



# Prisoners and Criminal Proceedings (Scotland) Act 1993

## 1993 CHAPTER 9

### PART I

#### DETENTION, TRANSFER AND RELEASE OF OFFENDERS

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

- C1** Pt. I (ss. 1-27) modified (S.) (20.10.1997) by 1997 c. 48, s. 16(2)(3) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- C2** Pt. I (ss. 1-27) 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.)
- C3** Pt. I (ss. 1-27) applied (S.) (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. Pt. 2 para. 29; S.S.I. 2001/274, art. 3(3)

#### *Early release*

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

- (1) 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
- (3) After a long-term prisoner has served one-half of his sentence the Secretary of State may, if recommended to do so by the Parole Board under this section, release him on licence.

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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- (4) If recommended to do so by the Parole Board under this section, the Secretary of State may, after consultation with—
- (a) the Lord Justice General, whom failing the Lord Justice Clerk; and
  - (b) if available, the trial judge,
- release on licence a life prisoner who is not a discretionary life prisoner.
- (5) The Parole Board shall not make a recommendation under subsection (4) above unless the Secretary of State has referred the case to the Board for its advice.
- (6) Notwithstanding the foregoing provisions of this section, the Secretary of State shall not release a person who is serving—
- (a) a sentence of imprisonment for a term and one or more sentences of imprisonment for life; or
  - (b) more than one sentence of imprisonment for life,
- unless and until the requirements of those provisions are satisfied in respect of each of those sentences.
- (7) A person to whom subsection (6) above applies shall, when released on licence under this section, be released on a single licence under subsection (4) above.
- (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.

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

- C4** 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))  
 S. 1(4) applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. paras. 5, 6, 7; S.I. 1997/2200, **art. 2(1)(g)**
- C5** 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))
- C6** S. 1(3) modified (1.4.1995) by S.I. 1995/911, **art. 3(a)**
- C7** 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. 1(4) applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. 1 paras. 5, 6, 7; S.I. 1997/2200, **art. 2(1)(g)**

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VALID FROM 08/02/2006

## [<sup>F1</sup>1AA Release of certain sexual offenders

- (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.
- (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.]

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### Textual Amendments

- F1** 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

VALID FROM 30/09/1998

### [<sup>F2</sup>1A] Application to persons serving more than one sentence.

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

### Textual Amendments

- F2** S. 1A inserted (30.9.1998) by [1998 c. 37, s. 111\(1\)](#); [S.I. 1998/2327](#), [art. 2\(1\)\(x\)](#)

### Modifications etc. (not altering text)

- C8** S. 1A excluded (17.12.2001) by [2001 asp 13, s. 24\(c\)](#) (with [s. 29](#)); [S.S.I. 2001/456](#), [art. 2](#)
- C9** 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.

- (1) In this Part of this Act “discretionary life prisoner”, subject to subsection (9)(a) below and except where the context otherwise requires, means a life prisoner—
- (a) whose sentence was imposed for an offence the sentence for which is not fixed by law; and
  - (b) in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below.

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- (2) The order referred to in subsection (1)(b) above is an order that subsections (4) and (6) below shall apply to the life prisoner as soon as he has served such part of his sentence (“the relevant part”) as is specified in the order, being such part as the court considers appropriate taking into account—
  - (a) the seriousness of the offence, or of the offence combined with other offences associated with it; and
  - (b) any previous conviction of the life prisoner.
- (3) Where a court which imposes life imprisonment for an offence such as is mentioned in subsection (1)(a) above decides not to make such order as is mentioned in subsection (2) above, it shall state its reasons for so deciding; and for the purposes of any appeal or review, any such order and any such decision shall each constitute part of a person’s sentence within the meaning of the 1975 Act.
- (4) Where this subsection applies, the Secretary of State shall, if directed to do so by the Parole Board, release a discretionary 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.
- (6) Where this subsection applies, a discretionary life prisoner may, subject to subsection (7) below, at any time require the Secretary of State to refer his case to the Parole Board.
- (7) No requirement shall be made under subsection (6) above—
  - (a) where the prisoner is also serving a sentence of imprisonment for a term, before he has served one-half of that sentence; and
  - (b) where less than two years has elapsed since the disposal of any (or the most recent if more than one) previous reference of his case to the Board under subsection (5)(a) or (6) above or under section 17(3) of this Act.
- (8) In determining for the purposes of subsection (4) or (6) above whether a discretionary life prisoner has served the relevant 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 two or more sentences of imprisonment for life—
  - (a) he is a discretionary life prisoner only if the requirements of subsection (1) above are satisfied in respect of each of those sentences;
  - (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 relevant 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.

