



# Prisoners and Criminal Proceedings (Scotland) Act 1993

## 1993 CHAPTER 9

### PART I

#### DETENTION, TRANSFER AND RELEASE OF OFFENDERS

##### *Early release*

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

- (1) [<sup>F1</sup>Subject to section 26A(4) of this Act,] as soon as a short-term prisoner has served one-half of his sentence the Secretary of State shall, without prejudice to any supervised release order to which the prisoner is subject, release him unconditionally.
- (2) As soon as a long-term prisoner has served two-thirds of his sentence, the Secretary of State shall release him on licence [<sup>F2</sup>unless he has before that time been so released, in relation to that sentence, under any provision of this Act].
- (3) After a long-term prisoner has served one-half of his sentence the Secretary of State
  - [<sup>F3</sup>(a) shall, except in the case mentioned in paragraph (b) below; or
  - (b) may, in the case of a prisoner who is liable to removal from the United Kingdom (within the meaning of section 9 of this Act),]if recommended to do so by the Parole Board under this section, release him on licence.

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

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

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- (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.

#### Textual Amendments

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- F5** S. 1(4)-(7) repealed (8.10.2001) by 2001 asp 7, **s. 1(2)**; S.S.I. 2001/274, **art. 3(3)**

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

- C1** S. 1 excluded (17.12.2001) by 2001 asp 13, **s. 24(c)** (with s. 29); S.S.I. 2001/456, **art. 2**
- C2** 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**))
- C3** 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**))
- C4** S. 1(3) modified (1.4.1995) by S.I. 1995/911, **art. 3(a)**

VALID FROM 08/02/2006

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

- (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

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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.]

#### Textual Amendments

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

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

[ Where a prisoner has been sentenced to two or more terms of imprisonment which are <sup>F8</sup>(1)] 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—

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- (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 [<sup>F9</sup>under] or required by this Part of this Act in respect of any of the sentences.

[ Where a prisoner who is serving any term of imprisonment receives a sentence of <sup>F10</sup>(2) imprisonment or other detention for life, for an indeterminate period or without limit of time which is to take effect on the day after he would (but for the sentence so received) be entitled to be released from the term, nothing in this Part of this Act shall require—

- (a) the Scottish Ministers to release him in respect of any such term unless and until they are required to release him in respect of the sentence so received; or
- (b) the Scottish Ministers or the Parole Board to consider his release in respect of any such term unless and until the Scottish Ministers are or the Parole Board is required to consider his release, or the Scottish Ministers are required to release him, in respect of the sentence so received.]]

#### Textual Amendments

- F7** S. 1A inserted (30.9.1998) by 1998 c. 37, s. 111(1); S.I. 1998/2327, art. 2(1)(x)
- F8** S. 1A renumbered as s. 1A(1) (1.12.2003) by virtue of Criminal Justice (Scotland) Act 2003 (asp 7), ss. 30(a), 89(2); S.S.I. 2003/475, art. 2, Sch.
- F9** Word in s. 1A(c)(ii) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(2); S.S.I. 2003/288, art. 2, Sch.
- F10** S. 1A(2) added (1.12.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 30(b), 89(2); S.S.I. 2003/475, art. 2, Sch.

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

- C5** S. 1A excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2
- C6** 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.

[<sup>F11</sup>(1) In this Part of this Act “<sup>F12</sup> . . . life prisoner”, <sup>F13</sup> . . . except where the context otherwise requires, means a person—

- (a) sentenced to life imprisonment for an offence for which, subject to paragraph (b) below, such a sentence is not the sentence fixed by law; [<sup>F14</sup>or
- <sup>F14</sup>(aa) sentenced to life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law;]]
- (b) whose sentence was imposed under section 205A(2) of the 1995 Act (imprisonment for life on further conviction for certain offences); <sup>F15</sup> . . .
- <sup>F15</sup>(c) . . . . .

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

(2) The order referred to in [<sup>F16</sup>subsection (1)] above is an order that subsections (4) and (6) below shall apply to the <sup>F12</sup> . . . life prisoner as soon as he has served such part of his sentence ([<sup>F17</sup>the punishment part]) as is specified in the order, being such part

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as the court considers appropriate [<sup>F18</sup>to satisfy the requirements for retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public),]taking into account—

(a) the seriousness of the offence, or of the offence combined with other offences [<sup>F19</sup>of which the life prisoner is convicted on the same indictment as that offence]; <sup>F20</sup> . . .

[<sup>F21</sup>(aa) in the case of a life prisoner to whom paragraph (a) of subsection (1) above applies—

(i) the period of imprisonment, if any, which the court considers would have been appropriate for the offence had the court not sentenced the prisoner to imprisonment for life for it;

(ii) the part of that period of imprisonment which the court considers would satisfy the requirements of retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public); and

(iii) the proportion of the part mentioned in sub-paragraph (ii) above which a prisoner sentenced to it would or might serve before being released, whether unconditionally or on licence, under section 1 of this Act;]

(b) any previous conviction of the <sup>F12</sup> . . . life prisoner [<sup>F22</sup>; and.

(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.]

[<sup>F23</sup>(3) A court which imposes life imprisonment for an offence such as is mentioned in subsection (1) above shall make such order as is mentioned in subsection (2) above and such order shall constitute part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

(3A) An order such as is mentioned in subsection (2) above—

(a) shall specify the period that the court considers appropriate under that subsection in years and months; and

(b) may specify any such period of years and months notwithstanding the likelihood that such a period will exceed the remainder of the prisoner's natural life.]

(4) Where this subsection applies, the Secretary of State shall, if directed to do so by the Parole Board, release a <sup>F12</sup> . . . life prisoner on licence.

(5) The Parole Board shall not give a direction under subsection (4) above unless—

(a) the Secretary of State has referred the prisoner's case to the Board; and

(b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

[<sup>F24</sup>(5A) Where, on the disposal of any reference of a life prisoner's case under section 28(4) of the 1989 Act, under subsection (5)(a) above, subsection (5C) or (6) below or section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), the Parole Board declines to direct that the prisoner be released on licence, it shall—

(a) give the prisoner reasons in writing for the decision not to direct his release on licence; and

(b) fix the date when it will next consider the prisoner's case under this section, being [<sup>F25</sup>, subject to subsections (5AB) to (5AD) below,] a date not later than

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two years after the date of its decision to decline to direct the release of the prisoner.

[ Where a reference has been made to the Parole Board under any of the provisions <sup>F26</sup>(5AB) mentioned in subsection (5A) above and the prisoner receives another sentence of imprisonment (whether for life or for a term) before a date has been fixed for considering his case, the Board shall, if he would not be eligible for release from the other sentence on the date which would (apart from this subsection) have been fixed for considering his case, fix a date (other than that date) for considering his case.

(5AC) Where, at any time after such a reference has been made—

- (a) a date has been fixed for considering the prisoner's case; or
- (b) following the disposal of the reference, a date has been fixed under subsection (5A)(b) above,

and, before that date, the prisoner receives any other sentence of imprisonment (whether for life or for a term), the Board shall, if he would not be eligible for release from any such other sentence on that date, fix a different date for considering his case (and where he receives any further sentence of imprisonment from which he would not be eligible for release on that different date, the Board shall fix a further different date).

