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Changes to legislation: There are currently no known outstanding effects for the Counter-Terrorism and Sentencing Act 2021, Cross Heading: Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9). (See end of Document for details)

SCHEDULES

SCHEDULE 13

CONSEQUENTIAL AND RELATED AMENDMENTS

PART 7

CONSEQUENTIAL AND RELATED AMENDMENTS: SCOTLAND

Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)

- 52 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
- (2) In section 1 (release of short-term, long-term and life prisoners)—
- (a) in subsection (3A), for “section 1A” substitute “ sections 1A and 1B ”;
 - (b) in subsection (9), after “applies” insert “ to the extent that the person is serving a sentence of imprisonment imposed in respect of an offence within section 1AB(2) ”.
- (3) In section 1AA (release of certain sexual offenders), for subsection (9) substitute—
- “(9) This section is subject to section 1B.”
- (4) In section 1AB (restricted eligibility for release on licence of terrorist prisoners)—
- (a) in subsection (2)—
 - (i) in the words before paragraph (a), for “whether it was committed before or after this section comes into force” substitute “ whenever it was committed ”;
 - (ii) for paragraphs (b) and (c) substitute—
 - “(b) it is a service offence as respects which the corresponding civil offence is so specified, or
 - (c) it was determined to have a terrorist connection.”;
 - (b) after subsection (5) insert—
 - “(5A) For the purposes of this section, an offence was determined to have a terrorist connection if it was—
 - (a) proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008, or
 - (b) determined to have a terrorist connection under—
 - (i) section 30 or 32 of that Act, or
 - (ii) section 69 of the Sentencing Code (including as applied by section 238(6) of the Armed Forces Act 2006),

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(in the case of an offender sentenced in England and Wales or Northern Ireland, or for a service offence, but now subject to the provisions of this Part).

(5B) Subsection (4) is subject to sections 1A and 1B.”;

(c) in subsection (6), for “, “corresponding civil offence” and “service court”” substitute “and “corresponding civil offence””.

(5) In the heading of section 1A, after “to” insert “ certain ”.

(6) After section 1A insert—

“1B Prisoners serving consecutive sentences including at least one terrorism sentence

(1) This section applies where—

- (a) a prisoner has been sentenced to two or more terms of imprisonment which are to be served consecutively on each other,
- (b) one or more of the sentences (the “terrorism sentence”) was imposed in respect of an offence within section 1AB(2), and
- (c) the sentences were imposed on the same occasion or, where they were imposed on different occasions, the prisoner has not been released under this Part at any time during the period beginning with the first and ending with the last of those occasions.

(2) If the prisoner is serving a terrorism sentence and a sentence imposed in respect of an offence that is not within section 1AB(2) (a “non-terrorism sentence”), the terrorism sentence is to be served (or, where subsection (7) applies, treated as being served) after the non-terrorism sentence irrespective of when the sentences were imposed.

(3) Where subsection (2) applies, the prisoner is to be taken to begin serving the custodial part of the terrorism sentence (or first such sentence) as soon as the prisoner has served the custodial part of the non-terrorism sentence.

(4) If (but for this section) the prisoner would have been released on licence under this Part in respect of a non-terrorism sentence, the period during which the prisoner would have been on licence under this Part is to be served concurrently with the custodial part of the terrorism sentence.

(5) The prisoner may not be released under this Part in respect of the terrorism sentence unless and until the prisoner has served the aggregate of—

- (a) if the prisoner is serving a non-terrorism sentence, the custodial part of the sentence, and
- (b) the custodial part of each terrorism sentence that the prisoner is serving.

(6) Subsection (7) applies where—

- (a) a non-terrorism sentence is imposed on the prisoner (the “new sentence”), and
- (b) the prisoner has already served part of the custodial part of a terrorism sentence (the “served part”).