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

**C10** S. 2(2)(7) 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))

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

- (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)

**C11** S. 3 excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2

**C12** 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)

VALID FROM 03/07/2006

#### <sup>F3</sup>3AA Further powers to release prisoners

- (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

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- (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;
  - (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

- F3** 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)**

VALID FROM 30/09/1998

#### **[<sup>F4</sup>3A** Re-release of prisoners serving extended sentences.

- (1) This section applies to a prisoner serving an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences) who has been recalled to prison under section 17(1) of this Act.
- (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—

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- (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 disposal of that referral;
  - (b) in any other case, at any time.
- (3) Where a prisoner to whom this section applies is subject to another sentence which is not treated as a single sentence with the extended sentence, the Secretary of State shall not be required to refer his case to the Parole Board before he has served one half of 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.
- (5) If the Parole Board gives a direction under subsection (4) above, the Secretary of State shall release the prisoner on licence.]

#### Textual Amendments

**F4** 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)

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

**C13** 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.

- (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.
- (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
  - (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)



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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 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

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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.”.

#### Marginal Citations

M1 1984 c. 36.

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

- (1) Subject to section 1(8) of this Act and to subsections (2) and (3) 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—
- (a) under section 407 of the 1975 Act (imprisonment for non-payment of fine: summary proceedings) or under that section as applied by section 194 of that Act (imprisonment for non-payment of fine: solemn proceedings) or, by virtue of the appropriate one of those sections, under section 415(2) or 207(2) 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.
- (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,

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and if during the term in question the prisoner is both released under section 3 of this Act and subsequently recalled under section 17(1) 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.

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

- (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 section 207(2) or 415(2) of the 1975 Act as the Part applies to persons serving equivalent sentences of imprisonment; and

(b) to—

(i) persons sentenced under section 205 of that Act to be detained without limit of time or for life;

(ii) children sentenced to be detained without limit of time under section 206 of that Act; and

(iii) persons on whom detention without limit of time or for life is imposed under 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.

- (2) A child detained without limit of time under section 206 of the 1975 Act may, on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.

- (3) The Secretary of State may, after consultation with the Parole Board, by order provide that, in relation to all children detained without limit of time under section 206 of the 1975 Act or to such class of those children as may be specified in the order, this section shall have effect subject to the modification that, in subsection (2), for the word “may” there shall be substituted the word “shall”.

### Commencement Information

- II** 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.

- (1) Where a child is detained under section 206 of the 1975 Act (detention of children convicted on indictment) and the period specified in the sentence—

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- (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>F5</sup>(1A) The Secretary of State may by order provide—

- (a) that the reference to—
  - (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 section 206 of the 1975 Act or in pursuance of an order under subsection (3) below may, on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.
- (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.
- (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).

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- (5) <sup>F6</sup>Without prejudice to section 6(1)(b)(ii) of this Act, sections 3, 11(1), 12, 17 and 20(2) of this Act apply to children detained under section 206 of the 1975 Act as they apply to long-term prisoners; and references in those sections of this Act to prisoners, or to prison, imprisonment or sentences of imprisonment shall be construed accordingly.
- (6) The Secretary of State may, after consultation with the Parole Board, by order provide that, in relation to all children detained under section 206 of the 1975 Act or to such class of those children as may be specified in the order, this section shall have effect subject to the modification that, in subsection (2), for the word “may” there shall be substituted the word “shall”.
- (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

- F5** S. 7(1A)(1B) inserted (3.2.1995) by 1994 c. 33, s. 130(1); S.I. 1995/127, art. 2(1), Sch. 1  
**F6** Words in s. 7(5) substituted (27.7.1993) by 1993 c. 36, ss. 75(1), 78(2)

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

- C14** 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(1)(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))

#### Commencement Information

- I2** 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

## 8 Children detained in summary proceedings.

For subsection (6) of section 413 of the 1975 Act (review of case and release of child detained in summary proceedings) there shall be substituted the following subsections—

- “(6) Where a child is detained in residential care in pursuance of an order under—
- (a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (6A) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;
  - (b) subsection (1) above or (6B) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
    - (i) for such period and on such conditions as the local authority consider appropriate; or
    - (ii) unconditionally.

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- (6A) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement within the meaning of the 1968 Act, the effect of that requirement shall commence, or as the case may be resume, upon such release.
- (6B) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following commencement of the detention, elapsed), a child commits an offence to which this section applies 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, order that he be returned to the residential care of the authority which released him and that his detention in their care shall continue for the whole or any part of the period which—
- (a) begins with the date of the order for his return; and
  - (b) 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 elapses.
- (6C) An order under subsection (6B) above for return to residential care—
- (a) shall be taken to be an order for detention in residential care for the purposes of this Act and of any appeal; and
  - (b) shall, as the court making that order may direct, either be for a period of residential care before and to be followed by, or to be concurrent with, any period of residential care to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).”.

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

- (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)

**C15** S. 9 excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2

**C16** 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),

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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.