(5AD) Any date fixed under subsection (5AB) or (5AC) above shall—

- (a) be—
  - (i) the date on which the prisoner would be eligible to be released, or considered for release, from all such other sentences (subject to any change to the date on which he would be so eligible); or
  - (ii) a date as soon as practicable after that date; and
- (b) replace any date previously fixed for considering the prisoner's case.]

(5B) The Scottish Ministers shall refer the case of a life prisoner to the Parole Board so as to enable it to consider the case on the date fixed by the Board under subsection (5A) (b) [<sup>F27</sup>, (5AB) or (5AC)] above.

(5C) The Parole Board, at the request of a life prisoner in respect of whom it has, under subsection (5A)(b) [<sup>F27</sup>, (5AB) or (5AC)] above, fixed the date of the next consideration of his case, may direct the Scottish Ministers to refer that case to the Board before that date.]

(6) Where this subsection applies, a <sup>F12</sup> . . . l ife prisoner may, subject to subsection (7) below, <sup>F28</sup> . . . require the Secretary of State to refer his case to the Parole Board.

[<sup>F29</sup>(6A) The Scottish Ministers shall not refer the case of a life prisoner to the Parole Board under subsection (6) above if—

- (a) they have previously so referred his case to the Board under that subsection;
- (b) they have referred his case to the Board without the prisoner requiring them to do so under that subsection; or
- (c) the Parole Board has, on a reference to it under section 28(4) of the 1989 Act, under section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), declined to direct that the prisoner be released on licence.]

[<sup>F30</sup>(7) No requirement shall be made under subsection (6) above by a life prisoner who is also serving or liable to serve a sentence of imprisonment for a term, before he has served the appropriate part of the term.

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- (7A) The appropriate part of the term is—
- (a) one half, where the term is—
    - (i) less than 4 years; or
    - (ii) 4 years or more and is imposed by a sentence of imprisonment on conviction of an offence; or
  - (b) two thirds, where the term is 4 years or more and is a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of this Act.
- (7B) Section 5(1) of this Act, in so far as relating to the construction of references to sentences of imprisonment, does not apply to subsection (7A)(b) above.]
- (8) In determining for the purposes of subsection (4) or (6) above whether a <sup>F12</sup>. . . life prisoner has served the [<sup>F31</sup>punishment] part of his sentence, no account shall be taken of any time during which he was unlawfully at large.
- (9) Where a life prisoner is serving [<sup>F32</sup>or is liable to serve] two or more sentences of imprisonment for life—
- <sup>F33</sup>(a) . . . . .
  - (b) notwithstanding the terms of any order under subsection (2) above, subsections (4) and (6) above shall not apply to him until he has served the [<sup>F31</sup>punishment] part of each of those sentences; and
  - (c) he shall, if released on licence under subsection (4) above, be so released on a single licence.

#### Textual Amendments

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

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- F26** S. 2(5AB)-(5AD) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(b)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.
- F27** Words in s. 2(5B)(5C) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(c)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.
- F28** Words in s. 2(6) repealed (8.10.2001) by 2001 asp 7, **s. 1(3)(f)**; S.S.I. 2001/274, **art. 3(3)**
- F29** S. 2(6A) inserted (8.10.2001) by 2001 asp 7, **s. 1(3)(g)**; S.S.I. 2001/274, **art. 3(3)**
- F30** S. 2(7)-(7B) substituted for s. 2(7) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(d)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.
- F31** Words in s. 2(8)(9)(b) substituted (8.10.2001) by 2001 asp 7, **s. 1(3)(i)(ii)(j)(ii)**; S.S.I. 2001/274, **art. 3(3)**
- F32** Words in s. 2(9) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(e)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.
- F33** S. 2(9)(a) repealed (8.10.2001) by 2001 asp 7, **s. 1(3)(j)(i)**; S.S.I. 2001/274, **art. 3(3)**

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

- C7** S. 2 excluded (17.12.2001) by 2001 asp 13, **s. 24(c)** (with s. 29); S.S.I. 2001/456, **art. 2**
- C8** S. 2 applied (8.10.2001) by 2001 asp 7, **ss. 4, 5**, Sch. paras. 40, 47; S.S.I. 2001/274, **art. 3(3)**
- C9** 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.)
- C10** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, **ss. 41, 56(1)**, Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))  
 S. 2 applied (with modifications) (1.10.1997) by S.I. 1997/1776, **arts. 1, 2**, Sch. 1 paras. 5, 6, 7 (with transitional provisions in art. 5); S.I. 1997/2200, **art. 2(1)(g)**  
 S. 2 restricted (20.10.1997) by 1997 c. 48, **s. 16(4)(a)** (with s. 33); S.I. 1997/2323, **art. 3**, **Sch. 1**
- C11** S. 2(2)(7) modified (*prosp.*) by 1984 c. 47, s. 3(7), **Sch. para. 2** (as substituted (*prosp.*) by 1997 c. 43, **ss. 42, 57(2)**, **Sch. 2 para. 8(2)** (which amending provision was repealed (30.9.1998) by 1998 c. 37, **ss. 119, 120(2)**, Sch. 8 para. 136, **Sch. 10**; S.I. 1998/2327, **art. 2(2)(pp)(3)(x)**)  
 S. 2(2)(7) modified (retrospectively) by 1984 c. 47, **Sch. para. 2(5)** (as amended (1.10.1997) by 1997 c. 43, s. 42, Sch. 2 paras. 6, 7; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))
- C12** S. 2(4)(6) excluded (20.10.1997) by 1997 c. 48, **s. 16(4)(b)** (with s. 33); S.I. 1997/2323, **art. 3**, **Sch. 1**
- C13** S. 2(5A)(b) extended (8.10.2001) by 2001 asp 7, **ss. 4, 5**, Sch. paras. 30, 70, 77; S.S.I. 2001/274, **art. 3(3)**

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

- (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.



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

**C14** S. 3 excluded (17.12.2001) by [2001 asp 13, s. 24\(c\)](#) (with s. 29); [S.S.I. 2001/456, art. 2](#)

**C15** 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>F34</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
  - (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);

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- (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

**F34** S. 3AA inserted after s. 3 (3.7.2006 for specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 15\(5\), 24\(2\)](#); [S.S.I. 2006/331](#), [art 3\(4\)\(5\)](#); [S.S.I. 2008/21](#), [art. 2\(2\)](#)

#### [<sup>F35</sup>3A Re-release of prisoners serving extended sentences.

- (1) [<sup>F36</sup>Subject to subsection (1A) below,] this section applies to a prisoner serving an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences) [<sup>F37</sup>and in respect of whom a licence has been revoked under section 17(1) to (1B)] of this Act.
- [ This section does not apply to such a prisoner if he has, in addition to the sentence in <sup>F38</sup>(1A) relation to which his recall to prison applies, been sentenced to imprisonment for life and has not been released from that sentence.]
- (2) Subject to subsection (3) below, a prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board—
- (a) where his case has previously been referred to the Parole Board under this section or section 17(3) of this Act, not less than one year following the [<sup>F39</sup>Board's disposal of his case];
  - (b) in any other case, at any time.
- [ Where—
- <sup>F40</sup>(2A) (a) a prisoner's case has been referred to the Parole Board under this section or section 17(3) of this Act; and
- (b) the prisoner receives another sentence of imprisonment before the Board has considered his case,

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

- (2B) A case which, by virtue of subsection (2A) above, is not considered by the Parole Board shall not, for the purposes of subsection (2)(a) above, be treated as having been disposed of.]
- (3) Where a prisoner to whom this section applies is subject to another sentence which is not treated as a single [<sup>F41</sup>term] with the extended sentence, the Secretary of State shall not be required to refer his case to the Parole Board before he [<sup>F42</sup>would be eligible to be released, or considered for release, from] that other sentence.
- (4) Where the case of a prisoner to whom this section applies is referred to the Parole Board under this section or section 17(3) of this Act, the Board shall, if it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined (but not otherwise), direct that he should be released.
- (5) If the Parole Board gives a direction under subsection (4) above, the Secretary of State shall release the prisoner on licence.]

