



# Prisoners and Criminal Proceedings (Scotland) Act 1993

## 1993 CHAPTER 9

E+W+S

An Act to amend the law of Scotland with respect to the detention, transfer and release of persons serving sentences of imprisonment etc. or committed or remanded in custody; to make further provision as regards evidence and procedure in criminal proceedings in Scotland; and for connected purposes. [29th March 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

**E1** This Act extends to Scotland only except as provided by s. 48(5)(6) and (7).

### Modifications etc. (not altering text)

**C1** Act amended (S.) (3.2.1995) by 1994 c. 33, s. 134(2); S.I. 1995/127, art. 2(1), **Sch. 1** (with transitional provisions in **Sch. 2**)  
Act extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), **Sch. 1** para. 11, **Sch. 5** para. 12(1)(d); S.I. 1997/2200, **art. 2(1)(n)** (subject to **art. 5** of said S.I.) (which said amendment fell (30.9.1998) by reason of the repeal of **Sch. 5** para. 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8))  
Certain functions of Act made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, art. 4(1)(2), **Sch. 3 Pt. I paras. 1-4**, Pt. II paras. 5-8, Pt. III para. 10(2)

### Commencement Information

**I1** Act partly in force at Royal Assent see s. 48(2)(3) Act wholly in force at 1.1.1994 by S.I. 1993/2050

**Status:** Point in time view as at 27/06/2003. This version of this Act contains provisions that are not valid for this point in time.

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**PART I E+W+S**

DETENTION, TRANSFER AND RELEASE OF OFFENDERS

**Modifications etc. (not altering text)**

- C2** Pt. 1 modified (S.) (20.10.1997) by 1997 c. 48, s. 16(2)(3) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- C3** Pt. 1 applied (S.) (8.10.2001) by Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), ss. 4, 15(2), Sch. paras. 29, 66, 67, 77 (with Sch. para. 65); S.S.I. 2001/274, art. 3(3) (and by that para. 67 as substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(b)(v), 89(2); S.S.I. 2003/288, art. 2, Sch.)
- C4** Pt. 1 applied (S.) by Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), Sch. para. 7A (as inserted) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(a), 89(2); S.S.I. 2003/288, art. 2, Sch.
- C5** Pt. 1: power to modify conferred (S.) (1.3.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), ss. 94(3)(4), 104(1); S.S.I. 2007/84, art. 3(2)

*Early release*

**1 Release of short-term, long-term and life prisoners. S**

- (1) <sup>F1</sup>Subject to section 26A(4) of this Act,]as soon as a short-term prisoner 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.
- (2) As soon as a long-term prisoner has served two-thirds of his sentence, the Secretary of State shall release him on licence <sup>F2</sup>unless he has before that time 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 his sentence the Secretary of State <sup>F3</sup>(a) shall, except in the case mentioned in paragraph (b) below; or  
(b) may, in the case of a prisoner who is liable to removal from the United Kingdom (within the meaning of section 9 of this Act),  
if recommended to do so by the Parole Board under this section, release him on licence.

<sup>F4</sup>(3A) Subsections (1) to (3) above are subject to section 1A of this Act.]

- (4) .....
- <sup>F5</sup>(5) .....
- <sup>F5</sup>(6) .....
- <sup>F5</sup>(7) .....

(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.

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### Textual Amendments

- F1** Words in s. 1(1) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 98(1)**; S.I. 1998/2327, **art. 2(1)(y)(2)(gg)** (subject to arts. 5-8)
- F2** Words in s. 1(2) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 98(2)**; S.I. 1998/2327, **art. 2(1)(y)(2)(gg)** (subject to transitional provisions in art. 7(1))
- F3** Words in s. 1(3) substituted (27.6.2003) by **Criminal Justice (Scotland) Act 2003 (asp 7)**, ss. {s. 28(2)}, 89(2) (with saving in **S.S.I. 2003/287, art. 2(2)(b)**); S.S.I. 2003/288, **art. 2**, Sch.
- F4** S. 1(3A) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 98(3)**; S.I. 1998/2327, **art. 2(1)(y)(2)(gg)** (subject to arts. 5-8)
- F5** S. 1(4)-(7) repealed (8.10.2001) by 2001 asp 7, **s. 1(2)**; S.S.I. 2001/274, **art. 3(3)**

### Modifications etc. (not altering text)

- C6** S. 1 excluded (17.12.2001) by 2001 asp 13, **s. 24(c)** (with s. 29); S.S.I. 2001/456, **art. 2**
- C7** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))
- C8** S. 1(2)(3) modified (retrospectively) by 1984 c. 47, **Sch. para. 2(5)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 6(1)(2)**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))  
S. 1(2)(3) modified (1.10.1997) by 1984 c. 47, **Sch. para. 2(5)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 7(1)(2)**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))
- C9** S. 1(3) modified (1.4.1995) by S.I. 1995/911, **art. 3(a)**

VALID FROM 08/02/2006

### [<sup>F6</sup>1AA Release of certain sexual offenders **S**

- (1) As soon as a prisoner to whom this section applies has served one-half of his sentence the Scottish Ministers are to release him on licence.
- (2) This section applies to any short-term prisoner—
  - (a) sentenced to a term of 6 months or more; and
  - (b) who, by virtue of the conviction in respect of which that sentence was imposed, is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42).
- (3) It is immaterial, for the purposes of subsections (1) and (2) above, when the offence of which the prisoner was convicted was committed.
- (4) But this section does not apply to a prisoner who was released under section 1(1) of this Act in relation to the sentence mentioned in subsection (2)(a) above before the date on which section 15(3) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14) came into force (except that where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term, the reference in the preceding provisions of this subsection to his being released in relation to the sentence mentioned in subsection (2)(a) above is to be construed as a reference to his being released in relation to the single term).
- (5) Section 17 of this Act applies to such short-term prisoners as are mentioned in subsection (2) above as that section applies to long-term prisoners.

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- (6) Where a prisoner is released on licence under this section, the licence (unless revoked) remains in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed; but this subsection is subject to subsections (7) and (8) below.
- (7) Where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term the licence (unless revoked) remains in force until the relevant period (reckoned from the commencement of the single term) has elapsed.
- (8) The “relevant period” mentioned in subsection (7) above is—
- (a) the single term after deduction of half the number of days (if any) by which that term exceeds what it would be were there disregarded in determining it such terms (if any) as are imposed for a conviction other than one by virtue of which the prisoner is subject to the notification requirements mentioned in subsection (2)(b) above; or
  - (b) if to disregard such terms as are so imposed would have the consequence—
    - (i) that there would not remain two or more terms to treat as a single term; or
    - (ii) that though two or more terms would remain they would no longer be consecutive or wholly or partly concurrent,
 the single term after deduction of half the number of days (if any) by which that term exceeds the term imposed for the conviction, or as the case may be the terms imposed for the convictions, by virtue of which the prisoner is subject to those requirements.]

#### Textual Amendments

- F6** S. 1AA inserted after s. 1 (8.2.2006) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 15\(3\), 24\(2\)](#); [S.S.I. 2006/48](#), [art. 3\(1\)](#), Sch. Pt. 1

#### [<sup>F7</sup>1A] **Application to persons serving more than one sentence.** **S**

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, 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

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(ii) shall be subject to such conditions as may be specified [F8under] or required by this Part of this Act in respect of any of the sentences.]

#### Textual Amendments

- F7** S. 1A inserted (30.9.1998) by 1998 c. 37, s. 111(1); S.I. 1998/2327, art. 2(1)(x)  
**F8** Word in s. 1A(c)(ii) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(2); S.S.I. 2003/288, art. 2, Sch.

#### Modifications etc. (not altering text)

- C10** S. 1A excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2  
**C11** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))

## 2 Duty to release discretionary life prisoners. S

[F9(1) In this Part of this Act “F10 . . . life prisoner”, F11 . . . except where the context otherwise requires, means a person—

- (a) sentenced to life imprisonment for an offence for which, subject to paragraph (b) below, such a sentence is not the sentence fixed by law; [F12or  
F12(aa) sentenced to life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law;]  
(b) whose sentence was imposed under section 205A(2) of the 1995 Act (imprisonment for life on further conviction for certain offences); F13 . . .  
F13(c) . . . . .

and in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below.

(2) The order referred to in [F14subsection (1)] above is an order that subsections (4) and (6) below shall apply to the F10 . . . life prisoner as soon as he has served such part of his sentence ([F15the punishment part]) as is specified in the order, being such part as the court considers appropriate [F16to satisfy the requirements for retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public).]taking into account—

- (a) the seriousness of the offence, or of the offence combined with other offences [F17of which the life prisoner is convicted on the same indictment as that offence]; F18 . . .  
[F19(aa) in the case of a life prisoner to whom paragraph (a) of subsection (1) above applies—  
(i) the period of imprisonment, if any, which the court considers would have been appropriate for the offence had the court not sentenced the prisoner to imprisonment for life for it;  
(ii) the part of that period of imprisonment which the court considers would satisfy the requirements of retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public); and  
(iii) the proportion of the part mentioned in sub-paragraph (ii) above which a prisoner sentenced to it would or might serve before being

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- released, whether unconditionally or on licence, under section 1 of this Act;]
- (b) any previous conviction of the <sup>F10</sup> . . . life prisoner [<sup>F20</sup>; and.
  - (c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.]
- [<sup>F21</sup>(3) A court which imposes life imprisonment for an offence such as is mentioned in subsection (1) above shall make such order as is mentioned in subsection (2) above and such order shall constitute part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.
- (3A) An order such as is mentioned in subsection (2) above—
- (a) shall specify the period that the court considers appropriate under that subsection in years and months; and
  - (b) may specify any such period of years and months notwithstanding the likelihood that such a period will exceed the remainder of the prisoner's natural life.]
- (4) Where this subsection applies, the Secretary of State shall, if directed to do so by the Parole Board, release a <sup>F10</sup> . . . life prisoner on licence.
- (5) The Parole Board shall not give a direction under subsection (4) above unless—
- (a) the Secretary of State has referred the prisoner's case to the Board; and
  - (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- [<sup>F22</sup>(5A) Where, on the disposal of any reference of a life prisoner's case under section 28(4) of the 1989 Act, under subsection (5)(a) above, subsection (5C) or (6) below or section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), the Parole Board declines to direct that the prisoner be released on licence, it shall—
- (a) give the prisoner reasons in writing for the decision not to direct his release on licence; and
  - (b) fix the date when it will next consider the prisoner's case under this section, being [<sup>F23</sup>, subject to subsections (5AB) to (5AD) below,] a date not later than two years after the date of its decision to decline to direct the release of the prisoner.
- [ Where a reference has been made to the Parole Board under any of the provisions
- <sup>F24</sup>(5AB) mentioned in subsection (5A) above and the prisoner receives another sentence of imprisonment (whether for life or for a term) before a date has been fixed for considering his case, the Board shall, if he would not be eligible for release from the other sentence on the date which would (apart from this subsection) have been fixed for considering his case, fix a date (other than that date) for considering his case.
- (5AC) Where, at any time after such a reference has been made—
- (a) a date has been fixed for considering the prisoner's case; or
  - (b) following the disposal of the reference, a date has been fixed under subsection (5A)(b) above,
- and, before that date, the prisoner receives any other sentence of imprisonment (whether for life or for a term), the Board shall, if he would not be eligible for release from any such other sentence on that date, fix a different date for considering his case

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(and where he receives any further sentence of imprisonment from which he would not be eligible for release on that different date, the Board shall fix a further different date).

- (5AD) Any date fixed under subsection (5AB) or (5AC) above shall—
- (a) be—
    - (i) the date on which the prisoner would be eligible to be released, or considered for release, from all such other sentences (subject to any change to the date on which he would be so eligible); or
    - (ii) a date as soon as practicable after that date; and
  - (b) replace any date previously fixed for considering the prisoner's case.]
- (5B) The Scottish Ministers shall refer the case of a life prisoner to the Parole Board so as to enable it to consider the case on the date fixed by the Board under subsection (5A) (b) [<sup>F25</sup>, (5AB) or (5AC)] above.
- (5C) The Parole Board, at the request of a life prisoner in respect of whom it has, under subsection (5A)(b) [<sup>F25</sup>, (5AB) or (5AC)] above, fixed the date of the next consideration of his case, may direct the Scottish Ministers to refer that case to the Board before that date.]
- (6) Where this subsection applies, a <sup>F10</sup> . . . life prisoner may, subject to subsection (7) below, <sup>F26</sup> . . . require the Secretary of State to refer his case to the Parole Board.
- [<sup>F27</sup>(6A) The Scottish Ministers shall not refer the case of a life prisoner to the Parole Board under subsection (6) above if—
- (a) they have previously so referred his case to the Board under that subsection;
  - (b) they have referred his case to the Board without the prisoner requiring them to do so under that subsection; or
  - (c) the Parole Board has, on a reference to it under section 28(4) of the 1989 Act, under section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), declined to direct that the prisoner be released on licence.]

[<sup>F28</sup>(7) No requirement shall be made under subsection (6) above by a life prisoner who is also serving or liable to serve a sentence of imprisonment for a term, before he has served the appropriate part of the term.

(7A) The appropriate part of the term is—

    - (a) one half, where the term is—
      - (i) less than 4 years; or
      - (ii) 4 years or more and is imposed by a sentence of imprisonment on conviction of an offence; or
    - (b) two thirds, where the term is 4 years or more and is a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of this Act.

(7B) Section 5(1) of this Act, in so far as relating to the construction of references to sentences of imprisonment, does not apply to subsection (7A)(b) above.]

(8) In determining for the purposes of subsection (4) or (6) above whether a <sup>F10</sup> . . . life prisoner has served the [<sup>F29</sup>punishment] part of his sentence, no account shall be taken of any time during which he was unlawfully at large.

(9) Where a life prisoner is serving [<sup>F30</sup> or is liable to serve] two or more sentences of imprisonment for life—



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- <sup>F31</sup>(a) .....
- (b) notwithstanding the terms of any order under subsection (2) above, subsections (4) and (6) above shall not apply to him until he has served the [<sup>F29</sup>punishment]part of each of those sentences; and
- (c) he shall, if released on licence under subsection (4) above, be so released on a single licence.

### Textual Amendments

- F9** S. 2(1) substituted (20.10.1997 for certain purposes otherwise prosp.) by 1997 c. 48, ss. 16(1)(a), 65(2) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- F10** Words in s. 2(1)(2)(4)(6)(8) repealed (8.10.2001) by 2001 asp 7, s. 1(3)(a)(i)(b)(i)(vi)(d)(f)(i)(i); S.S.I. 2001/274, art. 3(3)  
 Word in s. 2(2)(b) repealed (8.10.2001) by 2001 asp 7, s. 1(3)(b)(vi); S.S.I. 2001/274, art. 3(3)  
 Word in s. 2(8) repealed (8.10.2001) by 2001 asp 7, s. 1(3)(i)(i); S.S.I. 2001/274, art. 3(3)
- F11** Words in s. 2(1) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 86, 89(2), Sch. 5; S.S.I. 2003/288, art. 2, Sch.
- F12** S. 2(1)(aa) and the preceding word “or” inserted (8.10.2001) by 2001 asp 7, s. 1(3)(a)(ii); S.S.I. 2001/274, art. 3(3)
- F13** S. 2(1)(c) and the preceding word “or” repealed (8.10.2001) by 2001 asp 7, s. 1(3)(a)(iii); S.S.I. 2001/274, art. 3(3)
- F14** Words in s. 2(2) substituted (20.10.1997) by 1997 c. 48, s. 62(1), Sch. 1 para. 14(3)(a)(i) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- F15** Words in s. 2(2) substituted (8.10.2001) by 2001 asp 7, s. 1(3)(b)(ii); S.S.I. 2001/274, art. 3(3)
- F16** Words in s. 2(2) inserted (8.10.2001) by 2001 asp 7, s. 1(3)(b)(iii); S.S.I. 2001/274, art. 3(3)
- F17** Words in s. 2(2)(a) substituted (8.10.2001) by 2001 asp 7, s. 1(3)(b)(iv); S.S.I. 2001/274, art. 3(3)
- F18** Word in s. 2(2)(a) repealed (20.10.1997) by 1997 c. 48, ss. 16(1)(b)(i), 62(2), Sch. 3 (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- F19** S. 2(2)(aa) inserted (8.10.2001) by 2001 asp 7, s. 1(3)(b)(v); S.S.I. 2001/274, art. 3(3)
- F20** S. 2(2)(c) and the preceding word “; and” inserted (20.10.1997) by 1997 c. 48, s. 16(1)(b)(ii) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- F21** S. 2(3)(3A) substituted for s. 2(3) (8.10.2001) by 2001 asp 7, s. 1(3)(c); S.S.I. 2001/274, art. 3(3)
- F22** S. 2(5A)-(5C) inserted (8.10.2001) by 2001 asp 7, s. 1(3)(e); S.S.I. 2001/274, art. 3(3)
- F23** Words in s. 2(5A)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 29(2)(a), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F24** S. 2(5AB)-(5AD) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 29(2)(b), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F25** Words in s. 2(5B)(5C) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 29(2)(c), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F26** Words in s. 2(6) repealed (8.10.2001) by 2001 asp 7, s. 1(3)(f); S.S.I. 2001/274, art. 3(3)
- F27** S. 2(6A) inserted (8.10.2001) by 2001 asp 7, s. 1(3)(g); S.S.I. 2001/274, art. 3(3)
- F28** S. 2(7)-(7B) substituted for s. 2(7) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 29(2)(d), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F29** Words in s. 2(8)(9)(b) substituted (8.10.2001) by 2001 asp 7, s. 1(3)(i)(ii)(j)(ii); S.S.I. 2001/274, art. 3(3)
- F30** Words in s. 2(9) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 29(2)(e), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F31** S. 2(9)(a) repealed (8.10.2001) by 2001 asp 7, s. 1(3)(j)(i); S.S.I. 2001/274, art. 3(3)