- (1) In a case where a transferred life prisoner transferred from England and Wales <sup>F7</sup> . . . is, by virtue of an order under section 34 of the <sup>M3</sup>Criminal Justice Act 1991, a discretionary life prisoner for the purposes of Part II of that Act, this Part of this Act except sections 1(4) and 2(9) shall apply as if—
  - (a) the prisoner were a discretionary life prisoner within the meaning of section 2 of this Act; and
  - (b) the relevant part of his sentence within the meaning of that section were the relevant part specified in the order under the said section 34.
- (2) In the case of any other transferred life prisoner [<sup>F8</sup>, except such case as is mentioned in paragraph 7 of Schedule 6 to this Act,] subsection (3) below applies where the Lord Justice General, whom failing the Lord Justice Clerk, certifies his opinion that, if the prisoner had been sentenced for his offence in Scotland after the commencement of section 2 of this Act, the court by which he was so 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.
- (3) In a case to which this subsection applies, this Part of this Act except sections 1(4) and 2(9) shall apply as if—
  - (a) the transferred life prisoner were a discretionary life prisoner within the meaning of section 2 of this Act; and
  - (b) the relevant part of his sentence within the meaning of that section were the part specified in the certificate.
- (4) In this section “transferred life prisoner” means a person—
  - (a) on whom a court in a country or territory outside Scotland [<sup>F9</sup> or a court-martial] has [<sup>F10</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>F11</sup>]<sup>F12</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 section 26 of the <sup>M4</sup>Criminal Justice Act 1961 or section 2 of the <sup>M5</sup>Colonial Prisoners Removal Act 1884; or
    - (ii) a warrant issued by the Secretary of State under the <sup>M6</sup>Repatriation of Prisoners Act 1984, [<sup>F13</sup>; or
    - (iii) rules made under section 122(1)(a) of the <sup>M7</sup>Army Act 1955 (imprisonment and detention rules); or

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- (iv) rules made under section 122(1)(a) of the <sup>M8</sup>Air Force Act 1955 (imprisonment and detention rules); or
- (v) a determination made under section 81(3) of the <sup>M9</sup>Naval Discipline Act 1957 (place of imprisonment or detention).]

there to serve, or to serve the remainder of, his sentence or sentences [<sup>F14</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—
  - (a) he shall be treated as a discretionary 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 section 34 of the said Act of 1991 or of any certificate under subsection (2) above, subsections (4) and (6) of section 2 of this Act shall not apply to him until he has served the relevant part of each of those sentences.

#### Textual Amendments

- F7** Words in s. 10(1) repealed (27.7.1993) by 1993 c. 36, ss. 76(2)(a), 79(14), 78(2), **Sch. 6 Pt I**
- F8** Words in s. 10(2) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(b), 78(2)
- F9** 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**
- F10** Words in s. 10(4)(a) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F11** Words in s. 10(4)(b) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F12** 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**
- F13** 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**
- F14** 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**

#### Marginal Citations

- M3** 1991 c. 53.
- M4** 1961 c. 39.
- M5** 1884 c. 31.
- M6** 1984 c. 47.
- M7** 1955 c. 18.
- M8** 1955 c. 19.
- M9** 1957 c. 53.

VALID FROM 08/10/2001

#### [<sup>F15</sup>10A Transfer of supervision of life prisoners

- (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.



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- (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

**F15** S. 10A inserted (8.10.2001) by 2001 asp 7, s. 3(2); S.S.I. 2001/274, art. 3(3)

## 11 Duration of licence.

- (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 section 212A of the 1975 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;
  - (b) by virtue of section 16(7) of this Act, the licence shall, unless revoked, remain in force until <sup>F16</sup> there has elapsed—
    - (i) a period (reckoned from the date on which he was ordered to be returned to prison under or by virtue of subsection (2)(a) of that

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section) equal in length to the period between the date on which the new offence was committed and the date on which he would (but for his release) have served the original sentence in full; or

- (ii) subject to subsection (4) below, a total period equal in length to the period for which he was so ordered to be returned to prison together with, so far as not concurrent with that period, any term of imprisonment to which he was sentenced in respect of the new offence,

whichever results in the later date.

- (4) In subsection (3)(b) above, “the original sentence” and “the new offence” have the same meanings as in section 16 of this Act.]

#### Textual Amendments

**F16** Words and s. 11(3)(b)(i)(ii)(4) substituted for words in s. 11(3)(b) (31.3.1996) by 1995 c. 20, s. 117(1), Sch. 6 Pt. I para. 179(2); S.I. 1996/517, art. 3(1) (which substitution fell (1.4.1996) by reason of the repeal (S.) of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

## 12 Conditions in licence.

- (1) A person released on licence under this Part of this Act shall 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 a probation officer 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.
- (3) The Secretary of State may from time to time under subsection (1) above insert, vary or cancel a condition in a licence granted under this Part of this Act; but in the case of a long-term or life prisoner no licence condition shall be included on release or subsequently inserted, varied or cancelled except—
- (a) in the case of the inclusion [<sup>F17</sup>or subsequent insertion, variation or cancellation] of a condition in the licence of a discretionary life prisoner, in accordance with the recommendations of the Parole Board; and
- (b) in any other case, after consulting the Board.
- (4) For the purposes of subsection (3) above, the Secretary of State shall be treated as having consulted the Parole Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.

