

2016 No. 416

CRIMINAL LAW

**The Home Detention Curfew Licence (Amendment) (Scotland)
Order 2016**

Made - - - - *13th December 2016*

Coming into force - - *14th December 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 3AA(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(a) and all other powers enabling them to do so.

In accordance with section 45(3) of that Act(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 and comes into force on the day after the day on which it is made.

Amendment of section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993

2. In section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, paragraphs (f) and (g) are repealed.

MICHAEL MATHESON
A member of the Scottish Government

St Andrew's House,
Edinburgh
13th December 2016

(a) 1993 c.9. Section 3AA was inserted by the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 15(5) and was amended by the Home Detention Curfew Licence (Amendment of Specified Days) (Scotland) Order 2008 (S.S.I. 2008/126).

(b) Section 45(3) has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) by repealing paragraphs (f) and (g) of that section.

Section 3AA(5) provides a list of circumstances where the Scottish Ministers’ power to release a prisoner from prison under section 3AA(1) (commonly known as home detention curfew (“HDC”)) does not apply. HDC is a form of release from prison, prior to the halfway stage of the prisoner’s sentence, where the prisoner is subject to a curfew condition which is remotely monitored.

Paragraph (f) provides that HDC cannot be granted to a prisoner where the prisoner has been released on licence under Part 1 of the 1993 Act or under the Prisons (Scotland) Act 1989 (c.45) but—

- (a) has been recalled to prison (other than by virtue of section 17A(1)(b) of the 1993 Act); or
- (b) has received a further sentence of imprisonment before the expiry of the prisoner’s sentence.

Section 17A(1)(b) of the 1993 Act provides for the recall to prison of prisoners who have been released on HDC but whose whereabouts can no longer be monitored remotely at the place specified in the prisoner’s licence.

Paragraph (g) provides that HDC cannot be granted to a prisoner where the prisoner has been released from prison (on licence or otherwise) during the currency of the prisoner’s sentence but has been returned to custody under section 16(2) or (4) of the 1993 Act. Section 16 of the 1993 Act provides that, where an offender has been released from prison and commits a further offence before the expiry of the prisoner’s sentence, the court may order the prisoner to be returned to prison to serve the remainder of the sentence.

The repeal of paragraphs (f) and (g) of section 3AA(5) of the 1993 Act means that prisoners in the circumstances described in those paragraphs will no longer be prohibited from obtaining HDC under section 3AA. The Scottish Ministers will then be given the discretion to release those prisoners on HDC but, under section 3AA(4), the Scottish Ministers must have regard to considerations of protecting the public at large, preventing re-offending by the prisoner and securing the successful re-integration of the prisoner into the community in exercising that discretion.