

Management of Offenders (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 27-EN), a Financial Memorandum (SP Bill 27-FM), a Policy
Memorandum (SP Bill 27-PM) and statements on legislative competence (SP Bill 27-LC).**

Management of Offenders (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for electronic monitoring of offenders and as to certain other restrictive measures imposable on offenders; to make provision about periods and processes as regards disclosure of convictions by offenders; and to make provision relating to the organisation and functions of the Parole Board for Scotland.

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PART 1

ELECTRONIC MONITORING ETC.

Monitoring in criminal proceedings

1 Requirement when disposing of case

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(1) When disposing of a case in respect of a person (“offender”) wholly or partly as mentioned in the list in section 3(2), a court may additionally require the offender to submit to monitoring by means of an approved device.

(2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).

15

(3) A requirement under subsection (1) means that the offender—

(a) is to be monitored by a person designated under section 11(1)(a), and

(b) is bound by the obligations set out in section 12(2) and (3).

20

(4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the offender—

(a) is complying with the specified aspects of the disposal, and

(b) is fulfilling the obligations set out in section 12(2) and (3).

(5) The court must—

(a) explain to the offender the purpose mentioned in subsection (4), and

(b) warn the offender of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).

25

(6) A requirement under subsection (1) is to be made by means of an order of the court (the form of which is to be prescribed by Act of Adjournal).

- (7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the court when disposing of the offender's case.

2 Particular rules regarding disposals

- (1) If an offender's agreement to a disposal mentioned in a particular paragraph of section 3(2) is necessary before the offender can become subject to the disposal, the offender's agreement to becoming subject to a requirement under section 1(1) is necessary before the requirement can be made in addition to the disposal.
- (2) A requirement made under section 1(1) lasts for as long as the offender is subject to the associated disposal, but a court which makes a requirement under section 1(1) may vary or revoke the requirement in conjunction with the variation or revocation by it under an enactment of the associated disposal.
- (3) In subsection (1), the reference to agreement to a disposal includes agreement, consent or willingness to becoming subject to the disposal.

3 List of the relevant disposals

- (1) Subsection (2) contains the list referred to in section 1(1).
- (2) This is the list—
- (a) making an order under, or varying an order made under, section 245A of the Criminal Procedure (Scotland) Act 1995 (in that Act called a restriction of liberty order),
 - (b) imposing a requirement restricting movements by virtue of, or varying such a requirement imposed by virtue of, section 234CA(1) of the Criminal Procedure (Scotland) Act 1995 (relating to a drug treatment and testing order within the meaning given by section 234B(2) of that Act),
 - (c) imposing a restricted movement requirement by virtue of, or varying such a requirement imposed by virtue of, section 227A(2)(j) of the Criminal Procedure (Scotland) Act 1995 (relating to a community payback order under section 227A(1) of that Act),
 - (d) making an order under, or varying or renewing an order made under, section 104, 105 or 109 of the Sexual Offences Act 2003 (relating to sexual offences prevention),
 - (e) making an order under, or varying or renewing an order made under, section 11, 12 or 21 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (relating to sexual risk or harm).

4 More about the list of disposals

- (1) The Scottish Ministers may by regulations modify the list in section 3(2) so as to—
- (a) add, alter or remove an entry,
 - (b) limit an entry so as to specify a certain aspect of what a court may do.
- (2) An entry included in section 3(2) may relate to anything, at any stage in criminal proceedings—
- (a) which can be made or imposed by a court with respect to an offender, or

(b) to which an offender can otherwise be made subject by a court,
except something under which an offender is to be detained in custody.

(3) A general or specific reference to a disposal mentioned in section 3(2) is, in relation to a requirement under section 1(1), to be construed as being to the relevant order or other measure so far as concerning—

(a) an offender's whereabouts in some way, or

(b) an offender's consumption, taking or ingesting of alcohol, drugs or other substances.

Monitoring on release on parole

5 Requirement with licence conditions

(1) When imposing any conditions of a sort mentioned in section 7(1) in connection with release of a person ("offender") on licence, the Scottish Ministers may additionally require the offender to submit to monitoring by means of an approved device.

(2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).

(3) A requirement under subsection (1) means that the offender—

(a) is to be monitored by a person designated under section 11(2)(a), and

(b) is bound by the obligations set out in section 12(2) and (3).

(4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the offender—

(a) is complying with the specified aspects of the conditions, and

(b) is fulfilling the obligations set out in section 12(2) and (3).

(5) The Scottish Ministers must—

(a) explain to the offender the purpose mentioned in subsection (4), and

(b) warn the offender of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).

(6) The terms of a requirement made under subsection (1) are to be stated in the licence on which the offender is released (with the licence being as referred to in the enactment under which the offender is released).

(7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the Scottish Ministers when imposing the conditions.

6 Particular rules regarding conditions

(1) Where a recommendation of the Parole Board for Scotland is necessary before any conditions mentioned in a particular paragraph of section 7(1) can be imposed on an offender, the Parole Board's recommendation that there should be a requirement under section 5(1) in the offender's case is necessary before the requirement can be made in addition to the conditions.

- (2) A requirement made under section 5(1) lasts for as long as the offender is subject to the associated conditions, but the Scottish Ministers may vary or revoke the requirement in conjunction with the variation or revocation by them under an enactment of the associated conditions.

7 List of the relevant conditions

- (1) These are the conditions referred to in section 5(1)—
- (a) a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which relates to release on licence under section 3AA of that Act),
 - (b) conditions under section 12(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (on release on licence under Part 1 of that Act (where sentencing is on or after 1 October 1993)),
 - (c) conditions under section 22(6) of the Prisons (Scotland) Act 1989 (on release on licence regarding certain sentences (where sentencing is before 1 October 1993)),
 - (d) conditions relating to temporary release in accordance with rules made under section 39 of the Prisons (Scotland) Act 1989 (known as prison rules),
 - (e) conditions relating to release from imprisonment or detention which arise on the basis prescribed in regulations made by the Scottish Ministers.
- (2) A general or specific reference to any conditions mentioned in subsection (1) is, in relation to a requirement under section 5(1), to be construed as being to the relevant conditions so far as concerning—
- (a) an offender’s whereabouts in some way, or
 - (b) an offender’s consumption, taking or ingesting of alcohol, drugs or other substances.

Devices, use and information

8 Approved devices to be prescribed

- (1) An approved device, in relation to a requirement under—
- (a) section 1(1), or
 - (b) section 5(1),
- is an electronic device of a type prescribed in regulations made by the Scottish Ministers.
- (2) A type of device that may be prescribed in regulations under subsection (1) includes—
- (a) a device for monitoring an offender’s whereabouts in some manner, or
 - (b) a device for detecting whether an offender has consumed, taken or ingested alcohol, drugs or other substances.

9 Use of devices and information

- (1) The Scottish Ministers may by regulations make provision about—
- (a) the use of an approved device in connection with a requirement made under—

- (i) section 1(1), or
 - (ii) section 5(1),
 - (b) the use of information obtained through monitoring of an offender by means of such a device for the purpose mentioned in section 1(4) or 5(4).
- 5 (2) Subsections (3) to (5) give examples of what regulations under subsection (1) may do.
- (3) Regulations may set out how a device is to be—
 - (a) worn by an offender, or
 - (b) used in some other way by an offender.
 - (4) Regulations may provide for—

10 (a) circumstances in which a particular type of device is, or is not, to be used,

 - (b) what information may, or may not, be gathered—
 - (i) at particular times,
 - (ii) in particular circumstances.
 - (5) Regulations may—

15 (a) allow or restrict the use or sharing of information obtained through monitoring,

 - (b) fix periods—
 - (i) during which such information may be retained,
 - (ii) after which such information must be destroyed.