### Modifications etc. (not altering text)

- C12** S. 2 excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2
- C13** S. 2 applied (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. paras. 40, 47; S.S.I. 2001/274, art. 3(3)



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- C14** Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2, 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)
- C15** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))  
S. 2 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. 1 paras. 5, 6, 7 (with transitional provisions in art. 5); S.I. 1997/2200, **art. 2(1)(g)**  
S. 2 restricted (20.10.1997) by 1997 c. 48, s. 16(4)(a) (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- C16** S. 2(2)(7) modified (*prosp.*) by 1984 c. 47, s. 3(7), **Sch. para. 2** (as substituted (*prosp.*) by 1997 c. 43, ss. 42, 57(2), **Sch. 2 para. 8(2)** (which amending provision was repealed (30.9.1998) by 1998 c. 37, s. 119, 120(2), Sch. 8 para. 136, **Sch. 10**; S.I. 1998/2327, **art. 2(2)(pp)(3)(x)**)  
S. 2(2)(7) modified (retrospectively) by 1984 c. 47, **Sch. para. 2(5)** (as amended (1.10.1997) by 1997 c. 43, s. 42, Sch. 2 paras. 6, 7; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))
- C17** S. 2(4)(6) excluded (20.10.1997) by 1997 c. 48, s. 16(4)(b) (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- C18** S. 2(5A)(b) extended (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. paras. 30, 70, 77; S.S.I. 2001/274, **art. 3(3)**

### 3 Power to release prisoners on compassionate grounds. **S**

- (1) The Secretary of State may at any time, if satisfied that there are compassionate grounds justifying the release of a person serving a sentence of imprisonment, release him on licence.
- (2) Before so releasing any long-term prisoner or any life prisoner, the Secretary of State shall consult the Parole Board unless the circumstances are such as to render consultation impracticable.
- (3) The release of a person under subsection (1) above shall not constitute release for the purpose of a supervised release order.

#### Modifications etc. (not altering text)

- C19** S. 3 excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, **art. 2**
- C20** Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2 & 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)  
Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))  
S. 3 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. 1 paras. 5, 6, 7 (with transitional provisions in art. 3, Sch. 2); S.I. 1997/2200, **art. 2(1)(g)**

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VALID FROM 03/07/2006

### **[<sup>F32</sup>3AA Further powers to release prisoners E+W+S**

- (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 whichever is the greater of—
  - (a) one quarter of his sentence; and
  - (b) four weeks of his sentence.
- (3) Without prejudice to subsection (2) above, the power in subsection (1) above is to be exercised only during that period of 121 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) the prisoner has been released on licence under this Part of this Act or under the 1989 Act but—
    - (i) has been recalled to prison other than by virtue of section 17A(1) (b) of this Act; or
    - (ii) before the date on which he would but for his release have served his sentence in full, has received a further sentence of imprisonment; or
  - (g) the prisoner has been released (whether or not on licence) during the currency of his sentence but has been returned to custody under section 16(2) or (4) of this Act.
- (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;

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- (b) amend the number of weeks for the time being specified in subsection (2) (b) above;
- (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.]

#### Textual Amendments

**F32** S. 3AA inserted after s. 3 (3.7.2006 for specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\), ss. 15\(5\), 24\(2\); S.S.I. 2006/331, art 3\(4\)\(5\); S.S.I. 2008/21, art. 2\(2\)](#)

#### [<sup>F33</sup>3A Re-release of prisoners serving extended sentences. **S**

(1) [<sup>F34</sup>Subject to subsection (1A) below,] this section applies to a prisoner serving an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences) [<sup>F35</sup>and in respect of whom a licence has been revoked under section 17(1) to (1B)] of this Act.

[ This section does not apply to such a prisoner if he has, in addition to the sentence in <sup>F36</sup>(1A) relation to which his recall to prison applies, been sentenced to imprisonment for life and has not been released from that sentence.]

- (2) Subject to subsection (3) below, a prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board—
- (a) where his case has previously been referred to the Parole Board under this section or section 17(3) of this Act, not less than one year following the [<sup>F37</sup>Board's disposal of his case];
  - (b) in any other case, at any time.

[ Where—

- <sup>F38</sup>(2A) (a) a prisoner's case has been referred to the Parole Board under this section or section 17(3) of this Act; and
- (b) the prisoner receives another sentence of imprisonment before the Board has considered his case,

the Board shall not consider his case unless there is a further referral of his case to the Board under this section.

(2B) A case which, by virtue of subsection (2A) above, is not considered by the Parole Board shall not, for the purposes of subsection (2)(a) above, be treated as having been disposed of.]

(3) Where a prisoner to whom this section applies is subject to another sentence which is not treated as a single [<sup>F39</sup>term] with the extended sentence, the Secretary of State shall not be required to refer his case to the Parole Board before he [<sup>F40</sup>would be eligible to be released, or considered for release, from] that other sentence.

(4) Where the case of a prisoner to whom this section applies is referred to the Parole Board under this section or section 17(3) of this Act, the Board shall, if it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined (but not otherwise), direct that he should be released.

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- (5) If the Parole Board gives a direction under subsection (4) above, the Secretary of State shall release the prisoner on licence.]

#### Textual Amendments

- F33** S. 3A inserted (30.9.1998) by 1998 c. 37, s. 88; S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)
- F34** Words in s. 3A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(a)(i), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F35** Words in s. 3A(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(a)(ii), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F36** S. 3A(1A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(b), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F37** Words in s. 3A(2)(a) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(c), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F38** S. 3A(2A)(2B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(d), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F39** Word in s. 3A(3) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(e)(i), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F40** Words in s. 3A(3) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(e)(ii), 89(2); S.S.I. 2003/288, art. 2, Sch.

#### Modifications etc. (not altering text)

- C21** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))

## 4 Persons detained under Mental Health (Scotland) Act 1984. S

- (1) Notwithstanding that a transfer direction and a restriction direction (those expressions having the same meanings as in the <sup>M1</sup>Mental Health (Scotland) Act 1984) have been given in respect of a person serving a sentence of imprisonment, this Part of this Act shall apply to the person as if he continued to serve that sentence while detained in, and as if he had not been removed to, hospital.

[<sup>F41</sup>(1A) This Part of this Act shall apply to a person conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act as if, while so detained, he was serving the sentence of imprisonment imposed on him at the time at which that direction was made.]

- (2) In section 71(7)(a) of the said Act of 1984 (categories of prisoner who may be transferred to hospital), the words “in criminal proceedings” shall cease to have effect.
- (3) For sections 74 and 75 of the said Act of 1984 there shall be substituted the following section—

### “74 Further provision as to transfer directions and restriction directions.

- (1) This subsection applies where a transfer direction and a restriction direction have been given in respect of a person—
- (a) serving a sentence of imprisonment; or

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- (b) who is detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971,  
if the Secretary of State is satisfied, at a time when the person would but for those directions be, by virtue of the circumstance mentioned in paragraph (a) or (b) above, in prison or being detained other than in a hospital, as to the matters mentioned in subsection (2) below.
- (2) The matters referred to in subsection (1) above are—
- (a) that either—
- (i) the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
- (ii) that it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and
- (b) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment.
- (3) Where subsection (1) above applies, the Secretary of State shall by warrant direct that the person be remitted to any prison or other institution or place in which he might have been detained had he not been removed to hospital and that he be dealt with there as if he had not been so removed.
- (4) Where subsection (1) above does not apply only because the Secretary of State is not satisfied as to the matter mentioned in subsection (2)(b) above, he may either—
- (a) by warrant give such direction as is mentioned in subsection (3) above; or
- (b) decide that the person shall continue to be detained in hospital.
- (5) If a direction is given under subsection (3) or (4)(a) above, then on the person's arrival in the prison or other institution or place to which remitted by virtue of that subsection the transfer direction and the restriction direction shall cease to have effect.
- (6) This subsection applies where a transfer direction and a restriction direction have been given in respect of such person as is mentioned in subsection (1) above and he has thereafter been released under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- (7) Where subsection (6) above applies—
- (a) the transfer direction and the restriction direction shall forthwith cease to have effect; and
- (b) the person shall thereupon be discharged from hospital unless a report is furnished in respect of him under subsection (9) below.
- (8) A transfer direction or restriction direction given in respect of a person detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971 shall, if it does not first cease to have effect under subsection (5) above or under section 65(2) of this Act, cease to have effect when his liability to be so detained comes to an end.
- (9) Not earlier than 28 days before a restriction direction given in respect of a person ceases to have effect other than by virtue of subsection (8) above, the

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responsible medical officer shall obtain from another medical practitioner a report on the condition of the person in the prescribed form and thereafter shall assess the need for the detention of the person to be continued; and, if it appears to the responsible medical officer that it is necessary in the interests of the health or safety of the person or for the protection of others that the person should continue to be liable to be detained in hospital, the officer shall furnish to the managers of the hospital where the person is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report of the other medical practitioner.

- (10) Where a report has been furnished under subsection (9) above the person shall, after the restriction direction ceases to have effect, be treated as if he had, on the date on which the restriction direction ceased to have effect, been admitted to the hospital in pursuance of an application for admission; but the provisions of sections 30(5) and (6) and 35 of this Act shall apply to the person and that report as they apply to a patient the authority for whose detention in hospital has been renewed in pursuance of subsection (4) of, and to a report under subsection (3) of, the said section 30.
- (11) For the purposes of section 40(2) of the Prisons (Scotland) Act 1989 (discounting from sentence periods while unlawfully at large) a person who, having been transferred to hospital in pursuance of a transfer direction from a prison or young offenders institution, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from the prison or young offenders institution.
- (12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”.

#### Textual Amendments

**F41** S. 4(1A) inserted (*retrospective* to 1.1.1998) by 1998 c. 37, ss. 119, 121(2), **Sch. 8 para. 99(1)(2)**

#### Marginal Citations

**M1** 1984 c. 36.

## 5 Fine defaulters and persons in contempt of court. **S**

- (1) Subject to <sup>F42</sup>sections 1(8) and 2(7B) of this Act and to subsections (2) <sup>F43</sup>to (4) below, this Part of this Act (except sections 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—
- <sup>F44</sup>(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.



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- (2) 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 [<sup>F45</sup>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.
- (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.
- [<sup>F46</sup>(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 and 27(5) of this Act shall apply to those terms as if they were terms of imprisonment.]

#### Textual Amendments

- F42** Words in s. 5(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003, {ss. 29(3)}, 89(2); S.S.I. 2003/288, **art. 2, Sch.**
- F43** Words in s. 5(1) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 100(a)**; S.I. 1998/2327, **art. 2(1)(2)(y)(hh)** (with transitional provisions in art. 7(2))
- F44** S. 5(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(3)**
- F45** Words in s. 5(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 36(2), 89(2)**; S.S.I. 2003/288, **art. 2, Sch.**
- F46** S. 5(4) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 100(b)**; S.I. 1998/2327, **art. 2(1)(2)(y)(hh)** (with transitional provisions in art. 7(2))

#### Modifications etc. (not altering text)

- C22** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

## 6 Application to young offenders and to children detained without limit of time. **S**

- (1) This Part of this Act applies—
- (a) to persons on whom detention in a young offenders institution (other than detention without limit of time or for life) has been imposed under [<sup>F47</sup>section 207(2)] of the [<sup>F48</sup>1995 Act] as the Part applies to persons serving equivalent sentences of imprisonment; and
  - (b) to—
    - (i) persons sentenced under [<sup>F49</sup>section 205(1) to (3)] of that Act to be detained without limit of time or for life;



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(ii) children sentenced to be detained without limit of time under <sup>F50</sup>section 208] of that Act; and

(iii) persons on whom detention without limit of time or for life is imposed under <sup>F51</sup>section 207(2)] of that Act,

as the Part applies to persons sentenced to imprisonment for life, and references in the Part (except in this section, sections 1(8) and 5(1) and paragraph 1(b) of Schedule 1) to prisoners (whether short-term, long-term or life) or to prison, imprisonment or sentences of imprisonment shall be construed accordingly.

<sup>F52</sup>(2) .....

<sup>F52</sup>(3) .....

#### Textual Amendments

**F47** Words in s. 6(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(a)**

**F48** Words in s. 6(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

**F49** Words in s. 6(1)(b)(i) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(b)**

**F50** Words in s. 6(1)(b)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(c)**

**F51** Words in s. 6(1)(b)(iii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(d)**

**F52** S. 6(2)(3) repealed (8.10.2001) by 2001 asp 7, s. 1(4); S.S.I. 2001/274, **art. 3(3)**

#### Modifications etc. (not altering text)

**C23** Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2, 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)

Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

#### Commencement Information

**I2** S. 6 not in force at Royal Assent see s. 48(2). S. 6(3) in force for certain purposes on 18.8.1993, S. 6 wholly in force at 1.10.1993 by S.I. 1993/2050 art. 3(2)(4), Sch. 1

## 7 Children detained in solemn proceedings. **S**

(1) Where a child is detained under <sup>F53</sup>section 208] of the <sup>F54</sup>1995 Act] (detention of children convicted on indictment) and the period specified in the sentence—

- (a) is less than four years, he shall be released on licence by the Secretary of State as soon as (following commencement of the sentence) half the period so specified has elapsed;
- (b) is of four or more years, he shall be so released as soon as (following such commencement) two thirds of the period so specified has elapsed <sup>F55</sup>unless he has before that time been so released, in relation to that sentence, under any provision of this Act].

<sup>F56</sup>(1A) The Secretary of State may by order provide—

- (a) that the reference to—

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- (i) four years, in paragraph (a) of subsection (1) above; or
    - (ii) four or more years, in paragraph (b) of that subsection,
  - shall be construed as a reference to such other period as may be specified in the order;
  - (b) that the reference to—
    - (i) half, in the said paragraph (a); or
    - (ii) two thirds, in the said paragraph (b),
  - shall be construed as a reference to such other proportion of the period specified in the sentence as may be specified in the order.
- (1B) An order under subsection (1A) above may make such transitional provision as appears to the Secretary of State necessary or expedient in connection with any provision made by the order.]
- (2) A child detained under [<sup>F53</sup>section 208] of the [<sup>F54</sup>1995 Act] or in pursuance of an order under subsection (3) below [<sup>F57</sup>shall], on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.
- [<sup>F58</sup>(2A) This subsection applies where a child detained under section 208 of the 1995 Act is sentenced, while so detained, to a determinate term of detention in a young offenders institution or imprisonment and, by virtue of section 27(5) of this Act, such terms of detention or imprisonment are treated as single term.
- (2B) In a case where subsection (2A) applies and the single term mentioned in that subsection is less than four years, the provisions of this section shall apply.
- (2C) In a case where subsection (2A) applies and the single term mentioned in that subsection is of four or more years—
  - (a) section 6 of this Act shall apply to him as if the single term were an equivalent sentence of detention in a young offenders institution, if that term is served in such an institution; and
  - (b) the provisions of this Act shall apply to him as if the single term were an equivalent sentence of imprisonment, if that term is served in a remand centre or a prison.]
- (3) If, after release under subsection (1) or (2) above and before the date on which the entire period specified in the sentence elapses (following commencement of the sentence), a child commits an offence in respect of which it is competent to impose imprisonment on a person aged 21 years or more (other than an offence in respect of which imprisonment for life is mandatory) and, whether before or after that date, pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding—
  - (a) in a case other than that mentioned in paragraph (b) below, order that he be returned to detention for the whole or any part of the period which—
    - (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period so elapses; and
  - (b) in a case where that court is inferior to the court which imposed the sentence, refer the case to the superior court in question; and a court to which a case is so referred may make such order with regard to it as is mentioned in paragraph (a) above.

