prospectively amended)

PART 1

DETENTION, TRANSFER AND RELEASE OF OFFENDERS

Early release

1 Release of short-term, long-term and life prisoners

- (1) Subject to section 26A(4) of this Act, as soon as a short-term prisoner, not being a prisoner to whom section 1AA of this Act applies, has served one-half of his sentence the Secretary of State shall, without prejudice to any supervised release order to which the prisoner is subject, release him unconditionally.
- (1A) Subsections (2) and (2A) apply as follows—
 - (a) subsection (2) applies in relation to a long-term prisoner who is serving a sentence imposed before 1st February 2016,
 - (b) subsection (2A) applies in relation to a long-term prisoner who is—
 - (i) serving a sentence imposed on or after 1st February 2016, and
 - (ii) not subject to an extended sentence within the meaning of section 210A of the 1995 Act.
- (1B) For the purpose of subsection (1A), a sentence specified on appeal in substitution for a sentence imposed earlier is to be regarded as imposed when the earlier sentence was imposed.
- (2) As soon as a long-term prisoner has served two-thirds of his sentence, the Secretary of State shall release him on licence unless he has before that time been so released, in relation to that sentence, under any provision of this Act.
- (2A) As soon as a long-term prisoner has only 6 months of the prisoner's sentence left to serve, the Scottish Ministers must release the prisoner on licence unless the prisoner has previously been so released in relation to that sentence under any provision of this Act.
- (3) After a long-term prisoner has served one-half of the prisoner's sentence, the Scottish Ministers must release the prisoner on licence if recommended to do so by the Parole Board.

- (3A) Subsections (1) to (3) above are subject to sections 1A and 1B of this Act.
- (3B) The Parole Board must publish, in such manner as it considers appropriate, the test it will apply in making a recommendation under subsection (3).
- (4) [repealed]
- (5) [repealed]
- (6) [repealed]
- (7) [repealed]
- (8) Schedule 1 to this Act, which makes special provision as respects the release of persons serving both a sentence of imprisonment imposed on conviction of an offence and a term of imprisonment or detention referred to in section 5(1)(a) or (b) of this Act, shall have effect.
- (9) This section does not apply in relation to a person to whom section 1AB applies to the extent that the person is serving a sentence of imprisonment imposed in respect of an offence within section 1AB(2).

...

1A Application to certain persons serving more than one sentence

- (1) Where a prisoner has been sentenced to two or more terms of imprisonment which are wholly or partly concurrent and do not fall to be treated as a single term by virtue of section 27(5) of this Act—
- (a) nothing in this Part of this Act shall require the Secretary of State to release him in respect of any of the terms unless and until the Secretary of State is required to release him in respect of each of the other terms;
 - (b) nothing in this Part of this Act shall require the Secretary of State or the Parole Board to consider his release in respect of any of the terms unless and until the Secretary of State or the Parole Board is required to consider his release, or the Secretary of State is required to release him, in respect of each of the other terms; and
 - (c) where he is released on licence under this Part of this Act, other than on licence under section 3AA or 3AB, he shall be on a single licence which—
 - (i) shall (unless revoked) remain in force until the date on which he would (but for his release) have served in full all the sentences in respect of which he has been so released; and
 - (ii) shall be subject to such conditions as may be specified under or required by this Part of this Act in respect of any of the sentences.
- (2) Where a prisoner who is serving any term of imprisonment receives a sentence of imprisonment or other detention for life, for an indeterminate period or without limit of time which is to take effect on the day after he would (but for the sentence so received) be entitled to be released from the term, nothing in this Part of this Act shall require—
- (a) the Scottish Ministers to release him in respect of any such term unless and until they are required to release him in respect of the sentence so received; or
 - (b) the Scottish Ministers or the Parole Board to consider his release in respect of any such term unless and until the Scottish Ministers are or the Parole Board is required to consider his release, or the Scottish Ministers are required to release him, in respect of the sentence so received.

1B Prisoners serving consecutive sentences including at least one terrorism sentence