#### Textual Amendments

- F35** 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)
- F36** Words in s. 3A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(a)(i), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F37** Words in s. 3A(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(a)(ii), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F38** S. 3A(1A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(b), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F39** Words in s. 3A(2)(a) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(c), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F40** S. 3A(2A)(2B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(d), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F41** Word in s. 3A(3) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(e)(i), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F42** Words in s. 3A(3) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 31(e)(ii), 89(2); S.S.I. 2003/288, art. 2, Sch.

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

- C16** 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.

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[<sup>F43</sup>(1A) This Part of this Act shall apply to a person conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act as if, while so detained, he was serving the sentence of imprisonment imposed on him at the time at which that direction was made.]

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

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

- (1) This subsection applies where a transfer direction and a restriction direction have been given in respect of a person—
  - (a) serving a sentence of imprisonment; or
  - (b) who is detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971,
 if the Secretary of State is satisfied, at a time when the person would but for those directions be, by virtue of the circumstance mentioned in paragraph (a) or (b) above, in prison or being detained other than in a hospital, as to the matters mentioned in subsection (2) below.
- (2) The matters referred to in subsection (1) above are—
  - (a) that either—
    - (i) the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
    - (ii) that it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and
  - (b) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment.
- (3) Where subsection (1) above applies, the Secretary of State shall by warrant direct that the person be remitted to any prison or other institution or place in which he might have been detained had he not been removed to hospital and that he be dealt with there as if he had not been so removed.
- (4) Where subsection (1) above does not apply only because the Secretary of State is not satisfied as to the matter mentioned in subsection (2)(b) above, he may either—
  - (a) by warrant give such direction as is mentioned in subsection (3) above; or
  - (b) decide that the person shall continue to be detained in hospital.
- (5) If a direction is given under subsection (3) or (4)(a) above, then on the person’s arrival in the prison or other institution or place to which remitted by virtue of that subsection the transfer direction and the restriction direction shall cease to have effect.
- (6) This subsection applies where a transfer direction and a restriction direction have been given in respect of such person as is mentioned in subsection (1)

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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 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.”.

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**Textual Amendments**

**F43** S. 4(1A) inserted (*retrospective* to 1.1.1998) by 1998 c. 37, ss. 119, 121(2), **Sch. 8 para. 99(1)(2)**

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**Marginal Citations**

**M1** 1984 c. 36.

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

- (1) Subject to [<sup>F44</sup>sections 1(8) and 2(7B)] of this Act and to subsections (2) [<sup>F45</sup>to (4)] below, this Part of this Act (except sections 1(3), 16 and 27(5)) applies to a person on whom imprisonment, or as the case may be detention in a young offenders institution, has been imposed—
- [<sup>F46</sup>(a) under section 219 of the 1995 Act (imprisonment for non-payment of fine or, by virtue of that section, under section 207 of that Act (detention of young offenders);] or
- (b) for contempt of court,
- as it applies to a person sentenced to imprisonment, or on whom detention has been imposed, on conviction of an offence; and references in this Part of this Act to prisoners (whether short-term or long-term), or to prison, imprisonment, detention or sentences of imprisonment shall be construed accordingly.
- (2) Where section 1(1) or (2) of this Act applies to a person by virtue of subsection (1) above, that section shall be construed as requiring the Secretary of State to release the person unconditionally as soon as, in the case of—
- (a) a short-term prisoner, he has served one-half of his term of imprisonment; or
- (b) a long-term prisoner, he has served two-thirds of his term of imprisonment,
- and if during the term in question the prisoner is [<sup>F47</sup>released on licence under section 3 of this Act and, subsequently, the licence is revoked under section 17(1), (1A) or (1B)] thereof, the period during which he is thereby lawfully at large shall be taken, for the purposes of paragraph (a) or (b) above, to be a period of imprisonment served.
- (3) Notwithstanding subsection (1) above, section 11 of this Act shall not apply to a person to whom this Part of this Act applies by virtue of that subsection but whose release on licence is under section 3 of this Act; and that licence shall (unless revoked) remain in force only until the date on which, by virtue of subsection (2) above, his release would have been required had he not been released earlier.
- [<sup>F48</sup>(4) Where a person has had imposed on him two or more terms of imprisonment or detention mentioned in subsection (1)(a) or (b) above, sections 1A and 27(5) of this Act shall apply to those terms as if they were terms of imprisonment.]

### Textual Amendments

- F44** Words in s. 5(1) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003, {ss. 29(3)}, 89(2); S.S.I. 2003/288, **art. 2**, Sch.
- F45** Words in s. 5(1) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 100(a)**; S.I. 1998/2327, **art. 2(1)(2)(y)(hh)** (with transitional provisions in art. 7(2))
- F46** S. 5(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(3)**
- F47** Words in s. 5(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 36(2)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.
- F48** S. 5(4) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 100(b)**; S.I. 1998/2327, **art. 2(1)(2)(y)(hh)** (with transitional provisions in art. 7(2))

### Modifications etc. (not altering text)

- C17** 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))

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## 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 [<sup>F49</sup>section 207(2)] of the [<sup>F50</sup>1995 Act] as the Part applies to persons serving equivalent sentences of imprisonment; and
- (b) to—
  - (i) persons sentenced under [<sup>F51</sup>section 205(1) to (3)] of that Act to be detained without limit of time or for life;
  - (ii) children sentenced to be detained without limit of time under [<sup>F52</sup>section 208] of that Act; and
  - (iii) persons on whom detention without limit of time or for life is imposed under [<sup>F53</sup>section 207(2)] of that Act,

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

<sup>F54</sup>(2) .....

<sup>F54</sup>(3) .....

### Textual Amendments

- F49** Words in s. 6(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(a)**
- F50** Words in s. 6(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**
- F51** Words in s. 6(1)(b)(i) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(b)**
- F52** Words in s. 6(1)(b)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(c)**
- F53** Words in s. 6(1)(b)(iii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(4)(d)**
- F54** S. 6(2)(3) repealed (8.10.2001) by 2001 asp 7, s. 1(4); S.S.I. 2001/274, **art. 3(3)**

### Modifications etc. (not altering text)

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

### Commencement Information

- I1** 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 [<sup>F55</sup>section 208] of the [<sup>F56</sup>1995 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>F57</sup>unless he has before that time been so released, in relation to that sentence, under any provision of this Act].