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(4) The period for which a child is ordered under subsection (3) above to be returned to detention—

- (a) shall be taken to be a sentence of detention for the purposes of this Act and of any appeal; and
- (b) shall, as the court making that order may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence (being in either case disregarded in determining the appropriate length of that sentence).

(4A) <sup>F59</sup> .....

[<sup>F60</sup>(5) Without prejudice to section 6(1)(b)(ii) of this Act—

- (a) sections 3, 11(1), 12, 12A, 12B, 17 and 20(2) of this Act apply to children detained under section 208 of the 1995 Act as they apply to long-term prisoners; and
- (b) in those sections of this Act, references to prisoners, or to prison, imprisonment or sentences of imprisonment shall be construed, and sections 1A and 27 shall apply, accordingly.]

(6) <sup>F61</sup> .....

(7) In the foregoing provisions of this section any reference to a child being detained does not include a reference to his being detained without limit of time.

#### Textual Amendments

- F53** Words in s. 7(1)(2)(5)(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(5)**
- F54** Words in s. 7(1)(2)(5)(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**
- F55** Words in s. 7(1)(b) added (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 101(a)**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)** (with transitional provisions in art. 7(3))
- F56** S. 7(1A)(1B) inserted (3.2.1995) by 1994 c. 33, s. 130(1); S.I. 1995/127, art. 2(1), **Sch. 1**
- F57** Word in s. 7(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(a), 89(2)** (with saving in S.S.I. 2003/287, art. 2(2)); S.S.I. 2003/288, **art. 2**, Sch.
- F58** S. 7(2A)(2B)(2C) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 101(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)** (with transitional provisions in art. 7(3))
- F59** S. 7(4A) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(b), 89(2)**; S.S.I. 2003/288, **art. 2**, Sch.
- F60** S. 7(5) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(c), 89(2)**; S.S.I. 2003/288, **art. 2**, Sch.
- F61** S. 7(6) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(d), 89(2)**; S.S.I. 2003/288, **art. 2**, Sch.

#### Modifications etc. (not altering text)

- C24** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))
- C25** S. 7(1) modified (retrospectively) by 1984 c. 47, **Sch. para. 2(5)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 6(2)**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))  
S. 7(1) modified (1.10.1997) by 1984 c. 47, **Sch. para. 2(5)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 7(1)(2)**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))

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### Commencement Information

**I3** S. 7 not in force at Royal Assent see. s. 48(2), s. 7(6) in force for certain purposes at 18.8.1993, s. 7 wholly in force at 1.10.1993 by [S.I. 1993/2050](#), [art. 3\(2\)\(4\)](#), [Sch. 1](#)

<sup>F62</sup>8 ..... **S**

### Textual Amendments

**F62** S. 8 repealed (1.4.1996) by [1995 c. 40](#), [ss. 6, 7\(2\)](#), [Sch. 5](#)

## 9 Persons liable to removal from the United Kingdom. **S**

- (1) In relation to a long-term prisoner who is liable to removal from the United Kingdom, section 1(3) of this Act shall have effect as if the words “, if recommended to do so by the Parole Board,” were omitted.
- (2) In relation to a person who is liable to removal from the United Kingdom, section 12 of this Act shall have effect as if subsection (2) were omitted.
- (3) For the purposes of this section, a person is liable to removal from the United Kingdom if he—
  - (a) is liable to deportation under section 3(5) of the <sup>M2</sup>Immigration Act 1971 and has been notified of a decision to make a deportation order against him;
  - (b) is liable to deportation under section 3(6) of that Act;
  - (c) has been notified of a decision to refuse him leave to enter the United Kingdom; or
  - (d) is an illegal immigrant within the meaning of section 33(1) of that Act.

### Modifications etc. (not altering text)

**C26** S. 9 excluded (17.12.2001) by [2001 asp 13](#), [s. 24\(c\)](#) (with [s. 29](#)); [S.S.I. 2001/456](#), [art. 2](#)

**C27** Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2, 6 extended (1.10.1997) by [1997 c. 43](#), [56\(1\)](#), [Sch. 1 paras. 10\(2\)\(5\), 11\(2\)\(4\)](#), [Sch. 5 paras. 11\(1\)\(3\), 12\(1\)](#); [S.I. 1997/2200](#), [art. 2\(1\)\(n\)](#) (subject to [art. 5](#) of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of [Sch. 5 paras. 11\(1\), 12\(1\)](#) by [1998 c. 37](#), [s. 120\(2\)](#), [Sch. 10](#); [S.I. 1998/2327](#), [art. 2\(1\)\(aa\)\(3\)\(x\)](#) (subject to [arts. 5-8](#) of the said S.I.)

Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by [1997 c. 43](#), [ss. 41, 56\(1\)](#), [Sch. 1 Pt. II paras. 10\(2\)\(a\)\(5\)\(a\)\(6\)\(7\), 11\(2\)\(a\)\(4\)\(a\)\(6\)](#) (subject to [art. 5](#)) (as amended (30.9.1998) by [1998 c. 37](#), [s. 119](#), [Sch. 8 paras. 135\(5\)\(a\)\(d\)\(f\)\(6\)\(a\)\(b\)](#); [S.I. 1998/2327](#), [art. 2\(1\)\(y\)\(2\)\(oo\)](#) (subject to [arts. 5-8](#)))

### Marginal Citations

**M2** [1971 c. 77](#).

## 10 Life prisoners transferred to Scotland. **S**

[<sup>F63</sup>(1) This Part of this Act, except section 2(9), shall apply to a transferred life prisoner (whether transferred before or after the commencement of this enactment or section 3

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of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7)) who is a life prisoner—

- (a) transferred from England and Wales and to whom—
  - (i) section 28(1)(a) (duty to release certain life prisoners) of the Crime (Sentences) Act 1997 (c.43) (in this section, “the 1997 Act”) applies and in respect of whom the court has made an order under section 28(2)(b) of that Act; or
  - (ii) section 82A (determination of tariffs) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) (in this section, “the 2000 Act”) applies and in respect of whom the court has made an order under section 82A(2) of that Act;
- (b) transferred from the Isle of Man and to whom paragraph 4(1) (discretionary life detainees) of Schedule 2 to the Custody Act 1995 (c.1) applies (that Act being an Act of the Tynwald of the Isle of Man to re-enact with amendments certain enactments relating to the custody of offenders and others; to make fresh provision for such custody; and for connected purposes: in this section “the Isle of Man Custody Act”); or
- (c) transferred from Northern Ireland and to whom a provision such as is mentioned in subsection (1A) below applies,

as if the prisoner were a life prisoner within the meaning of section 2 of this Act and the punishment part of his sentence within the meaning of that section were the relevant part specified in an order made under the said section 28(2)(b) or 82A(2) or paragraph 4(1) or made under a provision such as is mentioned in subsection (1A) below, as the case may be.

(1A) The provision referred to in paragraph (c) of subsection (1) above is—

- (a) a provision made by Order in Council under section 85 (provisions dealing with certain reserved matters) of the Northern Ireland Act 1998 (c.47), where that provision is to the effect that a court in Northern Ireland sentencing a person to imprisonment for life may make an order that early release provisions shall apply to the person as soon as he has served the part of his sentence specified in the order; or
- (b) any provision to that effect, including one made as described in paragraph (a) above, identified by the Scottish Ministers by order made by statutory instrument.]

[<sup>F64</sup>(2) In the case of any other transferred life prisoner, being one whose transfer occurred after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), subsection (3) below applies where the court, following a hearing under subsection (2J) below, makes an order under that subsection specifying a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2 of this Act if—

- (a) the prisoner had been sentenced for the offence in Scotland; and
- (b) that section (as amended by section 3 of the Convention Rights (Compliance) (Scotland) Act 2001) had been in force at the time when the prisoner was sentenced.

(2A) The Scottish Ministers shall, as soon as reasonably practicable after the transferred life prisoner is transferred to Scotland, refer the case of the transferred life prisoner to the High Court of Justiciary for a hearing under subsection (2J) below.

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- (2B) The Scottish Ministers shall not so refer the case of a transferred life prisoner if the prisoner—
- (a) has, under subsection (2C) below, waived the entitlement to such a hearing; or
  - (b) has served the part of the sentence specified in the certificate or direction referred to in subsection (2D) below
- [<sup>F65</sup>and in such a case subsection (3) below applies].
- (2C) A transferred life prisoner in respect of whom a certificate or direction referred to in subsection (2D) below has been issued or made may waive the entitlement to a hearing under subsection (2J) below provided—
- (a) the prisoner has had independent legal advice or has declined such advice; and
  - (b) a copy in writing of the waiver is sent to the Scottish Ministers.
- (2D) The certificate or direction referred to in subsection (2B)(b) above is—
- (a) a certificate issued under—
    - (i) section 48 of or paragraph 9 of Schedule 12 to the Criminal Justice Act 1991 (c.53); or
    - (ii) section 33 of the 1997 Act;
  - (b) a direction of the Secretary of State made under—
    - (i) section 28(4) of the 1997 Act; or
    - (ii) section 82A(5) of the 2000 Act; or
  - (c) such other certificate or direction as the Scottish Ministers may, by order made by statutory instrument, specify.
- (2E) Notwithstanding subsection (2A) above, a transferred life prisoner—
- (a) who has not, under subsection (2C) above, waived the entitlement to a hearing; or
  - (b) who has not served the part of the sentence specified in the certificate or direction referred to in subsection (2D) above issued in respect of that prisoner,
- may, after his transfer to Scotland, refer his case for a hearing under subsection (2J) below.
- (2F) The Scottish Ministers shall, no later than two weeks after the referral of a transferred life prisoner's case under subsection (2A) or (2E) above, send the documents and other information mentioned in subsection (2G) below to—
- (a) the High Court of Justiciary;
  - (b) the Lord Advocate; and
  - (c) the transferred life prisoner.
- (2G) The documents and other information referred to in subsection (2F) above are—
- (a) a copy of the indictment or any corresponding document;
  - (b) subject to subsection (2H) below, a copy of any report by the trial judge;
  - (c) a copy of any certificate or direction referred to in subsection (2D) above; and
  - (d) any other documents or information which the Scottish Ministers consider relevant.
- (2H) A report prepared by the trial judge—
- (a) may be sent under subsection (2F) above notwithstanding that it was prepared on the basis that it would not be disclosed to the transferred life prisoner; and

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- (b) shall be so sent for the purposes only of the hearing under subsection (2J) below.
- (2J) There shall be a hearing at which the High Court of Justiciary shall make the order referred to in subsection (2K) below.
- (2K) That order is an order specifying a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2 of this Act, if—
- (a) the prisoner had been sentenced for the offence in Scotland; and
  - (b) that section (as amended by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7)) had been in force at the time when the prisoner was sentenced.
- (2L) The court, in considering the case of a transferred life prisoner—
- (a) who is serving more than one sentence of imprisonment for life; and
  - (b) two or more of whose life sentences were imposed in proceedings on a single indictment,
- shall, in making the order under subsection (2J) above, proceed as if the prisoner had been sentenced in Scotland and section 205D (only one sentence of imprisonment for life to be imposed in any proceedings) of the 1995 Act had been in force at the time the prisoner was sentenced.
- (2M) Such a transferred life prisoner who, before being transferred to Scotland, had been released on licence, otherwise than on compassionate grounds, shall be deemed to have been released on licence under section 2(4) of this Act as if the transferred life prisoner had been a life prisoner to whom that section applied and who had served the punishment part of his sentence.
- (2N) The reference in this section to a transferred life prisoner’s release on compassionate grounds has the same meaning as that reference has in section 10A of this Act.
- (2P) The court shall pronounce the order under subsection (2J) above in open court.
- (2Q) If the court is satisfied that the transferred life prisoner is incapable of properly instructing a solicitor in relation to the hearing under subsection (2J) above, whether or not the prisoner has so instructed a solicitor, it shall not make the order under that subsection.
- (2R) If the Scottish Ministers are satisfied that the prisoner is no longer incapable of instructing a solicitor in relation to the hearing under subsection (2J) above, they shall, as soon as reasonably practicable thereafter, refer the case of the prisoner to the court for such a hearing.
- (2S) In this section—
- “incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and
  - “mental disorder” has the same meaning as it has in section 87 of the Adults with Incapacity (Scotland) Act 2000 (asp 4).



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- (2T) Nothing in this section shall be taken as preventing a prisoner, in respect of whom the court declined, under subsection (2Q) above, to make the order under subsection (2J) above, from again referring his case for a hearing under subsection (2J) above.
- (2U) A hearing under subsection (2J) above shall be criminal procedure for the purposes of section 305 of the 1995 Act (power of High Court of Justiciary to regulate criminal procedure by Act of Adjournal).]
- (3) In a case to which this subsection applies [<sup>F66</sup>(whether by virtue of subsection (2) above or of subsection (2B) above)], this Part of this Act except [<sup>F67</sup>section 2(9)] shall apply as if—
- (a) the transferred life prisoner were a <sup>F68</sup> . . . life prisoner within the meaning of section 2 of this Act; and
  - (b) the [<sup>F69</sup>punishment] part of his sentence within the meaning of that section were the part specified in the [<sup>F70</sup>order under subsection (2J) above][<sup>F71</sup>or as the case may be in the certificate or direction referred to in subsection (2D) above].
- (4) In this section “transferred life prisoner” means a person—
- (a) on whom a court in a country or territory outside Scotland [<sup>F72</sup>or a court-martial] has [<sup>F73</sup>(whether before or after the commencement of this section)] imposed one or more sentences of imprisonment or detention for an indeterminate period; and
  - (b) who has been transferred to Scotland [<sup>F74</sup>[<sup>F75</sup>, or in the case of a sentence imposed by a court martial in Scotland to a prison in Scotland (in either case whether] before or after that commencement)], in pursuance of—
    - (i) an order made by the Secretary of State under [<sup>F76</sup>paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997][<sup>F77</sup>, other than an order for a restricted transfer within the meaning of paragraph 6(1) of that Schedule to that Act,]or section 2 of the <sup>M3</sup>Colonial Prisoners Removal Act 1884; or
    - [<sup>F78</sup>(ia) a decision of the Secretary of State under section 80 (removal of patients to Scotland) of the Mental Health Act 1983 (c.20) authorising the prisoner’s removal to Scotland from England and Wales; or
    - (ib) a decision of the responsible authority under section 81 (removal to Scotland of patients from Northern Ireland) of the Mental Health (Scotland) Act 1984 (c.36) authorising the prisoner’s removal to Scotland from Northern Ireland; or]
    - (ii) a warrant issued by the Secretary of State under the <sup>M4</sup>Repatriation of Prisoners Act 1984, [<sup>F79</sup>; or
    - (iii) rules made under section 122(1)(a) of the <sup>M5</sup>Army Act 1955 (imprisonment and detention rules); or
    - (iv) rules made under section 122(1)(a) of the <sup>M6</sup>Air Force Act 1955 (imprisonment and detention rules); or
    - (v) a determination made under section 81(3) of the <sup>M7</sup>Naval Discipline Act 1957 (place of imprisonment or detention).]there to serve, or to serve the remainder of, his sentence or sentences [<sup>F80</sup>; and in this subsection “prison” has the same meaning as in the 1989 Act.].
- (5) Where a transferred life prisoner has been transferred to Scotland to serve the whole or part of two or more sentences referred to in subsection (4)(a) above—

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- (a) he shall be treated as a <sup>F81</sup> . . . life prisoner (within the meaning of section 2 of this Act) for the purposes of subsection (3) above only if the requirements of subsection (2) above are satisfied in respect of each of those sentences; and
- (b) notwithstanding the terms of any order under [<sup>F82</sup>the said section [<sup>F83</sup>28(2)] of the <sup>M8</sup>Crime (Sentences) Act 1997][<sup>F84</sup>section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 4(1) of Schedule 2 to the Isle of Man Custody Act or under a provision such as is mentioned in subsection (1A) above relating to Northern Ireland] or of any [<sup>F85</sup>order under subsection (2J)] above, subsections (4) and (6) of section 2 of this Act shall not apply to him until he has served the [<sup>F86</sup>punishment] part of each of those sentences.

