

## SCHEDULE TRANSITIONAL PROVISIONS

### PART 4

#### TRANSFERRED LIFE PRISONERS

- 49 This Part of this schedule applies to—
- (a) a life prisoner to whom subsection (1) of section 10 of the 1993 Act applied and in respect of whom the Secretary of State has issued a certificate under section 28(4) of the Crime (Sentences) Act 1997 (c. 43);
  - (b) a life prisoner to whom subsection (2), but not subsections (1) or (3), of section 10 of the 1993 Act applied; or
  - (c) a life prisoner to whom subsections (2) and (3) of that section applied, including one to whom those subsections applied by virtue of paragraph 7 of Schedule 6 to that Act,
- and who was transferred to Scotland before the relevant date; and the references in this paragraph to section 10 of the 1993 Act are references to that section as it had effect at the time the prisoner was so transferred.
- 50 In this Part of this schedule—
- “existing transferred life prisoner” means a life prisoner to whom this Part of this schedule applies by virtue of paragraph 49 above;
  - “incapable”, “life prisoner”, “mental disorder” and “punishment part” have respectively the same meanings as they have in Part 1 of this schedule;
  - “relevant date” means the date when this Part of this schedule comes into force.
- 51 The Scottish Ministers shall, as soon as reasonably practicable after the relevant date, refer the case of an existing transferred life prisoner to the High Court of Justiciary for a hearing under paragraph 59 below.
- 52 The Scottish Ministers shall not so refer the case of an existing transferred life prisoner to whom Part 3 of this schedule applies if the prisoner has, under paragraph 54 below, waived the entitlement to such a hearing.
- 53 The Scottish Ministers shall not so refer the case of an existing transferred life prisoner to whom paragraph 49(c) above applies if the prisoner—
- (a) has, under paragraph 54 below, waived the entitlement to such a hearing; or
  - (b) has served the part of the sentence specified in the certificate referred to in sub-paragraph (c) of paragraph 57 below issued in respect of that prisoner.
- 54 An existing transferred life prisoner to whom Part 3 of this schedule or paragraph 49(c) above applies may waive the entitlement to a hearing under paragraph 59 below provided—
- (a) the prisoner has had independent legal advice or has declined such advice; and
  - (b) a copy in writing of the waiver is sent to the Scottish Ministers.
- 55 Notwithstanding paragraph 51 above, an existing transferred life prisoner—
- (a) who has not, under paragraph 54 above, waived the entitlement to a hearing; or

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- (b) who has not served the part of the sentence specified in the certificate referred to in sub-paragraph (c) of paragraph 57 below issued in respect of that prisoner,  
may refer his or her case for a hearing under paragraph 59 below.
- 56 The Scottish Ministers shall, no later than two weeks after the referral of an existing transferred life prisoner's case under paragraph 51 or 55 above, send the documents and other information mentioned in paragraph 57 below to—
- (a) the High Court of Justiciary;
  - (b) the Lord Advocate; and
  - (c) the existing transferred life prisoner.
- 57 The documents and other information referred to in paragraph 56 above are—
- (a) a copy of any indictment or corresponding document;
  - (b) subject to paragraph 58 below, a copy of any report by the trial judge;
  - (c) a copy of any certificate under—
    - (i) section 10(2) of the 1993 Act;
    - (ii) section 48 of or paragraph 9 of Schedule 12 to the Criminal Justice Act 1991 (c. 53); or
    - (iii) section 28(4) or 33 of the Crime (Sentences) Act 1997 (c. 43);
  - (d) any other documents or information which the Scottish Ministers consider relevant.
- 58 A report prepared by the trial judge—
- (a) may be sent under paragraph 56 above notwithstanding that it was prepared on the basis that it would not be disclosed to the existing transferred life prisoner; and
  - (b) shall be so sent for the purposes only of the hearing under paragraph 59 below.
- 59 There shall be a hearing, at which the High Court of Justiciary shall make the order referred to in paragraph 60 below.
- 60 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 the 1993 Act, if—
- (a) the prisoner had been sentenced for the offence in Scotland; and
  - (b) that section, as amended by this Act, had been in force at the time when the prisoner was sentenced.
- 61 It shall not be a ground of appeal in relation to the part of the sentence specified in the order made under paragraph 59 above that the court had regard to—
- (a) any certificate referred to in paragraph 57(c) above;
  - (b) in the case of a prisoner transferred to Scotland from England and Wales, any recommendation made by the Lord Chief Justice to the Secretary of State as to the period of the life sentence that the prisoner should be required to serve before becoming eligible for release on licence;
  - (c) any other certificate issued or any recommendation, declaration, decision, direction or order made in respect of the prisoner, under any enactment applying in any part of the United Kingdom or in the Channel Islands or the Isle of Man, as to the period that the prisoner should or must serve before becoming eligible for release on licence.