(7) The prisoner is to be treated as having served—

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- (a) where the served part is less than the custodial part of the new sentence, such part of the custodial part of the new sentence as is equal to the served part,
 - (b) where the served part is equal to the custodial part of the new sentence, the custodial part of the new sentence,
 - (c) where the served part exceeds the custodial part of the new sentence—
 - (i) the custodial part of the new sentence, and
 - (ii) so much of the custodial part of the terrorism sentence as is equal to the amount by which the served part exceeds the custodial part of the new sentence.
- (8) Nothing in this Part requires—
- (a) the Scottish Ministers to release the prisoner in respect of any of the terms of imprisonment unless and until they are required to release the prisoner in respect of each of the other terms of imprisonment,
 - (b) the Scottish Ministers or the Parole Board to consider the prisoner's release in respect of any of the terms of imprisonment unless and until the Ministers are or the Board is required to consider the prisoner's release, or the Ministers are required to release the prisoner, in respect of each of the other terms.
- (9) If the prisoner is released on licence under this Part the prisoner is to be on licence, on and after the release, until the prisoner would, but for the release, have served a term equal in length to the aggregate length of the term of imprisonment of any non-terrorism sentence and the term or, as the case may be, terms of imprisonment for the terrorism sentence or sentences less the period mentioned in subsection (10).
- (10) The period is—
- (a) any period served concurrently in accordance with subsection (4), and
 - (b) if (but for this section) the prisoner would have been released unconditionally under section 1(1) in respect of a non-terrorism sentence, the period equal to one-half of the term of that sentence.
- (11) Where a prisoner to which this section applies is released on licence under this Part (other than a licence under section 3AA), the release is to be on a single licence which is to be subject to such conditions as may be specified or required by this Part in relation to all the sentences in respect of which the prisoner has been so released.
- (12) In this section “custodial part”, in relation to a term of imprisonment means a period equal to the part of the term that (but for this section) the prisoner would be required to serve before—
- (a) the Scottish Ministers are required to release the prisoner under this Part, or
 - (b) the Parole Board is first entitled under this Part to make a recommendation that the prisoner be released on licence under this Part.
- (13) In this section—

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- (a) references to a non-terrorism sentence include references to two or more such sentences that are treated as a single term by virtue of section 27(5) (whether imposed before, after or both before and after a terrorism sentence), and
 - (b) where subsection (7) applies, the references in that subsection to the “custodial part of the new sentence” include references to the custodial part of the single term.
- (14) This section applies to a prisoner on whom sentence was imposed before the day on which paragraph 52(6) of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021 came into force as it applies to a prisoner on whom sentence was imposed on or after that day.”
- (7) In section 2 (duty to release discretionary life prisoners)—
- (a) in subsection (2)—
 - (i) in the opening words, after “being” insert “ , subject to section 205ZB(2) of the 1995 Act, ”;
 - (ii) in paragraph (c), after “appropriate” insert “ (and except in the case of a prisoner to whom section 205ZB of the 1995 Act applies) ”;
 - (b) in subsection (6), for “subsection (7)” substitute “ subsections (6B) and (7) ”;
 - (c) after subsection (6A) insert—
 - “(6B) No requirement may be made under subsection (6) by a life prisoner who is also serving or liable to serve a sentence of imprisonment in respect of an offence within section 1AB(2)—
 - (a) in the case of a prisoner to whom section 1AB(3) applies, before the day on which the Scottish Ministers are required to refer the prisoner's case to the Parole Board under section 1AB(3), or
 - (b) in the case of a prisoner to whom section 1AB(3) does not apply by virtue of section 1AB(2A), before the day on which the Scottish Ministers are required to release the prisoner under section 26ZA(5).”;
 - (d) in subsection (7), after “prisoner” insert “ (other than a prisoner to whom subsection (6B) applies) ”.
- (8) In section 2B(1) (punishment part for life prisoners: assessment under section 2A(1) (a) and (b)), at the beginning insert “ Subject to section 205ZB(2) of the 1995 Act, ”.
- (9) In section 3A (re-release of prisoners serving extended sentences)—
- (a) in the heading, after “serving” insert “ certain terrorism sentences and ”;
 - (b) in subsection (1), for the words from “an” to “sentences)” substitute “ a sentence mentioned in subsection (1ZA) ”;
 - (c) after subsection (1) insert—
 - “(1ZA) The sentences are—
 - (a) a sentence imposed under section 205ZA of the 1995 Act (serious terrorism sentence);
 - (b) a sentence imposed under section 205ZC of that Act (terrorism sentence with fixed licence period);
 - (c) an extended sentence under section 210A of that Act.”;

