



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

2012 asp 7

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th June 2012 and received Royal Assent on 26th July 2012**

An Act of the Scottish Parliament to amend the rules about the punishment part of non-mandatory life sentences imposed in criminal cases and to amend the rules about the disclosure of information obtained by the Scottish Criminal Cases Review Commission.

## 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the words “(ignoring the period of confinement, if any, which may be necessary for the protection of the public)” are repealed,
- (b) paragraph (aa) and the word “and” immediately preceding paragraph (c) are repealed,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—
- (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.”.

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(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,
- (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.

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- (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.”.

## 2 Ancillary provision

- (1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with section 1.
- (2) Regulations under subsection (1) may (in particular) modify Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 or Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.

## PART 2

### DISCLOSURE OF INFORMATION OBTAINED BY SCCRC

## 3 Exception to non-disclosure rule

- (1) Part XA (Scottish Criminal Cases Review Commission) of the Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 194J (offence of disclosure), in subsections (1) and (2), after the words “section 194K” in each place where they occur there is inserted “or 194M”.
- (3) After section 194L there is inserted—

*“Special circumstances for disclosure*

### **194M Further exception to section 194J**

- (1) The disclosure of information, or the authorisation of disclosure of information, is excepted from section 194J by this section if—
  - (a) the conditions specified in subsection (2) are met, and
  - (b) the Commission have determined that it is appropriate in the whole circumstances for the information to be disclosed.
- (2) The conditions are that—
  - (a) the information relates to a case that has been referred to the High Court under section 194B(1),
  - (b) the reference concerns—

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- (i) a conviction, or
- (ii) a finding under section 55(2), and
- (c) the case has fallen, or has been abandoned, under the provisions or other rules applying by virtue of section 194B(1).

#### **194N Effect of the exception**

- (1) Where the disclosure of information is excepted from section 194J by section 194M, the disclosure of the information is not prevented by any obligation of confidentiality or other limitation on disclosure arising otherwise than under section 194J.
- (2) For the purpose of subsection (1), such an obligation or limitation does not include one imposed—
  - (a) by, under or by virtue of any enactment, or
  - (b) by any interdict or other court order applying in connection with this section.

#### **194O Notification and representations etc.**

- (1) When considering for the purpose of section 194M(1) the question of whether it is appropriate for the information to be disclosed, the Commission have the following duties.
- (2) The Commission must—
  - (a) so far as practicable, take reasonable measures to—
    - (i) notify each of the affected persons of the possibility that the information may be disclosed, and
    - (ii) seek the views of each of them on the question, and
  - (b) to such extent (and in such manner) as they think fit, consult the other interested persons.
- (3) The Commission must—
  - (a) allow the prescribed period for each of the affected and other interested persons involved to take steps (including legal action) in their own favour in relation to the question, and
  - (b) have regard to any material representations made to them on the question by any of those affected and other interested persons within the prescribed period.
- (4) The Commission must have regard to any other factors that they believe to be significant in relation to the question.
- (5) In subsections (2) and (3)—
  - (a) the references to the affected persons are to the persons—
    - (i) to whom the information directly relates, or
    - (ii) from whom the information was obtained, whether directly or indirectly,
  - (b) the references to the other interested persons are to (so far as not among the affected persons)—
    - (i) the Lord Advocate, and

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- (ii) such additional persons (if any) as appear to the Commission to have a substantial interest in the question.
- (6) In subsection (3), the references to the prescribed period in relation to a particular person are to—
  - (a) the period of 6 weeks, or
  - (b) such longer period as the Commission may set,starting with the date on which the notification was sent to, or (as the case may be) consultation was initiated with respect to, the person.
- (7) Subsections (3) and (6) are inapplicable in relation to a particular person if the Commission cannot reasonably ascertain the person’s whereabouts.

#### **194P Consent if UK interest**

- (1) Unless subsection (3) is complied with, section 194M(1) is of no effect in relation to any information falling within subsection (2).
- (2) Information falls within this subsection if it—
  - (a) is held by the Commission, and
  - (b) at any time, has been supplied by the UK Government under arrangements of any kind.
- (3) This subsection is complied with if, at any time, the UK Government has in connection with section 194M(1) given its consent to disclosure of the information.
- (4) In this section, “the UK Government” means a Minister of the Crown or a department of the Government of the United Kingdom.

