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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 232**

**CRIMINAL LAW**

**The Offenders Assisting Investigations and Prosecutions  
(Substituted Sentences) (Scotland) Order 2008**

<i>Made</i>	- - - -	<i>5th June 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th June 2008</i>
<i>Coming into force</i>	- -	<i>30th June 2008</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 94(3) of the Police, Public Order and Criminal Justice (Scotland) Act 2006<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Offenders Assisting Investigations and Prosecutions (Substituted Sentences) (Scotland) Order 2008 and comes into force on 30th June 2008.

**Interpretation**

2. In this Order—

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(2)</sup>;

“the original sentence” is the sentence passed on an offender who falls within section 92(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006; and

“the substitute sentence” is the sentence that is substituted for the original sentence under section 92(7) or (9) or on appeal under section 92(11) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

**Calculation of periods of time in custody and on release**

3.—(1) In calculating for the purpose of Part I of the 1993 Act the total period of time that must be served in custody under the substitute sentence, there shall be deducted from that period any period of time served in custody under the original sentence.

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(1) 2006 asp 10.  
(2) 1993 c. 9.

(2) In calculating for the purpose of Part I of the 1993 Act the total period of time during which a person is, or is to be, released on licence in respect of the substitute sentence, there shall be deducted from that period any period of time—

- (a) served in custody under the original sentence which is surplus to that which the person requires to serve in custody under the substitute sentence taking account of paragraph (1) of this article;
- (b) during which the person was released on licence under that Part of that Act in respect of the original sentence before the date on which (but for that release) that sentence would have been served in full; and
- (c) during which the person was released unconditionally under that Part of that Act in respect of the original sentence before the date on which (but for that release) that sentence would have been served in full.

(3) In calculating for the purpose of Part I of the 1993 Act the total period of time during which a person is, or is to be, released unconditionally in respect of the substitute sentence, there shall be deducted from that period any period of time—

- (a) served in custody under the original sentence which is surplus to that which the person requires to serve in custody under the substitute sentence taking account of paragraph (1) of this article;
- (b) during which the person was released on licence under that Part of that Act in respect of the original sentence before the date on which (but for that release) that sentence would have been served in full; and
- (c) during which the person was released unconditionally under that Part of that Act in respect of the original sentence, before the date on which (but for that release) that sentence would have been served in full.

St Andrew's House,  
Edinburgh  
5th June 2008

*KENNY MACASKILL*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision in relation to the calculation of sentences following the imposition of a substitute sentence under section 92(7) or (9) or on appeal under section 92(11) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”).

Article 3(1) makes provision for calculating (under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”)) the total period of time that must be spent in custody under a substitute sentence. The article provides that any period of time that has already been spent in custody under the original sentence is to be deducted from the total period due to be spent in custody under the substitute sentence.

Article 3(2) makes provision for calculating (under Part I of the 1993 Act) the total period of time that must be spent on release on licence under a substitute sentence. The article provides that any period of time spent in custody which is surplus to that which an offender requires to spend in custody under a substitute sentence (which, in practice, will occur where a reduced sentence is substituted in circumstances where the offender has given or offered more assistance to the prosecutor); any period already spent on release on licence; or any period on unconditional release under the original sentence, is to be deducted from the total period due to be spent on release on licence under the substitute sentence.

Article 3(3) makes provisions for calculating (under Part I of the 1993 Act) the total period of time during which a person is on unconditional release under a substitute sentence. The article provides that any period spent in custody under the original sentence which is surplus to that which an offender requires to spend in custody under a substitute sentence (which, in practice, will occur where a reduced sentence is substituted in circumstances where the offender has given or offered more assistance to the prosecutor); any period already spent on release on licence under the original sentence; or any period on unconditional release under the original sentence, is to be deducted from the total period due spent on unconditional release under the substitute sentence.