- (1) This section applies where—
 - (a) a prisoner has been sentenced to two or more terms of imprisonment which are to be served consecutively on each other,
 - (b) one or more of the sentences (the “terrorism sentence”) was imposed in respect of an offence within section 1AB(2), and
 - (c) the sentences were imposed on the same occasion or, where they were imposed on different occasions, the prisoner has not been released under this Part at any time during the period beginning with the first and ending with the last of those occasions.
- (2) If the prisoner is serving a terrorism sentence and a sentence imposed in respect of an offence that is not within section 1AB(2) (a “non-terrorism sentence”), the terrorism sentence is to be served (or, where subsection (7) applies, treated as being served) after the non-terrorism sentence irrespective of when the sentences were imposed.
- (3) Where subsection (2) applies, the prisoner is to be taken to begin serving the custodial part of the terrorism sentence (or first such sentence) as soon as the prisoner has served the custodial part of the non-terrorism sentence.
- (4) If (but for this section) the prisoner would have been released on licence under this Part in respect of a non-terrorism sentence, the period during which the prisoner would have been on licence under this Part is to be served concurrently with the custodial part of the terrorism sentence.
- (5) The prisoner may not be released under this Part in respect of the terrorism sentence unless and until the prisoner has served the aggregate of—
 - (a) if the prisoner is serving a non-terrorism sentence, the custodial part of the sentence, and
 - (b) the custodial part of each terrorism sentence that the prisoner is serving.
- (6) Subsection (7) applies where—
 - (a) a non-terrorism sentence is imposed on the prisoner (the “new sentence”), and
 - (b) the prisoner has already served part of the custodial part of a terrorism sentence (the “served part”).
- (7) The prisoner is to be treated as having served—
 - (a) where the served part is less than the custodial part of the new sentence, such part of the custodial part of the new sentence as is equal to the served part,
 - (b) where the served part is equal to the custodial part of the new sentence, the custodial part of the new sentence,
 - (c) where the served part exceeds the custodial part of the new sentence—
 - (i) the custodial part of the new sentence, and
 - (ii) so much of the custodial part of the terrorism sentence as is equal to the amount by which the served part exceeds the custodial part of the new sentence.
- (8) Nothing in this Part requires—

- (a) the Scottish Ministers to release the prisoner in respect of any of the terms of imprisonment unless and until they are required to release the prisoner in respect of each of the other terms of imprisonment,
 - (b) the Scottish Ministers or the Parole Board to consider the prisoner's release in respect of any of the terms of imprisonment unless and until the Ministers are or the Board is required to consider the prisoner's release, or the Ministers are required to release the prisoner, in respect of each of the other terms.
- (9) If the prisoner is released on licence under this Part the prisoner is to be on licence, on and after the release, until the prisoner would, but for the release, have served a term equal in length to the aggregate length of the term of imprisonment of any non-terrorism sentence and the term or, as the case may be, terms of imprisonment for the terrorism sentence or sentences less the period mentioned in subsection (10).
- (10) The period is—
- (a) any period served concurrently in accordance with subsection (4), and
 - (b) if (but for this section) the prisoner would have been released unconditionally under section 1(1) in respect of a non-terrorism sentence, the period equal to one-half of the term of that sentence.
- (11) Where a prisoner to which this section applies is released on licence under this Part (other than a licence under section 3AA or 3AB), the release is to be on a single licence which is to be subject to such conditions as may be specified or required by this Part in relation to all the sentences in respect of which the prisoner has been so released.
- (12) In this section “custodial part”, in relation to a term of imprisonment means a period equal to the part of the term that (but for this section) the prisoner would be required to serve before—
- (a) the Scottish Ministers are required to release the prisoner under this Part, or
 - (b) the Parole Board is first entitled under this Part to make a recommendation that the prisoner be released on licence under this Part.
- (13) In this section—
- (a) references to a non-terrorism sentence include references to two or more such sentences that are treated as a single term by virtue of section 27(5) (whether imposed before, after or both before and after a terrorism sentence), and
 - (b) where subsection (7) applies, the references in that subsection to the “custodial part of the new sentence” include references to the custodial part of the single term.
- (14) This section applies to a prisoner on whom sentence was imposed before the day on which paragraph 52(6) of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021 came into force as it applies to a prisoner on whom sentence was imposed on or after that day.

...

3AA Further powers to release short-term prisoners

- (1) Subject to subsections (2) to (5) below, the Scottish Ministers may release on licence under this section—
- (a) a short-term prisoner serving a sentence of imprisonment for a term of three months or more; ~~or~~

~~(b) a long term prisoner whose release on having served one half of his sentence has been recommended by the Parole Board.~~

- (2) The power in subsection (1) above is not to be exercised before the prisoner has served one quarter of the prisoner's sentence.
- (3) Without prejudice to subsection (2) above, the power in subsection (1) above is to be exercised only during that period of 166 days which ends on the day 14 days before that on which the prisoner will have served one half of his sentence.
- (4) In exercising the power conferred by subsection (1) above, the Scottish Ministers must have regard to considerations of—
 - (a) protecting the public at large;
 - (b) preventing re-offending by the prisoner; and
 - (c) securing the successful re-integration of the prisoner into the community.
- (5) Subsection (1) above 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 supervised release order made under section 209 of that Act;
 - (c) 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 (asp 13);
 - (d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42);
 - (e) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act);
 - (f) [repealed]
 - (g) [repealed].
- (6) The Scottish Ministers may by order do any or all of the following—
 - (a) amend the number of months for the time being specified in subsection (1)(a) above;
 - (b) amend a period for the time being specified in subsection (2) above (which may be done by amending the subsection to describe a period as a particular length of time or a proportion of a prisoner's sentence),
 - (c) amend a number of days for the time being specified in subsection (3) above;
 - (d) amend any paragraph of subsection (5) above, add a further paragraph to that subsection or repeal any of its paragraphs.
- (7) For the avoidance of doubt, nothing in this section requires the Parole Board to make a decision by a particular date about whether to recommend that a long-term prisoner be released having served one-half of the prisoner's sentence.
- (8) This section does not apply in relation to a person to whom section 1AB applies.

