

CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Part 1

Prisoners and Parole

Amendment of provisions relating to transferred life prisoners

28. [Section 3\(1\)\(a\)](#) and (b) amend section 10 of the 1993 Act by substituting new subsections for subsections (1) and (2) and by inserting new subsections (1A) and (2A) to (2U).
29. Previously, section 10(1) of the 1993 Act dealt with discretionary life prisoners and under 18 murderers who were transferred to Scotland from another UK jurisdiction on an unrestricted basis, that is certain prisoners who transfer to Scotland to serve their sentences and who become subject to Scots law following their transfer. Section 10(1) of the 1993 Act provided for the recognition of the equivalent to the “designated part” and for the prisoner to thereafter be treated as a designated life prisoner sentenced in Scotland.
30. [Section 10\(1\)](#), as amended, applies to the classes of prisoners specified therein who are transferred after the Act comes into force as well as such prisoners who were transferred before the provisions of the Act came into force. It enables all prisoners transferred from another UK jurisdiction who are to be subject to Scots law following their transfer and who have an equivalent to a punishment part that has been set by another UK court to have that part recognised and deemed to be a punishment part for the purposes of the 1993 Act
31. Provision is contained in section 10(2) for the way in which transferred life prisoners – to whom section 10(1) does not apply - will be treated following their transfer to Scotland. It will apply in the case of prisoners not mentioned in section 10(1) with indeterminate sentences who are transferred to Scotland after section 3 of the Act comes into force from countries outside the UK under repatriation arrangements, military prisoners and life prisoners from other parts of the UK who are transferred here on an unrestricted basis. These prisoners either do not have any equivalent to a punishment part under the law of the sending jurisdiction, or an equivalent to a punishment part has been fixed in the sending jurisdiction but not by a court.
32. Under the substituted version of section 10(2), subject to certain exceptions, the transferred life prisoners to whom the subsection applies will require to have their cases referred to the High Court for a punishment part hearing. They will be treated as life prisoners sentenced in Scotland, once the High Court has set their punishment part. At the court hearing to set the punishment part, the court will be required to make an order specifying the punishment part that the court would have specified if the prisoner had

*These notes relate to the Convention Rights (Compliance) (Scotland)
Act 2001 (asp 7) which received Royal Assent on 5 July 2001*

been sentenced for the offence in Scotland and if section 2(2), as amended by the Act, had been in force at the time the prisoner was sentenced.

33. New subsections (2A) to (2U) make provision in relation to the holding of a hearing by the High Court to set a punishment part for the transferred life prisoner.
34. New subsection (2A) requires the Scottish Ministers to refer the case to the High Court of Justiciary as soon as reasonably practicable following the prisoner's transfer to Scotland. Thereafter, the hearing will be held on the same basis as the hearings that are to be held for existing life prisoners sentenced in Scotland which are provided for in Part 1 of the schedule to the Act. New subsection (2B) allows certain transferred life prisoners (i.e. those in respect of whom certificates or directions referred to in subsection (2D) have been issued) to waive their entitlement to a hearing. In these cases, the certificate or direction fixes a punishment period but the period was not fixed in open court. New subsections (2E) to (2U) make provision as to the hearing to set a punishment part, the order to be made by the High court, the circumstances in which such a transferred life prisoner will be deemed to have served the punishment part, the procedure where the life prisoner is incapable of instructing a solicitor, and to allow the High Court to regulate procedure at a hearing to set a punishment part.
35. [Section 3\(1\)\(c\)](#) amends section 10(3). The amendments remove redundant references to section 1(4), the word "designated", and insert new references to the punishment part and the court hearing that is provided for in new subsection (2J). As amended by this Act, section 10(3) has the effect of applying the 1993 Act to the transferred life prisoners once the court has fixed a punishment part. Such prisoners will thereafter be treated as if they were life prisoners sentenced in Scotland.
36. [Section 3\(1\)\(d\)](#) amends the definition of a "transferred life prisoner" in section 10(4)(b)(i) to make it clear that section 10 applies only to those prisoners who are transferred to Scotland on an "unrestricted basis", i.e. those who are subject to Scots law for all purposes following their transfer. This is in contrast to prisoners who come from other parts of the UK on a "restricted basis", and who remain subject to the law of the sentencing jurisdiction. The amendments to section 10 make no provision for such prisoners, because they remain subject to the early release law of the jurisdiction from which they are transferred and are not covered by the release regime in the 1993 Act. The amendment also ensures that prisoners transferred from other parts of the UK under mental health provisions are covered by the definition of transferred life prisoner.
37. [Section 3\(1\)\(e\)](#) amends section 10(5) by repealing redundant references to the word "designated", making reference to the new court hearing under new subsection (2J) and the "punishment part".
38. [Section 3\(2\)](#) inserts a new section 10A into the 1993 Act. Section 10A makes provision for those life prisoners whose supervision is transferred to Scotland on an unrestricted basis on or after their release from another UK jurisdiction, except for those who have been released on compassionate grounds for whom special provision is made. Those to whom section 10A applies are regarded as having served their punishment part and will be treated as if they had been released under section 2(4) of the 1993 Act.