



# Prisoners and Criminal Proceedings (Scotland) Act 1993

## 1993 CHAPTER 9

### PART I

#### DETENTION, TRANSFER AND RELEASE OF OFFENDERS

##### *Early release*

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

[<sup>F1</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) <sup>F2</sup> .....
  - (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; [<sup>F3</sup> or
  - (iii) subsections (5) to (8) of section 28 (early release of life prisoners to whom that section applies) of the Crime (Sentences) Act 1997 (c. 43) (in this section, the “1997 Act”) apply by virtue of an order made under section 28(2)(b) of that Act (while that provision was in force) or an order made under section 269(2) of, or paragraph 3(1)(a) of Schedule 22 to, the Criminal Justice Act 2003;]
- (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

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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 [F<sup>4</sup>82A(2), 28(2)(b) or 269(2) or paragraph 3(1)(a) or] 4(1) or made under a provision such as is mentioned in subsection (1A) below, as the case may be.

- [ This Part of this Act, except section 2(9), applies also to a transferred life prisoner—
- <sup>F5</sup>(1AA) (a) who is transferred from England and Wales on or after the date on which section 269 of the Criminal Justice Act 2003 comes into force,
- (b) in relation to whom paragraph 3 of Schedule 22 to that Act applies by virtue of paragraph 2(a) of that Schedule, but
- (c) in respect of whom, under the paragraph so applying, no order has been made, 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 notified minimum term defined by paragraph 3(4) of that Schedule.]

(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.]

[F<sup>6</sup>(2) In the case of any other transferred life prisoner, being one whose transfer occurred after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), subsection (3) below applies where the court, following a hearing under subsection (2J) below, makes an order under that subsection specifying a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2 of this Act if—

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

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

(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

[F<sup>7</sup> and in such a case subsection (3) below applies].

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

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

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- (3) In a case to which this subsection applies [<sup>F8</sup>(whether by virtue of subsection (2) above or of subsection (2B) above)], this Part of this Act except [<sup>F9</sup>section 2(9)] shall apply as if—
- (a) the transferred life prisoner were a <sup>F10</sup>. . . life prisoner within the meaning of section 2 of this Act; and
  - (b) the [<sup>F11</sup>punishment] part of his sentence within the meaning of that section were the part specified in the [<sup>F12</sup>order under subsection (2J) above][<sup>F13</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>F14</sup>or a court-martial] has [<sup>F15</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>F16</sup><sup>F17</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>F18</sup>paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997][<sup>F19</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>M1</sup>Colonial Prisoners Removal Act 1884; or
    - [<sup>F20</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
    - [<sup>F21</sup>(ib) a decision of the responsible authority under article 6 (removal to Scotland of patients to Northern Ireland) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 <sup>M2</sup> authorising the prisoner’s removal to Scotland from Northern Ireland]]
    - (ii) a warrant issued by the Secretary of State under the <sup>M3</sup>Repatriation of Prisoners Act 1984, [<sup>F22</sup>; or
    - (iii) rules made under section 122(1)(a) of the <sup>M4</sup>Army Act 1955 (imprisonment and detention rules); or
    - (iv) rules made under section 122(1)(a) of the <sup>M5</sup>Air Force Act 1955 (imprisonment and detention rules); or
    - (v) a determination made under section 81(3) of the <sup>M6</sup>Naval Discipline Act 1957 (place of imprisonment or detention),]there to serve, or to serve the remainder of, his sentence or sentences [<sup>F23</sup>; and in this subsection “prison” has the same meaning as in the 1989 Act.].
- [<sup>F24</sup>(4A) The reference in subsection (4)(b) above to a person who has been transferred to Scotland in pursuance of a warrant under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in Scotland in pursuance of a warrant issued by the Scottish Ministers under section 4A of that Act (warrant transferring responsibility for detention and release of offender).
- (4B) Such a person is to be taken to have been transferred when the warrant under section 4A of that Act was issued in respect of that person.]

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- (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>F25</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>F26</sup>the said section [<sup>F27</sup>28(2)] of the [<sup>F28</sup>the 1997 Act]] [<sup>F29</sup>section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), [<sup>F30</sup>section 269(2) of, or paragraph 3(1)(a) of Schedule 22 to, the Criminal Justice Act 2003,] 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>F31</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>F32</sup>punishment] part of each of those sentences.

#### Textual Amendments

- F1** 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)
- F2** S. 10(1)(a)(i) and word omitted (18.12.2003) and repealed (4.4.2005) by virtue of Criminal Justice Act 2003 (c. 44), ss. 304, 332, 336(2), Sch. 32 para. 66(a)(i), {Sch. 37, Pt. 7}; S.I. 2005/950, art. 2(1), Sch. 1 para. 44(4)(l)
- F3** S. 10(1)(a)(iii) and preceding word inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 304, 336(2), Sch. 32 para. 66(a)(ii)
- F4** Words in s. 10(1) substituted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 304, 336(2), Sch. 32 para. 66(a)(iii)
- F5** S. 10(1AA) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 304, 336(2), Sch. 32 para. 66(b)
- F6** 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)
- F7** 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.
- F8** 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.
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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.
- F14** 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
- F15** Words in s. 10(4)(a) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F16** Words in s. 10(4)(b) inserted (27.7.1993) by 1993 c. 36, ss. 76(2)(c), 78(2)
- F17** 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
- F18** 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)(l)(2)(i) (subject to art. 5)
- F19** 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)
- F20** 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)
- F21** S. 10(4)(b)(ib) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, Sch. 1 para. 23(2)
- F22** 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
- F23** 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

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- F24** S. 10(4A)(4B) inserted (14.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 148(1), 153(7), **Sch. 26 para. 30**; S.I. 2008/1586, **art. 2(1)**, Sch. 1 para. 48(m)
- F25** 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)**
- F26** 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**
- F27** 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)**
- F28** Words in s. 10(5)(b) substituted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 304, 336(2), **Sch. 32 para. 66(c)(i)**
- F29** 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)**
- F30** Words in s. 10(5)(b) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), ss. 304, 336(2), **Sch. 32 para. 66(c)(ii)**
- F31** 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)**
- F32** 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)**

- C1** S. 10 excluded (17.12.2001) by 2001 asp 13, **s. 24(c)** (with s. 29); S.S.I. 2001/456, **art. 2**
- C2** 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)**

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**Marginal Citations**

- M1** 1884 c. 31.
- M2** S.I. 2005/2078.
- M3** 1984 c. 47.
- M4** 1955 c. 18.
- M5** 1955 c. 19.
- M6** 1957 c. 53.

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