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 (2), the Scottish Ministers or, as the case may be, the Parole Board must have regard to considerations of—
 - (a) protecting the public at large,
 - (b) preventing re-offending by the prisoner, and
 - (c) 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,
 - (c) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act).
- (10) 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.

...

3B Review of decisions as to determinate sentences

- (1) This section applies to—
 - (a) a prisoner serving a determinate sentence (apart from a sentence imposed under section 205ZC of the 1995 Act or an extended sentence), and
 - (b) a prisoner serving a sentence imposed under section 205ZC of the 1995 Act or an extended sentence (except such a sentence or extended sentence in relation to which a licence has been revoked under section 17(1) to (1B)).
- (2) A prisoner to whom this section applies is entitled to have a relevant decision in relation to the sentence reviewed by the Parole Board within 12 months from the date of the relevant decision.
- (3) Here, a relevant decision is a decision of the Parole Board not to recommend the release of the prisoner on licence although the prisoner is otherwise eligible for release on licence.
- (4) A prisoner—
 - (a) to whom this section applies, and
 - (b) who has been recalled to prison in respect of the sentence in accordance with the specified provisions (except where the recall relates to a sentence imposed under section 205ZC of the 1995 Act or an extended sentence),is entitled to have the prisoner's case reviewed by the Parole Board within 12 months from the date of the prisoner's return to prison.
- (5) Here, the specified provisions are those in section 17(1) to (1B).
- (6) It is for the Parole Board to fix a date considered by it as appropriate for a review by virtue of subsection (2) or (4).
- (7) Neither subsection (2) nor (4) gives rise to an entitlement to a review if—
 - (a) the prisoner has less of the sentence to serve than the 12 months mentioned in the particular subsection, or
 - (b) the prisoner has received another sentence of imprisonment, and the prisoner is not eligible for release from the other sentence until after the end of the 12 months mentioned in the particular subsection.
- (8) The Parole Board must—
 - (a) in connection with subsection (2), give the prisoner reasons in writing for the relevant decision, and
 - (b) in connection with subsection (2) or (4), inform the prisoner in writing of the entitlement to a review (including as subject to subsections (6) and (7)).

3C Power to release early

- (1) The Scottish Ministers may by regulations provide that a person of a description specified in the regulations is to be released from prison early on a date that is—
 - (a) either—
 - (i) specified in the regulations, or
 - (ii) determined in accordance with provision made in the regulations, and
 - (b) not later than the regulations' latest release date.
- (2) The Scottish Ministers may make regulations under this section only if they are satisfied that making the regulations is necessary and proportionate, in response to the effects an emergency situation is having or is likely to have on a prison or prisons generally, for the purpose of protecting—
 - (a) the security and good order of any prison to which the regulations would relate, or
 - (b) the health, safety or welfare of prisoners, or those working, in any such prison.
- (3) Regulations under this section may—
 - (a) provide that long term prisoners released by virtue of those regulations are released on licence,
 - (b) specify standard conditions which must be included in any licence granted by virtue of paragraph (a).
- (4) A person is not to be released from prison by virtue of regulations under this section if—
 - (a) the person falls within subsection (5), or
 - (b) the governor of the prison within which the person is detained considers that the person would, if released, pose an immediate risk of harm to an identified person.
- (5) A person falls within this subsection if the person is—
 - (a) a life prisoner,
 - (b) an untried prisoner,
 - (c) a terrorist prisoner within the meaning of section 1AB,
 - (d) due to serve a terrorism sentence within the meaning of section 1B but, by virtue of that section, is not yet serving it,
 - (e) liable to removal from the United Kingdom for the purposes of section 9,
 - (f) subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995,
 - (g) serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),
 - (h) the subject of proceedings under the Extradition Act 2003,
 - (i) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003,
 - (j) serving a sentence of imprisonment or detention for an offence—
 - (i) that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, or
 - (ii) under section 1(1) of the Domestic Abuse (Scotland) Act 2018,

- (k) a long-term prisoner, unless that prisoner has been recommended for release by the Parole Board at the date on which the regulations are made.
- (6) Regulations under this section may make different provision for different purposes.
- (7) In this section—