#### **194Q Consent if foreign interest**

- (1) Unless subsection (3) is complied with, section 194M(1) is of no effect in relation to any information falling within subsection (2).
- (2) Information falls within this subsection if it—
  - (a) is held by the Commission, and
  - (b) at any time, has been supplied by a designated foreign authority under arrangements of any kind.
- (3) This subsection is complied with if the designated foreign authority has in connection with section 194M(1) given its consent to disclosure of the information, by virtue of—
  - (a) the arrangements concerned, or
  - (b) subsection (4).
- (4) Where not previously given by virtue of those arrangements, it is for the Commission to seek the designated foreign authority’s consent to disclosure of the information.
- (5) Subsection (1) does not apply if the information also falls within section 194P(2).

### **194R Designated foreign authority**

- (1) The references in section 194Q to a designated foreign authority are to a current or previous authority of a prosecutorial, judicial or other character which is or was located within a country or territory outwith the United Kingdom.
- (2) But, if in connection with subsection (4) of that section—
  - (a) the Commission cannot reasonably identify or find the particular authority in question, or
  - (b) they are unsuccessful in their reasonable attempts to communicate with it,the references in subsections (3) and (4) of that section to the designated foreign authority are to be read as if they were to the relevant foreign government.
- (3) In the application of subsection (2), paragraph (a) of subsection (3) of that section is to be ignored.
- (4) In subsection (2)—
  - (a) the references to the Commission include their acting with the Lord Advocate's help,
  - (b) the reference to the relevant foreign government—
    - (i) is to the government of the other country or territory,
    - (ii) in the event of doubt as to the status or operation of a governmental system in the other country or territory, is to be regarded as being to the body described in subsection (5).
- (5) That is, the principal body in it (for the time being (if any)) that is recognised by the Government of the United Kingdom as having responsibility for exercising governmental control centrally.

### **194S Disapplication of sections 194O to 194R**

- (1) Sections 194O to 194R cease to have effect if subsection (2) prevails.
- (2) This subsection prevails where, on their preliminary examination of the question to which section 194O(1) relates, the Commission determine for the purpose of section 194M(1) that it is manifestly inappropriate for the information to be disclosed.
- (3) But—
  - (a) if there is a material change in any significant factor on which the determination depended, it is open to the Commission to re-examine the question (and this is to be regarded as another preliminary examination of the question),
  - (b) where they choose to re-examine the question, the effect of sections 194O to 194R is restored unless subsection (2) again prevails.

### **194T Final disclosure-related matters**

- (1) If the Commission decide in pursuance of section 194M(1) to disclose the information—
  - (a) subsection (2) applies initially, and
  - (b) subsection (3) applies subsequently.
- (2) Before disclosing the information, the Commission must—
  - (a) so far as practicable, take reasonable measures to notify of the decision—
    - (i) each of the affected persons, and
    - (ii) to the same extent as they were consulted under section 194O(2)(b), the other interested persons, and
  - (b) allow the prescribed period for each of the affected and other interested persons involved to take steps (including legal action) in their own favour in relation to the decision.
- (3) In disclosing the information, the Commission must—
  - (a) explain the context in which the information is being disclosed by them (including by describing the background to the case), and
  - (b) where (for any reason) other information relating to the case remains undisclosed by them, explicitly state that fact,  
and do so along with the material by which the disclosure is made.
- (4) In subsection (2), the references to the affected and other interested persons are to be construed in accordance with section 194O(5).
- (5) In subsection (2)(b), the reference to the prescribed period in relation to a particular person is to—
  - (a) the period of 6 weeks, or
  - (b) such longer period as the Commission may set,  
starting with the date on which the notification was sent to the person.
- (6) Subsections (2)(b) and (5) are inapplicable in relation to a particular person if the Commission cannot reasonably ascertain the person's whereabouts.
- (7) In subsection (3)(b), the reference to other information is to any other information obtained by the Commission in the exercise of their functions.”.

### **4 Consequential revocation**

The Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 (S.S.I. 2009/448) is revoked.



### **PART 3**

#### COMMENCEMENT AND SHORT TITLE

##### **5 Commencement**

- (1) This Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

##### **6 Short title**

The short title of this Act is the Criminal Cases (Punishment and Review) (Scotland) Act 2012.