#### Extent Information

**E1** S.12(1)(2)(3)(4) extends to Scotland, S.12(2) extends also to England and Wales.

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### Textual Amendments

**F17** Words in s. 12(3)(a) inserted (3.2.1995) by 1994 c. 33, s. 131; S.I. 1995/127, art. 2(1), Sch. 1

### Modifications etc. (not altering text)

**C17** 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)

VALID FROM 08/02/2006

### <sup>F18</sup>12AA Conditions for persons released on licence under section 3AA

- (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
  - (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

**F18** 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)

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**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)

VALID FROM 08/02/2006

## 12AB Curfew condition

- (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 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

- F18** 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\(1\)\(b\)\(2\)](#)

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VALID FROM 27/06/2003

### [<sup>F19</sup>12A Suspension of licence conditions

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

#### Textual Amendments

**F19** 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.

VALID FROM 27/06/2003

### [<sup>F19</sup>12B Certain licences to be replaced by one

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

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(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

**F19** 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.

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)

**C18** 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.

(1) After section 212 of the 1975 Act there shall be inserted the following section—

#### “212A Supervised release orders.

(1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on

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passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.

- (2) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
  - (a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993); and
  - (b) comply with—
    - (i) such requirements as are specified in the order; and
    - (ii) such requirements as that officer may reasonably specify, for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).
- (3) A supervised release order—
  - (a) shall be as nearly as possible in such form as may be prescribed by Act of Adjournal;
  - (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
  - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.
- (5) The clerk of the court by which a supervised release order is made in respect of a person shall—
  - (a) forthwith send a copy of the order to the person and to the Secretary of State; and
  - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.
- (6) In this section—

“relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

“relevant period” means such period as may be specified in the supervised release order, being a period—

  - (a) not exceeding twelve months after the date of the person’s release; and
  - (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

“supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may

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be, probation officer who is for the time being supervising for those purposes the person released.”.

- (2) Notwithstanding section 26 of the <sup>M10</sup>Criminal Justice Act 1961 and section 212A(1) of the 1975 Act, where a short-term prisoner within the meaning of the <sup>M11</sup>Criminal Justice Act 1991, being a prisoner in respect of whom section 44 of that Act (release of sexual offenders) applies, is transferred to a prison in Scotland to serve his sentence or the remainder of his sentence, the sheriff court for the area in which that prison is situated shall, on the application of the Secretary of State supported by any relevant documents or information received by the Secretary of State on the transfer of the prisoner to Scotland, make under this subsection, but subject to section 212A(2) to (6) of the 1975 Act, a supervised release order in respect of the prisoner.
- (3) For the purposes of a supervised release order under subsection (2) above the relevant period within the meaning of section 212A(2) of the 1975 Act shall be whichever is the shorter of—
- (a) the period of twelve months from the date of the prisoner’s release; and
  - (b) the period from that date until the date by which the entire term of imprisonment specified in his sentence has (following commencement of the imprisonment) elapsed.
- (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) send to the authority or, as the case may be, to the clerk 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 section 212A(5)(b) of the 1975 Act.

#### Extent Information

**E2** S. 14(1)(2)(3)(4)(5) extends to Scotland, S. 14(4) extends also to England and Wales.

#### Marginal Citations

**M10** 1961 c. 39.

**M11** 1991 c. 53.

## 15 Variation of supervised release order etc.

- (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



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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—
    - (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, a probation officer 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 section 212A(2)(b) of the 1975 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 probation officer) 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.

## 16 Commission of offence by released prisoner.

- (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 under this Part of this Act or Part II of the <sup>M12</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

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- (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 section 254(3) or 453C(1) of the 1975 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>F20</sup>(7) Where an order under subsection (2) or (4) above is made in respect of a person released on licence—
- (a) the making of the order shall have the effect of revoking the licence; and
  - (b) if the sentence comprising—
    - (i) the period for which the person is ordered to be returned to prison; and
    - (ii) so far as not concurrent with that period, any term of imprisonment to which he is sentenced in respect of the new offence,
 is six months or more but less than four years, section 1(1) of this Act shall apply in respect of that sentence as if for the word “unconditionally” there were substituted the words “on licence”.]

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#### Extent Information

**E3** S.16(1)(2)(3)(4)(5)(6)(7) extends to Scotland, S.16(1)(3) also extends to England and Wales.

#### Textual Amendments

**F20** S. 16(7) substituted (S.)(31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 179(3)**; S.I. 1996/517, **art. 3(1)** (which substitution fell (1.4.1996) by reason of the repeal (S.) of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), **Sch. 3 Pt. II paras. 16(3), Sch. 5**)

#### Marginal Citations

**M12** 1991 c. 53.

## 17 Revocation of licence.

- (1) Where—
  - (a) a long-term or life prisoner has been released on licence under this Part of this Act, the Secretary of State may revoke that licence and recall him to prison—
    - (i) if recommended to do so by the Parole Board; or
    - (ii) if revocation and recall are, in the opinion of the Secretary of State, expedient in the public interest and it is not practicable to await such recommendation;
  - (b) a short-term prisoner has been so released, the Secretary of State may revoke his licence and recall him to prison if satisfied that his health or circumstances have so changed that were he in prison his release under section 3(1) of this Act would no longer be justified.
- (2) A person recalled under subsection (1) above shall, on his return to prison, be informed of the reasons for his recall and that he has the right to make written representations to the Secretary of State in that regard.
- (3) The Secretary of State shall refer to the Parole Board the case of—
  - (a) a person recalled under subsection (1)(a)(i) above who makes representations under subsection (2) above; or
  - (b) a person recalled under subsection (1)(a)(ii) 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.
- (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.