“emergency situation” means—

- (a) the incidence or spread of infection, contamination or the source of contamination which presents or could present significant harm to human health in Scotland (whether from risks originating there or elsewhere),
- (b) an event or situation which has resulted in any prison (or part of a prison) to which the regulations would relate being unusable,
- (c) any other event or situation which is reasonably considered by the Scottish Ministers to place at significant risk—
 - (i) the security and good order of a prison or prisons generally,
 - (ii) the health, safety, and welfare of prisoners, or those working, in any such prison,

“governor” in relation to a prison, means—

- (a) the governor appointed for the prison under section 3(1A) of the Prisons (Scotland) Act 1989, or
- (b) in the case of a contracted out prison, the director appointed for the prison under section 107(1)(a) of the Criminal Justice and Public Order Act 1994,

“latest release date” means a date specified in the regulations in question, which must be a date within the period of 180 days beginning with the day that the regulations are made,

“untried prisoner” means a person who, whether or not in prison for any other reason, is in prison—

- (a) having been committed for examination or trial on a criminal charge,
- (b) by virtue of remand in custody under the Extradition Act 2003,
- (c) by virtue of detention under Schedule 2 or 3 of the Immigration Act 1971, or
- (d) following conviction and awaiting sentence.

3D Parliamentary scrutiny of regulations made under section 3C

- (1) Regulations under section 3C are subject to the affirmative procedure, unless subsection (2) applies to them.
- (2) This subsection applies to regulations if—
 - (a) they do not provide for the release of any person more than 180 days earlier than the Scottish Ministers would otherwise be required to release the person, and
 - (b) the Scottish statutory instrument containing the regulations includes a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.
- (3) Where subsection (2) applies to regulations—

- (a) section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply to the regulations,
 - (b) the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made,
 - (c) the Scottish Ministers must explain why they are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure, and
 - (d) the regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the Scottish statutory instrument containing them is approved by resolution of the Parliament.
- (4) In calculating the period of 28 days mentioned in subsection (3)(d), no account is to be taken of any time during which the Scottish parliament is—
- (a) in recess for more than 4 days, or
 - (b) dissolved.
- (5) Regulations ceasing to have effect by virtue of subsection (3)(d) neither—
- (a) affects anything done under the regulations before they ceased to have effect, nor
 - (b) prevents new regulations being made under section 3C.

3E Effect of early release from prison or young offenders institution by virtue of regulations

- (1) A person described in the first column of the table below who is released from custody by virtue of regulations under section 3C is deemed to have been released by virtue of the provision of this Act mentioned in the corresponding entry in the second column.

<i>Status of person immediately before release</i>	<i>Provision of this Act by virtue of which the person is deemed to have been released</i>
A short-term prisoner	section 1(1)
A long-term prisoner	section 1(3)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) (fine defaulters and persons in contempt of court) and who is, for any purpose, to be treated as a short-term prisoner by virtue of that section	section 1(1), construed as required by section 5(2)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) and who is, for any purpose, to be treated as a long-term prisoner by virtue of that section	section 1(3), construed as required by section 5(2)
(a) A person detained—	section 7(2)
(i) under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on	

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| indictment), or
(ii) in pursuance of an order under section 7(3) (children detained in solemn proceedings) | |
|---|--|

- (2) In this section, “short-term prisoner” and “long-term prisoner” include a person treated, for any purpose, as a short-term prisoner or (as the case may be) a long term prisoner by virtue of section 6(1)(a) or 16(5)(a).

...

5 Fine defaulters and persons in contempt of court

- (1) Subject to sections 1(8) and 2(7B) of this Act and to subsections (2) to (4) below, this Part of this Act (except sections 3AA, 1(3), 16 and 27(5)) applies to a person on whom imprisonment, or as the case may be detention in a young offenders institution, has been imposed—

- (a) under section 219 of the 1995 Act (imprisonment for non-payment of fine or, by virtue of that section, under section 207 of that Act (detention of young offenders)); or
- (b) for contempt of court,

as it applies to a person sentenced to imprisonment, or on whom detention has been imposed, on conviction of an offence; and references in this Part of this Act to prisoners (whether short-term or long-term), or to prison, imprisonment, detention or sentences of imprisonment shall be construed accordingly.

- (2) Subject to section 1B, where section 1(1) or (2) of this Act applies to a person by virtue of subsection (1) above, that section shall be construed as requiring the Secretary of State to release the person unconditionally as soon as, in the case of—

- (a) a short-term prisoner, he has served one-half of his term of imprisonment; or
- (b) a long-term prisoner, he has served two-thirds of his term of imprisonment,

and if during the term in question the prisoner is released on licence under section 3 of this Act and, subsequently, the licence is revoked under section 17(1), (1A) or (1B) thereof, the period during which he is thereby lawfully at large shall be taken, for the purposes of paragraph (a) or (b) above, to be a period of imprisonment served.