### Textual Amendments

- F63** S. 10(1)(1A) substituted for s. 10(1) (8.10.2001) by 2001 asp 7, s. 3(1)(a); S.S.I. 2001/274, art. 3(3)
- F64** S. 10(2)-(2U) substituted for s. 10(2) (27.7.2001 for certain purposes otherwise 8.10.2001) by 2001 asp 7, s. 3(1)(b); S.S.I. 2001/274, art. 3(3)
- F65** Words in s. 10(2B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(3)(a); S.S.I. 2003/288, art. 2, Sch.
- F66** Words in s. 10(3) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(3)(b)(i); S.S.I. 2003/288, art. 2, Sch.
- F67** Words in s. 10(3) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(c)(i); S.S.I. 2001/274, art. 3(3)
- F68** Word in s. 10(3)(a) repealed (8.10.2001) by 2001 asp 7, s. 3(1)(c)(ii); S.S.I. 2001/274, art. 3(3)
- F69** Word in s. 10(3)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(c)(iii); S.S.I. 2001/274, art. 3(3)
- F70** Words in s. 10(3)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(c)(iii); S.S.I. 2001/274, art. 3(3)
- F71** Words in s. 10(3) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(3)(b)(ii); S.S.I. 2003/288, art. 2, Sch.
- F72** Words in s. 10(4)(a) inserted (3.2.1995) by 1994 c. 33, s. 133(a); S.I. 1995/127, art. 2(1), Sch. 1
- F73** Words in s. 10(4)(a) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F74** Words in s. 10(4)(b) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F75** Words in s. 10(4)(b) substituted (3.2.1995) by 1994 c. 33, s. 133(b)(i); S.I. 1995/127, art. 2(1), Sch. 1
- F76** Words in s. 10(4)(b)(i) substituted (1.10.1997) by 1997 c. 43, s. 55(2), Sch. 4 para. 16(1); S.I. 1997/2200, art. 2(1)(1)(2)(i) (subject to art. 5)
- F77** Words in s. 10(4)(b)(i) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(d)(i); S.S.I. 2001/274, art. 3(3)
- F78** S. 10(4)(b)(ia)(ib) inserted (8.10.2001) by 2001 asp 7, s. 3(1)(d)(ii); S.S.I. 2001/274, art. 3(3)
- F79** S. 10(4)(b)(iii)(iv)(v) and the preceding word “; or” inserted (3.2.1995) by 1994 c. 33, s. 133(b)(ii); S.I. 1995/127, art. 2(1), Sch. 1
- F80** Words in s. 10(4)(b) inserted (3.2.1995) by 1994 c. 33, s. 133(b)(iii); S.I. 1995/127, art. 2(1), Sch. 1
- F81** Word in s. 10(5)(a) repealed (8.10.2001) by 2001 asp 7, s. 3(1)(e)(i); S.S.I. 2001/274, art. 3(3)
- F82** Words in s. 10(5)(b) substituted (20.10.1997) by 1997 c. 48, s. 62(1), Sch. 1 para. 14(8)(e) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- F83** Word in s. 10(5)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(A); S.S.I. 2001/274, art. 3(3)
- F84** Words in s. 10(5)(b) inserted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(B); S.S.I. 2001/274, art. 3(3)
- F85** Words in s. 10(5)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(C); S.S.I. 2001/274, art. 3(3)
- F86** Word in s. 10(5)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(C); S.S.I. 2001/274, art. 3(3)

### Modifications etc. (not altering text)

- C28** S. 10 excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2
- C29** S. 10(1) applied (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. para. 78; S.S.I. 2001/274, art. 3(3)

### Marginal Citations

- M3** 1884 c. 31.

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- M4** 1984 c. 47.
- M5** 1955 c. 18.
- M6** 1955 c. 19.
- M7** 1957 c. 53.
- M8** 1997 c. 43.

## [<sup>F87</sup> 10A Transfer of supervision of life prisoners **S**

- (1) This section applies to a life prisoner released on licence in respect of whom, whether before or after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), an order was made under paragraph 4 of Schedule 1 to the Crime (Sentences) Act 1997 (c.43) transferring responsibility for his supervision to the Scottish Ministers and ordering that the supervision or, as the case may be, the remainder of it be undergone in Scotland, that order being an unrestricted transfer within the meaning of paragraph 6(1) of that Schedule.
- (2) This Part of this Act—
  - (a) shall apply to such a life prisoner, except one released on compassionate grounds, as if that prisoner had served the punishment part of his life sentence and had been released on licence under section 2(4) of this Act;
  - (b) shall apply to such a life prisoner released on compassionate grounds as if that prisoner had been released on licence under section 3 of this Act.
- (3) If, in the case of such a life prisoner released on compassionate grounds—
  - (a) the Scottish Ministers revoke that life prisoner’s licence and recall him to prison under section 17(1) of this Act; and
  - (b) the Parole Board does not, under section 17(4) of this Act, direct that he be immediately released on licence,section 10 of this Act shall apply to the life prisoner as it applies to a transferred life prisoner within the meaning of section 10 whose transfer occurred after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001.
- (4) References in this section to a life prisoner’s release on compassionate grounds are references to his release under section 30 of the 1997 Act or under equivalent provision made for Northern Ireland such as is mentioned in subsection (5) below.
- (5) The provision referred to in subsection (4) above is—
  - (a) a provision made by Order in Council under section 85 (provisions dealing with certain reserved matters) of the Northern Ireland Act 1998 (c.47) governing the release of life prisoners on compassionate grounds; or
  - (b) any provision to that effect, including one made as described in paragraph (a) above, identified by the Scottish Ministers by order made by statutory instrument.]

### Textual Amendments

- F87** S. 10A inserted (8.10.2001) by 2001 asp 7, s. 3(2); S.S.I. 2001/274, art. 3(3)

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**11 Duration of licence. S**

- (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 [F88section 209] of the [F891995 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 the date on which, but for such release, he would have been released under section 1(1) of this Act;
  - F90(b) .....

**Textual Amendments**

**F88** Words in s. 11(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(6)(a)**

**F89** Words in s. 11(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

**F90** S. 11(3)(b) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 102, **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(hh)(3)(u)** (with transitional provisions in arts. 5-8)

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**Modifications etc. (not altering text)**

**C30** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

Ss. 11-13 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, **Sch. 1 paras. 5, 6, 7** (with transitional provisions in **art. 3, Sch. 2**); S.I. 1997/2200, **art. 2(1)(g)**

**12 Conditions in licence. E+W+S**

- (1) A person released on licence under this Part of this Act shall [F91, 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, or of [F92an officer of a local probation board] appointed for or assigned to such petty sessions 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.
- [F93(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

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- 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.]

#### Extent Information

- E2** S.12(2) extends to England and Wales and Scotland; s. 12 otherwise extends to Scotland only, see s. 48(5)(6)

#### Textual Amendments

- F91** Words in s. 12 inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 35(2), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F92** Words in s. 12(2)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. I para. 4(1)(a)(2); S.I. 2001/919, art. 2(f)(i)
- F93** S. 12(3) substituted (27.6.2003) for s. 12(3)(4) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 28(3), 89(2) (with saving in S.S.I. 2003/287, art. 2(2)(b)); S.S.I. 2003/288, art. 2, Sch.

#### Modifications etc. (not altering text)

- C31** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6); S.I. 1997/2200, art. 2(1)(g) (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))
- Ss. 11-13 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. 1 paras. 5, 6, 7 (with transitional provisions in art. 3, Sch. 2)

VALID FROM 08/02/2006

#### [<sup>F94</sup>12AA Conditions for persons released on licence under section 3AA **E+W+S**

- (1) Without prejudice to the generality of section 12(1) of this Act, any licence granted under section 3AA of this Act must include—
- (a) the standard conditions; and
- (b) a curfew condition complying with section 12AB of this Act.
- (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 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; and

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(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.

#### Textual Amendments

**F94** Ss. 12AA, 12AB inserted after s. 12 (8.2.2006 for specified purposes, 3.7.2006 for further specified purposes, 11.2.2008 for further specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 15\(10\)](#), [24\(2\)](#); [S.S.I. 2006/48](#), [art. 3\(1\)\(3\)](#), [Sch. Pt. 1](#); [S.S.I. 2006/331](#), [art. 3\(4\)\(5\)](#); [S.S.I. 2008/21](#), [art. 2\(1\)\(b\)\(2\)](#)

VALID FROM 08/02/2006

#### 12AB Curfew condition **E+W+S**

- (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



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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.]

#### Textual Amendments

**F94** Ss. 12AA, 12AB inserted after s. 12 (8.2.2006 for specified purposes, 3.7.2006 for further specified purposes, 11.2.2008 for further specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 15\(10\)](#), 24(2); [S.S.I. 2006/48](#), [art. 3\(1\)\(3\)](#), Sch. Pt. 1; [S.S.I. 2006/331](#), [art. 3\(4\)\(5\)](#); [S.S.I. 2008/21](#), [art. 2\(1\)\(b\)\(2\)](#)

### [<sup>F95</sup>12A Suspension of licence conditions **S**

- (1) Where a prisoner, who has been released on licence under this Part of this Act as respects a sentence of imprisonment—
- continues, by virtue of any enactment or rule of law, to be detained in prison notwithstanding such release; or
  - 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—
- the prisoner is so detained; and
  - the licence remains in force.
- (3) The conditions are any conditions, however expressed, requiring the prisoner—
- to be of good behaviour and to keep the peace; or
  - 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—
- adding to the conditions mentioned in that subsection such other condition as they consider appropriate; or
  - cancelling or varying a condition for the time being mentioned in that subsection.]

#### Textual Amendments

**F95** Ss. 12A, 12B inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 35\(3\)](#), 89(2); [S.S.I. 2003/288](#), [art. 2](#), Sch.

### [<sup>F95</sup>12B Certain licences to be replaced by one **S**

- (1) Subsection (2) below applies where a prisoner—
- 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



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(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.]

#### Textual Amendments

**F95** Ss. 12A, 12B inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 35(3)**, 89(2); [S.S.I. 2003/288](#), **art. 2**, Sch.

### 13 Supervision of persons released on licence. **S**

The Secretary of State may make rules for regulating the supervision of any description of person released, under this Part of this Act, on licence.

#### Modifications etc. (not altering text)

**C32** Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2 & 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); [S.I. 1997/2200](#), **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; [S.I. 1998/2327](#), **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)  
Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)**; [S.I. 1997/2200](#), **art. 2(1)(g)** (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; [S.I. 1998/2327](#), **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))  
Ss. 11-13 applied (with modifications) (1.10.1997) by [S.I. 1997/1776](#), arts. 1, 2, Sch. 1 paras. 5, 6, 7 (with transitional provisions in [art. 3](#), **Sch. 2**); [S.I. 1997/2200](#), **art. 2(1)(g)**

### 14 Supervised release of short-term prisoners. **E+W+S**

**F96**(1) . . . . .

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- <sup>F97</sup>(2) .....
- (3) .....
- (4) The Secretary of State shall, not later than thirty days before the date of release of a short-term prisoner who is subject to a supervised release order, designate—
- (a) the local authority for the area where the prisoner proposes to reside after release;
  - (b) the local authority for the area where the place from which he is to be released is situated; or
  - (c) the justices for the petty sessions area where he proposes to reside after release, as the appropriate authority or, as the case may be, justices for the purposes of the order.
- (5) As soon as practicable after designating a local authority or justices under subsection (4) above the Secretary of State shall—
- (a) inform the prisoner in writing of the designation; and
  - (b) end to the authority or, as the case may be, to the [<sup>F98</sup>chief executive] to the justices a copy of the supervised release order and of the relevant documents and information received by the Secretary of State by virtue of [<sup>F99</sup>section 209(6)(b)] of the [<sup>F100</sup>1995 Act].

#### Textual Amendments

- F96** S. 14(1) repealed (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 5** (with s. 6, Sch. 3 Pt. II paras. 16, 17)
- F97** S. 14(2)(3) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 103, **Sch. 10**; S.I. 1997/2327, **art. 2(1)(y)(aa)(2)(hh)(3)(u)**
- F98** Words in s. 14(5)(b) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 170** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)
- F99** Words in s. 14(5) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(7)(a)(i)(ii)(b)(c)**
- F100** Words in s. 14(5)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

#### Modifications etc. (not altering text)

- C33** S. 14(5): certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 2(1)-(3)**

## 15 Variation of supervised release order etc. **E+W+S**

- (1) A person released subject to a supervised release order, or his supervising officer, may request the Secretary of State that a local authority or the justices for a petty sessions area (in this section referred to as the “second” designee) be designated under this subsection as the appropriate authority or justices for the purposes of the order in place of that or those for the time being designated under section 14(4) of this Act or this subsection (the “first” designee) if the person resides or proposes to reside in the area of the second designee.
- (2) The Secretary of State shall, if he designates the second designee in accordance with the request, determine the date from which the designation shall have effect.
- (3) As soon as practicable after a designation is made under subsection (1) above—
- (a) the Secretary of State shall—

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- (i) inform the person subject to the supervised release order, the first designee and the second designee that the designation has been made and of the date determined under subsection (2) above; and
  - (ii) send a copy of the supervised release order to the second designee; and
  - (b) the first designee shall send to the second designee the relevant documents and information received by the first designee by virtue of section 14(5)(b) of this Act (or by virtue of this paragraph).
- (4) The court which made a supervised release order may, on an application under this subsection by a person subject to the order (whether or not he has been released before the application is made) or by his supervising officer (or, if the person is not yet released, but a local authority stands or justices stand designated as the appropriate authority or justices in respect of the order, by a relevant officer of that authority or, as the case may be, <sup>F101</sup>an officer of a local probation board] appointed for or assigned to the petty sessions area)—
- (a) amend, vary or cancel any requirement specified in or by virtue of the order;
  - (b) insert in the order a requirement specified for the purpose mentioned in <sup>F102</sup>section 209(3)(b)] of the <sup>F103</sup>1995 Act],
- whether or not such amendment, variation, cancellation or insertion accords with what is sought by the applicant; but the period during which the person is to be under supervision shall not thereby be increased beyond any period which could have been specified in making the order.
- (5) If an application under subsection (4) above is by the supervising officer (or other relevant officer or <sup>F104</sup>officer of a local probation board]) alone, the court shall cite the person who is subject to the order to appear before the court and shall not proceed under that subsection until it has explained to the person, in as straightforward a way as is practicable, the effect of any proposed amendment, variation, cancellation or insertion.
- (6) The clerk of the court by which an amendment, variation, cancellation or insertion is made under subsection (4) above shall forthwith send a copy of the resultant order to the person subject to it and to the supervising officer.

#### Textual Amendments

- F101** Words in s. 15(4) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. I para. 4(1)(a)(2)**; S.I. 2001/919, **art. 2(f)(i)**
- F102** Words in s. 15(4)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(8)**
- F103** Words in s. 15(4)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**
- F104** Words in s. 15(5) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 117**; S.I. 2001/919, **art. 2(f)(ii)**

#### Modifications etc. (not altering text)

- C34** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))
- C35** S. 15(1)(2)(3): certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 2(4)-(6)**

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## 16 Commission of offence by released prisoner. **E+W+S**

- (1) This section applies to a short-term or long-term prisoner sentenced to a term of imprisonment (in this section referred to as “the original sentence”) by a court in Scotland and released [<sup>F105</sup>at any time] under this Part of this Act or Part II of the <sup>M9</sup>Criminal Justice Act 1991 if—
  - (a) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment (other than an offence in respect of which imprisonment for life is mandatory); and
  - (b) whether before or after that date, he pleads guilty to or is found guilty of that offence (in this section referred to as “the new offence”) in a court in Scotland or England and Wales.
- (2) Where the court mentioned in subsection (1)(b) above is in Scotland it may, instead of or in addition to making any other order in respect of the plea or finding—
  - (a) in a case other than that mentioned in paragraph (b) below, order the person to be returned to prison for the whole or any part of the period which—
    - (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1)(a) above; and
  - (b) in a case where that court is inferior to the court which imposed the sentence mentioned in the said subsection (1)(a), refer the case to the superior court in question; and a court to which a case is so referred may make such order with regard to it as is mentioned in paragraph (a) above.
- (3) Where the court mentioned in subsection (1)(b) above is in England and Wales it may, instead of or in addition to making any other order in respect of the plea or finding, refer the case to the court which imposed the original sentence and shall, if it does so, send to that court such particulars of that case as may be relevant.
- (4) The court to which a case is referred under subsection (3) above may make such an order as is mentioned in subsection (2)(a) above in respect of the person.
- (5) The period for which a person to whom this section applies is ordered under subsection (2) or (4) above to be returned to prison—
  - (a) shall be taken to be a sentence of imprisonment for the purposes of this Act and of any appeal; and
  - (b) shall, as the court making that order may direct, either be served before and be followed by, or be served concurrently with, any sentence of imprisonment imposed for the new offence (being in either case disregarded in determining the appropriate length of that sentence).
- (6) In exercising its powers under [<sup>F106</sup>section 118(4) or 189(1) and (2)] of the [<sup>F107</sup>1995 Act], the court hearing an appeal against an order under subsection (2) or (4) above may, if it thinks fit and notwithstanding subsection (2)(a), substitute for the period specified in the order a period not exceeding the period between the date on which the person was released and the date mentioned in subsection (1)(a) above.
- [<sup>F108</sup>(7) Where an order under subsection (2) or (4) above is made in respect of a person released on licence—
  - (a) <sup>F109</sup>.....
  - <sup>F110</sup>(b) .....]