Arrangements and designation

20 **10 Arrangements for monitoring system**

- (1) The Scottish Ministers must make contractual or other arrangements to secure the monitoring of an offender—
 - (a) by means of an approved device, and
 - (b) in connection with a requirement made under—

25 (i) section 1(1), or

 - (ii) section 5(1).
- (2) The Scottish Ministers must keep the Scottish Courts and Tribunals Service informed of the identity of whoever is eligible for designation by a court under section 11(1)(a) (including by reference to eligibility in all or some circumstances).
- 30 (3) Different arrangements may be made under subsection (1) for different purposes (including arrangements of temporary or local effect).

11 Designation of person to do monitoring

- (1) When a requirement is made under section 1(1), the court must—

35 (a) designate a person to be responsible for monitoring the offender by means of an approved device for the purpose mentioned in section 1(4),

 - (b) notify the offender of the fact of designation of the person,

- (c) send to the designated person—
- (i) intimation of the fact of designation,
 - (ii) the date on which monitoring of the offender is to begin,
 - (iii) details of the requirement and the specified aspects of the associated disposal, and
 - (iv) any further information that it considers appropriate.
- 5
- (2) When a requirement is made under section 5(1), the Scottish Ministers must—
- (a) designate a person to be responsible for monitoring the offender by means of an approved device for the purpose mentioned in section 5(4),
 - (b) notify the offender of the fact of designation of the person,
 - (c) send to the designated person—
- (i) intimation of the fact of designation,
 - (ii) the date on which monitoring of the offender is to begin,
 - (iii) details of the requirement and the specified aspects of the associated conditions, and
 - (iv) any further information that they consider appropriate.
- 10
- (3) The designated person's responsibility for monitoring the offender—
- (a) is suspended if the disposal is or (as the case may be) the conditions are suspended,
 - (b) ends—
- (i) when the disposal ceases or (as the case may be) the conditions cease to have effect, or
 - (ii) if someone else is designated under subsection (1)(a) or (as the case may be) (2)(a) as a replacement.
- 15
- (4) If the designated person can no longer discharge the person's responsibility for monitoring the offender—
- (a) someone else must be designated under subsection (1)(a) or (as the case may be) (2)(a) as a replacement, and
 - (b) subsection (1)(b) and (c) or (as the case may be) (2)(b) and (c) applies again.
- 20
- (5) See section 10(2) for who is eligible for designation by the court under subsection (1)(a).
- 25
- (6) In subsections (1) to (4)—
- (a) a reference to the designated person is to whoever is for the time being designated under subsection (1)(a) or (as the case may be) (2)(a),
 - (b) a reference to the specified aspects of the disposal or the conditions in question has the same meaning as is given by section 1(7) or (as the case may be) 5(7).
- 30
- 35

Obligations and compliance

12 Standard obligations put on offenders

- (1) The obligations in subsections (2) and (3) are set out in relation to a requirement made under—
- 5 (a) section 1(1), or
 (b) section 5(1).
- (2) The offender must obey instructions given by the designated person on how an approved device allocated to the offender is to be—
- 10 (a) worn by the offender, or
 (b) used in some other way by the offender,
- so as to facilitate monitoring of the offender by means of the approved device for the purpose mentioned in section 1(4) or (as the case may be) 5(4).
- (3) The offender must not—
- 15 (a) tamper with the approved device, or cause or permit someone else to tamper with the device, or
 (b) intentionally damage or destroy the approved device, or cause or permit someone else so to damage or destroy the device.
- (4) In subsection (2), the reference to the designated person is to whoever is for the time being designated under section 11(1)(a) or (as the case may be) (2)(a).

13 Deemed breach of disposal or conditions

- (1) In the operation of a disposal mentioned in section 3(2)—
- 20 (a) an additional requirement made under section 1(1) is to be regarded as if part of the disposal,
 (b) the disposal is therefore to be taken as breached with respect to the requirement if the offender contravenes section 12(2) or (3).
- 25 (2) Any provisions of an enactment as to breach of the disposal are engaged by virtue of subsection (1) accordingly (so far as relevant in the case).
- (3) No offence constituted by reason of breaching the disposal (where there is such an offence) can be committed by virtue of subsection (1).
- 30 (4) In the operation of any conditions mentioned in section 7(1)—
- (a) an additional requirement made under section 5(1) is to be regarded as if part of the conditions,
 (b) the conditions are therefore to be taken as breached with respect to the requirement if the offender contravenes section 12(2) or (3).
- 35 (5) Any provisions of an enactment—
- (a) as to breach of the conditions or the licence in which they are contained, or
 (b) as to recall to a prison or another place in consequence of breach of the conditions or the licence in which they are contained,
- are engaged by virtue of subsection (4) accordingly (so far as relevant in the case).

- (6) If—
- (a) a requirement under section 5(1) is made in addition to the condition to which section 7(1)(a) refers, and
 - (b) other than as a result of contravention of section 12(2) or (3), the offender cannot be monitored as envisaged by the requirement,
- section 17A(1)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is engaged in the same way as that section would be if the offender were in breach of the condition to which section 7(1)(a) refers.
- (7) In subsections (2) and (5), the references to provisions relating to breach of something include provisions relating to variation or revocation of it in consequence of breach of it.

14 Documentary evidence at breach hearings

- (1) As regards a requirement made under section 1(1), subsection (3) applies in relation to a hearing on the issue of whether the offender has—
- (a) contravened the specified aspects of the associated disposal, or
 - (b) contravened section 12(2) or (3).
- (2) As regards a requirement made under section 5(1), subsection (3) applies in relation to a hearing on the issue of whether the offender has—
- (a) contravened the specified aspects of the associated conditions, or
 - (b) contravened section 12(2) or (3).
- (3) Evidence may be given by way of a document bearing to comprise (both)—
- (a) a statement—
 - (i) produced by an approved device (or any apparatus linked to the device), and
 - (ii) showing information relevant to the issue, and
 - (b) a certificate signed by or on behalf of the designated person that the information is accurate.
- (4) This includes information about—
- (a) the offender's whereabouts at a particular time, or
 - (b) the presence of alcohol, drugs or other substances in the offender's body at a particular time.
- (5) The document—
- (a) is sufficient evidence of everything contained in it,
 - (b) is admissible only if a copy of it is served on the offender prior to the start of the hearing concerned.
- (6) In subsections (1) to (3)—
- (a) a reference to a hearing includes a court or administrative hearing,
 - (b) a reference to the specified aspects of the disposal or the conditions in question has the same meaning as is given by section 1(7) or (as the case may be) 5(7),

- (c) a reference to the designated person is to someone who at the time of the signing of the certificate is designated under section 11(1)(a) or (as the case may be) (2)(a).

SSI procedure and schedule

5 **15 Procedure for making regulations**

- (1) Regulations under this Part may—
- (a) make different provision for different purposes (including provision of temporary or local effect),
- 10 (b) include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under this Part are subject to the negative procedure.