(2A) [repealed]

- (3) Notwithstanding subsection (1) above, section 11 of this Act shall not apply to a person to whom this Part of this Act applies by virtue of that subsection but whose release on licence is under section 3 of this Act; and that licence shall (unless revoked) remain in force only until the date on which, by virtue of subsection (2) above, his release would have been required had he not been released earlier.

- (4) Where a person has had imposed on him two or more terms of imprisonment or detention mentioned in subsection (1)(a) or (b) above, sections 1A, 1B and 27(5) of this Act shall apply to those terms as if they were terms of imprisonment.

...

11 Duration of licence

- (1) Where a long-term prisoner is released on licence under this Part of this Act, the licence shall (unless revoked) remain in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed.
- (2) Where a life prisoner is so released, the licence shall (unless revoked) remain in force until his death.
- (3) Without prejudice to any order under section 209 of the 1995 Act, where a short-term prisoner is released on licence—
 - (a) under section 3(1) of this Act, the licence shall (unless revoked) remain in force until—
 - (i) in the case of a person to whom section 1AB applies, the date on which, but for such release, the entire period specified in the prisoner's sentence (reckoned from the commencement of the sentence) has elapsed, and
 - (ii) in any other case, under section 3(1) of this Act, the licence shall (unless revoked) remain in force until the date on which, but for the release under section 3(1), he would have been released under section 1(1) of this Act;
 - (b) [repealed]
- (3ZA) Where a short-term prisoner is released on licence under section 1AB, the licence (unless revoked) remains in force until the entire period specified in the prisoner's sentence (reckoned from the commencement of the sentence) has elapsed.
- (3A) Subsections (1) to (3) above do not apply in relation to release on licence under section 3AA or 3AB of this Act.
- (3B) A licence granted under section 3AA of this Act remains in force (unless it is revoked) until the date on which the released person would, but for his release under that section, fall to be released under section 1 of this Act.
- (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.

12 Conditions in licence

- (1) A person released on licence under this Part of this Act shall, subject to section 12A below, comply with such conditions as may be specified in that licence by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1) above and to the power of the Secretary of State under subsection (3) below to vary or cancel any condition, a licence granted under this Part of this Act shall include a condition requiring that the person subject to it—
 - (a) shall be under the supervision of a relevant officer of such local authority, of an officer of a local probation board appointed for or assigned to such local justice area or (as the case may be) of an officer of a provider of probation services acting in such local justice area, as may be specified in the licence; and
 - (b) shall comply with such requirements as that officer may specify for the purposes of the supervision.
- (2A) In its application to a licence granted under section 3AA of this Act, subsection (2) above is to be construed as if, for the words “shall include” there were substituted may include.
- (3) The Scottish Ministers may under subsection (1) above include on release and from time to time insert, vary or cancel a condition in a licence granted under this Part of this Act; but—
 - (a) in the case of a long-term or life prisoner released by the Scottish Ministers under subsection (1) of section 3 of this Act without consulting the Parole Board, no licence condition shall be inserted, varied or cancelled subsequent to the release except in accordance with the recommendations of the Parole Board; and
 - (b) in the case of any other long-term or life prisoner, no licence condition shall be included on release, or subsequently inserted, varied or cancelled except in accordance with such recommendations.
- (3A) Subsection (3)(b) does not apply in relation to a standard condition in a licence granted by virtue of regulations under section 3C(3).
- (4A) Subsection (3)(b) above does not apply in relation to a condition in a licence granted under section 3AB(1) of this Act; but in exercising their powers under this section in relation to a long-term prisoner released on such a licence the Scottish Ministers must have regard to any recommendations which the Parole Board has made by virtue of section 3AB(2) as to conditions to be included on release.

12ZA Conditions for persons released on licence under section 3C(3)

- (1) Standard conditions specified by the Scottish Ministers in regulations under section 3C(3) remain in force (unless they are cancelled) in relation to a released person until the date on which the released person would, but for release by virtue of the regulations, fall to be released under section 1(3).
- (2) Standard conditions specified by the Scottish Ministers in regulations under section 3C(3) may include a curfew condition complying with section 12AB.

