

Status: Point in time view as at 20/10/1997.

Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 33(3).

TRANSITIONAL PROVISIONS WITH RESPECT TO EARLY RELEASE

- 1 (1) In this Schedule—
- “existing provisions” means the provisions relating to the detention or release of persons which are in force immediately prior to the date upon which Chapter 1 of Part III of this Act (hereinafter referred to as “the Chapter”) comes into force, and where those provisions are amended or repealed by this Act or any other enactment, that amendment or repeal shall apply for the purposes of those provisions and this Schedule only if expressly stated to do so;
 - “new provisions” means the Chapter;
 - “new offence” means an offence (including default in paying a fine and contempt of court) committed after the new provisions come into force;
 - “old offence” means an offence (including default in paying a fine and contempt of court) committed before the new provisions come into force;
 - “new sentence” means a sentence passed in respect of a new offence;
 - “old sentence” means a sentence passed in respect of an old offence; and
 - “sentence” includes a period of imprisonment imposed for default in paying a fine or for contempt of court.
- (2) In subparagraph (1) above, the definitions of new offence, new sentence, old offence and old sentence shall have effect notwithstanding that conviction and sentence may occur after the Chapter comes into force.
- (3) In relation to default in paying a fine, the date on which sentence is passed shall be taken to be, in relation to imprisonment imposed—
- (a) under section 214(2) or 216 of the 1995 Act, the date on which the court imposes imprisonment; and
 - (b) under section 214(4) of the 1995 Act, the date on which the defaulter is committed to prison.
- 2 Where, by virtue of the provisions of this Schedule, a prisoner is treated as serving—
- (a) a new sentence, the new provisions will apply in respect of him;
 - (b) an old sentence, the existing provisions will apply in respect of him,
- in both cases subject to any specific provision made in this Schedule.
- 3 For the purposes of this Schedule, where additional days have been awarded to, or days of remission have been forfeited by, a prisoner serving an old sentence, the

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period which he is required to serve in respect of that sentence shall be computed without regard to those days, and he shall serve those days—

- (a) after that period has come to an end; and
- (b) before starting to serve any new sentence of imprisonment which is to run consecutively to that old sentence.

4 Where any combination of old and new sentences is to run, either consecutively or concurrently, in relation to a prisoner, any supervised release order imposed under any of those sentences shall begin on the date when he is released; and where there is more than one such order he shall be subject to whichever of them is the longer or, as the case may be, the longest.

5 Where a single sentence is passed in respect of a number of offences committed on different days, for the purposes of this Schedule the sentence shall be deemed to have been passed in respect of the offence or offences committed on the latest of those days.

6 Subject to paragraph 8 below, where a new sentence is to run consecutively to an old sentence, the new sentence shall begin—

- (a) where the old sentence was or is for less than four years, at the expiry of one half of that sentence; and
- (b) subject to paragraph 7 below, where the old sentence was or is for four years or more, at the expiry of two thirds of that sentence

7 Where, in a case to which paragraph 6(b) above applies, the Parole Board have, prior to the passing of the new sentence, recommended that the prisoner be released on licence on a date—

- (a) earlier than the expiry of two thirds of that sentence; and
- (b) later than the date on which the new sentence is passed,

the new sentence shall begin on such date as the Secretary of State may, after considering any further recommendation of the Parole Board, determine, being a date not later than the expiry of two thirds of the sentence.