[<sup>F58</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 [<sup>F55</sup>section 208] of the [<sup>F56</sup>1995 Act] or in pursuance of an order under subsection (3) below [<sup>F59</sup>shall], on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.

[<sup>F60</sup>(2A) This subsection applies where a child detained under section 208 of the 1995 Act is sentenced, while so detained, to a determinate term of detention in a young offenders institution or imprisonment and, by virtue of section 27(5) of this Act, such terms of detention or imprisonment are treated as single term.

(2B) In a case where subsection (2A) applies and the single term mentioned in that subsection is less than four years, the provisions of this section shall apply.

(2C) In a case where subsection (2A) applies and the single term mentioned in that subsection is of four or more years—

- (a) section 6 of this Act shall apply to him as if the single term were an equivalent sentence of detention in a young offenders institution, if that term is served in such an institution; and
- (b) the provisions of this Act shall apply to him as if the single term were an equivalent sentence of imprisonment, if that term is served in a remand centre or a prison.]

(3) If, after release under subsection (1) or (2) above and before the date on which the entire period specified in the sentence elapses (following commencement of the sentence), a child commits an offence in respect of which it is competent to impose imprisonment on a person aged 21 years or more (other than an offence in respect of which imprisonment for life is mandatory) and, whether before or after that date, pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding—



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- (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).
- (4A) <sup>F61</sup> .....
- [<sup>F62</sup>(5) Without prejudice to section 6(1)(b)(ii) of this Act—
- (a) sections 3, 11(1), 12, 12A, 12B, 17 and 20(2) of this Act apply to children detained under section 208 of the 1995 Act as they apply to long-term prisoners; and
  - (b) in those sections of this Act, references to prisoners, or to prison, imprisonment or sentences of imprisonment shall be construed, and sections 1A and 27 shall apply, accordingly.]
- (6) <sup>F63</sup> .....
- (7) In the foregoing provisions of this section any reference to a child being detained does not include a reference to his being detained without limit of time.

#### Textual Amendments

- F55** Words in s. 7(1)(2)(5)(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(5)**
- F56** Words in s. 7(1)(2)(5)(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**
- F57** Words in s. 7(1)(b) added (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 101(a)**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)** (with transitional provisions in art. 7(3))
- F58** S. 7(1A)(1B) inserted (3.2.1995) by 1994 c. 33, s. 130(1); S.I. 1995/127, art. 2(1), **Sch. 1**
- F59** Word in s. 7(2) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(a), 89(2)** (with saving in S.S.I. 2003/287, art. 2(2)); S.S.I. 2003/288, **art. 2**, Sch.
- F60** S. 7(2A)(2B)(2C) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 101(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)** (with transitional provisions in art. 7(3))
- F61** S. 7(4A) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(b), 89(2)**; S.S.I. 2003/288, **art. 2**, Sch.
- F62** S. 7(5) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(c), 89(2)**; S.S.I. 2003/288, **art. 2**, Sch.
- F63** S. 7(6) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 38(2)(d), 89(2)**; S.S.I. 2003/288, **art. 2**, Sch.

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

- C19** 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))
- C20** S. 7(1) modified (retrospectively) by 1984 c. 47, **Sch. para. 2(5)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 6(2)**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))  
S. 7(1) modified (1.10.1997) by 1984 c. 47, **Sch. para. 2(5)** (as inserted (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 7(1)(2)**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))

#### 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**

F648

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#### Textual Amendments

- F64** S. 8 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5**

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

- (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)

- C21** S. 9 excluded (17.12.2001) by 2001 asp 13, **s. 24(c)** (with s. 29); S.S.I. 2001/456, **art. 2**
- 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.)  
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)

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(as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

#### Marginal Citations

M2 1971 c. 77.

## 10 Life prisoners transferred to Scotland.

[<sup>F65</sup>(1) This Part of this Act, except section 2(9), shall apply to a transferred life prisoner (whether transferred before or after the commencement of this enactment or section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7)) who is a life prisoner—

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

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

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

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

[<sup>F66</sup>(2) In the case of any other transferred life prisoner, being one whose transfer occurred after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), subsection (3) below applies where the court, following a hearing under subsection (2J) below, makes an order under that subsection specifying

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a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2 of this Act if—

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

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

(2B) The Scottish Ministers shall not so refer the case of a transferred life prisoner if the prisoner—

- (a) has, under subsection (2C) below, waived the entitlement to such a hearing; or
- (b) has served the part of the sentence specified in the certificate or direction referred to in subsection (2D) below

[<sup>F67</sup>and in such a case subsection (3) below applies].

(2C) A transferred life prisoner in respect of whom a certificate or direction referred to in subsection (2D) below has been issued or made may waive the entitlement to a hearing under subsection (2J) below provided—

- (a) the prisoner has had independent legal advice or has declined such advice; and
- (b) a copy in writing of the waiver is sent to the Scottish Ministers.

(2D) The certificate or direction referred to in subsection (2B)(b) above is—

- (a) a certificate issued under—
  - (i) section 48 of or paragraph 9 of Schedule 12 to the Criminal Justice Act 1991 (c.53); or
  - (ii) section 33 of the 1997 Act;
- (b) a direction of the Secretary of State made under—
  - (i) section 28(4) of the 1997 Act; or
  - (ii) section 82A(5) of the 2000 Act; or
- (c) such other certificate or direction as the Scottish Ministers may, by order made by statutory instrument, specify.

(2E) Notwithstanding subsection (2A) above, a transferred life prisoner—

- (a) who has not, under subsection (2C) above, waived the entitlement to a hearing; or
- (b) who has not served the part of the sentence specified in the certificate or direction referred to in subsection (2D) above issued in respect of that prisoner,

may, after his transfer to Scotland, refer his case for a hearing under subsection (2J) below.

(2F) The Scottish Ministers shall, no later than two weeks after the referral of a transferred life prisoner's case under subsection (2A) or (2E) above, send the documents and other information mentioned in subsection (2G) below to—

- (a) the High Court of Justiciary;
- (b) the Lord Advocate; and
- (c) the transferred life prisoner.

(2G) The documents and other information referred to in subsection (2F) above are—

