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Margaret Mitchell MSP
Convener
Justice Committee
Scottish Parliament
EH99 1SP

15 March 2019

Dear Margaret,

MANAGEMENT OF OFFENDERS (SCOTLAND) BILL

During the Stage 1 debate, I undertook to provide the Justice Committee with further information about our plans for the creation of an offence of remaining unlawfully at large. I have set out below what the current position is and what the Scottish Government propose to introduce at Stage 2 of the Bill.

I discussed these with representatives of each of the parties at a cross-party meeting on the Bill on 12 March and I wanted to set out some further details for you now. As you will be aware, this is the offence that was suggested by HM Inspectorate of Constabulary in Scotland (HMICS) in their independent report into Home Detention Curfew (HDC) in October 2018.

Unlawfully at Large – current position

It is not currently an offence for an offender to be unlawfully at large or to remain unlawfully at large following their recall to prison or the expiry of their period of temporary release. Once an offender is unlawfully at large, the police or a prison officer can arrest the offender without warrant. Common law powers for the police to enter and search premises would not necessarily extend to entry and search to locate a prisoner who is unlawfully at large but there is a statutory power in section 40A of the 1989 Act to apply for a warrant to arrest an offender who is unlawfully at large.

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“Remaining Unlawfully at Large” – Construction of a new offence

We intend to make it an offence for an offender who is released from prison on licence to remain unlawfully at large following their recall to prison or the expiry of their period of temporary release. The new offence will largely mirror the corresponding offences in England and Wales. A copy of the relevant English and Welsh legislation is attached as an annex for your information.

Unlawfully at large – warrant procedures

We also intend to amend s40A of the 1989 Prisons (Scotland) Act to make clear that only the Police can apply for a warrant under that section to arrest a person who is unlawfully at large. We also intend to clarify that the warrant will include a power to enter and search premises to locate an offender who is unlawfully at large.

Creation of other offences – cutting off a tag/breaching licence conditions

We noted the calls during the Stage 1 debate for the creation of other offences in relation to electronic monitoring. The two offences discussed in particular were—

- the act of cutting off or otherwise tampering with an electronic tag;
- the act of breaching licence conditions in general.

We raised this in the cross-party meeting and asked that parties consider the merits of the remaining unlawfully at large offence in addressing their concerns about the punishment of those who breach their licence conditions and/or abscond. If there were to be alternative or additional offences being considered we discussed the following issues:

- the need to consider the existing powers of the Scottish Ministers (SPS) and the courts in relation to breach of licence conditions and recall to prison;
- the desire to avoid creating unintended hierarchies of conditions;
- the principle of allowing the Scottish Ministers (SPS) and the courts sufficient flexibility to consider the individual circumstances of the case without binding how they respond to what may be a lower level breach; and
- the risk of criminalising minor breaches of licence conditions.

I hope that this information is helpful to the Committee and I am happy to provide any additional details that you feel would be of assistance to you



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Criminal Justice Act 2003 c. 44
Part 12 SENTENCING
Chapter 6 Release, licences, supervision and recall
Recall after release
This version in force from: **April 13, 2015 to present**

[255ZA Offence of remaining unlawfully at large after recall

- (1) A person recalled to prison under section 254 or 255 commits an offence if the person—
- (a) has been notified of the recall orally or in writing, and
 - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- (2) A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) written notice of the recall has been delivered to an appropriate address, and
 - (b) a period specified in the notice has elapsed.
- (3) In subsection (2) “*an appropriate address*” means—
- (a) an address at which, under the person's licence, the person is permitted to reside or stay, or
 - (b) an address nominated, in accordance with the person's licence, for the purposes of this section.
- (4) A person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) the person's licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
 - (b) the person has failed to comply with such an instruction, and
 - (c) the person has not complied with such an instruction for at least 6 months.
- (5) A person who is guilty of an offence under this section is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
- (6) In relation to an offence committed before section 154(1) comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
- (7) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.]¹

Notes

1. Added by Criminal Justice and Courts Act 2015 c. 2 Pt 1 s.12(2) (April 13, 2015)

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Crime (Sentences) Act 1997 c. 43
Part II EFFECT OF CUSTODIAL SENTENCES
Chapter II LIFE SENTENCES
Licences and recall
This version in force from: **April 13, 2015 to present**

[32ZA Offence of remaining unlawfully at large after recall

- (1) A person recalled to prison under section 32 commits an offence if the person—
- (a) has been notified of the recall orally or in writing, and
 - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- (2) A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) written notice of the recall has been delivered to an appropriate address, and
 - (b) a period specified in the notice has elapsed.
- (3) In subsection (2) “*an appropriate address*” means—
- (a) an address at which, under the person's licence, the person is permitted to reside or stay, or
 - (b) an address nominated, in accordance with the person's licence, for the purposes of this section.
- (4) A person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) the person's licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
 - (b) the person has failed to comply with such an instruction, and
 - (c) the person has not complied with such an instruction for at least 6 months.
- (5) A person who is guilty of an offence under this section is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
- (6) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
- (7) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.]¹

Notes

1. Added by Criminal Justice and Courts Act 2015 c. 2 Pt 1 s.12(1) (April 13, 2015)

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Prisoners (Return to Custody) Act 1995 c. 16
This version in force from: **April 13, 2015 to present**

1.— Remaining at large after temporary release.

(1) Subject to subsection (2) below, a person who has been temporarily released in pursuance of rules made under section 47(5) of the Prison Act 1952 (rules for temporary release) is guilty of an offence if—

- (a) without reasonable excuse, he remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released; or
- (b) knowing or believing an order recalling him to have been made and while unlawfully at large by virtue of such an order, he fails, without reasonable excuse, to take all necessary steps for complying as soon as reasonably practicable with that order.

[...] ¹

(2) Subsection (1) above shall not apply in the case of a person temporarily released from a secure training centre [or secure college]².

[(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both), and
- (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).] ³

(4) An offence under this section shall be taken to be committed at the place where the offender was required to be detained immediately before being temporarily released.

(5) A person shall be deemed for the purposes of this section to be unlawfully at large whenever he is deemed to be so at large for the purposes of section 49 of the Prison Act 1952 (which confers powers of arrest).

(6) This section shall not apply where the period of temporary release expired, or the order of recall was made, before the commencement of this section.

[(7) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

(8) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (3)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.] ⁴

Notes

1. Repealed by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 Sch.10 para.7 (December 3, 2012)

2. Words inserted by Criminal Justice and Courts Act 2015 c. 2 Sch.9 para.11 (March 20, 2015)

3. Substituted by Criminal Justice and Courts Act 2015 c. 2 Pt 1 s.13(2) (April 13, 2015: substitution has effect as SI 2015/778 subject to transitional provisions specified in 2015 c.2 s.13(4))

4. Added by Criminal Justice and Courts Act 2015 c. 2 Pt 1 s.13(3) (April 13, 2015)

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