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[<sup>F111</sup>(8) 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, the date mentioned in subsection (1)(a) above shall be taken to be that on which he would (but for his release) have served all of the sentences in full.]

#### Extent Information

**E3** S.16(1)(3) extends to England and Wales and Scotland; s. 16 otherwise extends to Scotland only, see s. 48(5)(6)

#### Textual Amendments

**F105** Words in s. 16(1) inserted (S.) (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 104(1)**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)**

**F106** Words in s. 16(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(9)(a)**

**F107** Words in s. 16(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

**F108** S. 16(7) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(9)(b)**

**F109** S. 16(7)(a) and word repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 36(3), 89(2)**; S.S.I. 2003/288, **art. 2, Sch.**

**F110** S. 16(7)(b) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), **Sch. 8 para. 104(3), Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(hh)(3)(u)** (subject to transitional provisions in arts. 5-8)

**F111** S. 16(8) inserted (30.9.1998) by 1998 c. 37, s. 111(2); S.I. 1998/2327, **art. 2(1)(x)** (subject to arts. 5-8)

#### Modifications etc. (not altering text)

**C36** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

#### Marginal Citations

**M9** 1991 c. 53.

## 17 Revocation of licence. **S**

[<sup>F112</sup>(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

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- (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 revocation of a person's licence 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 immediate release on licence, the Secretary of State shall under this section give effect to that direction.
- [<sup>F113</sup>(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.]
- [<sup>F114</sup>(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.

#### Textual Amendments

**F112** S. 17(1)(1A)(1B)(2)(3) substituted (27.6.2003) for s. 17(1)-(3) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. {s. 36(4)}, 89(2); [S.S.I. 2003/288](#), [art. 2](#), Sch.

**F113** S. 17(4AA) inserted (8.10.2001) by [2001 asp 7](#), [s. 1\(5\)\(c\)](#); [S.S.I. 2001/274](#), [art. 3\(3\)](#)

**F114** S. 17(4A) inserted (30.9.1998) by [1998 c. 37](#), s. 119, [Sch. 8 para. 105](#); [S.I. 1998/2327](#), [art. 2\(1\)\(y\)\(2\)\(hh\)](#)

#### Modifications etc. (not altering text)

**C37** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by [1997 c. 43](#), ss. 41, 56(1), [Sch. 1 Pt. II paras. 10\(2\)\(a\)\(5\)\(a\)\(6\)\(7\)](#), [11\(2\)\(a\)\(4\)\(a\)\(6\)](#); [S.I. 1997/2200](#), [art. 2\(1\)\(g\)](#) (subject to art. 5) (which amending provisions were amended (30.9.1998) by [1998 c. 37](#), s. 119, [Sch. 8 paras. 135\(a\)\(i\)\(d\)\(6\)\(a\)\(i\)\(b\)](#); [S.I. 1998/2327](#), [art. 2\(1\)\(y\)\(2\)\(oo\)](#) (subject to arts. 5-8))



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VALID FROM 03/07/2006

**[<sup>F115</sup>17A Recall of prisoners released under section 3AA E+W+S]**

- (1) If it appears to the Scottish Ministers as regards a prisoner released on licence under section 3AA of this Act that—
  - (a) he has failed to comply with any condition included in his licence; or
  - (b) his whereabouts can no longer be monitored remotely at the place for the time being specified in the curfew condition included in the licence,
 they may revoke the licence and recall the person to prison under this section.
- (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.
- (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) Where the revocation of a person's licence is cancelled by virtue of subsection (4) above, the person is to be treated for the purposes of section 3AA of this Act as if he had not been recalled to prison under this section.
- (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.]

**Textual Amendments**

**F115** S. 17A inserted (3.7.2006 for specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), **ss. 15(13)**, 24(2); S.S.I. 2006/331, **art 3(4)(5)**; S.S.I. 2008/21, **art. 2(2)**

**18 Breach of supervised release order. S**

- (1) Where the court which imposed a supervised release order on a person is informed, by statement on oath by an appropriate officer, that the person has failed to comply with a requirement specified in or by virtue of that order, the court may—
  - (a) issue a warrant for the arrest of the person; or
  - (b) issue a citation requiring the person to appear before the court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which a person is brought, or appears, in pursuance of a warrant or citation issued under subsection (1) above that there has been such failure as is mentioned in that subsection, the court may—
  - (a) order him to be returned to prison for the whole or any part of the period which—



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- (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date of the first proven failure referred to in the statement mentioned in subsection (1) above and the date on which supervision under the supervised release order would have ceased; or
  - (b) do anything in respect of the supervised release order that might have been done under section 15(4) of this Act on an application under that subsection in relation to that order.
- (3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.
- (4) As soon as the period for which a person is ordered under subsection (2) above to be returned to prison expires, the Secretary of State shall release him unconditionally.
- (5) For the purposes of this Act, any such period as is mentioned in subsection (4) above is neither a sentence nor a part of a sentence.
- (6) The following are “appropriate officers” for the purposes of subsection (1) above—
- (a) the person’s supervising officer;
  - (b) the [<sup>F116</sup>chief social work officer] of a local authority which is designated under section 14(4) or 15(1) of this Act as the appropriate authority for the purposes of the order;
  - (c) any officer appointed by that [<sup>F116</sup>chief social work officer] for the purposes of this section.

#### Textual Amendments

**F116** Words in s. 18(6)(b)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 179(2)**; S.I. 1996/323, **art. 4(1)(b)(c)**

#### Modifications etc. (not altering text)

**C38** S. 18 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, **Sch. 1 paras. 5, 6, 7** (with transitional provisions in **art. 3, Sch. 2**); S.I. 1997/2200, **art. 2(1)(g)**  
Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to **art. 5**) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to **arts. 5-8**)  
Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2 & 6 extended (1.10.1997) by 1997 c. 43, 56(1), **Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1)**; S.I. 1997/2200, **art. 2(1)(n)** (subject to **art. 5** of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of **Sch. 5 paras. 11(1), 12(1)** by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to **arts. 5-8** of the said S.I.)

## 19 Appeals in respect of decisions relating to supervised release orders. **S**

- (1) Within two weeks after a determination by a court—
- (a) on an application under section 15(4); or
  - (b) under section 18(2),
- of this Act, or within such longer period as the High Court may allow, the person subject to the supervised release order may lodge a written note of appeal with the

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Clerk of Justiciary, who shall send a copy to the court which made the determination and to the Secretary of State.

- (2) A note of appeal under subsection (1) above shall be as nearly as possible in such form as may be prescribed by Act of Adjournment and shall contain a full statement of all the grounds of appeal; and except by leave of the High Court on cause shown it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

#### Modifications etc. (not altering text)

**C39** S. 19 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. paras. 5, 6, 7 (with transitional provisions in art. 3, Sch. 2); S.I. 1997/2200, art. 2(1)(g)  
Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6); S.I. 1997/2200, art. 2(1)(g) (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))  
Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2 & 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, art. 2(1)(n) (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), Sch. 10; S.I. 1998/2327, art. 2(1)(aa)(3)(x) (subject to arts. 5-8 of the said S.I.)

## 20 The Parole Board for Scotland. **S**

- (1) There shall continue to be a body to be known as the Parole Board for Scotland, which shall discharge the functions conferred on it by, or by virtue of, <sup>F117</sup> . . . this Act.
- (2) It shall be the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is connected with the early release or recall of prisoners.
- (3) <sup>F118</sup> . . . . .
- (4) The Secretary of State may by rules make provision with respect to the proceedings of the Board, including provision—
- (a) authorising cases to be dealt with in whole or in part by a prescribed number of members of the Board in accordance with such procedure as may be prescribed;
  - (b) requiring cases to be dealt with at prescribed times; and
  - <sup>F119</sup>(ba) enabling the Board to require any person, other than a prisoner whose case the Board is considering, to attend a hearing before it to give evidence or to produce documents;]
  - (c) as to what matters may be taken into account by the Board (or by such number) in dealing with a case.

[<sup>F120</sup>and rules under this section may make different provision for different classes of prisoner.]

- <sup>F121</sup>(4A) In making provision such as is mentioned in subsection (4)(ba) above, the Scottish Ministers may apply subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973 (c.65) with such modifications as may be set out in the rules but subject to the limitation that any penalty under subsection (5) of section 210 as so

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applied shall be restricted to a fine which shall not exceed level 2 on the standard scale.]

- (5) The Secretary of State may give the Board directions as to the matters to be taken into account by it in discharging its functions under this Part of this Act; and in giving any such directions the Secretary of State shall in particular have regard to—
- (a) the need to protect the public from serious harm from offenders; and
  - (b) the desirability of preventing the commission by offenders of further offences and of securing their rehabilitation.
- (6) The supplementary provisions in Schedule 2 to this Act shall have effect with respect to the Board.

#### Textual Amendments

- F117** Words in s. 20(1) repealed (27.7.2001) by 2001 asp 7, s. 5(1)(a) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)
- F118** S. 20(3) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 28(4), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F119** S. 20(4)(ba) inserted (27.7.2001) by 2001 asp 7, s. 5(1)(b) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)
- F120** Words in s. 20(4) inserted (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para. 106; S.I. 1998/2327, art. 2(1)(y)(2)(hh)
- F121** S. 20(4A) inserted (27.7.2001) by 2001 asp 7, s. 5(1)(c) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)

#### Modifications etc. (not altering text)

- C40** S. 20 modified (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. paras. 35, 44; S.S.I. 2001/274, art. 3(3)
- C41** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))

#### Commencement Information

- I4** S. 20 not in force at Royal Assent see s. 48(2). S. 20(3)(4)(5) in force for certain purposes at 18.8.1993, S. 20 wholly in force at 1.10.1993 by S.I. 1993/2050, art. 3(2)(4), Sch. 1

## 21 Parole advisers. **S**

- (1) The Secretary of State may appoint under this section persons (to be known as “parole advisers”) to give advice to prisoners, or former prisoners, who wish to make representations to the Secretary of State or to the Parole Board as regards any matter concerning their release on licence under this Part of this Act or their return to prison or detention by virtue of this Part of this Act.
- (2) The Secretary of State shall pay to parole advisers such remuneration and allowances as he may with the consent of the Treasury determine.

#### Modifications etc. (not altering text)

- C42** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5)

**Status:** Point in time view as at 27/06/2003. This version of this Act contains provisions that are not valid for this point in time.

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(as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))  
 Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2 & 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.))

### *Miscellaneous*

## 22 Place of confinement of prisoners. **S**

For section 10 of the 1989 Act (place of confinement of prisoners) there shall be substituted the following section—

### “10 Place of confinement of prisoners.

- (1) A prisoner may be lawfully confined in any prison.
- (2) Prisoners shall be committed to such prisons as the Secretary of State may from time to time direct, and may be moved by the Secretary of State from any prison to any other prison.
- (3) The foregoing provisions of this section are without prejudice to section 11 of this Act and section 241 of the [<sup>F122</sup>1995 Act] (transfer of prisoner in connection with hearing of appeal).”

#### **Textual Amendments**

**F122** Words in s. 22 substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

## 23 Transfer of young offenders to prison or remand centre. **S**

After section 20 of the 1989 Act there shall be inserted the following section—

### “20A Transfer of young offenders to prison or remand centre.

- (1) Subject to section 21 of this Act, an offender sentenced to detention in a young offenders institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.
- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offenders institution shall be detained in a prison or remand centre instead of in a young offenders institution, but if the offender is under 18 years of age at the time of the direction, only for a temporary purpose.
- (3) Where an offender is detained in a prison or remand centre by virtue of subsection (2) above, any rules under section 39 of this Act which apply in relation to persons detained in that place shall apply to that offender; but subject to the foregoing and to subsection (4) below, the provisions of the [<sup>F123</sup>1995 Act], the Prisoners and Criminal Proceedings (Scotland) Act 1993 and this Act

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relating to the treatment and supervision of persons sentenced to detention in a young offenders institution shall continue to apply to the offender.

- (4) Where an offender referred to in subsection (3) above attains the age of 21 years, subsection (3) of section 21 of this Act shall apply to him as if he had been transferred to prison under that section.”.

#### Textual Amendments

F123 Words in s. 23 substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(2)

#### 24 Additional days for disciplinary offences. **S**

The following subsection shall be added at the end of section 39 of the 1989 Act (rules for the management of prisons and other institutions)—

- “(7) Rules made under this section may provide for the award of additional days, not exceeding in aggregate one-sixth of the prisoner’s sentence—
- (a) to a short-term or long-term prisoner within the meaning of Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993; or
  - (b) conditionally on his eventually becoming such a prisoner, to a person remanded in custody,
- where he is guilty, under such rules, of a breach of discipline.”.

#### 25 Provision in prison rules for directions. **S**

The following subsections shall be added at the end of section 39 of the 1989 Act (rules for the management of prisons and other institutions) after the subsection added by section 24 of this Act—

- “(8) Without prejudice to any power to make standing orders or to issue directions or any other kind of instruction, rules made under this section may authorise the Secretary of State to supplement the rules by making provision by directions for any purpose specified in the rules; and rules so made or directions made by virtue of this subsection may authorise the governor, or any other officer, of a prison, or some other person or class of persons specified in the rules or directions, to exercise a discretion in relation to the purpose so specified.
- (9) Rules made under this section may permit directions made by virtue of subsection (8) above to derogate (but only to such extent, or in such manner, as may be specified in the rules) from provisions of rules so made and so specified.
- (10) Any reference, however expressed, in any enactment other than this section to rules made under this section shall be construed as including a reference to directions made by virtue of subsection (8) above.
- (11) Directions made by virtue of subsection (8) above shall be published by the Secretary of State in such manner as he considers appropriate.”.

#### 26 Further amendment of Mental Health (Scotland) Act 1984. **S**

In section 73 of the <sup>M10</sup>Mental Health (Scotland) Act 1984, subsection (3) (which provides for the continued detention in hospital of persons moved there by virtue of a

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transfer order while awaiting trial etc. even where that order has ceased to have effect) shall cease to have effect.

#### Marginal Citations

M10 1984 c. 36.

### [<sup>F124</sup> Extended sentences]

#### Textual Amendments

F124 S. 26A and preceding cross-heading inserted (30.9.1998) by 1998 c. 37, s. 87; S.I. 1998/2327, art. 2(1) (s) (subject to arts. 5-8)

### [<sup>F124F125</sup> 26A] Extended sentences. S

- (1) This section applies to a prisoner who, on or after the date on which section 87 of the Crime and Disorder Act 1998 comes into force, has been made subject to an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences).
- (2) Subject to the provisions of this section, this Part of this Act, except section 1A, shall apply in relation to extended sentences as if any reference to a sentence or term of imprisonment was a reference to the custodial term of an extended sentence.
- (3) Where a prisoner subject to an extended sentence is released on licence under this Part the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.
- (4) Where, apart from this subsection, a prisoner subject to an extended sentence would be released unconditionally—
  - (a) he shall be released on licence; and
  - (b) the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.
- (5) The extension period shall be taken to begin as follows—
  - (a) for the purposes of subsection (3) above, on the day following the date on which, had there been no extension period, the prisoner would have ceased to be on licence in respect of the custodial term;
  - (b) for the purposes of subsection (4) above, on the date on which, apart from that subsection, he would have been released unconditionally.
- (6) Subject to section 1A(c) of this Act and section 210A(3) of the 1995 Act and to any direction by the court which imposes an extended sentence, where a prisoner is subject to two or more extended sentences, the extension period which is taken to begin in accordance with subsection (5) above shall be the aggregate of the extension period of each of those sentences.
- (7) For the purposes of sections 12(3) and 17(1) of this Act, and subject to subsection (8) below, the question whether a prisoner is a long-term or short-term prisoner shall be determined by reference to the extended sentence.



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- (8) Where a short-term prisoner serving an extended sentence in respect of a sexual offence is released on licence under subsection (4)(a) above, the provisions of section 17 of this Act shall apply to him as if he was a long-term prisoner.
- [<sup>F126</sup>(9) In relation to a prisoner subject to an extended sentence, the reference in section 17(5) of this Act to the prisoner being “liable to be detained in pursuance of his sentence” shall be construed as a reference to the prisoner being liable to be detained until the expiry of the extension period.]
- (10) For the purposes of this section “custodial term”, “extension period” and “imprisonment” shall have the same meaning as in section 210A of the 1995 Act.
- (11) In section 1A(c) and section 16(1)(a) of this Act, the reference to the date on which a prisoner would have served his sentence in full shall mean, in relation to a prisoner subject to an extended sentence, the date on which the extended sentence, as originally imposed by the court, would expire.]