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- (a) a copy of the indictment or any corresponding document;
  - (b) subject to subsection (2H) below, a copy of any report by the trial judge;
  - (c) a copy of any certificate or direction referred to in subsection (2D) above; and
  - (d) any other documents or information which the Scottish Ministers consider relevant.
- (2H) A report prepared by the trial judge—
- (a) may be sent under subsection (2F) above notwithstanding that it was prepared on the basis that it would not be disclosed to the transferred life prisoner; and
  - (b) shall be so sent for the purposes only of the hearing under subsection (2J) below.
- (2J) There shall be a hearing at which the High Court of Justiciary shall make the order referred to in subsection (2K) below.
- (2K) That order is an order specifying a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2 of this Act, if—
- (a) the prisoner had been sentenced for the offence in Scotland; and
  - (b) that section (as amended by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7)) had been in force at the time when the prisoner was sentenced.
- (2L) The court, in considering the case of a transferred life prisoner—
- (a) who is serving more than one sentence of imprisonment for life; and
  - (b) two or more of whose life sentences were imposed in proceedings on a single indictment,
- shall, in making the order under subsection (2J) above, proceed as if the prisoner had been sentenced in Scotland and section 205D (only one sentence of imprisonment for life to be imposed in any proceedings) of the 1995 Act had been in force at the time the prisoner was sentenced.
- (2M) Such a transferred life prisoner who, before being transferred to Scotland, had been released on licence, otherwise than on compassionate grounds, shall be deemed to have been released on licence under section 2(4) of this Act as if the transferred life prisoner had been a life prisoner to whom that section applied and who had served the punishment part of his sentence.
- (2N) The reference in this section to a transferred life prisoner's release on compassionate grounds has the same meaning as that reference has in section 10A of this Act.
- (2P) The court shall pronounce the order under subsection (2J) above in open court.
- (2Q) If the court is satisfied that the transferred life prisoner is incapable of properly instructing a solicitor in relation to the hearing under subsection (2J) above, whether or not the prisoner has so instructed a solicitor, it shall not make the order under that subsection.
- (2R) If the Scottish Ministers are satisfied that the prisoner is no longer incapable of instructing a solicitor in relation to the hearing under subsection (2J) above, they shall, as soon as reasonably practicable thereafter, refer the case of the prisoner to the court for such a hearing.
- (2S) In this section—

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“incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and

“mental disorder” has the same meaning as it has in section 87 of the Adults with Incapacity (Scotland) Act 2000 (asp 4).

- (2T) Nothing in this section shall be taken as preventing a prisoner, in respect of whom the court declined, under subsection (2Q) above, to make the order under subsection (2J) above, from again referring his case for a hearing under subsection (2J) above.
- (2U) A hearing under subsection (2J) above shall be criminal procedure for the purposes of section 305 of the 1995 Act (power of High Court of Justiciary to regulate criminal procedure by Act of Adjournal).]
- (3) In a case to which this subsection applies [<sup>F68</sup>(whether by virtue of subsection (2) above or of subsection (2B) above)], this Part of this Act except [<sup>F69</sup>section 2(9)] shall apply as if—
- (a) the transferred life prisoner were a <sup>F70</sup>. . . life prisoner within the meaning of section 2 of this Act; and
  - (b) the [<sup>F71</sup>punishment] part of his sentence within the meaning of that section were the part specified in the [<sup>F72</sup>order under subsection (2J) above][<sup>F73</sup>or as the case may be in the certificate or direction referred to in subsection (2D) above].
- (4) In this section “transferred life prisoner” means a person—
- (a) on whom a court in a country or territory outside Scotland [<sup>F74</sup>or a court-martial] has [<sup>F75</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>F76</sup><sup>F77</sup>, or in the case of a sentence imposed by a court martial in Scotland to a prison in Scotland (in either case whether] before or after that commencement)], in pursuance of—
    - (i) an order made by the Secretary of State under [<sup>F78</sup>paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997][<sup>F79</sup>, other than an order for a restricted transfer within the meaning of paragraph 6(1) of that Schedule to that Act,]or section 2 of the <sup>M3</sup>Colonial Prisoners Removal Act 1884; or
    - <sup>F80</sup>(ia) a decision of the Secretary of State under section 80 (removal of patients to Scotland) of the Mental Health Act 1983 (c.20) authorising the prisoner’s removal to Scotland from England and Wales; or
    - (ib) a decision of the responsible authority under section 81 (removal to Scotland of patients from Northern Ireland) of the Mental Health (Scotland) Act 1984 (c.36) authorising the prisoner’s removal to Scotland from Northern Ireland; or]
    - (ii) a warrant issued by the Secretary of State under the <sup>M4</sup>Repatriation of Prisoners Act 1984, [<sup>F81</sup>; or
    - (iii) rules made under section 122(1)(a) of the <sup>M5</sup>Army Act 1955 (imprisonment and detention rules); or
    - (iv) rules made under section 122(1)(a) of the <sup>M6</sup>Air Force Act 1955 (imprisonment and detention rules); or

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(v) a determination made under section 81(3) of the <sup>M7</sup>Naval Discipline Act 1957 (place of imprisonment or detention),]

there to serve, or to serve the remainder of, his sentence or sentences [<sup>F82</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 <sup>F83</sup> . . . life prisoner (within the meaning of section 2 of this Act) for the purposes of subsection (3) above only if the requirements of subsection (2) above are satisfied in respect of each of those sentences; and
- (b) notwithstanding the terms of any order under [<sup>F84</sup>the said section [<sup>F85</sup>28(2)] of the <sup>M8</sup>Crime (Sentences) Act 1997][<sup>F86</sup>section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 4(1) of Schedule 2 to the Isle of Man Custody Act or under a provision such as is mentioned in subsection (1A) above relating to Northern Ireland] or of any [<sup>F87</sup>order under subsection (2J)] above, subsections (4) and (6) of section 2 of this Act shall not apply to him until he has served the [<sup>F88</sup>punishment] part of each of those sentences.

#### Textual Amendments

- F65** S. 10(1)(1A) substituted for s. 10(1) (8.10.2001) by 2001 asp 7, s. 3(1)(a); S.S.I. 2001/274, art. 3(3)
- F66** S. 10(2)-(2U) substituted for s. 10(2) (27.7.2001 for certain purposes otherwise 8.10.2001) by 2001 asp 7, s. 3(1)(b); S.S.I. 2001/274, art. 3(3)
- F67** Words in s. 10(2B) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(3)(a); S.S.I. 2003/288, art. 2, Sch.
- F68** Words in s. 10(3) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(3)(b)(i); S.S.I. 2003/288, art. 2, Sch.
- F69** Words in s. 10(3) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(c)(i); S.S.I. 2001/274, art. 3(3)
- F70** Word in s. 10(3)(a) repealed (8.10.2001) by 2001 asp 7, s. 3(1)(c)(ii); S.S.I. 2001/274, art. 3(3)
- F71** Word in s. 10(3)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(c)(iii); S.S.I. 2001/274, art. 3(3)
- F72** Words in s. 10(3)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(c)(iii); S.S.I. 2001/274, art. 3(3)
- F73** Words in s. 10(3) added (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89(2), Sch. 4 para. 2(3)(b)(ii); S.S.I. 2003/288, art. 2, Sch.
- F74** 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
- F75** Words in s. 10(4)(a) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F76** Words in s. 10(4)(b) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F77** 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
- F78** Words in s. 10(4)(b)(i) substituted (1.10.1997) by 1997 c. 43, s. 55(2), Sch. 4 para. 16(1); S.I. 1997/2200, art. 2(1)(2)(i) (subject to art. 5)
- F79** Words in s. 10(4)(b)(i) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(d)(i); S.S.I. 2001/274, art. 3(3)
- F80** S. 10(4)(b)(ia)(ib) inserted (8.10.2001) by 2001 asp 7, s. 3(1)(d)(ii); S.S.I. 2001/274, art. 3(3)
- F81** 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
- F82** 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
- F83** Word in s. 10(5)(a) repealed (8.10.2001) by 2001 asp 7, s. 3(1)(e)(i); S.S.I. 2001/274, art. 3(3)
- F84** Words in s. 10(5)(b) substituted (20.10.1997) by 1997 c. 48, s. 62(1), Sch. 1 para. 14(8)(e) (with s. 33); S.I. 1997/2323, art. 3, Sch. 1
- F85** Word in s. 10(5)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(A); S.S.I. 2001/274, art. 3(3)
- F86** Words in s. 10(5)(b) inserted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(B); S.S.I. 2001/274, art. 3(3)
- F87** Words in s. 10(5)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(C); S.S.I. 2001/274, art. 3(3)
- F88** Word in s. 10(5)(b) substituted (8.10.2001) by 2001 asp 7, s. 3(1)(e)(ii)(C); S.S.I. 2001/274, art. 3(3)