12AA Conditions for persons released on licence under section 3AA or 3AB

- (1) Without prejudice to the generality of section 12(1)—
 - (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.
- (2) Subsection (1) above is without prejudice to any power exercisable under section 12 of this Act.
- (3) In this section, “the standard conditions” means such conditions as may be prescribed as such for the purposes of this section.
- (4) In subsection (3) above, “prescribed” means prescribed by order by the Scottish Ministers.
- (5) Different standard conditions may be so prescribed—
 - (a) for licences granted under section 3AA and for licences granted under section 3AB(1),
 - (b) for different classes of prisoner.
- (6) Subsection (4) of section 3AA of this Act applies in relation to—
 - (a) the exercise of the power of prescription conferred by subsection (3) above in relation to licences granted under section 3AA; and
 - (b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AA of this Act,as it applies in relation to the exercise of the power conferred by subsection (1) of that section.
- (7) Subsection (4) of section 3AB applies in relation to—
 - (a) the exercise of the power of prescription conferred by subsection (3) above in relation to licences granted under section 3AB(1), and
 - (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.

12AB Curfew condition

- (1) For the purposes of this Part, a curfew condition is a condition which—
 - (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and
 - (b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.
- (2) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (1) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

- ~~(3) 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 condition specified by virtue of subsection (1) above as that section applies in relation to the making of, and compliance with, a restriction of liberty order.~~
- ~~(4) A curfew condition is to be monitored remotely and the Scottish Ministers must designate in the licence a person who is to be responsible for the remote monitoring and must, as soon as practicable after they do so, send that person a copy of the condition together with such information as they consider requisite to the fulfilment of the responsibility.~~
- ~~(5) Subject to subsection (6) below, the designated person's responsibility—~~
- ~~(a) commences on that person's receipt of the copy so sent;~~
 - ~~(b) is suspended during any period in which the curfew condition is suspended; and~~
 - ~~(c) ends when the licence is revoked or otherwise ceases to be in force.~~
- ~~(6) The Scottish Ministers may from time to time designate a person who, in place of the person designated under subsection (4) above (or last designated under this subsection), is to be responsible for the remote monitoring; and on the Scottish Ministers amending the licence in respect of the new designation, that subsection and subsection (5) above apply in relation to the person designated under this subsection as they apply in relation to the person replaced.~~
- ~~(7) If a designation under subsection (6) above is made, the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced accordingly.~~

12A Suspension of licence conditions

- (1) Where a prisoner, who has been released on licence under this Part of this Act as respects a sentence of imprisonment—
- (a) continues, by virtue of any enactment or rule of law, to be detained in prison notwithstanding such release; or
 - (b) is, by virtue of any enactment or rule of law, detained in prison subsequent to the date of such release but while the licence remains in force,
- the conditions in the licence, other than those mentioned in subsection (3) below, shall by virtue of such detention be suspended.
- (2) The suspension of the conditions shall have effect for so long as—
- (a) the prisoner is so detained; and
 - (b) the licence remains in force.
- (3) The conditions are any conditions, however expressed, requiring the prisoner—
- (a) to be of good behaviour and to keep the peace; or
 - (b) not to contact a named person or class of persons (or not to do so unless with the approval of the person specified in the licence by virtue of section 12(2)(a) of this Act).
- (4) The Scottish Ministers may by order amend subsection (3) above by—
- (a) adding to the conditions mentioned in that subsection such other condition as they consider appropriate; or

- (b) cancelling or varying a condition for the time being mentioned in that subsection.

12B Certain licences to be replaced by one

- (1) Subsection (2) below applies where a prisoner—
 - (a) has been released on licence under this Part of this Act or under the 1989 Act as respects any sentence of imprisonment (“the original sentence”); and
 - (b) while so released, receives another sentence of imprisonment (whether for life or for a term) (“the subsequent sentence”),and the licence as respects the original sentence has not been revoked.
- (2) Where—
 - (a) this subsection applies; and
 - (b) the prisoner is to be released on licence under this Part of this Act as respects the subsequent sentence,he shall instead be released on a single licence under this Part of this Act as respects both the original sentence and the subsequent sentence.
- (3) The single licence—
 - (a) shall have effect in place of—
 - (i) the licence as respects the original sentence; and
 - (ii) any licence on which the prisoner would, apart from this section, be released as respects the subsequent sentence;
 - (b) shall be subject to such conditions as were in the licence as respects the original sentence immediately before that licence was replaced by the single licence; and
 - (c) shall (unless revoked) remain in force for so long as any licence as respects the original sentence or as respects the subsequent sentence would, apart from this section (and if not revoked), have remained in force.
- (4) References in this section to release on licence do not include release on licence under section 3AA or 3AB of this Act.

...

17 Revocation of licence

- (1) Where—
 - (a) a long-term prisoner has been released on licence under this Part of this Act and is not detained as mentioned in section 12A(1)(a) or (b) of this Act; or
 - (b) a life prisoner has been so released on licence and is not detained as mentioned in section 12A(1)(b) of this Act,the Scottish Ministers—
 - (i) shall, if recommended to do so by the Parole Board; or
 - (ii) may, if revocation and recall are, in their opinion, expedient in the public interest and it is not practicable to await such a recommendation,revoke the licence and recall the prisoner to prison.