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

**C19** 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

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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.)

**C20** S. 17(1)(a) modified (1.4.1995) by S.I. 1995/911, **art. 3(c)**

VALID FROM 03/07/2006

### **[<sup>F21</sup>17A Recall of prisoners released under section 3AA**

- (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**

- F21** 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)**

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## 18 Breach of supervised release order.

- (1) [<sup>F22</sup>Where it appears to the court which imposed a supervised release order on a person, on information from] 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—
    - (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 director of social work 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 director for the purposes of this section.

### Textual Amendments

**F22** Words in s. 18(1) substituted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 179(4)**; S.I. 1996/517, **art. 3(1)** (which substitution fell (1.4.1996) by reason of the repeal (S.) of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), **Sch. 3 Pt. II paras. 16(3), 17, Sch. 5**)

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

- (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)

**C21** 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.

- (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, this Part of 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) The Secretary of State may, after consultation with the Board, by order provide that, in relation to such class of case as may be specified in the order, this Act shall have effect subject to the modifications that—
- (a) in subsection (3) of section 1, for the word “may” there shall be substituted the word “shall” so however that nothing in this paragraph shall affect the operation of that subsection as it has effect in relation to a long-term prisoner who is liable to removal from the United Kingdom (within the meaning of section 9 of this Act);
  - (b) in section 12—
    - (i) in subsection (3)(a), after the words “licence of a” there shall be inserted the words “long-term or”; and
    - (ii) subsection (4) shall be omitted; and
  - (c) in section 17(1)(a), for the word “may” there shall be substituted the word “shall”.
- (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;

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- (b) requiring cases to be dealt with at prescribed times; and
  - (c) as to what matters may be taken into account by the Board (or by such number) in dealing with a case.
- (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.

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

**C22** 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.)

#### Commencement Information

**I3** 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.

- (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)

**C23** 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.)

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### *Miscellaneous*

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

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 1975 Act (transfer of prisoner in connection with hearing of appeal).”.

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

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 1975 Act, the Prisoners and Criminal Proceedings (Scotland) Act 1993 and this Act 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.”.

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

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—



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- (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.

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.

In section 73 of the <sup>M13</sup>Mental Health (Scotland) Act 1984, subsection (3) (which provides for the continued detention in hospital of persons moved there by virtue of a transfer order while awaiting trial etc. even where that order has ceased to have effect) shall cease to have effect.

### Marginal Citations

M13 1984 c. 36.

VALID FROM 30/09/1998

[<sup>F23</sup> Extended sentences]

### Textual Amendments

F23 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)

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## <sup>F24</sup> 26A Extended sentences.

- (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.
- (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.
- (9) In relation to a prisoner subject to an extended sentence, the reference in section 17(5) of this Act to his sentence shall be construed as a reference to the extended sentence.
- (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

- F24** S. 26A and preceding cross-heading inserted (30.9.1998) by 1998 c. 37, s. 87; S.I. 1998/2327, art. 2(1)(s)

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#### 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))

VALID FROM 04/10/2005

#### [<sup>F25</sup>**26B Parole Board to have regard to risk management plans**

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

**F25** 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.

(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;

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

“local authority” means a regional or islands council;

“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 the Justices of the <sup>M14</sup>Peace Act 1979;

“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>M15</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 section 212A (as inserted by section 14 of this Act) of the 1975 Act but includes any order under subsection (2) of the said section 14; and

“supervising officer” has the meaning given by the said section 212A.

(2) The Secretary of State may by order provide—

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- (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 1975 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.

#### Commencement Information

**I4** 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

**M14** 1979 c. 55.

**M15** 1968 c. 49.

## PART II

### CRIMINAL PROCEEDINGS

#### *Evidence*

#### **28 Prints, samples etc. in criminal investigations.**

- (1) This section applies where a person has been arrested and is in custody, or is detained under section 2(1) of the <sup>M16</sup>Criminal Justice (Scotland) Act 1980 (detention and questioning).

