

CRIMINAL CASES (PUNISHMENT AND REVIEW) (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Punishment part of non-mandatory life sentences

Section 1 – Setting the punishment part

4. Section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ('the 1993 Act') makes provision regarding the duty to release discretionary life prisoners. Section 1 of the Act makes various amendments to section 2 of the 1993 Act.
5. At present, section 2(2)(aa) of the 1993 Act provides the existing framework that courts use in setting the 'punishment part' of discretionary life sentences and any Order for Lifelong Restriction ('OLR' – see section 210F of the Criminal Procedure (Scotland) Act 1995). The punishment part of non-mandatory life sentences (i.e. either a discretionary life sentence or an OLR) is the period of time an offender must spend in prison before they become eligible to apply for parole.
6. [Section 1\(2\)](#) of the Act makes various changes to section 2(2) of the 1993 Act. Section 1(2)(b) and (c) of the Act repeals section 2(2)(aa) of the 1993 Act and replaces it with new section 2(2)(d) providing that a court, when determining the punishment part of a non-mandatory life sentence, is to follow the rules laid out in new section 2A(1) of the 1993 Act (as being inserted by section 1(3) of the Act).
7. [Section 1\(2\)\(a\)](#) and (d) of the Act inserts (with a consequential change) new section 2(2A) into the 1993 Act and this new section retains the matters mentioned in existing section 2(2)(a) to (c) of the 1993 Act for application in fixing the punishment part of a sentence of all offenders who receive mandatory sentences of life imprisonment i.e. for murder or any other offence for which life imprisonment is the sentence fixed by law.
8. [Section 1\(3\)](#) of the Act inserts new section 2A into the 1993 Act. New section 2A provides the rules by which the court is to set the punishment part of non-mandatory life sentences.
9. New section 2A(1)(a) provides that the court must firstly assess the period of imprisonment which the court considers would have been appropriate for the offence had the prisoner not been sentenced to a non-mandatory life sentence. New section 2A(2)(a) provides that in considering the period of imprisonment under new section 2A(1)(a), the court must ignore any period of confinement which may be necessary for the protection of the public.
10. New section 2A(1)(b) provides that the court must then assess the part of that period of imprisonment which would represent an appropriate period to satisfy the requirements of retribution and deterrence. New section 2A(2)(b) provides that new section 2A(1)(b) is subject to the requirements of new section 2B.

11. New section 2B(1) provides that the part of the period of imprisonment is to either be one-half of the period specified under new section 2A(1)(a) or a greater proportion of the period specified under new section 2A(1)(a). However, a greater proportion than one-half can only be specified if new section 2B(2) applies. New section 2B(2) provides that the court can specify a greater proportion of the period specified under new section 2A(1)(a) if it considers it appropriate to do so having considered, in particular, the matters specified in new section 2B(5).
12. New section 2B(5)(a) to (c) provides that the matters are:
 - the seriousness of the offence, or the offence combined with other offences of which the prisoner is convicted on the same indictment as that offence;
 - where the offence was committed where the prisoner was serving a period of imprisonment for another offence; and
 - any previous convictions of the prisoner.

(In considering these matters, the court is still not to take into account any period of confinement which may be necessary for the protection of the public.)
13. New section 2B(3) provides that the court can specify a greater proportion of the period under new section 2A(1)(a) up to and including the whole of that period. New section 2B(4) provides that references in new sections 2B(1) to (3) to the period mentioned in new section 2A(1)(a) are references to that period as informed by new section 2A(2)(a) (i.e. ignoring any period of confinement which may be necessary for the protection of the public).
14. The combined effect of new sections 2A(1)(c) and 2A(2)(c) is to provide that the required consideration by the court as to whether and at what level any sentence discount for an early guilty plea is appropriate is to be left until after the court has made the assessment under new section 2A(1)(a) and (b).
15. [Sections 1\(4\) to \(6\)](#) of the Act make a number of amendments to section 20 of the Custodial Sentences and Weapons (Scotland) Act 2007 ('the 2007 Act') and introduces new section 20A into the 2007 Act. Section 20 of the 2007 Act contains as yet uncommenced provisions relating to the setting of punishment part of life sentences. The purpose of sections 1(4) to (6) of the Act is to make similar changes to the 2007 Act as are being made to the existing 1993 Act framework for the setting of punishment parts of life sentences by sections 1(1) to (3) of the Act. When the provisions in Part 1 of the 2007 Act are brought into force, part 1 of the 1993 Act will be repealed. The changes contained in sections 1(4) to (6) make a number of necessary changes to the 2007 Act so that when they are commenced along with the rest of the as yet uncommenced provisions in the 2007 Act, the system for setting punishment parts of life sentences as provided for in the 1993 Act and amended by the Act will continue in the same manner within the 2007 Act.

[Section 2 – Ancillary provision](#)

16. [Section 2](#) of the Act provides for a regulation-making power for the Scottish Ministers to make such supplemental, incidental, consequential, transitional, transitory or saving provisions as they consider necessary or expedient for the purpose of, or in connection with, section 1. The power covers modification to Part 1 of the 1993 Act or Part 2 of the 2007 Act for this purpose. Any regulations made under the power will be subject to the affirmative procedure.