#### Textual Amendments

**F125** S. 26A and preceding cross-heading inserted (30.9.1998) by 1998 c. 37, s. 87; S.I. 1998/2327, art. 2(1)(s)

**F126** S. 26A(9) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 37(2), 89(2); S.S.I. 2003/288, art. 2, Sch.

#### Modifications etc. (not altering text)

**C43** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))

VALID FROM 04/10/2005

#### [<sup>F127</sup>26B Parole Board to have regard to risk management plans **S**

The Parole Board shall, whenever it is considering the case of a person in respect of whom there is a risk management plan, have regard to the plan.]

#### Textual Amendments

**F127** S. 26B inserted (4.10.2005) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 41, 89(2); S.S.I. 2005/433, art. 2(c)

### Interpretation

#### 27 Interpretation of Part I. **E+W**

- (1) In this Part of this Act, except where the context otherwise requires—  
“court” does not include a court-martial;  
“discretionary life prisoner” has the meaning given by section 2 of this Act;

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“life prisoner” means a person serving a sentence of imprisonment for life;

“local authority” means a [<sup>F128</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

[<sup>F129</sup>“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;

“Parole Board” means the Parole Board for Scotland;

“petty sessions area” has the same meaning as in [<sup>F130</sup>the Justices of the Peace Act 1997];

“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 <sup>M11</sup>Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.);

“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 [<sup>F131</sup>section 209][<sup>F132</sup>(as inserted by section 14 of this Act)] of the [<sup>F133</sup>1995 Act] but includes any order under subsection (2) of the said section 14; and

“supervising officer” has the meaning given by the said [<sup>F131</sup>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.
- (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, having been sentenced, he has served (in whole or in part), consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.
- (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 [<sup>F133</sup>1995 Act], fall to be released on or by a day which is a Saturday, Sunday or public holiday he shall instead be released on or by the last preceding day which is not a Saturday, Sunday or public holiday.



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### Extent Information

- E4** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

- F128** S. 27(1): words in the definition of “local authority” substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 179(3)**; S.I. 1996/323, **art. 4(1)(b)(c)**
- F129** S. 27(1): definition of “local probation board” inserted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 118**; S.I. 2001/919, **art. 2(f)(ii)**
- F130** S. 27(1): words in the definition of “petty sessions area” substituted (19.6.1997) by 1997 c. 25, ss. 73(2), 74, **Sch. 5 para. 33** (with Sch. 4 para. 27)
- F131** Words in s. 27(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(10)**
- F132** S. 27(1): words in the definition of “supervised release order” ceased to have effect (30.9.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 14(16)** (with s. 33) (as substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 141(2)**; S.I. 1998/2327, **art. 2(1)(y)(2)(pp)**) and words repealed (*prosp.*) by 1997 c. 48, ss. 62(2), 65(3), **Sch. 3**
- F133** Words in s. 27(1)(7) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

### Modifications etc. (not altering text)

- C44** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

### Commencement Information

- I5** S. 27 not in force at Royal Assent see s. 48(2). S. 27(1)(2)(3) in force for certain purposes at 18.8.1993, S. 27 wholly in force at 1.10.1993 by S.I. 1993/2050, **art. 3(2)(4)**, **Sch. 1**

### Marginal Citations

- M11** 1968 c. 49.

## 27 Interpretation of Part I. **S**

(1) In this Part of this Act, except where the context otherwise requires—

“court” does not include a court-martial;

**F205**

. . .

“life prisoner” means a person serving a sentence of imprisonment for life;

“local authority” means a [**F206** council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];

[**F207** “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;

“Parole Board” means the Parole Board for Scotland;

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“petty sessions area” has the same meaning as in [F208]the Justices of the Peace Act 1997];

“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 M27Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.);

“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 [F209]section 209][F210](as inserted by section 14 of this Act)] of the [F211]1995 Act] but includes any order under subsection (2) of the said section 14; and

“supervising officer” has the meaning given by the said [F209]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.
- [F212](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 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.]
- (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 [F211]1995 Act], fall to be released on or by a day which is a Saturday, Sunday or public holiday he shall instead be released on or by the last preceding day which is not a Saturday, Sunday or public holiday.
- [F213](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.]

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### Extent Information

- E6** This version of this provision extends to Scotland only; a separate version of this provision extends to England and Wales only

### Textual Amendments

- F205** S. 27(1): definition of "discretionary life prisoner" repealed (S.) (8.10.2001) by 2001 asp 7, s. 1(6); S.S.I. 2001/274, art. 3(3)
- F206** S. 27(1): words in the definition of "local authority" substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 179(3); S.I. 1996/323, art. 4(1)(b)(c)
- F207** S. 27(1): definition of "local probation board" inserted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. II para. 118; S.I. 2001/919, art. 2(f)(ii)
- F208** S. 27(1): words in the definition of "petty sessions area" substituted (19.6.1997) by 1997 c. 25, ss. 73(2), 74, Sch. 5 para. 33 (with Sch. 4 para. 27)
- F209** Words in s. 27(1) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(10)
- F210** S. 27(1): words in the definition of "supervised release order" ceased to have effect (S.) (30.9.1998) by virtue of 1997 c. 48, s. 62(1), Sch. 1 para. 14(16) (with s. 33) (as substituted (S.) (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para. 141(2); S.I. 1998/2327, art. 2(1)(y)(2)(pp))
- F211** Words in s. 27(1)(7) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(2)
- F212** S. 27(5) substituted (S.) (30.9.1998) by 1998 c. 37, s. 111(3); S.I. 1998/2327, art. 2(1)(x)
- F213** S. 27(8) inserted (S.) (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para. 107; S.I. 1998/2327, art. 2(1)(y)(2)(hh)

### Modifications etc. (not altering text)

- C47** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))
- C48** S. 27(7) excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2

### Commencement Information

- I10** S. 27 not in force at Royal Assent see s. 48(2); S. 27(1)(2)(3) in force for certain purposes at 18.8.1993, S. 27 wholly in force at 1.10.1993 by S.I. 1993/2050, art. 3(2)(4), Sch. 1

### Marginal Citations

- M27** 1968 c. 49.

## PART II S

### CRIMINAL PROCEEDINGS

#### Evidence

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**Textual Amendments**

**F134** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

**F137** **29** .....



**Textual Amendments**

**F137** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

**F138** **30** .....



**Textual Amendments**

**F138** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

**F139** **31** .....



**Textual Amendments**

**F139** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

**F140** **32** .....



**Textual Amendments**

**F140** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

**F141** **33** .....



**Textual Amendments**

**F141** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

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F142 **34** ..... **S**

**Textual Amendments**

**F142** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

F143 **35** ..... **S**

**Textual Amendments**

**F143** Ss. 28-35 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with ss. 3, 4, Sch. 3 Pt. II paras. 16, 17)

**36 Evidence as to taking or destruction of eggs. S**

After section 19 of the <sup>M12</sup>Wildlife and Countryside Act 1981 there shall be inserted the following section—

**“19A Evidence in Scotland as to taking or destruction of eggs.**

In any proceedings in Scotland for an offence under section 1(1)(c) of, or by virtue of section 3(1)(a)(iii) of, this Act, the accused may be convicted on the evidence of one witness.”.

**Marginal Citations**

**M12** 1981 c. 69.

F144 **37** ..... **S**

**Textual Amendments**

**F144** Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

*Procedure*

F145 **38** ..... **S**

**Textual Amendments**

**F145** Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

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F146 **39** ..... **S**

**Textual Amendments**

F146 Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

F147 **40** ..... **S**

**Textual Amendments**

F147 Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

F148 **41** ..... **S**

**Textual Amendments**

F148 Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

F149 **42** ..... **S**

**Textual Amendments**

F149 Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

F150 **43** ..... **S**

**Textual Amendments**

F150 Ss. 37-43 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16, 17, **Sch. 5**

**PART III E+W+S**

GENERAL

**44 Expenses. S**

There shall be paid out of money provided by Parliament—

- (a) any sums required by the Secretary of State for defraying the expenses of the Parole Board for Scotland;
- (b) any expenses incurred by the Secretary of State under section 21(2) of this Act;

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- (c) any administrative expenses incurred by the Secretary of State under this Act; and
- (d) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

#### 45 Rules and orders. **S**

- (1) The power of the Secretary of State to make rules and orders under this Act shall be exercisable by statutory instrument.
- (2) Any rule made under section 13 or 20(4) of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order shall not be made under section 6(3), [F1517(1A)]. . . or 27(2) of this Act unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F151** Words in s. 45(3) substituted (3.2.1995) by 1994 c. 33, s. 130(2); S.I. 1995/127, art. 2(1), **Sch. 1**

#### 46 Interpretation. **E+W+S**

In this Act—

- [F152“the 1975 Act” means the <sup>M13</sup>Criminal Procedure (Scotland) Act 1975;]
- “the 1980 Act” means the <sup>M14</sup>Criminal Justice (Scotland) Act 1980; and
- “the 1989 Act” means the <sup>M15</sup>Prisons (Scotland) Act 1989.
- [F153“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995]

#### Textual Amendments

**F152** Entry in s. 46 ceased to have effect (1.4.1996) by 1995 c. 40, ss. 4, 5, 7(2), **Sch. 3 Pt. II paras. 16, 17, Sch. 4 para. 86(11)** and entry repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5**

**F153** Entry in s. 46 inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(11)**

#### Marginal Citations

**M13** 1975 c. 21.

**M14** 1980 c. 62.

**M15** 1989 c. 45.

#### 47 Minor and consequential amendments, transitional provisions, savings and repeals. **E+W+S**

- (1) The enactments mentioned in Schedule 5 to this Act shall have effect subject to the amendments there specified (being minor amendments and amendments consequential on the preceding provisions of this Act).
- (2) The transitional provisions and savings contained in Schedule 6 to this Act shall have effect; but nothing in this subsection shall be taken as prejudicing the operation of sections 16 and 17 of the <sup>M16</sup>Interpretation Act 1978 (effect of repeals).



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- (3) The enactments mentioned in Part I of Schedule 7 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Part and the instruments mentioned in Part II of that Schedule are hereby revoked to the extent specified in the third column of that Part.

#### Extent Information

**E5** S. 47(1)(3) extends to England and Wales and Scotland for specified purposes; s. 47 otherwise extends to Scotland only, see s. 48(5)(6)

#### Commencement Information

**I6** S.47(1) in force for certain purposes at Royal Assent as provided by S.48(4), for certain further purposes at 18.8.1993 and 18.9.1993, S. 47(3) in force for certain purposes at 18.9.1993, s. 47 wholly in force at 1.10.1993 by S.I. 1993/2050, art. 3(2)(3)(4), Sch. 1, Sch. 2

#### Marginal Citations

**M16** 1978 c. 30.

### 48 Short title, commencement and extent. **E+W+S**

- (1) This Act may be cited as the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- (2) Subject to subsection (4) below, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different provisions and for different purposes.
- (3) An order under subsection (2) above may make such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with any provision brought into force by the order.
- (4) This section and, in so far as relating to paragraph 5 of Schedule 5 to this Act, section 47(1) of this Act shall come into force on the day on which this Act is passed.
- (5) Subject to subsection (6) below, this Act extends to Scotland only.
- (6) This section and the following provisions of this Act also extend to England and Wales—
- section 12(2);
  - section 14(4);
  - section 15;
  - section 16(1) and (3);
  - section 27;
  - section 46; and
  - in section 47, subsection (1) in so far as relating to paragraphs 1(38) and 3 of Schedule 5, and subsection (3) in so far as relating to the entry in Schedule 7 in respect of the <sup>M17</sup>Criminal Justice Act 1991.
- (7) Nothing in subsection (5) above affects the extent of this Act in so far as it amends or repeals any provision of the <sup>M18</sup>Army Act 1955, the <sup>M19</sup>Air Force Act 1955 or the <sup>M20</sup>Naval Discipline Act 1957.

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#### Subordinate Legislation Made

**P1** [S. 48\(2\)\(3\)](#) power fully exercised (16.8.1993): 18.8.1993, 18.9.1993, 1.10.1993 and 1.1.1994 appointed days by [S.I. 1993/2050](#) (subject to saving in arts. 4-10)

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#### Marginal Citations

**M17** [1991 c. 53](#).

**M18** [1955 c. 18](#).

**M19** [1955 c. 19](#).

**M20** [1957 c. 53](#).

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## SCHEDULES

### SCHEDULE 1 S

Section 1(8).

#### CONSECUTIVE AND CONCURRENT TERMS OF IMPRISONMENT

##### *General*

- 1 This Schedule applies as respects the release of a person on whom there has been imposed—
- (a) a term of imprisonment on conviction of an offence (“his offence term”); and
  - (b) a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of this Act (“his non-offence term”).

##### *Consecutive terms of imprisonment*

- 2 Where his offence term and his non-offence term are consecutive—
- (a) his offence term shall be taken to precede his non-offence term;
  - (b) notwithstanding section 1(1) to (3) of this Act, he shall not be released when he has served the proportion of his offence term mentioned in whichever of those subsections is (or are) relevant to the term in question but when he falls to be released by virtue of the application of section 5 of this Act to his non-offence term; and
  - (c) his non-offence term shall be taken as beginning on the date on which he would have been released under section 1(1) to (3) but for subparagraph (b) above.

VALID FROM 02/04/2006

##### *<sup>F154</sup>Concurrent terms of imprisonment*

#### **Textual Amendments**

**F154** Sch. 1 paras. 2, 2A and cross-heading to para. 2A substituted for Sch. 1 para. 2 (2.4.2006) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 32(3)(a), 89(2); S.S.I. 2006/85, art. 1(2)

- 2A Where his offence term and his non-offence term are wholly or partly concurrent, section 1(1) to (3) of this Act (so far as relevant to the term in question and whether or not modified by section 5(2) of this Act or as read with section 220 of the 1995 Act (reduction of term in certain circumstances)) shall apply separately to each term (that is to say, in particular, he may be released as respects one of

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the terms even if he is not for the time being eligible for release as respects the other term).]

#### *Wholly concurrent terms of imprisonment*

- 3 Where his offence term and his non-offence term are wholly concurrent—
- (a) only the offence term shall be taken into account for the purposes of the provisions of this Part of this Act relating to his release; but
  - (b) he shall not be released under section 1(3) of this Act.

#### *Partly concurrent terms of imprisonment*

- 4 Where his offence term and his non-offence term are partly concurrent—
- (a) section 1(1) or (2), or as the case may be those provisions as modified by section 5(2), of this Act shall apply in relation to the term which is due to expire later and shall not apply to the term which is due to expire first; and
  - (b) if the term due to expire later is his offence term, section 1(3) of this Act shall apply in relation to it only if the person has served such proportion of his non-offence term as would, but for sub-paragraph (a) above, entitle him to release under section 1(1) or (2), as modified by section 5(2), of this Act.

## SCHEDULE 2 **S**

Section 20(6).

### THE PAROLE BOARD

#### **Modifications etc. (not altering text)**

**C45** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2, 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)

#### *Membership*

- 1 The Parole Board shall consist of a chairman and not less than four other members appointed by the Secretary of State.
- [<sup>F155</sup>1A In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed in regulations made by them.]

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#### Textual Amendments

**F155** Sch. 2 paras. 1A, 1B inserted (27.7.2001) by 2001 asp 7, s. 5(2) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)

[<sup>F156</sup>1B In making regulations under paragraph 1A above, the Scottish Ministers may make different provision for different kinds of members of the Board, including the kinds of members having the respective qualifications for office specified in paragraph 2 below.]

#### Textual Amendments

**F156** Sch. 2 paras. 1A, 1B inserted (27.7.2001) by 2001 asp 7, s. 5(2) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)

2 The Parole Board shall include among its members—

- (a) a Lord Commissioner of Justiciary;
- (b) a registered medical practitioner who is a psychiatrist;
- (c) a person appearing to the Secretary of State to have knowledge and experience of the supervision or aftercare of discharged prisoners; and
- (d) a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders.

#### *Limitation, termination etc. of appointment of members*

[<sup>F157</sup>2A An appointment as a member of the Parole Board shall, subject to paragraphs 2B to 2D below, last for such period, being not shorter than six years nor longer than seven years, as is specified in the instrument of appointment.]

#### Textual Amendments

**F157** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

<sup>F158</sup>2B A member of the Parole Board may resign at any time by giving notice to that effect to the Scottish Ministers.

#### Textual Amendments

**F158** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

<sup>F159</sup>2C An appointment of a person as a member of the Parole Board shall not extend beyond the day when the person reaches the age of 75.

#### Textual Amendments

**F159** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

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**F160** 2D The appointment of a member of the Parole Board shall come to an end upon the member's being removed from office under paragraph 3 below.