16 Additional and consequential provisions

- (1) Part 1 of schedule 1 amends provisions relating to particular restrictive measures imposable on offenders.
- 15 (2) Part 2 of schedule 1 contains consequential amendments in relation to electronic monitoring of offenders.

PART 2

DISCLOSURE OF CONVICTIONS

Rules relating to disclosure

20 **17 Effect of expiry of disclosure periods**

- (1) The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) is amended as follows.
- (2) In section 1, for subsection (1) there is substituted—
- “(1) Subsections (1A) and (1B) apply where—
- (a) an individual has at any time been convicted of any offence, and
- 25 (b) an excluded sentence was not imposed on the individual in respect of the conviction.
- (1A) After the expiry of the disclosure period applicable to the conviction in accordance with section 6 (including any extension under subsection (4) of that section)—
- 30 (a) the individual is, for the purposes of this Act, to be treated as a protected person in respect of the conviction, and
- (b) the conviction is, for the purposes of this Act, to be treated as spent.
- (1B) But where the disclosure period so applicable expired before commencement of this Act, the individual and conviction are to be treated as mentioned in
- 35 subsection (1A) from the date of commencement of this Act.
- (1C) Subsections (1) to (1B) are subject to subsections (2), (5) and (6).”.

18 Sentences excluded from becoming spent

- (1) The 1974 Act is amended as follows.
- (2) In section 5, in subsection (1)—
 - (a) in paragraph (b)—
 - (i) the words “, youth custody” are repealed,
 - (ii) for “thirty” there is substituted “48”,
 - (b) in paragraph (d)—
 - (i) the words from “under” in the first place where it occurs to “or” in the third place where it occurs are repealed,
 - (ii) for the words “1975” in the first place where they occur there is substituted “1995”,
 - (iii) the words “section 91 of the said Act of 2000 or” are repealed,
 - (iv) the words from “or under section 206” to the end are repealed,
 - (c) after paragraph (d) there is inserted—
 - (da) a sentence of detention for a term exceeding 48 months passed under section 207 (detention of young offenders) or 208 (detention of children convicted on indictment) of the Criminal Procedure (Scotland) Act 1995;”.

19 Disclosure periods for particular sentences

- (1) The 1974 Act is amended as follows.
- (2) In section 5, for subsections (2) to (10) there is substituted—
 - “(2A) For the purposes of this Act, the disclosure period applicable to a sentence specified in the first column of Table A is—
 - (a) where the sentence was imposed on a person who was 18 years of age or older at the date of the conviction in respect of which the sentence was imposed, the period specified in the second column of Table A in relation to that sentence,
 - (b) where the sentence was imposed on a person who was under 18 years of age at the date of the conviction in respect of which the sentence was imposed, the period specified in the third column of Table A in relation to that sentence.
 - (2B) For the purposes of subsection (2A), the disclosure period applicable to a sentence is to be reckoned from the date of the conviction in respect of which the sentence was imposed.
 - (2C) Subsection (2A) applies to Table B as it applies to Table A.
 - (2D) This subsection applies to a sentence which is—
 - (a) not dealt with in—
 - (i) subsections (1) to (2C) (including in Table A or Table B), or
 - (ii) any of sections 5C to 5J,
 - (b) imposed on a person in respect of a conviction, and

- (c) given by way of an order—
 - (i) imposing on the person any disqualification, disability, prohibition, requirement or restriction, or
 - (ii) which is otherwise intended to regulate the person's behaviour.

5 (2E) The disclosure period applicable to a sentence to which subsection (2D) applies is—

- (a) in the case of an order—
 - 10 (i) containing provision enabling the date on which the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) ceases or ceased to have effect to be determined, or
 - 15 (ii) containing provision for the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) to have effect for an indefinite period (including the lifetime of a person) or without limit of time,

the period beginning with the date of the conviction and ending on the date on which the disqualification, disability, prohibition, requirement, restriction or regulation (as the case may be) ceases or ceased to have effect,

- 20 (b) in the case of any other order, a period of 2 years beginning with the date of the conviction.

(2F) For the purposes of this section—

- (a) consecutive terms of—
 - 25 (i) imprisonment or other custodial sentences, or
 - (ii) detention under section 209 of the Armed Forces Act 2006,are to be treated as a single term,
- (b) terms of imprisonment, or of detention, which are—
 - 30 (i) wholly or partly concurrent, and
 - (ii) imposed in respect of offences of which a person was convicted in the same proceedings,are to be treated as a single term,
- (c) no account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed, and
- 35 (d) a sentence imposed by a court outwith Scotland is to be treated as the sentence mentioned—
 - (i) in this section,
 - (ii) in Table A or Table B, or
 - (iii) in any of sections 5C to 5J,40 to which it most closely corresponds.

(2G) References in this section, Table A, sections 5D to 5H and section 5J to a sentence provided for in a particular enactment include references to any sentence of a kind superseded (whether directly or indirectly) by such a sentence.”.

5 (3) In subsection (11)—

(a) in paragraph (a), for “(8) above” there is substituted “(2E), in Table A or Table B or in any of sections 5C, 5D, 5H and 5I;”,

(b) in paragraph (b), for “(2)(a) above” there is substituted “(2A)”.

(4) After subsection (11) there is inserted—

10 “(12) In this section—

“Table A” means the table in section 5A,

“Table B” means the table in section 5B,

“custodial sentence” means—

(a) a sentence of imprisonment,

15 (b) a sentence of detention under section 44, 207 or 208 of the Criminal Procedure (Scotland) Act 1995,

(c) a sentence of Borstal training,

(d) a sentence of corrective training,

20 “sentence of imprisonment” includes a sentence of penal servitude (and references to terms of imprisonment are to be read accordingly).”.

20 Table A – disclosure periods: ordinary cases

(1) The 1974 Act is amended as follows.

(2) After section 5 there is inserted—

“5A Table A – disclosure periods: ordinary cases

25 (1) This is Table A as referred to in section 5(2A)—

TABLE A
Disclosure periods: ordinary cases

<i>Sentence</i>	<i>Disclosure period – aged 18 or over</i>	<i>Disclosure period – aged under 18</i>
30 A custodial sentence not exceeding 12 months	The term of the sentence plus 2 years	The term of the sentence plus 1 year
A custodial sentence exceeding 12 months but not exceeding 30 months	The term of the sentence plus 4 years	The term of the sentence plus 2 years
35 A custodial sentence exceeding 30 months but not exceeding 48 months	The term of the sentence plus 6 years	The term of the sentence plus 3 years
A fine	12 months	6 months

A compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995	12 months	6 months
An order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years
Any sentence— (a) not mentioned above in this Table or in Table B, or (b) other than one to which section 5(2D), or any of sections 5C to 5J, applies	12 months	6 months

(2) In Table A, “custodial sentence” and “Table B” have the same meanings as given by section 5(12).”.

21 Table B – disclosure periods: service sentences

(1) The 1974 Act is amended as follows.