8 Where a new sentence is to run consecutively to an old sentence and the prisoner concerned is in prison—

- (a) because he has been recalled to prison by the Secretary of State, the new sentence shall begin, where he is recalled—
 - (i) after the expiry of one half and before the expiry of two thirds of the old sentence, at the expiry of two thirds of that sentence;
 - (ii) after the expiry of two thirds of the old sentence, at the expiry of the old sentence;
 - (iii) in either of the cases mentioned in sub-paragraphs (i) and (ii) above, and the Parole Board has directed his release under section 17(4) of the 1993 Act or has recommended his release under section 28(5) of the 1989 Act, on the date on which he would,

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- by virtue of that direction or recommendation and but for the new sentence, have been released;
- (b) as a result of an order made under section 16 of the 1993 Act (commission of offence by released prisoner), the new sentence shall begin on the date on which the return period determined by that order expires;
- (c) both because he has been recalled by the Secretary of State and returned as a result of an order made under section 16 of the 1993 Act, the new sentence shall begin on the expiry of whichever of the recall period and the order period ends later.
- 9 Where any combination of old and new sentences is to run consecutively in relation to a prisoner and—
- (a) after the expiry of any supervised release order such as is mentioned in paragraph 4 above; or
- (b) where he is not subject to any such supervised release order, on his release, there remains outstanding part of any licence period in respect of an old sentence, he shall, in accordance with the existing provisions, be subject to that licence for that part of that period.
- 10 Where any combination of old and new sentences is to run consecutively in relation to a prisoner and—
- (a) the last of those sentences is a new sentence, he shall, in addition to any supervised release order or licence period, be subject to the new provisions in relation to that new sentence; and
- (b) the last of those sentences is an old sentence, he shall, in addition to any supervised release order or licence period, be subject to the existing provisions in relation to that old sentence.
- 11 In calculating a licence period for the purposes of paragraphs 9 and 10 above any period less than three months shall be disregarded.
- 12 Where a prisoner serving an old sentence of four years or more—
- (a) has been released on licence; and
- (b) receives a new sentence,
- before the expiry of that old sentence, he shall begin to serve the new sentence immediately on its being passed or on such other date as the court may specify.
- 13 Where an old sentence is to run consecutively to a new sentence, the prisoner concerned shall begin to serve the old sentence on the date when he would otherwise have been released from the new sentence.
- 14 Where any combination of old and new sentences is to run concurrently, in relation to a prisoner, he shall be treated as if he is serving whichever of them will, as at the date on which the latest of them is passed, give rise to the later or, as the case may be, latest release date and, for the purposes of this paragraph, “release date” means—

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- (a) in the case of an old sentence—
 - (i) one half of a sentence of less than four years; and
 - (ii) two thirds of a sentence of four years or more; and
 - (b) in the case of a new sentence, the whole term.
- 15 If, by virtue of paragraph 14 above, the prisoner is to be treated as serving an old sentence, and—
- (a) that sentence is either quashed or reduced to a period shorter than the concurrent new sentence on appeal; or
 - (b) a new sentence to which he is subject is increased on appeal to a period longer than the concurrent old sentence,
- the prisoner concerned shall, as at the date when he begins to be treated as serving the new sentence, be deemed to have been awarded as many early release days as possible in relation to the period during which he was treated as serving the old sentence, (under deduction of any additional days which may have been awarded to him, or days of remission which may have been forfeited by him, during that period).
- 16 (1) This paragraph applies where a prisoner who is being held on remand in respect of both an old offence and a new offence is, in consequence of the same act or omission—
- (a) awarded additional days in respect of any prospective old sentence which may be imposed upon him; and
 - (b) is made subject to an order by which he forfeits early release days, in respect of any prospective new sentence which may be imposed upon him.
- (2) Where the prisoner receives—
- (a) only an old sentence, he is liable to the additional days mentioned in subparagraph (1)(a) above;
 - (b) only a new sentence, he is liable only to forfeit the early release days mentioned in subparagraph (1)(b) above.
- (3) Where the prisoner receives both an old and a new sentence which are to run—
- (a) consecutively, he is liable to the additional days, if the longer or, as the case may be, longest sentence is an old sentence, or to the forfeiture of the early release days, if the longer or, as the case may be, longest, sentence is a new sentence;
 - (b) concurrently, he is liable either to the additional days or, as the case may be, to the forfeiture of the early release days, depending on whether the sentence is, in accordance with paragraph 14 above, to be treated as an old or, as the case may be, a new sentence.

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