**Textual Amendments**

**F160** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

**F161** 2E A person may be reappointed to be a member of the Parole Board but only if—  
(a) three years or more have passed since the person ceased to be a member of the Parole Board; and  
(b) the person has not previously been reappointed under this paragraph.

**Textual Amendments**

**F161** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

**F162** 2F A person whose membership of the Parole Board came to an end by resignation under paragraph 2B above may be reappointed under paragraph 2E above.

**Textual Amendments**

**F162** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

**F163** 2G A person whose membership of the Parole Board came to an end on removal from office under paragraph 3 below shall not be reappointed.

**Textual Amendments**

**F163** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

**F164** 2H The provisions of paragraphs 1 to 2D above apply to a reappointment under paragraph 2E above as they apply to an appointment.

**Textual Amendments**

**F164** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

**F165** *Performance of duties*

2J The Chairman of the Parole Board shall have regard to the desirability of securing that every member of the Parole Board is given the opportunity of participating appropriately in the functions of the Board under this Act on not fewer than 20 days in each successive period of 12 months beginning with the day of the member's appointment as such.

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#### Textual Amendments

**F165** Sch. 2 paras. 2A-2J inserted (8.10.2001) by 2001 asp 7, s. 5(3) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

#### Removal of members from office

<sup>F166</sup>3 A member of the Parole Board may be removed from office by and only by order of the tribunal constituted by and under paragraph 3B below (“the tribunal”).]

#### Textual Amendments

**F166** Sch. 2 paras. 3-3D substituted for Sch. 2 para. 3 (8.10.2001) by 2001 asp 7, s. 5(4) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

<sup>F167</sup>3A The tribunal may order the removal from office of a member only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

#### Textual Amendments

**F167** Sch. 2 paras. 3-3D substituted for Sch. 2 para. 3 (8.10.2001) by 2001 asp 7, s. 5(4) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

<sup>F168</sup>3B The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—

- (a) either a Senator of the College of Justice or a sheriff principal (who shall preside);
- (b) a person who is, and has been for at least ten years, legally qualified; and
- (c) one other person who shall not be legally qualified.

#### Textual Amendments

**F168** Sch. 2 paras. 3-3D substituted for Sch. 2 para. 3 (8.10.2001) by 2001 asp 7, s. 5(4) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

<sup>F169</sup>3C For the purposes of paragraph 3B above, a person is legally qualified if that person is an advocate or a solicitor.

#### Textual Amendments

**F169** Sch. 2 paras. 3-3D substituted for Sch. 2 para. 3 (8.10.2001) by 2001 asp 7, s. 5(4) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

<sup>F170</sup>3D Regulations, made by the Scottish Ministers—

- (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a member from office and providing as to the effect and duration of such suspension; and



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- (b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

#### Textual Amendments

**F170** Sch. 2 paras. 3-3D substituted for Sch. 2 para. 3 (8.10.2001) by 2001 asp 7, s. 5(4) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(3)

#### Remuneration and allowances

- 4 There shall be paid to the members of the Board such remuneration and allowances as the Secretary of State may <sup>F171</sup> . . . determine.

#### Textual Amendments

**F171** Words in Sch. 2 para. 4 repealed (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 110, Pt. IV; S.I. 1998/3178, art. 3

- 5 The expenses of the Board under paragraph 4 above and any other expenses incurred by the Board in discharging the functions mentioned in section 20(1) of this Act shall be defrayed by the Secretary of State.

#### Reports

- 6 The Board shall as soon as practicable after the end of each year make to the Secretary of State a report on the performance of its functions during that year, and the Secretary of State shall lay a copy of the report before Parliament.

#### Regulations

- [<sup>F172</sup>6A Regulations under paragraphs 1A and 3D above shall be made by statutory instrument.]

#### Textual Amendments

**F172** Sch. 2 paras. 6A, 6B inserted (27.7.2001) by 2001 asp 7, s. 5(5) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)

- <sup>F173</sup>6B No such regulations shall be made unless laid in draft before, and approved by resolution of, the Scottish Parliament.

#### Textual Amendments

**F173** Sch. 2 paras. 6A, 6B inserted (27.7.2001) by 2001 asp 7, s. 5(5) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)

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F174 SCHEDULE 3 S

Textual Amendments

F174 Sch. 3 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5 and Sch. 3 para. 8

F176 SCHEDULE 4 S

Textual Amendments

F176 Sch. 4 repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5

SCHEDULE 5 E+W+S

Section 47(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*Criminal Procedure (Scotland) Act 1975 (c. 21)*

F177 1 .....

Textual Amendments

F177 Sch. 5 para. 1 repealed (S.)(1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5

*Mental Health (Scotland) Act 1984 (c. 36)*

- 2 (1) Section 65 of the Mental Health (Scotland) Act 1984 (appeal to sheriff by patient in respect of whom restriction direction has been given) shall be amended as follows.
- (2) In subsection (1)(b), for the words “in the event of the patient’s not being released on licence or discharged under supervision under subsection (2)(b)(ii) of this section he” there shall be substituted the words “ the patient ”.
- (3) For subsection (2) there shall be substituted the following subsection—
  - “(2) If the sheriff notifies the Secretary of State—
    - (a) that the patient would be entitled to be absolutely discharged, the Secretary of State shall by warrant direct that the patient be remitted to any prison or other institution or place in which he might have

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been detained had he not been removed to hospital and that he shall be dealt with there as if he had not been so removed;

(b) that the patient would be entitled to be conditionally discharged, the Secretary of State may—

(i) by warrant give such direction as is mentioned in paragraph (a) above; or

(ii) decide that the patient should continue to be detained in a hospital,

and (if a direction is given under this subsection) on the person's arrival in the prison or other institution or place to which remitted by virtue of this subsection, the restriction direction, together with the transfer direction given in respect of the person, shall cease to have effect.”.

*Repatriation of Prisoners Act 1984 (c. 47)*

3 (1) The Repatriation of Prisoners Act 1984 shall be amended as follows.

(2) In section 2 (transfer of prisoners out of United Kingdom), in subsection (4)(b), for sub-paragraph (ii) there shall be substituted the following sub-paragraph—

“(ii) released on licence under section 1(2), (3) or (4), 2(4) or 7(1) or (2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993;”.

(3) In section 3 (transfer of prisoners into United Kingdom), after subsection (8) there shall be inserted the following subsection—

“(9) The provisions contained by virtue of subsection (1)(c) above in a warrant under this Act shall, in the case of a person who is a transferred life prisoner for the purposes of section 48 of the Criminal Justice Act 1991 or section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (life prisoners transferred to England and Wales or, as the case may be, Scotland) include provision specifying the part of his sentence which is treated by virtue of section 48 or section 10 as the relevant part of his sentence.”.

(4) In the Schedule (operation of certain enactments in relation to prisoners transferred into United Kingdom), in paragraph 2, for sub-paragraph (1) there shall be substituted the following sub-paragraphs—

“(1) In determining for the purposes of any of the enactments relating to release on licence whether the prisoner has at any time served a particular proportion or part of his sentence specified in that provision, the prisoner's sentence shall, subject to sub-paragraph (2) below, be deemed to begin with the day on which the relevant provisions take effect.

(1A) In sub-paragraph (1) above “the enactments relating to release on licence” means—

(a) sections 33(1)(b) and (2), 34(3) and (5), 35(1) and 37(1) and (2) of the Criminal Justice Act 1991; and

(b) sections 1(2) and (3), 2(2) and (7) and 7(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993;” and the amendment made to sub-paragraph (2) of that paragraph by paragraph 35(3) (b) of Schedule 11 to the Criminal Justice Act 1991 shall extend also to Scotland.

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(5) For paragraph 3 of the Schedule there shall be substituted the following paragraph—

“3 Where the relevant provisions include provision equivalent to a sentence in relation to which section 35(2) of the Criminal Justice Act 1991 or, as the case may be, section 1(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (power to release life prisoners who are not discretionary life prisoners) applies, section 35(2) or, as the case may be, section 1(4) shall have effect as if the reference to consulting the trial judge were omitted.”.

*Legal Aid (Scotland) Act 1986 (c. 47)*

4 In section 21(1) of the Legal Aid (Scotland) Act 1986 (definition of “criminal legal aid”), after paragraph (a) (but before the word “and” which immediately follows that paragraph) there shall be inserted the following paragraph—

“(aa) any case the referral of which is required, under section 2(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, by a discretionary life prisoner;”.

*Road Traffic Offenders Act 1988 (c. 53)*

5 In section 12(4) of the Road Traffic Offenders Act 1988, as proposed to be inserted by paragraph 85 of Schedule 4 to the <sup>M24</sup>Road Traffic Act 1991 (proof of identity of driver in summary proceedings for certain road traffic offences), for the words “Road Traffic Act 1988” in the first place where they occur there shall be substituted the words “ this Act ”.

**Commencement Information**

I7 Sch.5 para.5 in force as provided by S.48(4).

**Marginal Citations**

M24 1991 c. 40.

*Prisons (Scotland) Act 1989 (c. 45)*

- 6 (1) The Prisons (Scotland) Act 1989 shall be amended as follows.
- (2) In section 12 (photographing and measuring of prisoners)—
- (a) for the words “The Secretary of State may make regulations as to” there shall be substituted the words “ Rules under section 39 of this Act may provide for ”; and
  - (b) the words “such regulations” shall cease to have effect.
- (3) In section 14(1) (legalised police cells), after the word “under” there shall be inserted the words “ section 39 of ”.
- (4) In section 19 (provisions of 1989 Act applying to remand centres and young offenders institutions)—
- (a) in subsection (3), for the words “the rules” there shall be substituted the words “ rules under section 39 of this Act ”; and
  - (b) in subsection (4), in sub-paragraph (iii) of the proviso—

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- (i) for the words “paragraphs (i) and (ii)” there shall be substituted the words “ paragraph (i) ”; and
  - (ii) for the words “of the Secretary of State” there shall be substituted the words “ under section 39 of this Act ”.
- (5) In section 21 (transfer to prison of persons over 21 etc.)—
  - (a) in subsection (1), after the word “section” there shall be inserted the words “ but without prejudice to section 20A(2) of this Act ”; and
  - (b) in subsection (3), after the words “1975 Act” there shall be inserted the words “ the Prisoners and Criminal Proceedings (Scotland) Act 1993 ”.
- (6) In section 39(1) (rules for the management of prisons and other institutions)—
  - (a) the word “and”, where it occurs for the third time, shall cease to have effect; and
  - (b) at the end there shall be added the words “ and for any other matter as respects which it is provided in this Act that rules may be made under this section ”.
- (7) In section 40(2) (no account to be taken, in calculating period of liability to detention, of period when unlawfully at large)—
  - (a) after the word “institution”, where it first occurs, there shall be inserted the words “ or committed to a prison or remand centre ”;
  - (b) after the word “sentence” there shall be inserted the words “ or committal ”;
  - (c) for the words “or young offenders institution” there shall be substituted the words “ , young offenders institution or remand centre ”; and
  - (d) after the words “so detained,” there shall be inserted the words “ or the date on or by which a term or period of imprisonment or detention elapses or has been served, ”.
- (8) In section 42(2) (procedure in relation to statutory instruments containing regulations or rules), for the words from “regulations” to the end there shall be substituted the words “ an order made under section 37(1) or rules made under section 39 of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament ”.
- (9) In section 43 (interpretation)—
  - (a) in subsection (1), the definition of “sentence of imprisonment” shall cease to have effect; and
  - (b) in subsection (2), the words “(other than in section 25)” shall cease to have effect.

#### Commencement Information

**18** Sch. 5 para. 6 not in force at Royal Assent see. s. 48(2). Sch. 5 para. 6(1)-(4), (6),(8) in force at 18.8.1993, para. 6 wholly in force at 1.10.1993 by S.I. 1993/2050, art. 3(2)(4), Sch. 1

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SCHEDULE 6 **S**

Section 47(2).

## TRANSITIONAL PROVISIONS AND SAVINGS

**Modifications etc. (not altering text)**

- C46** Sch. 6 amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 70(1)**; S.I. 1998/2327, **art. 2(1)(y)(2)(u)**  
Sch. 6 modified (*retrospectively*) by 1984 c. 47, s. 3(7), **Sch. para. 2(4)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 6(1)(2)**; S.I. 1997/2200, **art. 2(1)(h)**)  
Sch. 6 modified (*retrospectively*) by 1984 c. 47, s. 3(7), **Sch. para. 2(4)** (as substituted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 7(1)(2)**; S.I. 1997/2200, **art. 2(1)(h)**)  
Sch. 6: certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, **art. 4(2)**, **Sch. 3 Pt. I paras. 5-8**, Pt. III para. 10(3)  
Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2, 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)-(4), Sch. 5 paras. 11(1)-(3), 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)  
Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

## 1 In this Schedule—

“existing provisions” means such provisions as relate to the detention or release of persons and are amended or repealed by this Act, as they had effect immediately before such amendment or repeal [<sup>F178</sup>except that an amendment or repeal effected by any amendment shall apply for the purposes of the existing provisions if expressly stated to do so];

“new provisions” means sections 1 to 21 and 27 of this Act (together with the provisions of the [<sup>F179</sup>1995 Act] and of the <sup>M25</sup>Mental Health (Scotland) Act 1984 which so relate and are so amended [<sup>F180</sup>by this Act][<sup>F181</sup>and the Repatriation of Prisoners Act 1984 as it has effect by virtue of paragraphs 6 and 7 of Schedule 2 to the Crime (Sentences) Act 1997][<sup>F182</sup>and section 33 of the Criminal Justice (Scotland) Act 2003 (asp 7)];

“existing child detainee” means any child (“child” having the meaning assigned to that expression by [<sup>F183</sup>section 93(2)(b) of the Children (Scotland) Act 1995]) who, at the relevant date, is detained under section 206 of the [<sup>F179</sup>1995 Act] other than without limit of time or is detained in residential care by virtue of section 413 of the [<sup>F179</sup>1995 Act];

“existing licensee” means any person who, before the relevant date, has been released on licence under the 1989 Act;

“existing life prisoner” means any person [<sup>F184</sup>(other than a transferred life prisoner)] who, at the relevant date, is serving—

- (a) a sentence of imprisonment for life;
- (b) a sentence of detention without limit of time or for life under section 205 of the [<sup>F179</sup>1995 Act];
- (c) a sentence of detention without limit of time under section 206 of that Act; or

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- (d) a period of detention without limit of time or for life under section 207(2) of that Act;
- “existing prisoner” means any person who, at the relevant date, is serving—
- (a) a sentence of imprisonment; or
- (b) a sentence of detention in a young offenders institution; and
- “relevant date” means the date of commencement of the new provisions.

#### Textual Amendments

- F178** Sch. 6 para. 1: words in the definition of "existing provisions" inserted (3.2.1995) by 1994 c. 33, s. 134(1) (a)(i); S.I. 1995/127, art. 2(1), Sch. 1
- F179** Words in Sch. 6 para. 1 substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(2)
- F180** Sch. 6 para. 1: words in the definition of "new provisions" inserted (3.2.1995) by 1994 c. 33, s. 134(1) (a)(ii); S.I. 1995/127, art. 2(1), Sch. 1
- F181** Sch. 6 para. 1: words in the definition of "new provisions" inserted (1.10.1997) by 1997 c. 43, s. 55, Sch. 4 para. 16(2); S.I. 1997/2200, art. 2(1)(1)(2)(i)
- F182** Sch. 6 para. 1: words in the definition of "new provisions" inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {s. 33(3)}, 89(2); S.S.I. 2003/288, art. 2, Sch.
- F183** Sch. 6 para. 1: words in the definition of "existing child detainee" substituted (1.4.1997) by 1995 c. 36, s. 105(4), Sch. 4 para. 56(3); S.I. 1996/3201, art. 3(7)
- F184** Sch. 6 para. 1: words in the definition of "existing life prisoner" inserted (27.7.1993) by 1993 c. 36, ss. 76(3)(a), 78(2)

#### Marginal Citations

- M25** 1984 c. 36.

- 2 (1) Subject to sub-paragraph (2) and [<sup>F185</sup>to section 10(4) of this Act], the new provisions shall apply only to persons who are sentenced (or on whom detention is imposed) on or after the relevant date; and notwithstanding any repeal or amendment effected by or by virtue of this Act, but subject to that sub-paragraph [<sup>F186</sup>, to the following provisions of this Schedule and to the exception in the definition of “existing provisions” in paragraph 1 above,], the existing provisions shall continue to apply to persons sentenced (or on whom detention has been imposed) before that date.
- (2) Section 3 of this Act [<sup>F187</sup>, and sections 12 and 17 of this Act in so far as relating to a licence granted, or person released, by virtue of this sub-paragraph,] shall apply irrespective of the date on which a person is sentenced (or on which detention is imposed on him).