(2) After section 5A (inserted by section 20) there is inserted—

“5B Table B – disclosure periods: service disciplinary sentences

This is Table B as referred to in section 5(2C)—

TABLE B
Disclosure periods: service disciplinary sentences

<i>Sentence</i>	<i>Disclosure period – aged 18 or over</i>	<i>Disclosure period – aged under 18</i>
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty’s service	10 years	5 years
A sentence of dismissal from Her Majesty’s service	7 years	3½ years
Any sentence of service detention within the meaning of the Armed Forces Act 2006, or any sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings	5 years	2½ years
A custodial order under section 71AA of the Army Act 1955 or the Air Force Act 1955, or under section 43AA of the Naval Discipline	7 years	7 years

	Act 1957, where the maximum period of detention specified in the order is more than 6 months		
5	A custodial order under schedule 5A of the Army Act 1955 or the Air Force Act 1955, or under schedule 4A of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is more than 6 months	7 years	7 years
10	A sentence of detention for a term exceeding 6 months but not exceeding 30 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006	5 years	5 years
15			
20	A sentence of detention for a term not exceeding 6 months passed under section 71A(4) of the Army Act 1955 or Air Force Act 1955, section 43A(4) of the Naval Discipline Act 1957 or section 209 of the Armed Forces Act 2006	3 years	3 years
25	A custodial order under any of the schedules of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 mentioned above, where the maximum period of detention specified in the order is 6 months or less	3 years	3 years
30	A custodial order under section 71AA of the Army Act 1955 or Air Force Act 1955, or section 43AA of the Naval Discipline Act 1957, where the maximum period of detention specified in the order is 6 months or less	3 years	3 years”

22 Disclosure period: caution for good behaviour

- (1) The 1974 Act is amended as follows.

(2) After section 5B (inserted by section 21) there is inserted—

“5C Disclosure period: caution for good behaviour

(1) Subsection (2) applies where, in respect of a conviction, a person was ordained to find caution for good behaviour in respect of a period (“the caution period”).

(2) The disclosure period applicable to the sentence is—

(a) where the person was 18 years of age or older at the date of the conviction, whichever is the longer of—

- (i) 6 months from the date of the conviction,
- (ii) the length of the caution period,

(b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—

- (i) 3 months from the date of the conviction,
- (ii) the length of the caution period.”.

23 Disclosure period: particular court orders

(1) The 1974 Act is amended as follows.

(2) After section 5C (inserted by section 22) there is inserted—

“5D Disclosure period: particular court orders

(1) Where, in respect of a conviction, an order listed in subsection (2) was imposed on a person, the disclosure period applicable to the sentence is—

(a) where the person was 18 years of age or older at the date of the conviction, whichever is the longer of—

- (i) one year from the date of the conviction,
- (ii) a period beginning with that date and ending when the order ceases to have effect,

(b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—

- (i) six months from the date of the conviction,
- (ii) a period beginning with that date and ending when the order ceases to have effect.

(2) The orders are—

- (a) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,
- (b) a drug treatment and testing order under section 234B of that Act,
- (c) a restriction of liberty order under section 245A of that Act.

(3) In subsection (1)(a)(ii) and (b)(ii), the reference to when the order ceases to have effect is—

(a) in the case of a community payback order, a reference to when the requirement imposed by the order ceases or ceased to have effect or otherwise requires or required to be complied with,

- (b) in the case of a drug treatment and testing order or restriction of liberty order, a reference to when the order ceases or ceased to have effect.”.

24 Disclosure period: adjournment or deferral

- (1) The 1974 Act is amended as follows.
- (2) After section 5D (inserted by section 23) there is inserted—

“5E Disclosure period: adjournment or deferral

- (1) Where, after convicting a person, a court adjourns a case under section 201 of the Criminal Procedure (Scotland) Act 1995 or defers sentence under section 202 of that Act, the adjournment or deferral is to be treated as a sentence for the purposes of this Act.
- (2) The disclosure period applicable to a sentence mentioned in subsection (1) is a period beginning with the date of the conviction and ending on the date a relevant sentence in respect of the conviction is imposed on the person.
- (3) In subsection (2), a “relevant sentence” is any sentence other than an adjournment or deferral (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.”.

25 Disclosure period: mental health orders

- (1) The 1974 Act is amended as follows.
- (2) After section 5E (inserted by section 24) there is inserted—

“5F Disclosure period for certain mental health orders

- (1) Subsection (2) applies where, further to the making of a compulsion order as mentioned in subsection (1) of section 59 of the Criminal Procedure (Scotland) Act 1995 in relation to a person, a restriction order under that section is made in respect of the person.
- (2) The disclosure period applicable to the restriction order is a period beginning with the date of the person’s conviction in respect of which the compulsion order was made and ending on the date the restriction order ceases or ceased to have effect.
- (3) Subsection (4) applies where, by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995—
- (a) a compulsion order is made under subsection (2)(a) of that section in relation to a person authorising the person’s detention in a hospital, and
- (b) a restriction order under subsection (2)(b) of that section is, in addition to the compulsion order, made in respect of the person.
- (4) The disclosure period applicable to the restriction order is a period beginning with the date of the person’s conviction in respect of which the compulsion order was made and ending on the date the restriction order ceases or ceased to have effect.
- (5) Where, in respect of a conviction, an order listed in subsection (6) was made in relation to a person, the disclosure period applicable to the sentence is a period beginning with the date of the conviction and ending on the date a relevant sentence in respect of the conviction is imposed on the person.

- (6) The orders are—
- (a) an assessment order under section 52D or 52E of the Criminal Procedure (Scotland) Act 1995,
 - (b) a treatment order under section 52M or 52N of that Act, or
 - (c) an interim compulsion order—
 - (i) under section 53 of that Act, or
 - (ii) if arising by virtue of subsection (1)(b) of section 57 of that Act, under subsection (2)(bb) of that section.
- (7) In subsection (5), a “relevant sentence” is any sentence other than an order mentioned in subsection (6) (or, where applicable, a further such order).”.

26 Disclosure period: compulsion orders

- (1) The 1974 Act is amended as follows.
- (2) After section 5F (inserted by section 25) there is inserted—

“5G Disclosure period: compulsion orders

- (1) The disclosure period applicable to a compulsion order—
- (a) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(a) of that section, or
 - (b) under section 57A of that Act,
- is a period beginning with the date of the conviction in respect of which the order was made and ending on the date the order ceases or ceased to have effect.
- (2) Subsection (1) is subject to sections 164A and 167A of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (3) Where the Mental Health Tribunal for Scotland makes a determination under section 167A(3) of that Act in relation to a person—
- (a) the person is, with effect from the date on which the disclosure period applicable to the compulsion order ends by virtue of that section, to be treated for the purposes of this Act as a protected person, and
 - (b) the person’s conviction in respect of which the compulsion order was made is for those purposes to be treated as spent.
- (4) Subsection (3) is subject to section 6(2).”.

- (3) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

- (4) After section 164 there is inserted—

“164A Application to end disclosure period for compulsion order

- (1) This section applies where a patient is subject to a relevant compulsion order.
- (2) Either of the persons mentioned in subsection (3) may make an application under this section to the Tribunal for a determination under section 167A that the disclosure period applicable to the compulsion order is to come to an end.

- (3) The persons referred to in subsection (2) are—
- (a) the patient, and
 - (b) the patient’s named person.
- (4) An application under this section may not be made until the expiry of the period of 12 months beginning with the day on which the order is made (or is deemed under section 198(2) to be made).
- (5) Where an application under this section relating to a compulsion order has already been refused by the Tribunal, a further such application relating to the order may not be made until the expiry of the period of 12 months beginning with the date of such refusal (or, where applicable, the date of the most recent such refusal).
- (6) An application under this section must be accompanied by such documents as may be prescribed by regulations.”.