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- (2) A constable may take from the person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable may, having regard to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take.
- (3) [<sup>F26</sup>Subject to subsection (3A) below,] All record of any prints or impressions taken under subsection (2) above [<sup>F27</sup>, all samples taken under subsection (4) below and all information derived from such samples] shall be destroyed [<sup>F28</sup>as soon as possible] following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 383 (absolute discharge) <sup>F29</sup> . . . of the 1975 Act.
- [<sup>F30</sup>(3A) The duty under subsection (3) above to destroy samples taken under subsection (4) below and information derived from such samples shall not apply where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken.
- (3B) No sample, or information derived from a sample, retained by virtue of subsection (3A) above shall be used—
- (a) in evidence against the person from whom the sample was taken; or
  - (b) for the purposes of the investigation of any offence.
- (3C) The duty under subsection (3) above shall not apply where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.]
- (4) A constable may, with the authority of an officer of a rank no lower than inspector, take from the person—
- (a) from the hair of an external part of the body [<sup>F31</sup>, other than pubic hair,], by means of cutting [<sup>F32</sup>, combing or plucking], a sample of hair or other material;
  - (b) from a fingernail or toenail or from under any such nail, a sample of nail or other material;
  - (c) from an external part of the body, by means of swabbing or rubbing, a sample of blood or other body fluid, of body tissue or of other material.
- [<sup>F33</sup>(d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material]
- (5) A constable may use reasonable force in exercising any power conferred by subsection (2) or (4) above.
- (6) Nothing in this section shall prejudice—
- (a) any power of search;
  - (b) any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
  - (c) any power to take prints, impressions or samples under the authority of a warrant.

#### Textual Amendments

**F26** Words in s. 28(3) inserted (31.3.1996) by 1995 c. 20, s. 58(2)(a); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

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- F27** Words in s. 28(3) inserted (31.3.1996) by 1995 c. 20, s. 58(2)(b); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)
- F28** Words in s. 28(3) substituted (31.3.1996) by 1995 c. 20, s. 58(2)(c); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which substitution fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)
- F29** Words in s. 28(3) repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 179(5), Sch. 7 Pt. I; S.I. 1996/517, art. 3(1) (which amending Act was repealed (1.4.1996) by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)
- F30** S. 28(3A)(3B)(3C) inserted (31.3.1996) by 1995 c. 20, s. 58(3); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)
- F31** Words in s. 28(4)(a) inserted (31.3.1996) by 1995 c. 20, s. 58(4)(a)(i); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)
- F32** Words in s. 28(4)(a) substituted (31.3.1996) by 1995 c. 20, s. 58(4)(a)(ii); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which substitution fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)
- F33** S. 28(4)(d) inserted (31.3.1996) by 1995 c. 20, s. 58(4)(b); S.I. 1996/517, art. 3(1) (subject to transitional provisions in arts. 4-6, Sch. 2 of the said S.I.) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

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

- C25** S. 28 applied (with modifications) (3.2.1995) by 1994 c. 33, s. 138(2); S.I. 1995/127, art. 2(1), Sch. 1

#### Marginal Citations

- M16** 1980 c. 62.

### [<sup>F34</sup>28A Prints, samples etc. in criminal investigations: supplementary provisions.

- (1) This section applies where a person convicted of an offence—
- (a) has not, since the conviction, had a sample, print or impression taken from him; or
  - (b) has (whether before or after the conviction) had a sample, print or impression taken from him but it was not suitable for the means of analysis for which it was taken or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.
- (2) Where this section applies, a constable may, within the permitted period—
- (a) take from the convicted person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable reasonably considers it appropriate to take; and
  - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (4) of section 28 of this Act by the means specified in that paragraph in relation to that sample.
- (3) A constable—
- (a) may require the convicted person to attend a police station for the purposes of subsection (2) above;

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- (b) may, where the convicted person is in legal custody within the meaning of the 1975 Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.
- (4) In subsection (2) above, “the permitted period” means—
- (a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;
- (b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that the sample, print or impression was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.
- (5) A requirement under subsection (3)(a) above—
- (a) shall give the person at least seven days’ notice of the date on which he is required to attend;
- (b) may direct him to attend at a specified time of day or between specified times of day.
- (6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.]

#### Textual Amendments

**F34** Ss. 28A, 28B inserted (31.3.1996) by 1995 c. 20, s. 58(5); S.I. 1996/517, art. 3(1) (which insertion fell (1.4.1996) by reason of the repeal (S.) of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

#### [<sup>F35</sup>28B Use of prints, samples etc.

Without prejudice to any power to do so apart from this section, prints, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such prints, impressions, samples and information.]

#### Textual Amendments

**F35** Ss. 28A, 28B inserted (31.3.1996) by 1995 c. 20, s. 58(5); S.I. 1996/517, art. 3(1) (which insertion fell (1.4.1996) by reason of the repeal of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), Sch. 3 Pt. II paras. 16(3), 17, Sch. 5)

#### 29 Evidence from documents.

Schedule 3 to this Act, which makes provision regarding the admissibility in criminal proceedings of copy documents and of evidence contained in business documents, shall have effect.

#### 30 Admissibility of audio and video records.

- (1) Section 32 of the 1980 Act (evidence by letter of request or on commission) shall be amended as follows.

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(2) After subsection (3) there shall be inserted the following subsection—

“(3A) Where any such record as is mentioned in paragraph (b) of subsection (2) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (3) above unless it is accompanied by a transcript of its contents.”.

(3) After subsection (5) there shall be inserted the following subsection—

“(5A) In subsections (2) and (3) above, “record” includes, in addition to a document in writing—

- (a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.”.

