



# Criminal Cases (Punishment and Review) (Scotland) Act 2012

2012 asp 7

## PART 1

### PUNISHMENT PART OF NON-MANDATORY LIFE SENTENCES

#### 1 Setting the punishment part

(1) Part 1 (detention, transfer and release of offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

(2) In section 2 (duty to release discretionary life prisoners), in subsection (2)—

- (a) in the opening text, the words “(ignoring the period of confinement, if any, which may be necessary for the protection of the public)” are repealed,
- (b) paragraph (aa) and the word “and” immediately preceding paragraph (c) are repealed,
- (c) after paragraph (c) there is inserted “; and
- (d) in the case of a life prisoner to whom paragraph (a) or (ab) of subsection (1) above applies, the matters mentioned in section 2A(1).”;

(d) after subsection (2) there is inserted—

“(2A) The matters mentioned in subsection (2)(a) to (c) above (taken together) are for the case of a life prisoner to whom paragraph (aa) of subsection (1) above applies; and, as respects the punishment part in the case of such a prisoner, the court is to ignore any period of confinement which may be necessary for the protection of the public.”.

(3) After section 2 there is inserted—

#### “2A Rules for section 2(2)(d) cases

(1) For the purpose of section 2(2)(d), the matters are—

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- (a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not sentenced the prisoner to imprisonment for life, or (as the case may be) not made the order for lifelong restriction, for it,
- (b) the part of that period of imprisonment which would represent an appropriate period to satisfy the requirements of retribution and deterrence, and
- (c) where appropriate, the ones mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.

(2) But—

- (a) in the application of subsection (1)(a), the court is to ignore any period of confinement which may be necessary for the protection of the public,
- (b) subsection (1)(b) is subject to section 2B,
- (c) subsection (1)(c) is inapplicable until the court has made the assessment required by virtue of subsection (1)(a) and (b).

#### **2B Assessment under section 2A(1)(a) and (b)**

- (1) The part mentioned in subsection (1)(b) of section 2A in relation to the period mentioned in subsection (1)(a) of that section is—
  - (a) one-half of that period, or
  - (b) if subsection (2) applies, such greater proportion of that period as the court specifies.
- (2) This subsection applies if, taking into account in particular the matters mentioned in subsection (5), the court considers that it would be appropriate to specify as that part a greater proportion of that period.
- (3) In subsections (1)(b) and (2), the references to a greater proportion extend so as to include the whole of that period.
- (4) In subsections (1) to (3), the references to the period mentioned in subsection (1)(a) of section 2A are to that period as informed by subsection (2) (a) of that section.
- (5) For the purpose of subsection (2), the matters are (continuing to ignore any period of confinement which may be necessary for the protection of the public)—
  - (a) the seriousness of the offence, or of the offence combined with other offences of which the prisoner is convicted on the same indictment as that offence,
  - (b) where the offence was committed when the prisoner was serving a period of imprisonment for another offence, that fact, and
  - (c) any previous conviction of the prisoner.”.
- (4) Part 2 (confinement and release of prisoners) of the Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (5) In section 20 (setting of punishment part)—
  - (a) in subsection (3), the words “(ignoring any period of confinement which may be necessary for the protection of the public)” are repealed,

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- (b) after subsection (4) there is inserted—
- “(4A) As respects the punishment part in the case to which subsection (4) relates, the court is to ignore any period of confinement which may be necessary for the protection of the public.”,
- (c) in subsection (5)—
- (i) the word “and” immediately preceding paragraph (b) is repealed,
- (ii) in paragraph (b), for the words “, by virtue of section 6, the court would have specified as the custody part.” there is substituted “would represent an appropriate period to satisfy the requirements of retribution and deterrence.”,
- (iii) after paragraph (b) there is inserted “and
- (c) where appropriate, the ones mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.”,
- (d) after subsection (5) there is inserted—
- “(5A) But—
- (a) in the application of subsection (5)(a), the court is to ignore any period of confinement which may be necessary for the protection of the public,
- (b) subsection (5)(b) is subject to section 20A,
- (c) subsection (5)(c) is inapplicable until the court has made the assessment required by virtue of subsection (5)(a) and (b).”.

- (6) After section 20 there is inserted—

**“20A Assessment under section 20(5)(a) and (b)**

- (1) The part mentioned in subsection (5)(b) of section 20 in relation to the period mentioned in subsection (5)(a) of that section is—
- (a) one-half of that period, or
- (b) if subsection (2) applies, such greater proportion of that period as the court specifies.
- (2) This subsection applies if, taking into account in particular the matters mentioned in subsection (5), the court considers that it would be appropriate to specify as that part a greater proportion of that period.
- (3) In subsections (1)(b) and (2), the references to a greater proportion extend so as to include the whole of that period.
- (4) In subsections (1) to (3), the references to the period mentioned in subsection (5)(a) of section 20 are to that period as informed by subsection (5A)(a) of that section.
- (5) For the purpose of subsection (2), the matters are (continuing to ignore any period of confinement which may be necessary for the protection of the public)—
- (a) the seriousness of the offence, or of the offence combined with other offences of which the prisoner is convicted on the same indictment as that offence,
- (b) where the offence was committed when the prisoner was serving a period of imprisonment for another offence, that fact, and

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(c) any previous conviction of the prisoner.”.