#### Textual Amendments

- F185** Words in Sch. 6 para 2(1) substituted (27.7.1993) by 1993 c. 36, ss. 76(3)(b), 78(2)
- F186** Words from “and to ” to “Schedule” in Sch. 6 para. 2 substituted (3.2.1995) by 1994 c. 33, s. 134(1)(b); S.I. 1995/127, art. 2(1), Sch. 1
- F187** Words in Sch. 6 para. 2(2) inserted (27.7.1993) by 1993 c. 36, ss. 75(2), 78(2)

- 3 An existing prisoner whose sentence is for a term of less than two years and who, by the relevant date, has served—
- (a) one-half or more of that sentence, shall be released unconditionally by the Secretary of State on that date;



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- (b) less than one-half of that sentence, shall be so released as soon as he has served one-half of that sentence.
- 4 (1) An existing child detainee whose sentence under section 206 of the [F188 1995 Act] is for a period—
- (a) of less than four years and who, by the relevant date, has served—
- (i) one-half or more of that sentence, shall be released on licence by the Secretary of State on that date;
- (ii) less than one-half of that sentence, shall be so released as soon as he has served one-half of that sentence;
- (b) of four years or more and who, by the relevant date, has served—
- (i) two-thirds or more of that sentence, shall be released on licence by the Secretary of State on that date;
- (ii) less than two-thirds of that sentence, shall be so released as soon as he has served two-thirds of that sentence.
- (2) An existing child detainee detained under section 206 of the [F188 1995 Act] may, on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.

#### Textual Amendments

**F188** Words in Sch. 6 para. 4(1)(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(2)

- 5 (1) An existing child detainee who, by the relevant date, has completed—
- (a) one-half or more of a period of detention in residential care for which he has been committed, shall be released from such care on that date;
- (b) less than one-half of that period, shall be so released as soon as he has completed one-half of that period,
- but until the entire such period has elapsed may be required by the appropriate local authority to submit to supervision in accordance with such conditions as they consider appropriate.
- (2) Where a child released under sub-paragraph (1) above is subject to a supervision requirement within the meaning of the M26 Social Work (Scotland) Act 1968, the effect of that requirement shall commence, or as the case may be resume, upon such release.

#### Marginal Citations

**M26** 1968 c. 49.

- 6 (1) This paragraph applies where, in the case of an existing life prisoner, the Lord Justice General, whom failing the Lord Justice Clerk, after consultation with the trial judge, if available, certifies his opinion that, if section 2 of this Act had been in force at the time when the prisoner was sentenced, the court by which he was sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.
- (2) In a case to which this paragraph applies, sections 1 to 27 of this Act except [F189 section 2(9)] shall apply as if—

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- (a) the existing life prisoner were a <sup>F190</sup> . . . life prisoner within the meaning of section 2 of this Act; and
  - (b) the [<sup>F191</sup>punishment]part of his sentence within the meaning of that section were the part specified in the certificate.
- (3) Where a person is serving two or more sentences of imprisonment for life or detention without limit of time or for life—
- (a) he shall be treated as a <sup>F190</sup> . . . life prisoner within the meaning of section 2 of this Act only if the requirements of sub-paragraph (1) above are satisfied in respect of each of those sentences; and
  - (b) notwithstanding the terms of any certificate under that sub-paragraph, subsections (4) and (6) of section 2 shall not apply to him until he has served the [<sup>F191</sup>punishment] part of each of those sentences.

#### Textual Amendments

**F189** Words in Sch. 6 para. 6(2) substituted (8.10.2001) by 2001 asp 7, s. 1(7)(a)(i); S.S.I. 2001/274, art. 3(3)

**F190** Words in Sch. 6 para. 6(2)(a)(3)(a) repealed (8.10.2001) by 2001 asp 7, s. 1(7)(a)(ii); S.S.I. 2001/274, art. 3(3)

**F191** Words in Sch. 6 para. 6(2)(b)(3)(b) substituted (8.10.2001) by 2001 asp 7, s. 1(7)(a)(iii); S.S.I. 2001/274, art. 3(3)

[<sup>F192</sup>6A(1) This paragraph applies where a prisoner sentenced before the relevant date to a sentence of imprisonment for life for an offence the sentence for which is not fixed by law has been (whether before, on or after that date) released on licence under the 1989 Act.

- (2) Without prejudice to section 22(6) of the 1989 Act, in a case to which this paragraph applies, the new provisions shall apply as if the prisoner were a <sup>F193</sup> . . . life prisoner, within the meaning of section 2 of this Act, whose licence has been granted under subsection (4) of that section of this Act on his having served the [<sup>F194</sup>punishment] part of his sentence.]

#### Textual Amendments

**F192** Sch. 6 paras. 6A, 6B inserted (3.2.1995) by 1994 c. 33, s. 135; S.I. 1995/127, art. 2(1), Sch. 1

**F193** Word in Sch. 6 para. 6A(2) repealed (8.10.2001) by 2001 asp 7, s. 1(7)(b)(i); S.S.I. 2001/274, art. 3(3)

**F194** Word in Sch. 6 para. 6A(2) substituted (8.10.2001) by 2001 asp 7, s. 1(7)(b)(ii); S.S.I. 2001/274, art. 3(3)

[<sup>F195</sup>6B(1) This paragraph applies where—

- (a) [<sup>F196</sup>an existing prisoner] was, at the relevant date, serving a sentence or sentences of imprisonment, on conviction of an offence, passed before that date and that sentence was for a term of, or as the case may be those sentences fall to be treated as for a single term of, two or more years; <sup>F197</sup> . . .
- (b) on or after [<sup>F198</sup>the date on which section 111 of the Crime and Disorder Act 1998 comes into force] he is, or has been, sentenced to a further term or terms of imprisonment, on conviction of an offence, to be served consecutively to, or concurrently with, the sentence or sentences mentioned in head (a) above [<sup>F199</sup>; and.

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- (c) he has not at any time prior to the passing of the sentence or sentences mentioned in head (b) above been released from the sentence or sentences mentioned in head (a) above under the existing provisions.]
- (2) In a case to which this paragraph applies—
- (a) the sentence or sentences mentioned in head (b) of sub-paragraph (1) above shall be treated as a single term with the sentences mentioned in head (a) of that sub-paragraph and that single term as imposed on or after the relevant date (so however that nothing in the foregoing provisions of this head shall affect the application of sections 39(7) (which makes provision as respects the award of additional days for breaches of discipline) and 24 (which makes provision as respects remission for good conduct) of the 1989 Act); and
- (b) the new provisions shall apply accordingly, except that—
- (i) where the prisoner is a long-term prisoner by virtue only of the aggregation provided for in head (a) of this sub-paragraph, he shall be released unconditionally on the same day as he would have been but for that aggregation;
- (ii) where, notwithstanding the aggregation so provided for, the prisoner remains a short-term prisoner, subsection (1) of section 1 of this Act shall in its application be construed as subject to the qualification that the prisoner shall be released no earlier than he would have been but for that aggregation;
- (iii) that section shall in its application be construed as if for subsection (3) there were substituted—
- (“ Without prejudice to subsection (1) above and to sub-paragraph (2)(b)(i) of paragraph 6B of Schedule 6 to this Act, after a prisoner to whom that paragraph applies has either served one-third of the sentence, or as the case may be sentences, mentioned in sub-paragraph (1)(a) of that paragraph, or (if it results in a later date of release) has served twelve months of that sentence or those sentences, the Secretary of State may, if recommended to do so by the Parole Board under this section, release him on licence; and where such a prisoner has been released on licence under section 22 of the 1989 Act, that licence shall be deemed to have been granted by virtue of this subsection.”;
- (iv) section 11(1) shall in its application be construed as if the sentence referred to were the further term or terms mentioned in head (b) of sub-paragraph (1) above; and
- (v) section 16 shall in its application be construed as if the original sentence (within the meaning of that section) were the further term or terms so mentioned.]

#### Textual Amendments

**F195** Sch. 6 paras. 6A, 6B inserted (3.2.1995) by 1994 c. 33, s. 135; S.I. 1995/127, art. 2(1), Sch. 1

**F196** Words in Sch. 6 para. 6B(1)(a) substituted (30.9.1998) by 1998 c. 37, s. 111(4)(a)(6); S.I. 1998/2327, art. 2(1)(x)

**F197** Word in Sch. 6 para. 6B repealed (30.9.1998) by 1998 c. 37, ss. 111(4)(b)(6), 120(2), Sch. 10; S.I. 1998/2327, art. 2(1)(x)(aa)(3)(u)

**F198** Words in Sch. 6 para. 6B substituted (30.9.1998) by virtue of 1998 c. 37, s. 111(4)(c)(6); S.I. 1998/2327, art. 2(1)(x)

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**F199** Sch. 6 para. 6B(1)(c) and the preceding word “; and” inserted (30.9.1998) by 1998 c. 37, s. 111(4)(d) (6); S.I. 1998/2327, art. 2(1)(x)

[<sup>F200</sup>6C(1) This paragraph applies where—

- (a) an existing prisoner was, at the relevant date, serving a sentence or sentences of imprisonment, on conviction of an offence, passed before that date;
  - (b) on or after the date on which section 111 of the Crime and Disorder Act 1998 comes into force he is, or has been, sentenced to a further term or terms of imprisonment on conviction of an offence, to be served wholly or partly concurrently with the sentence or sentences mentioned in head (a); and
  - (c) the sentences do not fall to be treated as a single term by virtue of paragraph 6B(2)(a) above.
- (2) In a case to which this paragraph applies the Secretary of State shall not release, or be required to consider the release of, the prisoner unless and until the requirements for release, or for consideration of his release, of the new and the existing provisions are satisfied in relation to each sentence to which they respectively apply.
- (3) In a case to which this paragraph applies the Parole Board shall not be required to consider the release of the prisoner unless and until the requirements for release, or for consideration for release, of the new and the existing provisions are satisfied in relation to each sentence to which they respectively apply.
- (4) In a case to which this paragraph applies, where the prisoner is released on licence, he shall be on a single licence which—
- (a) shall (unless revoked) remain in force until the later of—
    - (i) the date on which he would have been discharged from prison on remission of part of his sentence or sentences under the existing provisions if, after his release, he had not forfeited remission of any part of that sentence under those provisions; or
    - (ii) the date on which he would (but for his release) have served in full all the sentences in respect of which he was released on licence and which were imposed after the relevant date; and
  - (b) shall be deemed to be granted under the new provisions and, subject to sub-paragraph (5) below, those provisions so far as relating to conditions of licences, and recall or return to prison, shall apply as they apply in respect of a prisoner on licence in respect of a sentence passed after the relevant date.
- (5) In the application of section 16 to a person whose licence is deemed to be granted under the new provisions by virtue of sub-paragraph (4)(b) above, the reference to the original sentence (within the meaning of that section) shall be construed as a reference to the further term or terms mentioned in head (b) of sub-paragraph (1) above.]

#### Textual Amendments

**F200** Sch. 6 para. 6C inserted (30.9.1998) by 1998 c. 37, s. 111(5)(6); S.I. 1998/2327, art. 2(1)(x)

[<sup>F201</sup>6D Where a prisoner released on licence is treated by virtue of the provisions of this or any other enactment as a prisoner whose licence was granted under section 2(4) of this Act, the validity of his licence shall not be affected by the absence in the licence of such a condition as is specified in section 12(2) of this Act.]

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#### Textual Amendments

**F201** Sch. 6 para. 6D inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 108**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)**

F202<sup>7</sup> . . . . .

#### Textual Amendments

**F202** Sch. 6 para. 7 repealed (8.10.2001) by 2001 asp 7, **s. 3(3)**; S.S.I. 2001/274, **art. 3(3)**

- 8 Unless revoked [<sup>F203</sup>by virtue of paragraph 10 of this Schedule], a licence under—
- (a) paragraph 4(1)(a)(i) or (b)(i) above shall remain in force until at least twelve months have elapsed after the date of release and until the entire period of sentence has elapsed;
  - (b) paragraph 4(1)(a)(ii) or (b)(ii) above shall remain in force until a date determined by the Parole Board, being a date not later than the date by which the entire period of sentence has elapsed.

#### Textual Amendments

**F203** Words in Sch. 6 para. 8 inserted (3.2.1995) by 1994 c. 33, **s. 130(3)(a)**; S.I. 1995/127, **art. 2(1)**, **Sch. 1**

- 9 Section 12 of this Act shall apply in respect of a licence granted under this Schedule.
- [<sup>F204</sup>10 Section 17 of this Act shall apply in respect of a release on licence under paragraph 4 of this Schedule as that section applies in respect of the release on licence, under Part I of this Act, of a long-term prisoner.]

#### Textual Amendments

**F204** Sch. 6 para. 10 inserted (3.2.1995) by 1994 c. 33, **s. 130(3)(b)**; S.I. 1995/127, **art. 2(1)**, **Sch. 1**

## SCHEDULE 7 **E+W+S**

Section 47(3).

### REPEALS AND REVOCATIONS

#### PART I **E+W+S**

##### REPEALS

#### Commencement Information

**I9** Sch. 7 Pt. I not in force at Royal Assent see. s. 48(2). Sch. 7 Pt. I in force for certain purposes at 18.9.1993 and Pt. 1 wholly in force at 1.10.1993 by S.I. 1993/2050, **art. 3(3)(4)**, **Sch. 2** (subject to savings in **art. 4, 9**)

**Status:** Point in time view as at 27/06/2003. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Prisoners and Criminal Proceedings (Scotland) Act 1993. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Chapter	Short title	Extent of repeal
1 Edw.8 & 1 Geo.6 c. 37.	The Children and Young Persons (Scotland) Act 1937.	In section 57(3), the words “or section 25 of the Prisons (Scotland) Act 1989”.
3 & 4 Eliz.2 c. 18.	The Army Act 1955.	Section 71AA(6B).In Schedule 5A, paragraph 10(6B).
3 & 4 Eliz.2 c. 19.	The Air Force Act 1955.	Section 71AA(6B).In Schedule 5A, paragraph 10(6B).
5 & 6 Eliz.2 c. 53.	The Naval Discipline Act 1957.	Section 43AA(6B).In Schedule 4A, paragraph 10(6B).
1963 c. 39.	The Criminal Justice (Scotland) Act 1963.	In paragraph 13 of Schedule 1, the words “(and, if that person is released from such a prison under the said section 214(7) or 423(7), section 30(3) of the Prisons (Scotland) Act 1989)”.
1965 c. 20.	The Criminal Evidence Act 1965.	The whole Act.
1969 c. 48.	The Post Office Act 1969.	Section 93(4).
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	In section 108(2), the word “and” at the end of paragraph (b). Section 207(11). Section 212. Section 214. In section 270(2), the words “of two weeks or any extension thereof authorised by the High Court”. Section 289D(1A)(e). Section 328. In section 413(1) the words “for such period, not exceeding one year, as the sheriff may determine”. Section 415(11). Section 421. Section 423.

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1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	In Part I of Schedule 1, in Group B, paragraph (v).
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	In section 2, in subsection (5), paragraph (c) and the proviso to that paragraph; and in subsection (6) the words “or (c)”.  In Schedule 3, paragraph 12.
1981 c. 49.	The Contempt of Court Act 1981.	Section 15(6).
1984 c. 36.	The Mental Health (Scotland) Act 1984.	In section 71, subsection (2) (b); and in subsection (7) (a), the words “in criminal proceedings”.  Section 73(3).
1987 c. 41.	The Criminal Justice (Scotland) Act 1987.	Section 62(1).
1989 c. 45.	The Prisons (Scotland) Act 1989.	In Schedule 1, paragraph 19.  In section 12, the words “such regulations”.  Section 16(1).  Section 18.  In section 19(4), in paragraph (b), the word “24,”; and in the proviso, sub-paragraph (ii).  In section 21(3), the proviso.  Sections 22 to 32.  In section 39, in subsection (1) the word “and” where it occurs for the third time; and subsection (4).  In section 42, in subsection (1) the words “22(2), 30(6) or (7), 32(5) or”; and subsections (3) and (4).  In section 43, in subsection (1), the definitions of “local review committee”, “Parole Board” and “sentence of imprisonment”; in subsection (2), the words



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1991 c. 53.	The Criminal Justice Act 1991.	“(other than in section 25)”; and in subsection (5), the words “(other than in section 30)”.  Schedule 1.  In Schedule 2, paragraphs 1, 3 to 5, 8, 13 to 15, 17 and 18.  In Schedule 11, in paragraph 35, sub-paragraphs (2), (3)(a) and (4).
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## PART II S

### REVOCATIONS

Year and number	T itle	Extent of revocation
S.I. 1952/565.	The Prison (Scotland) Rules 1952.	Rule 9.
S.I. 1976/1889.	The Prison (Scotland) Amendment Rules 1976.	The whole rules.

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**Changes to legislation:**

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