- (1A) Where a long-term prisoner or a life prisoner has been released on licence as mentioned in subsection (1) above, but is detained as mentioned in that subsection, the Scottish Ministers—
- (a) shall, if recommended to do so by the Parole Board; or
 - (b) may, if revocation is, in their opinion, expedient in the public interest and it is not practicable to await such a recommendation,
- revoke the licence.
- (1B) Where a short-term prisoner has been released on licence under section 3(1) of this Act, the Scottish Ministers may, whether or not he is detained as mentioned in section 12A(1)(b) of this Act—
- (a) revoke the licence; and
 - (b) where he is not so detained, recall him to prison,
- if they are satisfied that his health or circumstances have so changed that his release on licence is no longer justified.
- (2) The Scottish Ministers shall, on the return to prison of a person whose licence is revoked under subsection (1), (1A) or (1B) above, inform that person of the reasons for the revocation.
- (3) The Scottish Ministers shall refer to the Parole Board the case of a person whose licence is revoked under subsection (1), (1A) or (1B) above.
- (4) Where on a reference under subsection (3) above the Parole Board directs a prisoner's release on licence, the Scottish Ministers must give effect to the direction without undue delay.
- (4AA) Where the Parole Board directs the release of a prisoner under subsection (4) above it may recommend that the Scottish Ministers insert, vary or cancel conditions in the prisoner's licence.
- (4A) Where the case of a prisoner to whom section 3A of this Act applies is referred to the Parole Board under subsection (3) above, subsection (4) of that section shall apply to that prisoner in place of subsection (4) above.
- (5) On the revocation of the licence of any person under the foregoing provisions of this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.
- (6) A licence under this Part of this Act, other than the licence of a life prisoner, shall be revoked by the Secretary of State if all conditions in it have been cancelled; and where a person's licence has been revoked under this subsection the person shall be treated in all respects as if released unconditionally.
- (7) References in this section to release on licence do not include release on licence under section 3AA or 3AB(1) of this Act.

17A Recall of prisoners released under section 3AA or 3AB(1)

- (1) Where a prisoner has been released on licence under section 3AA or 3AB(1), the Scottish Ministers may revoke the licence and recall the person to prison if in their opinion the revocation and recall are expedient in the public interest.
- (2) A person whose licence is revoked under subsection (1) above—

- (a) must, on his return to prison, be informed of the reasons for the revocation and of his right under paragraph (b) below; and
 - (b) may make representations in writing with respect to the revocation to the Scottish Ministers.
- (2A) Such representations must be made by a person—
- (a) within 6 months from when the person is informed as mentioned in subsection (2)(a), or
 - (b) later as allowed by the Parole Board on cause shown by the person.
- (3) The Scottish Ministers are to refer to the Parole Board the case of any person who makes such representations.
- (4) After considering the case the Parole Board may direct, or decline to direct, the Scottish Ministers to cancel the revocation.
- (5) [repealed]
- (5A) Despite the cancellation of the revocation of a person's licence by virtue of subsection (4), the person's recall to prison remains effective.
- (5B) Where a person's recall to prison remains effective under subsection (5A), the Scottish Ministers must consider whether the person should again be released under section 3AA or, as the case may be, 3AB(1).
- (6) On the revocation under this section of a person's licence, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

...

21A Operating protocol for release on licence under section 3AA or 3AB

- (1) The Scottish Ministers must prepare a document that describes—
- (a) the process of risk assessment that is carried out before a prisoner is released on licence under section 3AA or 3AB,
 - (b) the factors taken into account in carrying out such risk assessments,
 - (c) the procedures for monitoring a prisoner while released on licence under section 3AA or 3AB,
 - (d) the process for investigating a suspected failure to comply with a condition included in a licence under section 3AA or 3AB,
 - (e) the process by which a licence under section 3AA or 3AB is revoked and a prisoner recalled to prison as a result.
- (2) The Scottish Ministers must—
- (a) keep the document under review, and
 - (b) revise it to reflect any changes in the things it describes.
- (3) When preparing the first version of the document, or a revised version, the Scottish Ministers must consult—
- (a) the Scottish Courts and Tribunals Service,
 - (b) the Parole Board,

- (c) the chief constable of the Police Service of Scotland,
 - (d) local authorities,
 - (e) the Risk Management Authority.
- (4) Having prepared the first version of the document, or a revised version, the Scottish Ministers must—
- (a) make it publicly available, and
 - (b) lay a copy of it before the Scottish Parliament.
- (5) A copy of the first version of the document must be laid before the Scottish Parliament within 6 months of the Bill for the Management of Offenders (Scotland) Act 2019 receiving Royal Assent.