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- (d) in subsection (3), after “term with” insert “ the sentence under section 205ZA or, as the case may be, section 205ZC or ”;
- (e) in subsection (4), for the words from “if” to the end substitute—
 - “(a) where—
 - (i) the prisoner is serving a sentence imposed under section 205ZA or 205ZC of the 1995 Act or an extended sentence under section 210A of that Act in respect of a terrorism offence, and
 - (ii) the Board is satisfied that the condition in subsection (4A) is met (but not otherwise),direct that the prisoner should be released;
 - (b) where—
 - (i) the prisoner is serving an extended sentence under section 210A of that Act in respect of a sexual or violent offence, and
 - (ii) the Board is satisfied that the condition in subsection (4B) is met (but not otherwise),direct that the prisoner should be released.”;
- (f) after subsection (4) insert—
 - “(4A) The condition is that it is no longer necessary for the protection of the public that the prisoner should be confined.
 - (4B) The condition is that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.”
- (10) In section 3B (review of decisions as to determinate sentences)—
 - (a) in subsection (1)(a), after “from” insert “ a sentence imposed under section 205ZC of the 1995 Act or ”;
 - (b) in subsection (1)(b)—
 - (i) after “serving” insert “ a sentence imposed under section 205ZC of the 1995 Act or ”;
 - (ii) after “sentence”, in the second place it occurs, insert “ or extended sentence ”;
 - (c) in subsection (4)(b), after “relates to” insert “ a sentence imposed under section 205ZC of the 1995 Act or ”.
- (11) In section 5 (application of Part to fine defaulters and persons in contempt of court)—
 - (a) in subsection (2), for “subsection (2A)” substitute “ section 1B ”;
 - (b) omit subsection (2A);
 - (c) in subsection (4), after “1A” insert “ , 1B ”.
- (12) In section 6(1) (application of Act to young offenders and to children detained without limit of time), for paragraph (a) substitute—
 - “(a) to—
 - (i) persons on whom detention in a young offenders institution has been imposed under section 205ZA(6) of the 1995 Act,
 - (ii) persons on whom detention in a young offenders institution has been imposed under section 205ZC(4) of that Act, and

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(iii) persons on whom detention in a young offenders institution (other than detention without limit of time or for life) has been imposed under section 207(2) of that Act, as the Part applies to persons serving equivalent sentences of imprisonment.”.

(13) In section 7 (children detained in solemn proceedings)—

- (a) in subsection (3)—
 - (i) after “(2) above” insert “ or, as the case may be, section 1AB(4) or 26ZA(5)(a) ”;
 - (ii) after “sentence” insert “ or, as the case may be, before the date on which the sentence under section 205ZC(5) as originally imposed by the court expires ”;
 - (iii) after “so elapses” insert “ or, as the case may be, the sentence under section 205ZC(5) expires ”;
- (b) in subsection (5)(a)—
 - (i) for “and 20(2)” substitute “ , 20(2) and 26ZA ”;
 - (ii) for “detained under section 208 of the 1995” substitute “ on whom detention has been imposed under section 205ZC(5) of the 1995 Act and children detained under section 208 of that ”;
 - (iii) at the end (but before the final “and”) insert “ (but subject to the modifications of section 26ZA in subsection (5A)) ”;
- (c) in subsection (5), after paragraph (a) (but before the final “and”) insert—
 - “(aa) sections 3A and 3B of this Act apply to children on whom detention has been imposed under section 205ZC(5) of the 1995 Act as they apply to long-term prisoners.”;
- (d) in subsection (5)(b), after “1A” insert “ , 1B ”;
- (e) after subsection (5) insert—
 - “(5A) The modifications are that section 26ZA is to be read as if—
 - (a) subsection (9) were omitted, and
 - (b) subsection (10)(a) related to section 1A(1)(c) only.”;
- (f) in subsection (8)—
 - (i) for “subsection (5)” substitute “ subsections (2) and (3) to (7) ”;
 - (ii) after “applies” insert “ to the extent that detention is imposed on the person under section 205ZC(5) of the 1995 Act. ”;
- (g) after subsection (8) insert—
 - “(9) This section is subject to section 1B.”

(14) In section 9 (persons liable to removal from the United Kingdom), omit subsection (1A).

(15) In section 26A (extended sentences: application of section)—

- (a) in subsection (1), after “sentences” insert “ other than an extended sentence imposed in respect of a terrorism offence. ”;
- (b) in subsection (2), for “section 1A” substitute “ sections 1A and 1B ”;
- (c) in subsection (6), for “section 1A(c)” substitute “ sections 1A(1)(c) and 1B(11) ”.

(16) In section 27 (interpretation of Part 1 of the Act)—

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- (a) in subsection (5), after “shall” insert “, subject to subsection (5A), ”;
- (b) after subsection (5) insert—

“(5A) Subsection (5) does not apply in relation to a sentence passed on a person—

- (a) in respect of an offence within section 1AB(2), and
- (b) on or after the coming into force of paragraph 52(6) of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021.

(5B) In determining, for the purposes of subsection (5), whether a sentence passed on a person in respect of an offence (other than an offence within section 1AB(2)) is to be treated as part of a single term, any sentence passed on the person in respect of an offence within section 1AB(2) is to be ignored.”

- (17) In Schedule 1A (offences carrying restricted eligibility for release on licence), omit Part 2.

Commencement Information

- II** Sch. 13 para. 52(1)-(6)(7)(b)-(d)(8)-(17) in force at 30.4.2021, Sch. 13 para. 52(7)(a) in force at 29.6.2021
see s. 50(1)(i)(vi)(2)(v)(iii)

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