

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1949 (Repealed 1.4.1996), TENTH SCHEDULE. (See end of Document for details)*

## TENTH SCHEDULE

Section 76.

### TRANSITORY PROVISIONS

- 1 Where in any proceedings commenced before the date of the commencement of this Act no sentence, probation order, order discharging the offender absolutely or other order finally disposing of the case has been passed or made, the court shall have power to pass or make any sentence or order which it could have passed or made if the proceedings had been commenced after the said date.
- 2
  - (1) Any person who immediately before the commencement of this Act was undergoing or liable to undergo a term of penal servitude under a sentence passed by a court in any part of Great Britain or as a condition of a pardon granted by His Majesty for an offence for which he was sentenced to death, or in consequence of the forfeiture or revocation of a licence granted in any part of Great Britain under the Penal Servitude Acts 1853 to 1891 shall, if he is or ought to be in custody in Scotland at the commencement of this Act, be treated thereafter as if he had been sentenced to, or were undergoing or liable to undergo, imprisonment and not penal servitude for that term.
  - (2) Where any person who having been sentenced to penal servitude for life, or while undergoing penal servitude for life as a condition of a pardon granted as aforesaid, is at the commencement of this Act the holder of a licence granted under the Penal Servitude Acts 1853 to 1891, which has not been forfeited or revoked, he shall be deemed to have been released on licence under section fifty-seven of this Act.
  - (3) In the case of a person who is deemed by virtue of the last foregoing sub-paragraph to have been released on licence under section fifty-seven of this Act, the Secretary of State may, without recalling him to prison, substitute for the licence granted under the Penal Servitude Acts 1853 to 1891, a licence under the said section fifty-seven.
  - (4) Where any person who having been sentenced to penal servitude for a term less than life is at the commencement of this Act the holder of a licence granted as aforesaid under the Penal Servitude Acts 1853 to 1891, which has not been forfeited or revoked, he shall be treated as if his sentence had expired.
- 3 Any person who has been sentenced to imprisonment with hard labour for a term which has not expired at the commencement of this Act shall, for the remainder of that term, be treated as though he had been sentenced to imprisonment without hard labour; but nothing in this paragraph shall affect any disability or disqualification attaching to him by virtue of his sentence.
- 4
  - (1) Any person who is at the commencement of this Act detained in custody under a sentence of preventive detention shall for the remainder of the period for which he was sentenced to preventive detention be treated as if he had been sentenced to preventive detention under this Act; and the provisions of this Act relating to preventive detention shall apply to him accordingly.
  - (2) Where a person having been sentenced to a term of preventive detention is at the commencement of this Act absent from prison by virtue of a licence granted

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under section fourteen of the <sup>M1</sup>Prevention of Crime Act 1908 the provisions of Part II of that Act shall continue to apply to him; but if before the expiration of the term his licence is revoked or forfeited the said provisions shall cease to apply, and he shall for the remainder of the term be treated as if he had been sentenced to preventive detention under this Act; and the provisions of this Act relating to preventive detention shall apply to him accordingly.

- (3) Where a person has been sentenced to penal servitude for a term which has not expired at the commencement of this Act, and is liable to undergo a period of preventive detention on the determination of the sentence of penal servitude, there shall be substituted for the sentence of preventive detention a sentence of preventive detention under this Act for a like period; and the provisions of this Act relating to preventive detention shall apply to that person accordingly.

**Marginal Citations**

**M1** 1908 c. 59.

- 5 (1) Any person who, having been sentenced to detention in a Borstal institution, is or ought to be immediately before the commencement of this Act detained in Scotland in a Borstal institution, or in a prison awaiting removal to such an institution, or then holds a licence in force under section five of the Prevention of Crime Act 1908, or is under the supervision of the Secretary of State under section six of that Act, shall be deemed to have been sentenced to Borstal training under this Act, or to be under supervision under the Fourth Schedule to this Act; and in its application to him the said Fourth Schedule shall have effect as if for the references therein to three years there were substituted references to the term of the sentence of detention in a Borstal institution.
- (2) Any person to whom Part I of the <sup>M2</sup>Prevention of Crime Act 1908 applied immediately before the commencement of this Act by reason of his transfer from a prison to a Borstal institution under section three of that Act shall be treated as if he were transferred under the provisions of this Act on the date of the commencement of this Act.

**Marginal Citations**

**M2** 1908 c. 59.

- 6 (1) Where at the commencement of this Act a person is subject to the supervision of the police pursuant to the direction of a court in Scotland given under section eight of the <sup>M3</sup>Prevention of Crimes Act 1871 the period for which he is under supervision shall expire at the end of twelve months from the commencement of this Act unless it shall have expired sooner.
- (2) Any period of supervision as aforesaid exceeding twelve months which has not begun before the commencement of this Act shall by virtue of this Act be reduced to twelve months.

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- (3) The Secretary of State may substitute for any such direction, the period of supervision under which has not expired at the commencement of this Act, an order that the person subject to supervision under the direction shall, during the remainder of the period for which he would be liable to such supervision, be subject to the provisions of section twenty-two of this Act.

**Marginal Citations**

**M3** 1871 c. 112.

- 7 (1) Any probation order made under the <sup>M4</sup>Probation of Offenders Act 1907 by virtue of which a person is under supervision at the commencement of this Act shall be deemed to have been made under this Act:  
Provided that where any requirement as to residence in such an order has been in operation for more than six months the probation officer shall apply to the court for a review of the requirement for the purpose of considering whether the requirement should be cancelled or the period thereof reduced, and where the requirement has been in operation for more than twelve months the probation officer shall report the case to the court with a view to an order terminating the requirement.
- (2) Any order made by the Secretary of State under paragraph (ii) of subsection (1) of section two of the <sup>M5</sup>Probation of Offenders (Scotland) Act 1931 for the combination or division of areas shall have effect as if made under the Third Schedule to this Act.
- (3) The members of a probation committee appointed for any area in accordance with rules under section three of the aforesaid Act of 1931 holding office at the commencement of this Act shall, pending an appointment of a committee under paragraph 2 of the Third Schedule to this Act be deemed to be the probation committee for that area under this Act and the salaried probation officers appointed under the said Act for any area and holding office at the commencement of this Act shall be deemed to have been appointed under paragraph 3 of the said Schedule.

**Marginal Citations**

**M4** 1907 c. 17.

**M5** 1931 c. 30.

- 8 For the purposes of this Act—
- (a) prison rules made under any enactment repealed by this Act and regulations made under section four of the <sup>M6</sup>Prevention of Crime Act 1908 shall be deemed to have been made under section fifty-three of this Act; and
- (b) rules made under the <sup>M7</sup>Probation of Offenders Act 1907 or the <sup>M8</sup>Probation of Offenders (Scotland) Act 1931 shall be deemed to have been made under paragraph 7 of the Third Schedule to this Act.

**Marginal Citations**

**M6** 1908 c. 59.

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**M7** 1907 c. 17.

**M8** 1931 c. 30.

- 9 In relation to any person who—
- (a) having been sentenced to a term of preventive detention is at the commencement of this Act absent from prison by virtue of a licence granted under section fourteen of the <sup>M9</sup>Prevention of Crime Act 1908; or
  - (b) is at the commencement of this Act subject to the supervision of the police pursuant to the direction of any court under section eight of the <sup>M10</sup>Prevention of Crimes Act 1871,
- the provisions of section twenty-one of the <sup>M11</sup>Firearms Act 1937 shall have effect as originally enacted and not as amended by this Act.

**Marginal Citations**

**M9** 1908 c. 59.

**M10** 1871 c. 112.

**M11** 1937 c. 12.

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