(5) After section 167 there is inserted—

“167A Duties of Tribunal on application under section 164A

- (1) This section applies where an application is made under section 164A in respect of a patient.
- (2) If the Tribunal is satisfied that, without the provision of medical treatment of the kind mentioned in section 139(4)(b) to the patient, there would be a significant risk to the safety of other persons, it must refuse the application.
- (3) If the Tribunal is not satisfied as mentioned in subsection (2), it must determine that the disclosure period applicable to the compulsion order ends with immediate effect.
- (4) Before refusing an application under subsection (2) or making a determination under subsection (3), the Tribunal must afford the persons mentioned in subsection (5) the opportunity—
 - (a) of making representations (whether orally or in writing), and
 - (b) of leading, or producing, evidence.
- (5) Those persons are—
 - (a) the patient,
 - (b) the patient’s named person,
 - (c) any guardian of the patient,
 - (d) any welfare attorney of the patient,
 - (e) the mental health officer,
 - (f) the patient’s responsible medical officer,
 - (g) the patient’s primary carer,
 - (h) any curator ad litem appointed in respect of the patient by the Tribunal, and
 - (i) any other person appearing to the Tribunal to have an interest in the application.

- (6) In this section and section 164A—
- (a) “disclosure period”, in relation to a compulsion order, is to be construed in accordance with the Rehabilitation of Offenders Act 1974,
 - (b) references to the disclosure period applicable to a compulsion order are to be construed in accordance with section 5G(1) of that Act.

167B Duty to notify outcome of applications under section 164A

- (1) The Scottish Ministers may require the Tribunal to provide the information mentioned in subsection (3) in respect of a person.
 - (2) Where a requirement is made under subsection (1), the Tribunal must, before the expiry of the period of 15 working days beginning with the day on which the requirement is made, provide the Scottish Ministers with the information.
 - (3) The information is whether a refusal under subsection (2) of section 167A has been given, or a determination under subsection (3) of that section has been made, in relation to the person to whom the request relates.
 - (4) In subsection (2), “working day” has the meaning given by section 47(8).”.
- (6) In section 257A (ability to act if no named person), in subsection (3), after “164(2)” there is inserted “164A,”.

27 Disclosure period: juvenile offenders

- (1) The 1974 Act is amended as follows.
- (2) After section 5G (inserted by section 26) there is inserted—

“5H Disclosure period: orders relating to juvenile offenders

- (1) Where, in respect of a conviction, an order mentioned in subsection (2) was imposed on a person, the disclosure period applicable to the sentence is 1 year from the date of the conviction.
- (2) The order is an order under section 61 of the Children and Young Persons (Scotland) Act 1937—
 - (a) to send the person to an approved school, or
 - (b) to commit the person to the care of a fit person.”.

28 Disclosure period: service discipline

- (1) The 1974 Act is amended as follows.
- (2) After section 5H (inserted by section 27) there is inserted—

“5I Disclosure period: service disciplinary orders

- (1) Where, in respect of a conviction, a service community order, or an overseas community order, under the Armed Forces Act 2006 was made, the disclosure period applicable to the sentence is—
 - (a) where the person was 18 years of age or older at the date of the conviction, 5 years from the date of the conviction,

(b) where the person was under 18 years of age at the date of the conviction, whichever is the longer of—

(i) 2½ years from the date of the conviction,

(ii) a period beginning with that date and ending when the order in question ceases or ceased to have effect.

(2) Where, in respect of a conviction, a community supervision order under schedule 5A of the Army Act 1955 or the Air Force Act 1955 or under schedule 4A of the Naval Discipline Act 1957 was imposed, the disclosure period applicable to the sentence is whichever is the longer of—

(a) 1 year from the date of the conviction,

(b) a period beginning with that date and ending when the order ceases or ceased to have effect.

(3) Where, in respect of a conviction, an order under section 211 of the Armed Forces Act 2006 was made in respect of a person, the disclosure period applicable to the sentence is—

(a) where the person was 15 years of age or older at the date of the conviction—

(i) 5 years if the order was for a term exceeding 6 months,

(ii) 3½ years if the order was for a term of 6 months or less,

(b) where the person was under 15 years of age at the date of the conviction, a period beginning with that date and ending 1 year after the date on which the order ceases to have effect.”.

29 Sentences to which no disclosure period applies

(1) The 1974 Act is amended as follows.

(2) After section 5I (inserted by section 28) there is inserted—

“5J Sentences to which no disclosure period applies

(1) There is no disclosure period applicable to—

(a) an order discharging a person absolutely for an offence,

(b) the dismissal of a person with an admonition,

(c) a guardianship order—

(i) if arising by virtue of subsection (1)(b) of section 57 of the Criminal Procedure (Scotland) Act 1995, under subsection (2)(c) of that section, or

(ii) under section 58(1A) or (3) of the Criminal Procedure (Scotland) Act 1995,

(d) the discharge by a children’s hearing under section 69(1)(b) and (12) of the Children (Scotland) Act 1995 of the referral of a child’s case,

(e) a supervision requirement under any provision of that Act,

(f) the discharge by a children’s hearing or, as the case may be, by the sheriff of the referral of a child’s case to a children’s hearing under section 91(3)(b), 93(2)(b) or 119(3)(b) of the Children’s Hearings (Scotland) Act 2011, or

5 (g) a compulsory supervision order under any provision of that Act.

(2) In relation to any of the cases mentioned in subsection (1), references in this Act to any disclosure period are to be read as if the period of time were nil.”.

30 Disclosure periods applicable to convictions

(1) The 1974 Act is amended as follows.

10 (2) In section 6, for the words “section 5” where occurring in each of subsections (1) and (2) there is substituted “sections 5 to 5I”.

(3) Subsection (3) of section 6 is repealed.

(4) After subsection (3) of section 6 there is inserted—

“(3ZA) Subsection (3ZB) applies where—

15 (a) an order listed in subsection (3ZC) is imposed on a person in respect of a conviction for an offence,

(b) after the expiry of the disclosure period applicable to the conviction in accordance with subsection (1) or (2) (“the original disclosure period”), a further sentence for the offence is imposed on the person in consequence of breaching the order, and

20 (c) by virtue of the further sentence, the disclosure period applicable to the conviction in accordance with subsection (2) (“the new disclosure period”) ends later than the original disclosure period.

(3ZB) Despite the expiry of the original disclosure period, the person is not to be treated for the purposes of this Act as a protected person in respect of the conviction until the expiry of the new disclosure period (and accordingly the conviction is not to be treated as spent until that period has expired).

(3ZC) The list is—

(a) an order for conditional discharge,

30 (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,

(c) a drug treatment and testing order under section 234B of that Act,

(d) a restriction of liberty order under section 245A of that Act.

(3ZD) The Scottish Ministers may by regulations modify the list in subsection (3ZC) by—

35 (a) amending an entry,

(b) removing an entry,

(c) adding an entry.

(3ZE) Regulations under subsection (3ZD) are subject to the affirmative procedure.”.