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

**C23** S. 10 excluded (17.12.2001) by 2001 asp 13, s. 24(c) (with s. 29); S.S.I. 2001/456, art. 2

**C24** S. 10(1) applied (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. para. 78; S.S.I. 2001/274, art. 3(3)

#### **Marginal Citations**

**M3** 1884 c. 31.

**M4** 1984 c. 47.

**M5** 1955 c. 18.

**M6** 1955 c. 19.

**M7** 1957 c. 53.

**M8** 1997 c. 43.

### [<sup>F89</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.
- (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.]



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### Textual Amendments

**F89** 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 [F90 section 209] of the [F91 1995 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;
  - F92(b) .....

### Textual Amendments

**F90** Words in s. 11(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(6)(a)

**F91** Words in s. 11(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 86(2)

**F92** S. 11(3)(b) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 102, Sch. 10; S.I. 1998/2327, art. 2(1)(y)(aa)(2)(hh)(3)(u) (with transitional provisions in arts. 5-8)

### Modifications etc. (not altering text)

**C25** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6); S.I. 1997/2200, art. 2(1)(g) (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8))

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

## 12 Conditions in licence.

- (1) A person released on licence under this Part of this Act shall [F93, subject to section 12A below,] comply with such conditions as may be specified in that licence by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1) above and to the power of the Secretary of State under subsection (3) below to vary or cancel any condition, a licence granted under this Part of this Act shall include a condition requiring that the person subject to it—
  - (a) shall be under the supervision of a relevant officer of such local authority, or of [F94 an officer of a local probation board] appointed for or assigned to such petty sessions area, as may be specified in the licence; and
  - (b) shall comply with such requirements as that officer may specify for the purposes of the supervision.

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[<sup>F95</sup>(3) The Scottish Ministers may under subsection (1) above include on release and from time to time insert, vary or cancel a condition in a licence granted under this Part of this Act; but—

- (a) in the case of a long-term or life prisoner released by the Scottish Ministers under subsection (1) of section 3 of this Act without consulting the Parole Board, no licence condition shall be inserted, varied or cancelled subsequent to the release except in accordance with the recommendations of the Parole Board; and
- (b) in the case of any other long-term or life prisoner, no licence condition shall be included on release, or subsequently inserted, varied or cancelled except in accordance with such recommendations.]

#### Extent Information

**E1** S.12(2) extends to England and Wales and Scotland; s. 12 otherwise extends to Scotland only, see s. 48(5)(6)

#### Textual Amendments

**F93** Words in s. 12 inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 35(2)**, 89(2); [S.S.I. 2003/288](#), **art. 2**, Sch.

**F94** Words in s. 12(2)(a) substituted (1.4.2001) by [2000 c. 43](#), s. 74, **Sch. 7 Pt. I para. 4(1)(a)(2)**; [S.I. 2001/919](#), **art. 2(f)(i)**

**F95** S. 12(3) substituted (27.6.2003) for s. 12(3)(4) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 28(3)**, 89(2) (with saving in [S.S.I. 2003/287](#), **art. 2(2)(b)**); [S.S.I. 2003/288](#), **art. 2**, Sch.

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

**C26** Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by [1997 c. 43](#), **ss. 41**, 56(1), **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7)**, **11(2)(a)(4)(a)(6)**; [S.I. 1997/2200](#), **art. 2(1)(g)** (subject to [art. 5](#)) (which amending provisions were amended (30.9.1998) by [1998 c. 37](#), s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; [S.I. 1998/2327](#), **art. 2(1)(y)(2)(oo)** (subject to [arts. 5-8](#)))  
Ss. 11-13 applied (with modifications) (1.10.1997) by [S.I. 1997/1776](#), **arts. 1, 2**, **Sch. 1 paras. 5, 6, 7** (with transitional provisions in [art. 3](#), **Sch. 2**)

VALID FROM 08/02/2006

#### [<sup>F96</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.

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- (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

**F96** Ss. 12AA, 12AB inserted after s. 12 (8.2.2006 for specified purposes, 3.7.2006 for further specified purposes, 11.2.2008 for further specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [ss. 15\(10\)](#), 24(2); S.S.I. 2006/48, [art. 3\(1\)\(3\)](#), Sch. Pt. 1; S.S.I. 2006/331, [art. 3\(4\)\(5\)](#); S.S.I. 2008/21, [art. 2\(1\)\(b\)\(2\)](#)

VALID FROM 08/02/2006

#### 12AB Curfew condition

- (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.

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- (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

**F96** Ss. 12AA, 12AB inserted after s. 12 (8.2.2006 for specified purposes, 3.7.2006 for further specified purposes, 11.2.2008 for further specified purposes, otherwise 21.3.2008) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\), ss. 15\(10\), 24\(2\)](#); S.S.I. 2006/48, [art. 3\(1\)\(3\)](#), Sch. Pt. 1; S.S.I. 2006/331, [art. 3\(4\)\(5\)](#); S.S.I. 2008/21, [art. 2\(1\)\(b\)\(2\)](#)

#### [<sup>F97</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

**F97** 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.

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## [<sup>F97</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
  - (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

**F97** 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)

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

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

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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.

<sup>F98</sup>(1) .....

<sup>F99</sup>(2) .....

(3) .....

(4) The Secretary of State shall, not later than thirty days before the date of release of a short-term prisoner who is subject to a supervised release order, designate—

- (a) the local authority for the area where the prisoner proposes to reside after release;
- (b) the local authority for the area where the place from which he is to be released is situated; or
- (c) the justices for the petty sessions area where he proposes to reside after release, as the appropriate authority or, as the case may be, justices for the purposes of the order.

(5) As soon as practicable after designating a local authority or justices under subsection (4) above the Secretary of State shall—

- (a) inform the prisoner in writing of the designation; and
- (b) end to the authority or, as the case may be, to the [<sup>F100</sup>chief executive] to the justices a copy of the supervised release order and of the relevant documents and information received by the Secretary of State by virtue of [<sup>F101</sup>section 209(6)(b)] of the [<sup>F102</sup>1995 Act].