...

Interpretation

27 Interpretation of Part 1

- (1) In this Part of this Act, except where the context otherwise requires—
- “court” does not include a court-martial;
- ...
- “life prisoner” means a person serving a sentence of imprisonment for life or in respect of whom there has been made an order for lifelong restriction;
 - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
 - “local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000;
 - “long-term prisoner” means a person serving a sentence of imprisonment for a term of four years or more;
 - “order for lifelong restriction” means an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46);
 - “Parole Board” means the Parole Board for Scotland;
 - “local justice area” has the same meaning as in the Courts Act 2003 (c. 39);
 - “previous conviction” means—
 - (a) a previous conviction by a court in any part of the United Kingdom, or
 - (b) if the court considers appropriate, a previous conviction by a court in any member State of the European Union;
 - “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.);
 - “risk management plan” shall be construed in accordance with section 6(1) of the Criminal Justice (Scotland) Act 2003 (asp 7);
 - “short-term prisoner” means a person serving a sentence of imprisonment for a term of less than four years;

“supervised release order” has the meaning given by section 209 of the 1995 Act but includes any order under subsection (2) of the said section 14; and

“supervising officer” has the meaning given by the said section 209.

- (2) The Secretary of State may by order provide—
 - (a) that the references to four years in the definitions of “long-term prisoner” and “short-term prisoner” in subsection (1) above shall be construed as references to such other period as may be specified in the order;
 - (b) that any reference in this Part of this Act to a particular proportion of a prisoner’s sentence shall be construed as a reference to such other proportion of a prisoner’s sentence as may be so specified.
- (3) An order under subsection (2) above may make such transitional provisions as appear to the Secretary of State necessary or expedient in connection with any provision made by the order.
- (4) For the purposes of this Part of this Act so far as relating to licences or persons released on licence, the age of any person at the time when sentence was passed on him shall be deemed to have been that which appears to the Secretary of State to have been his age at that time.
- (4A) For the purposes of this Part of this Act, a term of imprisonment or detention—
 - (a) is wholly concurrent with another such term (or other such terms) if—
 - (i) it commences on the same date as that other term (or terms); and
 - (ii) it expires on the same date as that other term (or terms); and
 - (b) is partly concurrent with another such term (or other such terms) if—
 - (i) it commences on the same date as, and expires on a different date from, that other term (or terms); or
 - (ii) it commences on a different date from, but before the expiry of, that other term (or terms).
- (5) For the purposes of any reference, however expressed, in this Part of this Act to the term of imprisonment or other detention to which a person has been sentenced or which, or any part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall, subject to subsection (5A), be treated as a single term if—
 - (a) the sentences were passed at the same time; or
 - (b) where the sentences were passed at different times, the person has not been released under this Part of this Act at any time during the period beginning with the passing of the first sentence and ending with the passing of the last.
- (5A) Subsection (5) does not apply in relation to a sentence passed on a person—
 - (a) in respect of an offence within section 1AB(2), and
 - (b) on or after the coming into force of paragraph 52(6) of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021.
- (5B) In determining, for the purposes of subsection (5), whether a sentence passed on a person in respect of an offence (other than an offence within section 1AB(2)) is to be treated as part of a single term, any sentence passed on the person in respect of an offence within section 1AB(2) is to be ignored.

- (6) If additional days are awarded in accordance with rules made under section 39(7) of the 1989 Act (and are not remitted in accordance with such rules), the period which the prisoner (or eventual prisoner) must serve before becoming entitled to or eligible for release shall be extended by those additional days.
- (7) Where (but for this subsection) a prisoner would, under any provision of this Act or of the 1995 Act, fall to be released on or by a day which is—
- (a) an excepted day, or
 - (b) subject to subsection (7A), a Thursday,
- the release of the prisoner is to be brought forward to the last preceding day which is a suitable release day.
- (7A) Subsection (7)(b) does not apply where the prisoner fell to be released on or by an excepted day and the release was brought forward to a Thursday by virtue of subsection (7)(a).
- (7B) For the purposes of subsections (7) and (7A)—
- (a) an “excepted day” is a day which is—
 - (i) a Friday,
 - (ii) a Saturday,
 - (iii) a Sunday,
 - (iv) a public holiday,
 - (v) the day before a public holiday,
 - (b) a “suitable release day” is a day which is not—
 - (i) in a case where subsection (7)(a) applies, an excepted day,
 - (ii) in a case where subsection (7)(b) applies, an excepted day or a Thursday.
- (8) For the purposes of this section “public holiday” means any day on which, in the opinion of the Secretary of State, public offices or other facilities likely to be of use to the prisoner in the area in which he is likely to be following his discharge from prison will be closed.