

CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Part 1

Prisoners and Parole

Release of life prisoners

4. This Part of the Act relates to the release arrangements for life prisoners sentenced after this Part comes into force. It amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the “1993 Act”).
5. **Section 1(2)** repeals subsections (4) to (7) of section 1 of the 1993 Act. These provisions (which dealt with the release of life who prisoners who were not “designated life prisoners”) are now unnecessary. This Act makes provision for the future sentencing and release of all life prisoners to be dealt with under section 2 of the 1993. Previously the release arrangements in section 2 were restricted to designated life prisoners (discretionary life prisoners and persons who committed a murder whilst under the age of 18 years (“under 18 murderers”).
6. **Section 1(3)** amends section 2 of the 1993 Act. Paragraph (a)(i) repeals the term “designated” in consequence of the fact that section 2 will now apply to all life prisoners. Paragraph (a)(ii) inserts a new paragraph (aa) into section 2(1) of the 1993 Act and paragraph (a)(iii) repeals paragraph (c) of the same section. The effect of the amendments is that a “life prisoner” for the purposes of Part I of the 1993 Act is defined as a person:
 - “(a) *sentenced to life imprisonment for an offence for which such a sentence is not the sentence fixed by law; or*
 - (aa) *sentenced to life imprisonment for murder or for any offence for which that sentence is the sentence fixed by law.*
7. These amendments as read with sections 6 and 27(1) of the 1993 Act have the effect that the sentencing and release provisions in section 2 will now apply to all life prisoners. As mentioned above, previously, section 2 only applied to discretionary life prisoners and under 18 murderers.
8. **Section 1(3)(b)** amends section 2(2) of the 1993 Act. Sub-paragraph (i) repeals the redundant word “designated”. Sub-paragraph (ii) substitutes the words “punishment part” for the words “designated part” in the original text. Sub-paragraph (iii) inserts the words
 - “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)*

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into section 2(2) of the 1993 Act. Sub-paragraph (iv) substitutes the words “of which the life prisoner is convicted on the same indictment as that offence” for the words “associated with it.” The effect of these provisions is that, firstly, the part of the life sentence that requires to be specified in the order made by the court at the time that sentence is passed is now called the “punishment part” instead of the “designated part”. This is intended to reflect its purpose more clearly. Secondly, the provisions define more fully what is meant by a punishment part. It is defined as being the part of the life sentence that the court considers is the appropriate length of time that the prisoner requires to serve to satisfy the criminal justice requirements for retribution and deterrence. The amended definition makes it clear that the punishment part is the part of the sentence which represents the punitive element only and does not take account of any period of imprisonment that may be necessary for the protection of the public. After the punishment part has been served, it is for the Parole Board to determine, under section 2(5)(b) of the 1993 Act, whether it is no longer necessary for the protection of the public that the prisoner should be confined. The punishment part is therefore not concerned in any way with the issue of risk to the public. The provision at sub-paragraph (iv) makes clear that the length of the punishment part should reflect all the offences in respect of which the person has been convicted on a single indictment.

9. Sub-paragraph (v) makes provision for determining the appropriate punishment part in the case of a person given a discretionary life sentence. This is to avoid any doubt that the new provisions in the Act could be regarded as altering the way in which the appropriate punishment period should be determined for discretionary life prisoners. The provision therefore preserves the effect of the decision in the case of *O'Neill v Her Majesty's Advocate*, 1999 SLT 958 so that courts set punishment parts for discretionary life prisoners in the same manner as they have set designated parts for discretionary life prisoners by virtue of the criteria in *O'Neill* (see also the case of *Ansari* 2003 SLT 845 where the High Court has considered the interpretation of this provision).
10. Sub-paragraph (vi) repeals the redundant word “designated” in section 2(2)(b) of the 1993 Act.
11. **Section 1(3)(c)** substitutes section 2(3) of the 1993 Act and inserts a new subsection (3A). Previously subsection (3) of the 1993 Act provided that where a court imposed a life sentence (in relation to a murder committed by someone under 18 or for an offence for which such a sentence is not the sentence fixed by law) it could decide not to make an order setting a "designated part" (now a "punishment part"), but if the court did this it had to state its reasons for that decision. Previously the subsection also provided that the designated part constituted part of the person's sentence for the purposes of any review or appeal. The substituted subsection (3) removes the sentencing court's discretion not to set a punishment part and provides that a part must be set in all cases. The substituted subsection (3) also makes equivalent provision to the previous section 2(3) in that it provides that the punishment part constitutes part of a person's sentence within the meaning of the Criminal Procedure (Scotland) Act 1995 (the “1995 Act”) for the purposes of any appeal or review. As the punishment part forms part of the person's sentence it will continue to be appealable under the relevant provisions of the 1995 Act.
12. The new subsection (3A) provides, in paragraph (a), that the order made under section 2(2) of the 1993 Act setting the punishment part must specify the period in years and months that the court considers appropriate. In making the order the court must take into account the factors specified in subsection (2), namely, the seriousness of the offence, or the offence combined with other offences of which the prisoner is convicted on the same indictment, any previous convictions, and, where appropriate, the stage in the proceedings at which the offender indicated his intention to plead guilty and the circumstances in which that indication was given. Paragraph (b) of new subsection (3A) provides that the order specifying the punishment part may specify a period of years and months notwithstanding the likelihood that that such a period will exceed the remainder of the prisoner's natural life. A judge might specify such a period where the seriousness

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of the offence required a long punishment part to be set. Subsection (3A) also makes it clear that a punishment part can be set as normal in a case where the convicted person's life expectancy is short due to age or illness.

