

# CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### THE ACT

#### Schedule

#### *Transitional Provisions*

#### Part 1

#### Existing life prisoners

104. [Part 1](#) of the schedule to the Act makes provision for handling the cases of existing life prisoners. The interpretation and ECHR compatibility of Part 1 was considered in *Flynn & Ors v HMA*, Privy Council, 18<sup>th</sup> March 2004 (see also the earlier decision of the High Court at 2003 SLT 2003).
105. [Paragraph 1](#) defines a life prisoner to whom Part 1 of the schedule applies. Such a prisoner is referred to as an “existing life prisoner” (see paragraph 2). An “existing life prisoner” is a life prisoner who was sentenced for murder committed by the prisoner when aged 18 years or over and who was sentenced prior to the provisions contained in Part 1 of the schedule coming into force (paragraph 1(a)), or a prisoner in respect of whom the Lord Justice General or the Lord Justice Clerk has issued a certificate under paragraph 6(1) of schedule 6 to the 1993 Act or section 16(2) of the Crime and Punishment (Scotland) Act 1997 under previous transitional arrangements for discretionary life prisoners and under 18 murderers (paragraph 1(b)).
106. [Paragraphs 3 to 26](#) set the arrangements for the referral of the cases of existing life prisoners to the High Court to enable those prisoners to have a punishment part fixed so that they can be treated under the new release regime.
107. Certain life prisoners had the punishment element of their sentence fixed previously by a judge under the law as it stood before this Act. Provision is made to enable those prisoners to waive their right to the hearing provided they confirm they have had independent legal advice or have declined the opportunity to take such advice and the Scottish Ministers receive a written copy of the waiver.
108. Provision is also made to enable a report from the original trial judge to be made available for the purposes of the hearing even if the report was originally prepared on the understanding that it would not be disclosed to the prisoner.
109. [Paragraph 25](#) makes provision for existing life prisoners (other than those released on compassionate grounds in terms of section 3 of the 1993 Act) who have already been released from prison on life licence before the provisions in Part 1 of the schedule to this Act come into force. A prisoner in this category will, on the date the provisions in Part 1 of the schedule come into force, be deemed to be a prisoner who was released on licence under section 2(4) of the 1993 Act (as amended by section 1(3)(d) of this Act) as if that prisoner had been a life prisoner to whom section 2(4) applied and who

*These notes relate to the Convention Rights (Compliance) (Scotland)  
Act 2001 (asp 7) which received Royal Assent on 5 July 2001*

had served the punishment part of his sentence. If a prisoner requires to be recalled to prison for any reason after this he will be treated under the new provisions.

110. [Paragraph 26](#) provides that where an existing life prisoner released on licence is treated, by virtue of paragraph 25, as a prisoner who was released under section 2(4) of the 1993 Act, then the validity of his licence will not be affected by the absence in the licence of such a condition as is specified in section 12(2) of the 1993 Act. Section 12(2) of the 1993 Act contains two standard conditions for inclusion in a prisoner's licence on release from prison. They are that the prisoner shall be under the supervision of a relevant social work authority or probation officer and that he shall comply with such requirements as that officer might specify for the purposes of supervision. It is not a statutory requirement that these conditions appear in the licence of a prisoner released under the 1989 Act, although such conditions do appear in almost all licences issued under the 1989 Act.