

# **CRIMINAL JUSTICE (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **THE ACT THE ACT IS IN 12 PARTS.**

#### **Part 4 – Prisoners**

##### **Release of prisoners**

##### ***Section 38 – Special provision in relation to children***

183. **Section 38** amends section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). Section 7 provides for the early release of children who are sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on indictment) to determinate periods of detention. Such children are treated in a comparable manner to adults except that there is no minimum period to be served before they can be considered for discretionary release, on the recommendation of the Parole Board; and that they are all issued with a licence on release, even if serving less than 4 years, so that social work supervision is available to assist their resettlement in the community.
184. The definition of a child is the same as that in the 1995 Act, namely a person:
- (i) who has not attained the age of 16 years;
  - (ii) over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision order is in force; or
  - (iii) whose case has been referred to a children’s hearing by virtue of section 33 of the Children (Scotland) Act 1995.
185. The amendments made by this section of the Act to the statutory regime governing the early release of children on licence are in line with to the changes proposed for adult prisoners by sections 28, 35 and 36 of the Act. In particular, it will be a matter for the Parole Board to decide whether a child sentenced under section 208 of the 1995 Act to a determinate term of detention should be released early on licence, and it will also be for the Board to decide whether the licence under which such a person has been released should be revoked (though in exceptional cases this decision may be taken by the Scottish Ministers without a recommendation of the Board). Certain licence conditions may also be suspended if, during the currency of the licence, the child is lawfully detained without the licence being revoked. In addition, if a child is ordered to be returned to detention for committing an offence following release but in the period during which, but for his or her early release, the child would still be serving a sentence, such an order is no longer to have the effect of revoking the licence (if it is still current).