



# Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

## PART 2

### CONFINEMENT AND RELEASE OF PRISONERS

#### CHAPTER 2

##### CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

###### *Life prisoners*

PROSPECTIVE

#### **20**      **Setting of punishment part**

- (1) This section applies where the court imposes on a person a life sentence.
- (2) After imposing the sentence, the court must make an order specifying the punishment part of the sentence.
- (3) The punishment part is that part of the person's life sentence which, taking into account—
  - (a) in the case of a mandatory life sentence, the matters mentioned in subsection (4),
  - (b) in the case of a discretionary life sentence or an order for lifelong restriction under section 210F of the 1995 Act, the matters mentioned in subsection (5),the court considers appropriate to satisfy the requirements for retribution and deterrence<sup>F1</sup>....
- (4) Those matters are—
  - (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment as that offence,

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- (b) any previous conviction of the person, and
- (c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.

[<sup>F2</sup>(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.]

(5) Those matters are—

- (a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not imposed a sentence, or made an order, such as is mentioned in subsection (3)(b) for the offence, <sup>F3</sup>...
- (b) the part of that period of imprisonment which [<sup>F4</sup>would represent an appropriate period to satisfy the requirements of retribution and deterrence,][<sup>F5</sup>and]
- [<sup>F5</sup>(c) where appropriate, the ones mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.]

[<sup>F6</sup>(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) An order specifying a punishment part must specify the punishment part in years and months.
- (7) It does not matter that a punishment part so specified may exceed the remainder of the person's natural life.
- (8) An order specifying a punishment part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

#### Textual Amendments

- F1** Words in s. 20(3) repealed (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 1(5)(a)**, 5(2); S.S.I. 2012/249, art. 2
- F2** S. 20(4A) inserted (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 1(5)(b)**, 5(2); S.S.I. 2012/249, art. 2
- F3** Word in s. 20(5)(a) repealed (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 1(5)(c)(i)**, 5(2); S.S.I. 2012/249, art. 2
- F4** Words in s. 20(5)(b) substituted (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 1(5)(c)(ii)**, 5(2); S.S.I. 2012/249, art. 2
- F5** S. 20(5)(c) and word preceding it inserted (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 1(5)(c)(iii)**, 5(2); S.S.I. 2012/249, art. 2
- F6** S. 20(5A) inserted (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 1(5)(d)**, 5(2); S.S.I. 2012/249, art. 2

#### Modifications etc. (not altering text)

- C1** Pt. 2 power to modify conferred (24.9.2012) by *Criminal Cases (Punishment and Review) (Scotland) Act 2012* (asp 7), **ss. 2(2)**, 5(2); S.S.I. 2012/249, art. 2

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## [<sup>F7</sup>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
  - (c) any previous conviction of the prisoner.]

### Textual Amendments

- F7** S. 20A inserted (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), ss. 1(6), 5(2); S.S.I. 2012/249, art. 2

PROSPECTIVE

## 21 Referral to Parole Board

Before the expiry of the punishment part of a prisoner's life sentence, the Scottish Ministers must refer the prisoner's case to the Parole Board.

PROSPECTIVE

## 22 Review by Parole Board

- (1) Subsection (2) applies where a life prisoner's case is referred to the Parole Board under section 21.
- (2) Before the expiry of the punishment part of the prisoner's life sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.
- (3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

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PROSPECTIVE

### **23 Release on life licence following review by Parole Board**

- (1) Subsection (2) applies where the Parole Board determines under section 22(2) or 25(3) that section 22(3) does not apply in respect of a life prisoner.
- (2) The Parole Board must—
  - (a) direct the Scottish Ministers to release the prisoner on life licence, and
  - (b) specify conditions to be included in the prisoner's licence.
- (3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.
- (4) In the case of a determination under section 22(2) the direction must be implemented on the expiry of the punishment part of the prisoner's sentence.

PROSPECTIVE

### **24 Determination that section 22(3) applicable: consequences**

- (1) This section applies where the Parole Board determines under section 22(2) or 25(3) that section 22(3) applies in respect of a life prisoner.
- (2) The Parole Board must—
  - (a) give the prisoner reasons in writing for its determination, and
  - (b) fix the date on which it will next consider the prisoner's case.
- (3) Subject to section 26, the date fixed under subsection (2)(b) must fall within the period—
  - (a) beginning with the day falling 4 months after the day of the determination, and
  - (b) ending immediately before the second anniversary of the day of the determination.
- (4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).
- (5) On the prisoner's request, the Board may, if it considers it appropriate to do so, replace that date by fixing under subsection (2)(b) an earlier date when it will next consider the prisoner's case.

PROSPECTIVE

### **25 Further referral to Parole Board**

- (1) This section applies where the Parole Board fixes a date under section 24(2)(b) for considering a prisoner's case.
- (2) The Scottish Ministers must refer the prisoner's case to the Parole Board before that date.

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(3) The Parole Board must determine whether section 22(3) applies in respect of the prisoner.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 29A inserted by [2010 asp 13 s. 18\(6\)](#)
- s. 42A inserted by [2010 asp 13 Sch. 3 para. 6](#)
- s. 45(1)(za)(zb) inserted by [2010 asp 13 Sch. 3 para. 7\(2\)](#)
- s. 46A inserted by [2010 asp 13 s. 18\(7\)](#)
- s. 47(3A) inserted by [2010 asp 13 s. 18\(8\)\(c\)](#)
- s. 47(8)(a)(b) substituted for words by [2010 asp 13 s. 18\(8\)\(e\)](#)
- s. 51(1A) inserted by [2010 asp 13 Sch. 3 para. 9\(3\)](#)
- Sch. 2 para. 1(4) added by [2010 asp 13 Sch. 3 para. 13\(3\)\(c\)](#)
- Sch. 2 para. 7(1A) inserted by [2010 asp 13 Sch. 3 para. 13\(8\)](#)
- Sch. 3 para. 2A inserted by [2010 asp 13 Sch. 3 para. 14\(3\)](#)
- Sch. 3 para. 3(3) inserted by [2010 asp 13 Sch. 3 para. 14\(4\)\(b\)](#)
- Sch. 3 para. 3A inserted by [2010 asp 13 Sch. 3 para. 14\(5\)](#)
- Sch. 3 para. 5(4A) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(d\)](#)
- Sch. 3 para. 5(6) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(e\)](#)