13. Paragraph (d) repeals the redundant word "designated" in subsections (4) and (6) of section 2 of the 1993 Act.
14. Paragraph (e) inserts new subsections (5A), (5B) and (5C) into section 2 of the 1993 Act. Subsection (5A) provides that where the Parole Board, in considering the case of a life prisoner after the expiry of the punishment part or the case of a life prisoner who has been released on licence but recalled to custody, does not direct the prisoner's release on licence, it shall give the prisoner reasons, in writing, for its decision and shall fix the date for the next consideration of the prisoner's case. Subsection (5B) provides that the Scottish Ministers are required to refer the prisoner's case to the Board to enable the Board to consider it on the date that it has fixed for its next consideration. Subsection (5C) provides that the prisoner can invite the Board to bring forward the date for its next consideration of his or her case and if the Board agrees it can direct the Scottish Ministers to refer it before the date that it had originally fixed.
15. Paragraph (f) repeals the words "designated" and "at any time" because they are redundant.
16. Paragraph (g) inserts a new subsection (6A) into section 2 which restricts the prisoner's right as to when he may require the Scottish Ministers to refer his case to the Parole Board, in the light of the new provisions inserted by paragraph (e).
17. Paragraph (h) removes the provision which prevented a prisoner having a right to require his case to be referred to the Parole Board if less than 2 years had elapsed since the most recent review. This is in consequence of the changes mentioned above through the introduction of new subsections (5A) to (5C) into section 2 of the 1993 Act which make the date for any review a matter for the Parole Board.
18. Paragraph (i) repeals the redundant word "designated" where it first occurs, and substitutes the word "punishment" for the word "designated" where it secondly occurs in section 2(8) of the 1993 Act, to take account of the change in terminology that is provided for by the amended version of section 2(2) of the 1993 Act.
19. Paragraph (j)(i) repeals paragraph (a) of section 2(9) of the 1993 Act which provided that a life prisoner serving two or more sentences of imprisonment could only be regarded as a designated life prisoner if he had a designated part for all of his life sentences. This is no longer necessary because, under the changes made by the Act, all life prisoners will now have an order setting the punishment part made by the court under section 2(2) of the 1993 Act. Paragraph (j)(ii) repeals the term "designated" and substitutes "punishment". This amendment is consequential on the change in terminology provided for by the amendment of section 2(2) of the 1993 Act, whereby there will no longer be a designated part specified in an order under section 2(2) but instead a punishment part will be specified in any such order.
20. **Section 1(4)** repeals sections 6(2) and 6(3) of the 1993 Act. Section 6(2) empowered the Scottish Ministers to release on licence a child detained without limit of time under section 208 of the 1995 Act on the recommendation of the Parole Board. Section 6(3) empowered the Scottish Ministers, after consultation with the Parole Board, to make an order providing that in relation to all children or a particular class of children specified in the order detained without limit of time that the word "may" in section 6(2) shall be substituted by the word "shall". The effect of such an order is that a recommendation to release from the Parole Board is treated as a direction to release i.e. the Scottish Ministers are required to release the child. These provisions are no longer necessary because all children who are sentenced to detention without limit of time will require to have a punishment part set by virtue of the substituted version of section 2(3) of the

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1993 Act and the Scottish Ministers will require to release such prisoners on licence under section 2 if directed to do so by the Parole Board.

21. **Section 1(5)** amends sections 17(2), and 17(3)(a) of the 1993 Act (revocation of licence). The effect of section 1(5)(a) and (b) is that, where a prisoner's release licence has been revoked and he has been recalled to custody under section 17(1) of the 1993 Act, the Scottish Ministers are required to refer his case to the Parole Board. Previously, they were required to refer the case to the Parole Board only if the prisoner was recalled without a Parole Board recommendation or the prisoner put in written representations.
22. **Section 1(5)(c)** of the Act inserts a new subsection (4AA) into section 17 of the 1993 Act. This new subsection provides that where the Parole Board directs the release of a prisoner under section 17(4) they may recommend that the Scottish Ministers insert, vary or cancel conditions in the prisoner's licence.
23. **Section 1(6)** of the Act repeals the definition of "discretionary life prisoner" in section 27 (interpretation of Part I) because it is no longer necessary. The words discretionary life prisoner will no longer be used in the 1993 Act. The amended section 2 of the 1993 Act only makes reference to life prisoners.
24. **Section 1(7)** of the Act makes some purely technical and consequential amendments to schedule 6 to the 1993 Act (which relates to transitional and savings provisions for existing discretionary life prisoners). Paragraph (a)(i) amends paragraph 6(2) of schedule 6 to remove the reference to section 1(4) of the 1993 Act which is repealed by section 1(2) of the Act. The other amendments to paragraphs 6(2)(a), (2)(b), (3)(a), (3)(b) and 6A(2) simply repeal the word "designated" where it appears in relation to an existing designated life prisoner and substitute for the word "designated" the word "punishment" in relation to the part in the light of the change in terminology provided for above in the amendments to section 2(2) of the 1993 Act.
25. **Section 1(8)** of the Act makes similar purely technical and consequential amendments to section 16 of the Crime and Punishment (Scotland) Act 1997 (which relates to transitional and savings provisions for existing under 18 murderers). These amendments repeal references to section 1(4) of the 1993 Act and repeal the word "designated" where it appears in relation to an existing under 18 murderer and substitute for the word "designated" the word "punishment" in relation to the part, in the light of the change in terminology provided for above in the amendments to section 2(2) of the 1993 Act.