



Convention Rights (Compliance) (Scotland) Act 2001

2001 asp 7

PART 1

PRISONERS AND PAROLE

3 Amendment of provisions relating to transferred life prisoners

(1) In section 10 (life prisoners transferred to Scotland) of the 1993 Act—

(a) for subsection (1) there is substituted—

“(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) section 28(1)(a) (duty to release certain life prisoners) of the Crime (Sentences) Act 1997 (c. 43) (in this section, “the 1997 Act”) applies and in respect of whom the court has made an order under section 28(2)(b) of that Act; or

(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;

(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 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,

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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 28(2)(b) or 82A(2) or paragraph 4(1) or made under a provision such as is mentioned in subsection (1A) below, as the case may be.

- (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.”;
- (b) for subsection (2) there is substituted the following—
- “(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.
- (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

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- (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).

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- (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).”;
- (c) in subsection (3)—
- (i) for “sections 1(4) and 2(9)” there is substituted “section 2(9)”;
 - (ii) in paragraph (a), the word “designated” is repealed; and
 - (iii) in paragraph (b), for “designated” there is substituted “punishment” and for the word “certificate” there is substituted “order under subsection (2J) above”;
- (d) in subsection (4), in paragraph (b)—
- (i) in sub-paragraph (i), after “1997” there is inserted “, other than an order for a restricted transfer within the meaning of paragraph 6(1) of that Schedule to that Act,”; and
 - (ii) after sub-paragraph (i) there is inserted—
 - “(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
 - (ib) a decision of the responsible authority under section 81 (removal to Scotland of patients from Northern Ireland) of the Mental Health (Scotland) Act 1984 (c. 36) authorising the prisoner’s removal to Scotland from Northern Ireland; or”;
- (e) in subsection (5)—
- (i) in paragraph (a), the word “designated” is repealed; and
 - (ii) in paragraph (b)—
 - (A) for “28” there is substituted “28(2)”;
 - (B) after “1997” there is inserted “section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), 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”; and
 - (C) for “certificate under subsection (2)” there is substituted “order under subsection (2J)” and for “relevant” there is substituted “punishment”.
- (2) After section 10 of the 1993 Act there is inserted—

“10A Transfer of supervision of life prisoners

- (1) This section applies to a life prisoner released on licence in respect of whom, whether before or after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), an order was

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made under paragraph 4 of Schedule 1 to the Crime (Sentences) Act 1997 (c. 43) transferring responsibility for his supervision to the Scottish Ministers and ordering that the supervision or, as the case may be, the remainder of it be undergone in Scotland, that order being an unrestricted transfer within the meaning of paragraph 6(1) of that Schedule.

- (2) This Part of this Act—
- (a) shall apply to such a life prisoner, except one released on compassionate grounds, as if that prisoner had served the punishment part of his life sentence and had been released on licence under section 2(4) of this Act;
 - (b) shall apply to such a life prisoner released on compassionate grounds as if that prisoner had been released on licence under section 3 of this Act.
- (3) If, in the case of such a life prisoner released on compassionate grounds—
- (a) the Scottish Ministers revoke that life prisoner’s licence and recall him to prison under section 17(1) of this Act; and
 - (b) the Parole Board does not, under section 17(4) of this Act, direct that he be immediately released on licence,
- section 10 of this Act shall apply to the life prisoner as it applies to a transferred life prisoner within the meaning of section 10 whose transfer occurred after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001.
- (4) References in this section to a life prisoner’s release on compassionate grounds are references to his release under section 30 of the 1997 Act or under equivalent provision made for Northern Ireland such as is mentioned in subsection (5) below.
- (5) The provision referred to in subsection (4) 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) governing the release of life prisoners on compassionate grounds; 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.”

(3) Paragraph 7 of Schedule 6 to the 1993 Act is repealed.