### Textual Amendments

**F98** S. 14(1) repealed (1.4.1996) by 1995 c. 40, ss. 4, 7(2), **Sch. 5** (with s. 6, Sch. 3 Pt. II paras. 16, 17)

**F99** S. 14(2)(3) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 103, **Sch. 10**; S.I. 1997/2327, **art. 2(1)(y)(aa)(2)(hh)(3)(u)**

**F100** Words in s. 14(5)(b) substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 170** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)** (with Sch. 2 para. 2)

**F101** Words in s. 14(5) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(7)(a)(i)(ii)(b)(c)**

**F102** Words in s. 14(5)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

### Modifications etc. (not altering text)

**C28** S. 14(5): certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 2(1)-(3)**

## 15 Variation of supervised release order etc.

(1) A person released subject to a supervised release order, or his supervising officer, may request the Secretary of State that a local authority or the justices for a petty sessions area (in this section referred to as the “second” designee) be designated under this subsection as the appropriate authority or justices for the purposes of the order in place of that or those for the time being designated under section 14(4) of this Act or this

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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, <sup>F103</sup>an officer of a local probation board] appointed for or assigned to the petty sessions area)—
  - (a) amend, vary or cancel any requirement specified in or by virtue of the order;
  - (b) insert in the order a requirement specified for the purpose mentioned in <sup>F104</sup>section 209(3)(b)] of the <sup>F105</sup>1995 Act],  
whether or not such amendment, variation, cancellation or insertion accords with what is sought by the applicant; but the period during which the person is to be under supervision shall not thereby be increased beyond any period which could have been specified in making the order.
- (5) If an application under subsection (4) above is by the supervising officer (or other relevant officer or <sup>F106</sup>officer of a local probation board]) alone, the court shall cite the person who is subject to the order to appear before the court and shall not proceed under that subsection until it has explained to the person, in as straightforward a way as is practicable, the effect of any proposed amendment, variation, cancellation or insertion.
- <sup>F107</sup>(5A) The unified citation provisions (as defined by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46)) apply in relation to a citation under subsection (5) above as they apply in relation to a citation under section 216(3)(a) of that Act.]
- (6) The clerk of the court by which an amendment, variation, cancellation or insertion is made under subsection (4) above shall forthwith send a copy of the resultant order to the person subject to it and to the supervising officer.

#### Textual Amendments

**F103** Words in s. 15(4) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. I para. 4(1)(a)(2)**; S.I. 2001/919, **art. 2(f)(i)**

**F104** Words in s. 15(4)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(8)**

**F105** Words in s. 15(4)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

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- F106** Words in s. 15(5) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 117**; S.I. 2001/919, **art. 2(f)(ii)**
- F107** S. 15(5A) inserted (S.) (27.10.2003) by **Criminal Justice (Scotland) Act 2003 (asp 7)**, **ss. 60(5)**, 89(2); S.S.I. 2003/475, **art. 2**, Sch.

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

- C29** 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))
- C30** S. 15(1)(2)(3): certain functions made exercisable in or as regards Scotland (30.6.1999) by S.I. 1999/1748, arts. 4(1), 8(1), **Sch. 2 para. 2(4)-(6)**

## 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 [<sup>F108</sup>at any time] under this Part of this Act or Part II of the <sup>M9</sup>Criminal Justice Act 1991 if—
- (a) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment (other than an offence in respect of which imprisonment for life is mandatory); and
  - (b) whether before or after that date, he pleads guilty to or is found guilty of that offence (in this section referred to as “the new offence”) in a court in Scotland or England and Wales.
- (2) Where the court mentioned in subsection (1)(b) above is in Scotland it may, instead of or in addition to making any other order in respect of the plea or finding—
- (a) in a case other than that mentioned in paragraph (b) below, order the person to be returned to prison for the whole or any part of the period which—
    - (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1)(a) above; and
  - (b) in a case where that court is inferior to the court which imposed the sentence mentioned in the said subsection (1)(a), refer the case to the superior court in question; and a court to which a case is so referred may make such order with regard to it as is mentioned in paragraph (a) above.
- (3) Where the court mentioned in subsection (1)(b) above is in England and Wales it may, instead of or in addition to making any other order in respect of the plea or finding, refer the case to the court which imposed the original sentence and shall, if it does so, send to that court such particulars of that case as may be relevant.
- (4) The court to which a case is referred under subsection (3) above may make such an order as is mentioned in subsection (2)(a) above in respect of the person.
- (5) The period for which a person to whom this section applies is ordered under subsection (2) or (4) above to be returned to prison—
- (a) shall be taken to be a sentence of imprisonment for the purposes of this Act and of any appeal; and



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(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 [F109 section 118(4) or 189(1) and (2)] of the [F110 1995 Act], the court hearing an appeal against an order under subsection (2) or (4) above may, if it thinks fit and notwithstanding subsection (2)(a), substitute for the period specified in the order a period not exceeding the period between the date on which the person was released and the date mentioned in subsection (1)(a) above.

[F111(7) Where an order under subsection (2) or (4) above is made in respect of a person released on licence—

- (a) F112 .....
- F113(b) .....

[F114(8) Where a prisoner has been sentenced to two or more terms of imprisonment which are wholly or partly concurrent and do not fall to be treated as a single term by virtue of section 27(5) of this Act, the date mentioned in subsection (1)(a) above shall be taken to be that on which he would (but for his release) have served all of the sentences in full.]

#### Extent Information

E2 S.16(1)(3) extends to England and Wales and Scotland; s. 16 otherwise extends to Scotland only, see s. 48(5)(6)

#### Textual Amendments

F108 Words in s. 16(1) inserted (S.) (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 104(1)**; S.I. 1998/2327, **art. 2(1)(y)(2)(hh)**

F109 Words in s. 16(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(9)(a)**

F110 Words in s. 16(6) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(2)**

F111 S. 16(7) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 86(9)(b)**

F112 S. 16(7)(a) and word repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 36(3), 89(2)**; S.S.I. 2003/288, **art. 2, Sch.**

F113 S. 16(7)(b) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 104(3), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(hh)(3)(u)** (subject to transitional provisions in arts. 5-8)

F114 S. 16(8) inserted (30.9.1998) by 1998 c. 37, **s. 111(2)**; S.I. 1998/2327, **art. 2(1)(x)** (subject to arts. 5-8)

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

C31 Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), **11(2)(a)(4)(a)(6)** (subject to art. 5) (as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

#### Marginal Citations

M9 1991 c. 53.

## 17 Revocation of licence.

[F115(1) Where—

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- (a) a long-term prisoner has been released on licence under this Part of this Act and is not detained as mentioned in section 12A(1)(a) or (b) of this Act; or
- (b) a life prisoner has been so released on licence and is not detained as mentioned in section 12A(1)(b) of this Act,

the Scottish Ministers—

- (i) shall, if recommended to do so by the Parole Board; or
- (ii) may, if revocation and recall are, in their opinion, expedient in the public interest and it is not practicable to await such a recommendation,

revoke the licence and recall the prisoner to prison.

(1A) Where a long-term prisoner or a life prisoner has been released on licence as mentioned in subsection (1) above, but is detained as mentioned in that subsection, the Scottish Ministers—

- (a) shall, if recommended to do so by the Parole Board; or
- (b) may, if revocation is, in their opinion, expedient in the public interest and it is not practicable to await such a recommendation,

revoke the licence.

(1B) Where a short-term prisoner has been released on licence under section 3(1) of this Act, the Scottish Ministers may, whether or not he is detained as mentioned in section 12A(1)(b) of this Act—

- (a) revoke the licence; and
- (b) where he is not so detained, recall him to prison,

if they are satisfied that his health or circumstances have so changed that his release on licence is no longer justified.

