



Convention Rights (Compliance) (Scotland) Act 2001

2001 asp 7

PART 1

PRISONERS AND PAROLE

1 Release of life prisoners

- (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (in this Act, “the 1993 Act”) is amended as follows.
- (2) In section 1 (release of short-term, long-term and life prisoners), subsections (4) to (7) are repealed.
- (3) In section 2 (duty to release discretionary life prisoners)—
 - (a) in subsection (1)—
 - (i) the word “designated” is repealed;
 - (ii) after paragraph (a) there is inserted, “or
 - (aa) sentenced to life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law;”;and
 - (iii) paragraph (c) and the word “or” immediately preceding it are repealed;
 - (b) in subsection (2)—
 - (i) the word “designated” where it first occurs is repealed;
 - (ii) for “the designated part” there is substituted “ the punishment part ”;
 - (iii) after “appropriate” where it first occurs there is inserted “to satisfy the requirements for retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public),”;
 - (iv) for “associated with it” there is substituted “ of which the life prisoner is convicted on the same indictment as that offence ”;
 - (v) after paragraph (a) there is inserted—

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- “(aa) in the case of a life prisoner to whom paragraph (a) of subsection (1) above applies—
 - (i) the period of imprisonment, if any, which the court considers would have been appropriate for the offence had the court not sentenced the prisoner to imprisonment for life for it;
 - (ii) the part of that period of imprisonment which the court considers would satisfy the requirements of retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public); and
 - (iii) the proportion of the part mentioned in sub-paragraph (ii) above which a prisoner sentenced to it would or might serve before being released, whether unconditionally or on licence, under section 1 of this Act;”;
- and
- (vi) in paragraph (b), the word “designated” is repealed;
- (c) for subsection (3) there is substituted—
 - “(3) A court which imposes life imprisonment for an offence such as is mentioned in subsection (1) above shall make such order as is mentioned in subsection (2) above and such order shall constitute part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.
 - (3A) An order such as is mentioned in subsection (2) above—
 - (a) shall specify the period that the court considers appropriate under that subsection in years and months; and
 - (b) may specify any such period of years and months notwithstanding the likelihood that such a period will exceed the remainder of the prisoner’s natural life.”;
- (d) in subsection (4), the word “designated” is repealed;
- (e) after subsection (5) there is inserted—
 - “(5A) Where, on the disposal of any reference of a life prisoner’s case under section 28(4) of the 1989 Act, under subsection (5)(a) above, subsection (5C) or (6) below or section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), the Parole Board declines to direct that the prisoner be released on licence, it shall—
 - (a) give the prisoner reasons in writing for the decision not to direct his release on licence; and
 - (b) fix the date when it will next consider the prisoner’s case under this section, being a date not later than two years after the date of its decision to decline to direct the release of the prisoner.

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- (5B) The Scottish Ministers shall refer the case of a life prisoner to the Parole Board so as to enable it to consider the case on the date fixed by the Board under subsection (5A)(b) above.
- (5C) The Parole Board, at the request of a life prisoner in respect of whom it has, under subsection (5A)(b) above, fixed the date of the next consideration of his case, may direct the Scottish Ministers to refer that case to the Board before that date.”;
- (f) in subsection (6), the word “designated” and the words “at any time” are repealed;
- (g) after subsection (6) there is inserted—
- “(6A) The Scottish Ministers shall not refer the case of a life prisoner to the Parole Board under subsection (6) above if—
- (a) they have previously so referred his case to the Board under that subsection;
- (b) they have referred his case to the Board without the prisoner requiring them to do so under that subsection; or
- (c) the Parole Board has, on a reference to it under section 28(4) of the 1989 Act, under section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), declined to direct that the prisoner be released on licence.”;
- (h) in subsection (7), paragraph (b) is repealed;
- (i) in subsection (8)—
- (i) the word “designated” where it first occurs is repealed; and
- (ii) for “designated” where it second occurs there is substituted “punishment”; and
- (j) in subsection (9)—
- (i) paragraph (a) is repealed; and
- (ii) in paragraph (b), for “designated” there is substituted “punishment”.
- (4) In section 6 (application of Part I of the Act to young offenders and to children detained without limit of time), subsections (2) and (3) are repealed.
- (5) In section 17 (revocation of licence)—
- (a) in subsection (2), the words from “and” to the end are repealed;
- (b) in subsection (3), for paragraphs (a) and (b) there is substituted “ a person recalled under subsection (1) above ”; and
- (c) after subsection (4) there is inserted—
- “(4AA) Where the Parole Board directs the release of a prisoner under subsection (4) above it may recommend that the Scottish Ministers insert, vary or cancel conditions in the prisoner’s licence.”.
- (6) In section 27 (interpretation), in subsection (1), the definition of “discretionary life prisoner” is repealed.
- (7) In Schedule 6 (transitional provisions and savings)—
- (a) in paragraph 6—
- (i) in sub-paragraph (2), for “sections 1(4) and 2(9)” there is substituted “ section 2(9) ”;

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- (ii) in each of sub-paragraphs (2)(a) and (3)(a), the word “designated” is repealed; and
 - (iii) in each of sub-paragraphs (2)(b) and (3)(b), for “designated” there is substituted “punishment”; and
 - (b) in paragraph 6A(2)—
 - (i) the word “designated” where it first occurs is repealed; and
 - (ii) for “designated” where it second occurs there is substituted “punishment”.
- (8) In section 16 (designated life prisoners) of the Crime and Punishment (Scotland) Act 1997 (c.48)—
- (a) in subsection (3)—
 - (i) for “sections 1(4) and 2(9)” there is substituted “section 2(9)”;
 - (ii) in paragraph (a), the word “designated” is repealed; and
 - (iii) in paragraph (b), for “designated” there is substituted “punishment”; and
 - (b) in subsection (4)—
 - (i) in paragraph (a), the word “designated” is repealed; and
 - (ii) in paragraph (b), for “designated” there is substituted “punishment”.

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