### 31 Transcript of customs interview sufficient evidence.

In section 60(1) of the <sup>M17</sup>Criminal Justice (Scotland) Act 1987 (which provides that certain transcripts of interviews between police officers and accused persons shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy), after the words “accused person” there shall be inserted the words “, or between a person commissioned, appointed or authorised under section 6(3) of the Customs and Excise Management Act 1979 and an accused person, ”.

#### Marginal Citations

M17 1987 c. 41.

### 32 Evidence from abroad through television links in solemn proceedings.

After section 32 of the 1980 Act there shall be inserted the following section—

#### “32A Evidence from abroad through television links in solemn proceedings.

- (1) In any solemn proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
  - (a) the witness is outside the United Kingdom;
  - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—



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- (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
  - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link,
- requesting assistance in facilitating the giving of evidence by that witness through a live television link.
- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) the granting of the application—
    - (i) is in the interests of justice; and
    - (ii) in the case of an application by the prosecutor, is not unfair to the accused.
- (4) The power of the High Court to make Acts of Adjournal under the 1975 Act shall include power to make such provision as it considers necessary or expedient for the purposes of this section.”.

### 33 Evidence of children on commission.

- (1)<sup>F36</sup> . . . Subject to section 35 of this Act, where a child has been cited to give evidence in a trial the court may appoint a commissioner to take the evidence of the child if—
- (a) in solemn proceedings, at any time before the oath is administered to the jury;
  - (b) in summary proceedings, at any time before the first witness is sworn; or
  - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,
- application is made to the court in that regard; but to be so appointed a person must be, and for a period of at least five years have been, a member of the Faculty of Advocates or a solicitor.
- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.
- [<sup>F37</sup>(4) Subsections (2) to (4), (5A) and (6) of section 32 of the 1980 Act (evidence by letter of request or on commission) shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.]

#### Textual Amendments

**F36** Words in s. 33(1) repealed (31.3.1996) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 179(6)(a), Sch. 7 Pt. I; S.I. 1996/517, art. 3(1)

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**F37** S. 33(4) inserted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 179(6)(b)**; S.I. 1996/517, **art. 3(1)** (which insertion fell (1.4.1996) by reason of the repeal (S.) of 1995 c. 20 by 1995 c. 40, ss. 4, 6, 7(2), **Sch. 3 Pt. II paras. 16(3), 17, Sch. 5**)

### 34 Concealment by screen of accused from child giving evidence.

Subject to section 35 of this Act, where a child has been [<sup>F38</sup>or is likely to be] cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of the child while the child is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the child.

#### Textual Amendments

**F38** Words in s. 34 inserted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 179(7)**; S.I. 1996/517, **art. 3(1)**

### 35 Circumstances in which application under section 33 or 34 may be granted or on transfer be deemed granted, etc.

Subsections (2) and (3) of section 56 (restrictions on power of court to grant application for child's evidence to be given by means of live television link) and sections 57 (transfer of case where accommodation or equipment is lacking) and 58 (identification of accused by child whose evidence is given by such link) of the <sup>M18</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 shall apply in respect of an application under section 33(1) or 34 of this Act as those provisions of that Act apply in respect of an application under subsection (1) of the said section 56; and in sections 33 and 34 of this Act "child", "court" and "trial" have the same meanings as in the said sections 56 to 58.

#### Marginal Citations

**M18** 1990 c.40.

### 36 Evidence as to taking or destruction of eggs.

After section 19 of the <sup>M19</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

**M19** 1981 c. 69.

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### **37 Evidence by certificate.**

Schedule 1 to the 1980 Act (certain certificates to be sufficient evidence in relation to statutory offences) shall have effect subject to the amendments specified in Schedule 4 to this Act.

#### *Procedure*

### **38 Adjournment for inquiry etc. in summary proceedings at first calling.**

- (1) Immediately preceding section 334 of the 1975 Act there shall be inserted the following section—

**“333A Adjournment for inquiry at first calling.**

Without prejudice to section 338(1) of this Act, at the first calling of the case in a summary prosecution the court may, in order to allow time for inquiry into the case or for any other cause which it considers reasonable, adjourn the case under this section, for such period as it considers appropriate, without calling on the accused to plead to any charge against him but remanding him in custody or on bail or ordaining him to appear at the diet thus fixed; and the court may from time to time so adjourn the case, so however that—

- (a) where the accused is remanded in custody, the total period for which he is so remanded under this subsection shall not exceed twenty-one days and no one period of adjournment shall, except on special cause shown, exceed seven days; and
  - (b) where he is remanded on bail or ordained to appear, no one period of adjournment shall exceed twenty eight days.”.
- (2) Section 328 of the 1975 Act (which admits of adjournment for inquiry in summary proceedings only where an accused has been apprehended) shall cease to have effect.

### **39 New circumstances on notice of which preliminary diet may be ordered.**

- (1) Section 76 of the 1975 Act (which specifies various circumstances on notice of which a preliminary diet shall or may be ordered) shall be amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (b) there shall be inserted the following paragraph—
    - “(bb) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed, the court may make such order as is mentioned in paragraph (a) above;”;and
  - (b) in paragraph (c), for the words “or (b)” there shall be substituted the words “, (b) or (bb) ”.
- (3) In subsection (7)(c), after the word “paragraph” there shall be inserted the words “ (bb) or ”.