(5) For subsection (4) of section 6 there is substituted—

“(4) Where—

(a) during the disclosure period applicable to a conviction, the person convicted is convicted of a further offence, and

(b) the disclosure periods applicable to the two convictions under this section would end on different dates,

the disclosure period which would end earlier is extended so as to end at the same time as the other disclosure period (but this rule is subject to subsections (4A) to (5B)).”.

(6) After subsection (4) of section 6 there is inserted—

“(4A) Subsection (4B) applies where—

(a) in relation to the conviction of a person (“the first conviction”) the court adjourns the case, or defers sentence,

(b) during the disclosure period applicable to the adjournment or deferral, the person is convicted of a further offence,

(c) a relevant sentence is imposed on the person in respect of the first conviction, and

(d) there is, by virtue of section 5J, no disclosure period applicable to that sentence.

(4B) Section 4 does not operate so as to extend the disclosure period applicable to the first conviction.

(4C) In subsection (4A)—

(a) references to adjournments and deferrals are to those matters as mentioned in section 5E(1),

(b) a “relevant sentence” is any sentence other than an adjournment or deferral (as mentioned in section 5E(1)) or, where applicable, a further such adjournment or deferral.”.

(7) For subsection (5) of section 6 there is substituted—

“(5) A disclosure period is not extended in accordance with subsection (4) so as to end at the same time as another disclosure period if—

(a) the other disclosure period is applicable in accordance with section 5(2E) to an order—

(i) imposing on a person any disqualification, disability, prohibition, requirement or restriction, or

(ii) which is otherwise intended to regulate behaviour, and

(b) that order is the only sentence imposed in respect of the conviction to which the other disclosure period is applicable.

(5A) Subsection (5B) applies where—

(a) more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings),

(b) none of the sentences is an excluded sentence, and

(c) one of the sentences is an order mentioned in subsection (5) in respect of which the disclosure period is applicable in accordance with section 5(2E).

(5B) In determining whether the disclosure period applicable to another conviction is, in accordance with subsection (4), extended by virtue of the disclosure period applicable to the conviction mentioned in subsection (5A)(a), the disclosure period applicable to the order is to be disregarded.”.

(8) In subsection (6) of section 6—

(a) for the words “For the purposes of subsection (4)(a) above there shall be disregarded—” there is substituted “In subsection (4)(a), the reference to a conviction for a further offence does not include—”,

(b) for paragraph (b) there is substituted—

“(b) any conviction by or before a criminal court in summary proceedings;”,

(c) in paragraph (c)—

(i) for the words “Great Britain” there is substituted “Scotland”,

(ii) for the words “any part of Great Britain” there is substituted “Scotland”,

(iii) for the words “that part of Great Britain” there is substituted “Scotland”.

Regulation-making and other powers

31 Powers as to alternatives to prosecution

(1) The 1974 Act is amended as follows.

(2) After section 8B there is inserted—

“8C Modification of section 8B and schedule 3: Scotland

(1) The Scottish Ministers may by regulations modify the list of circumstances in section 8B(1) in which a person is given an alternative to prosecution by—

(a) amending an entry,

(b) removing an entry,

(c) adding an entry.

(2) The Scottish Ministers may by regulations modify paragraph 1 of schedule 3 by—

(a) amending provision specifying when an alternative to prosecution becomes spent,

(b) removing provision specifying when an alternative to prosecution becomes spent,

(c) adding provision specifying when an alternative to prosecution becomes spent.

(3) Regulations under this section—

(a) may make different provision for different purposes,

(b) are subject to the affirmative procedure.”.

32 How particular powers are exercisable

- (1) The 1974 Act is amended as follows.
- (2) After section 10 there is inserted—

“10A Order-making powers: Scottish Ministers

- 5 (1) Any power exercisable by the Scottish Ministers to make an order under this Act includes power—
 - (a) to make different provision for different purposes,
 - (b) to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- 10 (2) To the extent that the power to make an order under section 5(11) is exercisable by the Scottish Ministers, that power includes power exercisable by the Scottish Ministers to make consequential provision modifying any enactment (including this Act).”.

*Transitional, schedule and definition***33 Transitional provision**

- 15 (1) Any amendment of the 1974 Act by a provision of this Part referring in any way to a sentence applies in relation to a sentence imposed in respect of a conviction before the date on which the provision comes into force (as well as in respect of a conviction on or after that date).
- 20 (2) Any amendment of the 1974 Act by a provision of this Part referring to a conviction applies in relation to a conviction before the date on which the provision comes into force (as well as in relation to a conviction on or after that date).
- (3) Subsection (2) applies to the court’s convicting of a person as it applies to a conviction.
- (4) The 1974 Act applies as if the amendments mentioned in subsections (1) and (2) had
25 always had effect (but see the remaining provisions of this section).
- (5) Subsection (6) applies where, by virtue of subsection (4), a person—
 - (a) would have been treated as a rehabilitated person for the purposes of the 1974 Act, and
 - 30 (b) would have been so treated by virtue of an amendment of that Act made by a provision mentioned in subsection (1) or (2) before the date on which the provision comes into force.
- (6) The person is, subject to any order made under section 4(4) or 7(4) of the 1974 Act, to be treated on and after that date as a protected person (within the meaning of that Act as amended by this Act).
- 35 (7) Subsection (8) applies where, by virtue of subsection (4), a conviction—
 - (a) would have been treated as spent for the purposes of the 1974 Act, and
 - (b) would have been so treated by virtue of an amendment of that Act made by a provision mentioned in subsection (1) or (2) before the date on which the provision comes into force.
- 40 (8) The conviction is, subject to any order made under section 4(4) or 7(4), to be treated on and after that date as a spent conviction.

- (9) In subsections (5)(b) and (7)(b), the references to subsection (2) include references to that subsection as applied in subsection (3).

34 Remainder of amendments

Schedule 2 makes minor and consequential amendments to the 1974 Act (including changes to certain terminology).

35 Meaning of the 1974 Act

In this Part, “the 1974 Act” means the Rehabilitation of Offenders Act 1974.

PART 3

THE PAROLE BOARD

Membership and appointment

36 Mandatory categories of member

- (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) is amended as follows.
- (2) In schedule 2, in paragraph 2—
- (a) sub-paragraph (a) is repealed,
- (b) sub-paragraph (b) is repealed.

37 Appointment to be for fixed period

- (1) The 1993 Act is amended as follows.
- (2) In paragraph 2A of schedule 2, for the words from “such” to the end there is substituted “the period of 5 years beginning with the date of appointment”.

38 Further appointment to membership

- (1) The 1993 Act is amended as follows.
- (2) After paragraph 2D of schedule 2 there is inserted—
- “2DA(1) A person who has been a member of the Parole Board is eligible for appointment to the membership on a subsequent occasion.
- (2) The exception to this is where the person’s membership has previously ceased by virtue of—
- (a) paragraph 2C, or
- (b) paragraph 2D.”.
- (3) Paragraphs 2E to 2H of schedule 2 are repealed.
- (4) After paragraph 2H of schedule 2 there is inserted—

“Automatic reappointment

2HA(1) A member of the Parole Board is to be reappointed to the membership on the expiry of the period of the member’s appointment, unless—

- (a) in any case, sub-paragraph (2) applies, or
- (b) where the member is not the chairperson, sub-paragraph (3) applies.

(2) This sub-paragraph applies if the member has declined to be reappointed.

