

SCHEDULE TRANSITIONAL PROVISIONS

PART 3

EXISTING LIFE PRISONERS RECOMMENDED FOR RELEASE

- 31 This Part of this schedule applies to an existing life prisoner—
- (a) in respect of whom, before the relevant date, the Parole Board has recommended a provisional release date on which the prisoner should be released on licence under the 1989 Act or the 1993 Act;
 - (b) whose case has not been the subject of a hearing under paragraph 12 above; and
 - (c) to whose release neither the Lord Justice General, whom failing the Lord Justice Clerk, nor, if available, the trial judge objects.
- 32 In this Part of this schedule—
- “existing life prisoner” means a person who is an existing life prisoner for the purposes of Part 1 of this schedule by virtue only of paragraph 1(a) above;
 - “provisional release date” means, where that date has been fixed by reference to a month but not to a specific day in the month, the first day of that month, and, where that date would (but for this provision) be a Saturday, Sunday or public holiday and the prisoner would fall to be released then, means the last preceding day which is not a Saturday, Sunday or public holiday;
 - “public holiday” has the meaning given by section 27(8) of the 1993 Act;
 - “punishment part” has the same meaning as it has in Part 1 of this schedule;
 - “relevant date” means the date when this Part of this schedule comes into force.
- 33 If the Scottish Ministers have fixed a provisional release date in respect of the prisoner, the prisoner shall on that date be released on licence as if the prisoner had been a life prisoner to whom section 2(4) of the 1993 Act applied and had served the punishment part of his or her sentence.
- 34 If, however, the Scottish Ministers, having regard to the need to protect the public, are of the view, at any time between the time when they fixed the provisional release date for the prisoner and that date, that the prisoner’s conduct has been such that or that there has been a material change of circumstances such that the Parole Board should review the recommendation to release the prisoner on licence, they may refer to the Board the question of such release in the light of that conduct or that change of circumstances.
- 35 Such a review as is referred to in paragraph 34 above is, for the purposes of section 20 of the 1993 Act, within the functions of the Parole Board.
- 36 The Parole Board shall carry out such a review as is referred to in paragraph 34 above or 38 below as soon as is reasonably practicable after the question there mentioned is referred to the Board by the Scottish Ministers.
- 37 On such a review, the Parole Board shall either—
- (a) direct that the provisional release date fixed for the prisoner be adhered to and that he or she be released then in accordance with paragraph 33 above or, if the direction is made on or after that provisional release date, that the prisoner be released as soon as reasonably practicable after the direction is made in accordance with paragraph 39 below; or

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- (b) direct that the provisional release date so fixed no longer applies.
- 38 Notwithstanding that the Parole Board has made a direction under paragraph 37(a) above, the Scottish Ministers, if they are of the view that, having regard to the need to protect the public, at any time between the time of that direction and the provisional release date, the prisoner's conduct has been such that or that there has been a material change of circumstances such that the Parole Board should review that direction, may refer the question of such release to the Parole Board in the light of that conduct or that change of circumstances; and paragraphs 35 to 37 above and paragraphs 39 and 40 below shall apply to such a referral as they apply to a referral under paragraph 34.
- 39 Where the Parole Board has made a direction under paragraph 37(a) above in respect of a prisoner on or after the provisional release date fixed in respect of that prisoner, the Scottish Ministers shall release the prisoner on licence as soon as reasonably practicable after that direction is made; and paragraph 33 above shall apply to the prisoner as if the prisoner had been released on the provisional release date.
- 40 Notwithstanding that the Parole Board has made a direction under paragraph 37(b) above, the punishment part of the prisoner's sentence shall be regarded as having been served as at the end of the day immediately before the provisional release date and section 2 of the 1993 Act as amended by this Act shall apply to the prisoner as if an order such as mentioned in subsection (2) of that section had been made in respect of the prisoner when sentenced.
- 41 If the Scottish Ministers have not fixed a provisional release date in respect of the prisoner, then, subject to paragraphs 34 to 40 above, the prisoner shall be released on the provisional release date recommended by the Parole Board as if released on licence under section 2(4) of the 1993 Act as a life prisoner to whom that section applied and who had served the punishment part of his or her sentence.
- 42 If, however, the Scottish Ministers, having regard to the need to protect the public, are of the view that the Parole Board should consider afresh whether the prisoner should be released, they may refer to the Board the question of such release in the light of that need.
- 43 No such reference shall be made after the expiry of two weeks beginning with the relevant date.
- 44 The consideration and disposal of such a reference is, for the purposes of section 20 of the 1993 Act, within the functions of the Parole Board.
- 45 The Parole Board shall carry out such a review as is referred to in paragraph 42 above as soon as is reasonably practicable after the question there mentioned is referred to the Board by the Scottish Ministers.
- 46 On such a reference, the Parole Board shall either—
- (a) direct that the recommended provisional release date be adhered to and that the prisoner be released then or, if the direction is made on or after that recommended provisional release date, that the prisoner be released as soon as reasonably practicable after the direction is made in accordance with paragraph 48 below; or
 - (b) direct that the recommended provisional release date no longer applies.
- 47 Notwithstanding that the Parole Board has made a direction under paragraph 46(b) above, the punishment part of the prisoner's sentence shall be regarded as

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having been served as at the end of the day immediately before the recommended provisional release date and section 2 of the 1993 Act as amended by this Act shall apply to the prisoner as if an order such as is mentioned in subsection (2) of that section had been made in respect of the prisoner when sentenced.

- 48 Where the Parole Board has made a direction under paragraph 46(a) above in respect of a prisoner on or after the recommended provisional release date, the Scottish Ministers shall release the prisoner on licence as soon as reasonably practicable after that direction is made; and paragraph 41 above shall apply to the prisoner as if the prisoner had been released on the provisional release date.