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#### 40 Taking of other proceedings while jury out.

(1) After section 155 of the 1975 Act there shall be inserted the following section—

##### **“155A Taking of other proceedings while jury out.**

During the period in which, in any criminal trial, the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.”.

(2) After section 360 of that Act there shall be inserted the following heading and section—

##### *“ Interruption of proceedings*

##### **360A Interruption of summary proceedings for verdict in earlier trial.**

(1) Where the sheriff is sitting in any summary proceedings during the period in which the jury in any criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—

- (a) in order to receive the verdict of the jury and dispose of the cause to which it relates;
- (b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter, as for example that a production may be made available for examination by them,

and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

(2) Subsection (5) of section 156 of this Act shall apply in respect of the interruption of summary proceedings as it applies in respect of the interruption of a trial.”.

#### 41 Date of commencement of sentence.

(1) Each of sections 218 and 431 of the 1975 Act (consideration of time spent in custody) shall be amended as follows.

(2) After the word “shall” there shall be inserted “ (a) ”.

(3) At the end there shall be added the following words—

“or spent in custody awaiting extradition to the United Kingdom;

- (b) specify the date of commencement of the sentence; and
- (c) if that person—

- (i) has spent a period of time in custody on remand awaiting trial or sentence; or

- (ii) is an extradited prisoner for the purposes of this section, and the date specified under paragraph (b) above is not earlier than the date on which sentence is passed, state its reasons for not specifying an earlier date.”.

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- (4) The existing words, as so amended, shall be subsection (1).
- (5) After that subsection there shall be inserted the following subsections—
- “(2) A prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
    - (i) after having been extradited to the United Kingdom; and
    - (ii) without having first been restored to the state from which extradited or having had an opportunity of leaving the United Kingdom; and
  - (b) he was for any period kept in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—
- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);
  - (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
  - (c) under that Act as extended to a colony or under any corresponding law of a colony; or
  - (d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.”.

#### **42 Appeal by Lord Advocate against sentence in solemn proceedings etc.**

- (1) After section 228 of the 1975 Act (which provides for appeal by a person convicted on indictment) there shall be inserted the following section—

##### **“228A Appeal by Lord Advocate against sentence in solemn proceedings.**

Where a person has been convicted on indictment, the Lord Advocate may appeal against the sentence passed on conviction—

- (a) if it appears to the Lord Advocate that the sentence is unduly lenient; or
  - (b) on a point of law.”.
- (2) In section 442 of that Act (which provides for appeal in summary proceedings)—
- (a) in subsection (1), after paragraph (b) there shall be inserted the following paragraph—
    - “(c) the prosecutor in such proceedings may, in any class of case specified by order by the Secretary of State under this paragraph, so appeal against the sentence passed on such conviction if it appears to the prosecutor that the sentence is unduly lenient.”; and
  - (b) after subsection (2) there shall be added the following subsection—

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“(3) The power of the Secretary of State to make an order under paragraph (c) of subsection (1) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

#### **43 Prosecutor’s consent to or application for setting aside of conviction.**

For section 453 of the 1975 Act there shall be substituted the following section—

##### **“453 Prosecutor’s consent to or application for setting aside of conviction.**

- (1) Where—
  - (a) an appeal has been taken under section 442(1)(a)(i) or (iii) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction being set aside either in whole or in part; or
  - (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded he may, by a relevant minute, apply for the conviction so to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
  - (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
  - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
  - (a) thereupon ascertain, and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and
  - (b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—
  - (a) set aside the conviction either in whole or in part and—
    - (i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit; and
    - (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; or
  - (b) refuse to set aside the conviction, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.

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- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act relating to appeals.”.

### PART III

#### GENERAL

#### 44 Expenses.

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;
- (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.

- (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), [F397(1A) or (6)], 20(3) 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

**F39** 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.

In this Act—

- “the 1975 Act” means the <sup>M20</sup>Criminal Procedure (Scotland) Act 1975;
- “the 1980 Act” means the <sup>M21</sup>Criminal Justice (Scotland) Act 1980; and
- “the 1989 Act” means the <sup>M22</sup>Prisons (Scotland) Act 1989.

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#### Marginal Citations

**M20** 1975 c. 21.

**M21** 1980 c. 62.

**M22** 1989 c. 45.

### 47 Minor and consequential amendments, transitional provisions, savings and repeals.

- (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>M23</sup>Interpretation Act 1978 (effect of repeals).
- (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

**E4** [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

**I5** [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

**M23** 1978 c. 30.

### 48 Short title, commencement and extent.

- (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.



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**Status:** Point in time view as at 31/03/1996. 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)

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- (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>M24</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>M25</sup>Army Act 1955, the <sup>M26</sup>Air Force Act 1955 or the <sup>M27</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

**M24** 1991 c. 53.

**M25** 1955 c. 18.

**M26** 1955 c. 19.

**M27** 1957 c. 53.

**Status:**

Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

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