(3) This sub-paragraph applies if the Scottish Ministers have accepted a recommendation made to them by the chairperson that the other member should not be reappointed.

(4) A recommendation of that kind may be made to the Scottish Ministers only if the chairperson is satisfied that—

(a) the other member has failed to comply with any of the terms and conditions of membership by which the member is bound, or

(b) the number of members required for the Board to carry out its functions is such that the services of the other member are no longer needed.

2HB(1) Sub-paragraphs (2) and (3) apply in connection with paragraph 2HA(1).

(2) The reference in paragraph 2HA(1) to the period of the appointment includes each period of reappointment under that paragraph.

(3) In addition—

(a) the provisions of paragraphs 1 to 2D apply in relation to reappointment under paragraph 2HA(1) as well as applying otherwise, and

(b) the references in paragraphs 1 to 2D to appointment are so far as necessary for this purpose to be read as meaning reappointment,

which in particular means that reappointment is for 5 years at a time.”.

39 References to the chairperson

(1) The 1993 Act is amended as follows.

(2) In schedule 2—

(a) in paragraph 1, for the word “chairman” there is substituted “chairperson”,

(b) in paragraph 2J, for the word “Chairman” there is substituted “chairperson”.

(3) In addition, a reference in an enactment, instrument or document to the chairman of the Parole Board for Scotland is to be read as if the reference were to the chairperson of the Parole Board for Scotland.

Functions regarding prisoners

40 Frequency of review of particular decisions

(1) The 1993 Act is amended as follows.

(2) In section 3A, after subsection (3) there is inserted—

“(3A) The Parole Board must give a prisoner to whom this section applies written notification of the process for having the prisoner’s case referred to it under subsection (2) (including as subject to subsections (2A) to (3)).”.

(3) After section 3A there is inserted—

“3B Review of decisions as to determinate sentences

(1) This section applies to—

(a) a prisoner serving a determinate sentence (apart from an extended sentence), and

(b) a prisoner serving an extended sentence (except such a 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 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)).”.

41 Re-release after revocation of licences generally

(1) The 1993 Act is amended as follows.

(2) In section 17, in subsection (4)—

(a) the word “immediate” is repealed,

- (b) for the words from “the Secretary of State” to the end there is substituted “the Scottish Ministers must give effect to the direction without undue delay”.

42 Representations by certain recalled prisoners

- (1) The 1993 Act is amended as follows.
- (2) In section 17A, after subsection (2) there is inserted—
- “(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.”.

43 Long-term prisoners due for removal from the UK

- (1) The 1993 Act is amended as follows.
- (2) In subsection (3) of section 1, for the words from “his” to the end there is substituted “the prisoner’s sentence, the Scottish Ministers must release the prisoner on licence if recommended to do so by the Parole Board”.
- (3) Subsection (1) of section 9 is repealed.

Independence and governance

44 Continued independence of action

- (1) The Parole Board is to continue to act as an independent tribunal when exercising decision-making functions by virtue of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (or decision-making functions by virtue of another enactment relating to the same things).
- (2) In this section, the reference to the Parole Board is to the Parole Board for Scotland.

45 Administrative arrangements

- (1) The Scottish Ministers may by regulations authorise the chairperson of the Parole Board to make provision about administrative arrangements within the Board.
- (2) Examples of what may be covered in regulations under this section are arrangements as to—
- (a) the operational structure within the Parole Board, including the use of committees (and sub-committees),
- (b) the management set-up within the Board, including for—
- (i) the formation of a management committee,
- (ii) the leadership and membership of such a committee,
- (iii) the role of such a committee in budgetary, accounting and business matters.
- (3) Regulations under this section may allow the chairperson to delegate responsibility for arrangements (and allow for sub-delegation afterwards).
- (4) Before making regulations under this section, the Scottish Ministers must consult the Parole Board.

- (5) Regulations under this section are subject to the affirmative procedure.
- (6) In this section, the references to the Parole Board are to the Parole Board for Scotland.

Repeals and definition

46 Repeal of statutory provisions

- 5 (1) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (2) Part 1 (including schedule 1) is repealed.
- (3) In section 65, the word “rules,” where occurring in each of subsections (1) and (3) is repealed.

47 Meaning of the 1993 Act

- 10 In this Part, “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993.

PART 4

ANCILLARY AND FINAL MATTERS

48 Ancillary provision

- 15 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - 20 (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

49 Commencement

- 25 (1) The following provisions come into force on the day after Royal Assent—
 - (a) section 48,
 - (b) this section and section 50.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- 30 (3) Regulations under subsection (2) may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

50 Short title

This short title of this Act is the Management of Offenders (Scotland) Act 2018.

SCHEDULE 1
(introduced by section 16)

COURT ORDERS AND ELECTRONIC MONITORING

PART 1

ADDITIONAL PROVISIONS

5

Certain restrictive measures

1 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 227A, after paragraph (i) of subsection (2) there is inserted—

“(j) a restricted movement requirement.”.

10

(3) In section 227G—

(a) in subsection (2), in paragraph (b)—

(i) in sub-paragraph (iv), after the word “health” there is inserted “treatment”,

(ii) the word “or” immediately preceding sub-paragraph (vii) is repealed,

(iii) after sub-paragraph (vii) there is inserted “, or

15

(viii) a restricted movement requirement.”,

(b) in subsection (4), for the words “subsection (5) and section 227ZE(4)” there is substituted “subsections (4A) and (5)”,

(c) after subsection (4) there is inserted—

20

“(4A) Where an offender supervision requirement is imposed because of the imposition of a restricted movement requirement—

(a) the minimum period in subsection (3) does not apply,

(b) the court must ensure that the specified period does not expire before the expiry of the period during which the restricted movement requirement has effect by virtue of section 227ZF(5)(b).”.

25

(4) In section 227ZE—

(a) before subsection (1) there is inserted—

“(A1) Despite the generality of sections 227Z(2) and 227ZC(7)(d) for variation of a community payback order—

30

(a) a restricted movement requirement put or kept in the order must be accompanied in the order by an offender supervision requirement, and

(b) the court must ensure that the offender supervision requirement does not cease to have effect before the restricted movement requirement ceases to have effect.”,

(b) subsections (1) to (4) are repealed,

35

(c) in subsection (5)—

(i) for the words “varies the order” there is substituted “makes or varies a community payback order”,

(ii) for the words “the order making the variation” there is substituted “the order imposing the requirement”.

(5) In section 227ZF, in subsection (7)—

- (a) in the opening text, for the words from “in the case of” to “requirement of” there is substituted “as follows in relation to”,
- (b) in paragraph (a), at the beginning there is inserted “in the case of any restricted movement requirement imposed by the order,”,
- (c) in paragraph (b), for the words “where the only requirement” there is substituted “in the case of a restricted movement requirement imposed under section 227ZC(7)(d), where the only requirement (apart from the restricted movement requirement)”.

2 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 234AZA, in paragraph (a) of subsection (4), after the word “consider” there is inserted “the question of”.

15 *Notification, reports and addresses*

3 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) After section 245D there is inserted—

“245DA Further provision about multiple orders

(1) Subsection (2) applies where the court—

- (a) makes any of the listed orders in relation to an offender, and
- (b) knows that the offender is already subject to another of the listed orders.