- 62 The court shall pronounce the order under paragraph 59 above in open court.
- 63 If the court is satisfied that the existing transferred life prisoner is incapable of properly instructing a solicitor in relation to the hearing under paragraph 59 above, whether or not the prisoner has so instructed a solicitor, it shall not make the order under that paragraph.
- 64 If the Scottish Ministers are satisfied that the prisoner is no longer incapable of instructing a solicitor in relation to the hearing under paragraph 59 above, they shall, as soon as reasonably practicable thereafter, refer the case of the prisoner to the court for such a hearing.
- 65 Nothing in this Part of this schedule shall be taken as preventing a prisoner, in respect of whom the court declined, under paragraph 63 above, to make the order under paragraph 59 above, from again referring his or her case for a hearing under paragraph 59 above.
- 66 Where the court has made an order under paragraph 59 above—
- (a) Part 1 of the 1993 Act, except section 2(9), as amended by this Act shall apply to the existing transferred life prisoner as if—
    - (i) the existing transferred life prisoner were a life prisoner within the meaning of section 2 of that Act; and
    - (ii) the punishment part of that prisoner’s sentence within the meaning of that section were the part specified in the order under paragraph 59 above; and
  - (b) any certificate such as is referred to in sub-paragraph (c) of paragraph 57 above shall have no further effect.
- 67 Where, however, the existing transferred life prisoner has waived, under paragraph 54 above, the entitlement to a hearing under paragraph 59 above, section 10(3) of the 1993 Act shall apply to the prisoner as if the prisoner were a life prisoner and as if the part of the prisoner’s sentence specified in the certificate mentioned in sub-paragraph (c) of paragraph 57 above were the punishment part.
- 68 A hearing under paragraph 59 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).
- 69 The court, in considering the case of an existing 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 or corresponding document,
- shall, in making the order under paragraph 59 above, proceed as if the prisoner had been sentenced in Scotland and section 205D of the 1995 Act had been in force at the time the prisoner was sentenced.
- 70 In the case of an existing transferred life prisoner—
- (a) whose case was, before the relevant date, referred to the Parole Board under section 2 or 17(3) of the 1993 Act and, in respect of whom, the Board declined to direct the prisoner’s release on licence; or
  - (b) who was, before the relevant date, recalled to prison under section 17(1) of the 1993 Act and not thereafter released,
- the Board shall, as soon as reasonably practicable after the relevant date, fix the date when it will next consider the prisoner’s case, being a date no later than two years after the date of its decision to decline to direct the release of the prisoner or

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the date when the prisoner was recalled to prison, whichever is the later; and the date so fixed shall be treated as fixed under section 2(5A)(b) of the 1993 Act.

- 71 The references in sub-paragraphs (a) and (b) of paragraph 70 above to sections 2 and 17 of the 1993 Act are references to those sections as they had effect immediately before the relevant date.
- 72 An existing transferred life prisoner to whom paragraph 49(b) above applies and who, before the relevant date, has been or is released on licence (otherwise than under section 3 of the 1993 Act (release on compassionate grounds)) shall, at the relevant date, be deemed to have been released on licence under section 2(4) of the 1993 Act as if that prisoner had been a life prisoner to whom that section applied and who had served the punishment part of his or her sentence.
- 73 Where such an existing transferred life prisoner released on licence is treated by virtue of paragraph 72 above as a prisoner whose licence was granted under section 2(4) of the 1993 Act, the validity of his or her licence shall not be affected by the absence in the licence of such a condition as is specified in section 12(2) of that Act.
- 74 Part 3 of this schedule applies to an existing transferred life prisoner to whom paragraph 49(b) above applies as it applies to an existing life prisoner of the kind mentioned in paragraph 31 above with the substitution in paragraph 31(b) above of a reference to a hearing under paragraph 59 above for the reference to a hearing under paragraph 12 above.