(2) The Scottish Ministers shall, on the revocation of a person's licence under subsection (1), (1A) or (1B) above, inform that person of the reasons for the revocation.

(3) The Scottish Ministers shall refer to the Parole Board the case of a person whose licence is revoked under subsection (1), (1A) or (1B) above.]

(4) Where on a reference under subsection (3) above the Parole Board directs a prisoner's immediate release on licence, the Secretary of State shall under this section give effect to that direction.

[<sup>F116</sup>(4AA) Where the Parole Board directs the release of a prisoner under subsection (4) above it may recommend that the Scottish Ministers insert, vary or cancel conditions in the prisoner's licence.]

[<sup>F117</sup>(4A) Where the case of a prisoner to whom section 3A of this Act applies is referred to the Parole Board under subsection (3) above, subsection (4) of that section shall apply to that prisoner in place of subsection (4) above.]

(5) On the revocation of the licence of any person under the foregoing provisions of this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

(6) A licence under this Part of this Act, other than the licence of a life prisoner, shall be revoked by the Secretary of State if all conditions in it have been cancelled; and where a person's licence has been revoked under this subsection the person shall be treated in all respects as if released unconditionally.

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#### Textual Amendments

- F115** S. 17(1)(1A)(1B)(2)(3) substituted (27.6.2003) for s. 17(1)-(3) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. {s. 36(4)}, 89(2); S.S.I. 2003/288, [art. 2](#), Sch.
- F116** S. 17(4AA) inserted (8.10.2001) by [2001 asp 7](#), [s. 1\(5\)\(c\)](#); S.S.I. 2001/274, [art. 3\(3\)](#)
- F117** S. 17(4A) inserted (30.9.1998) by [1998 c. 37](#), s. 119, [Sch. 8 para. 105](#); S.I. 1998/2327, [art. 2\(1\)\(y\)\(2\)\(hh\)](#)

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

- C32** 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](#)))

VALID FROM 03/07/2006

#### [<sup>F118</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

- F118** 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) Where the court which imposed a supervised release order on a person is informed, by statement on oath by an appropriate officer, that the person has failed to comply with a requirement specified in or by virtue of that order, the court may—
  - (a) issue a warrant for the arrest of the person; or
  - (b) issue a citation requiring the person to appear before the court at such time as may be specified in the citation.
- [<sup>F119</sup>(1A) The unified citation provisions (as defined by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46)) apply in relation to a citation under subsection (1)(b) above as they apply in relation to a citation under section 216(3)(a) of that Act.]
- (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 [<sup>F120</sup>chief social work officer] of a local authority which is designated under section 14(4) or 15(1) of this Act as the appropriate authority for the purposes of the order;
  - (c) any officer appointed by that [<sup>F120</sup>chief social work officer] for the purposes of this section.

### Textual Amendments

**F119** S. 18(1A) inserted (27.10.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 60\(6\), 89\(2\); S.S.I. 2003/475, art. 2, Sch.](#)

**F120** Words in s. 18(6)(b)(c) substituted (1.4.1996) by [1994 c. 39, s. 180\(1\), Sch. 13 para. 179\(2\); S.I. 1996/323, art. 4\(1\)\(b\)\(c\)](#)

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

- C33** S. 18 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. 1 paras. 5, 6, 7 (with transitional provisions in art. 3, Sch. 2); S.I. 1997/2200, art. 2(1)(g) Ss. 1(4), 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6); S.I. 1997/2200, art. 2(1)(g) (subject to art. 5) (which amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b); S.I. 1998/2327, art. 2(1)(y)(2)(oo) (subject to arts. 5-8)) Ss. 1-3, 5, 6(1)(a)(b)(i)(iii), 9, 11-13, 15-21, 27, Schs. 2 & 6 extended (1.10.1997) by 1997 c. 43, 56(1), Sch. 1 paras. 10(2)(5), 11(2)(4), Sch. 5 paras. 11(1)(3), 12(1); S.I. 1997/2200, art. 2(1)(n) (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of Sch. 5 paras. 11(1), 12(1) by 1998 c. 37, s. 120(2), Sch. 10; S.I. 1998/2327, art. 2(1)(aa)(3)(x) (subject to arts. 5-8 of the said S.I.)

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

- (1) Within two weeks after a determination by a court—
- on an application under section 15(4); or
  - 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 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 Adjournal 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)

- C34** 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, <sup>F121</sup> . . . this Act.
- (2) It shall be the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is connected with the early release or recall of prisoners.

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- (3) <sup>F122</sup> .....
- (4) The Secretary of State may by rules make provision with respect to the proceedings of the Board, including provision—
- (a) authorising cases to be dealt with in whole or in part by a prescribed number of members of the Board in accordance with such procedure as may be prescribed;
  - (b) requiring cases to be dealt with at prescribed times; and
  - <sup>F123</sup>(ba) enabling the Board to require any person, other than a prisoner whose case the Board is considering, to attend a hearing before it to give evidence or to produce documents;]
  - (c) as to what matters may be taken into account by the Board (or by such number) in dealing with a case.
- <sup>F124</sup>and rules under this section may make different provision for different classes of prisoner.]
- <sup>F125</sup>(4A) In making provision such as is mentioned in subsection (4)(ba) above, the Scottish Ministers may apply subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973 (c.65) with such modifications as may be set out in the rules but subject to the limitation that any penalty under subsection (5) of section 210 as so applied shall be restricted to a fine which shall not exceed level 2 on the standard scale.]
- (5) The Secretary of State may give the Board directions as to the matters to be taken into account by it in discharging its functions under this Part of this Act; and in giving any such directions the Secretary of State shall in particular have regard to—
- (a) the need to protect the public from serious harm from offenders; and
  - (b) the desirability of preventing the commission by offenders of further offences and of securing their rehabilitation.
- (6) The supplementary provisions in Schedule 2 to this Act shall have effect with respect to the Board.

#### Textual Amendments

- F121** Words in s. 20(1) repealed (27.7.2001) by 2001 asp 7, s. 5(1)(a) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)
- F122** S. 20(3) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 28(4), 89(2); S.S.I. 2003/288, art. 2, Sch.
- F123** S. 20(4)(ba) inserted (27.7.2001) by 2001 asp 7, s. 5(1)(b) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)
- F124** Words in s. 20(4) inserted (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para. 106; S.I. 1998/2327, art. 2(1)(y)(2)(hh)
- F125** S. 20(4A) inserted (27.7.2001) by 2001 asp 7, s. 5(1)(c) (with Sch. paras. 79-83); S.S.I. 2001/274, art. 3(1)(e)

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

- C35** S. 20 modified (8.10.2001) by 2001 asp 7, ss. 4, 5, Sch. paras. 35, 44; S.S.I. 2001/274, art. 3(3)
- C36** Ss. 1, 1A, 2(4), 3A, 5, 6(1)(a)(b)(i)(iii), 7, 9, 16, 20, 21, 26A, 27, Schs. 2, 6 extended (30.9.1998) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7), 11(2)(a)(4)(a)(6) (subject to art. 5)

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(as amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(5)(a)(d)(f)(6)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))

#### 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)

- C37** 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.))

**Status:**

Point in time view as at 01/12/2003. This version of this cross heading 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.