(2) The clerk of court must send a copy of whichever of the listed orders is then made to—

- (a) any person responsible for monitoring the offender’s compliance with whichever of the other listed orders the offender is already subject to (so far as the person’s identity can reasonably be ascertained), and
- (b) the local authority within whose area the offender resides.

(3) The listed orders are—

- (a) a restriction of liberty order,
- (b) a community payback order,
- (c) a drug treatment and testing order.

(4) In the listed orders, the reference to a community payback order does not include such an order if imposed under section 227M(2).”.

4 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 227ZG, in subsection (2)—

- (a) in the opening text, before the word “report” there is inserted “written”,
- (b) after paragraph (a) there is inserted—

“(aa) the suitability of the place (particularly with a view to maximising the prospect of the offender’s compliance with the requirement and minimising the risk of reoffending by the offender),”.

(3) In section 227ZH, in subsection (2)—

- 5 (a) in the opening text, before the word “report” there is inserted “written”,
(b) after paragraph (a) there is inserted—

“(aa) the suitability of the new place (particularly with a view to maximising the prospect of the offender’s compliance with the requirement and minimising the risk of reoffending by the offender),”.

10 (4) In section 245A, in paragraph (a) of subsection (6)—

- (a) in the opening text, before the word “report” there is inserted “written”,
(b) after sub-paragraph (i) there is inserted—

15 “(ia) the suitability of what is proposed (particularly with a view to maximising the prospect of the offender’s compliance with the order and minimising the risk of reoffending by the offender);”.

(5) In section 245E—

- (a) in paragraph (a) of subsection (4A)—
(i) in the opening text, before the word “report” there is inserted “written”,
(ii) after sub-paragraph (i) there is inserted—

20 “(ia) the suitability of what is proposed (particularly with a view to maximising the prospect of the offender’s compliance with the order and minimising the risk of reoffending by the offender);”,

- (b) in sub-paragraph (i) of paragraph (a) of subsection (6), for the words from “the place” to the end there is substituted “the same matters as are to be included in a report under subsection (4A)(a);”.

PART 2

CONSEQUENTIAL PROVISIONS

5 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

(2) In section 12AB, subsections (3) to (7) are repealed.

30 (3) In section 17A, paragraph (b) of subsection (1) is repealed (as is the word “or” immediately preceding that paragraph).

6 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) These sections are repealed—

- 35 (a) section 227ZI,
(b) section 227ZK,
(c) section 245B,
(d) section 245C,
(e) section 245H.

- (3) In addition—
- (a) in the title of section 227ZE, the word “: rules” is added at the end,
 - (b) in section 234CA, in subsection (5)—
 - (i) for the word “Sections” there is substituted “Section”,
 - (ii) the words “, 245B and 245C” are repealed”,
 - (c) in the title of section 234CA, the word “remote” is repealed,
 - (d) in section 245A, in paragraph (a) of subsection (4), the words from “, including” to the end are repealed.

7 (1) The Crime and Punishment (Scotland) Act 1997 is amended as follows.

10 (2) In section 63, paragraph (a)(i) of subsection (1) is repealed.

8 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) Section 40 is repealed.

9 (1) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.

(2) Section 49 is repealed.

15
 SCHEDULE 2
(introduced by section 34)

REHABILITATION OF OFFENDERS ACT 1974

1 (1) The 1974 Act is amended as follows.

(2) In section 1—

20 (a) in subsection (2), for the word “rehabilitated” in both places where it occurs there is substituted “protected”,

(b) in subsection (3), after paragraph (za) there is inserted—

“(zb) a hospital direction under section 59A of the Criminal Procedure (Scotland) Act 1995;

25 (zc) a victim surcharge imposed under section 253F of the Criminal Procedure (Scotland) Act 1995;”,

(c) in subsection (4), for the word “rehabilitated” there is substituted “protected”,

(d) after subsection (4) there is inserted—

30 “(4A) In this Act, an “excluded sentence” is a sentence which is never, or is never to be treated as, spent for the purposes of this Act (see section 5(1) for list of excluded sentences).”.

(3) In the title of section 1, for the word “Rehabilitated” there is substituted “Protected”.

(4) In the title of section 2, the words “Rehabilitation of” are repealed.

35 (5) In the title of section 3, the words “under the Social Work (Scotland) Act 1968” are repealed.

(6) In section 4, in subsection (1), for the word “rehabilitated” there is substituted “protected”.

(7) In the title of section 4, for the word “rehabilitation” there is substituted “becoming a protected person”.

(8) In section 5—

(a) in subsection (1)—

(i) for the words “excluded from rehabilitation under” there is substituted “which are excluded sentences for the purposes of”,

(ii) for the words “sentence subject to rehabilitation under this Act” there is substituted “disclosable sentence”,

(b) after subsection (1A) there is inserted—

“(1AB)In subsection (1), “disclosable sentence” means a sentence imposed in relation to a conviction in respect of which a person may, under this Act, become a protected person.”.

(9) In the title of section 5, for the word “Rehabilitation” there is substituted “Disclosure”.

(10) In section 6—

(a) in subsection (1)—

(i) the words from “(not” to “Act)” are repealed,

(ii) for the word “rehabilitation” in the second place where it occurs there is substituted “disclosure”,

(b) in subsection (2)—

(i) the words from “and” to “Act,” are repealed,

(ii) for “rehabilitation” in the second place where it occurs there is substituted “disclosure”,

(c) after subsection (2) there is inserted—

“(2A)In subsections (1) and (2), the references to sentences do not include excluded sentences.”,

(d) in subsection (3A)—

(i) for the word “rehabilitation” in each place where it occurs there is substituted “disclosure”,

(ii) for the word “rehabilitated” there is substituted “protected”.

(11) In the title of section 6, for the word “rehabilitation” there is substituted “disclosure”.

(12) In section 7, in subsection (1)(d), for the word “rehabilitation” there is substituted “disclosure”.

(13) In the title of section 7, for the words “rehabilitation under this Act, etc.” there is substituted “protection under section 4(1)”.

(14) In section 8, in subsection (1), for the word “rehabilitated” there is substituted “protected”.

(15) In section 9—

(a) in subsection (1), for the words “rehabilitated living person” there is substituted “living protected person”,

(b) in subsection (3)—

(i) in paragraph (a), for the word “rehabilitated” in both places where it occurs there is substituted “protected”,

(ii) in paragraph (b), for the word “rehabilitated” in both places where it occurs there is substituted “protected”.

(16) In schedule 1, in paragraph 1, for the words “period of rehabilitation” there is substituted “disclosure period”.

(17) In schedule 2—

(a) in paragraph 1(3)(a) and (b), for the word “rehabilitation” in each place where it occurs there is substituted “disclosure”,

(b) in paragraph 5(b), for the word “rehabilitation” there is substituted “disclosure”.

(18) In schedule 3, in paragraph 1—

(a) in sub-paragraph (5), for the word “rehabilitation” in both places where it occurs there is substituted “disclosure”,

(b) in sub-paragraph (6), for the word “rehabilitation” in both places where it occurs there is substituted “disclosure”.

Management of Offenders (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for electronic monitoring of offenders and as to certain other restrictive measures imposable on offenders; to make provision about periods and processes as regards disclosure of convictions by offenders; and to make provision relating to the organisation and functions of the Parole Board for Scotland.

Introduced by: Michael Matheson
On: 22 February 2018
Bill type: Government Bill

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