

**2003 No. 287**

**CRIMINAL LAW**

**The Criminal Justice (Scotland) Act 2003 (Saving and  
Transitional Provisions) Order 2003**

<i>Made</i>	<i>5th June 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>6th June 2003</i>
<i>Coming into force</i>	<i>27th June 2003</i>

The Scottish Ministers, in exercise of the power conferred by section 84(1) of the Criminal Justice (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Criminal Justice (Scotland) Act 2003 (Saving and Transitional Provisions) Order 2003.

(2) This Order shall come into force on 27th June 2003.

(3) In this Order—

“the Act” means the Criminal Justice (Scotland) Act 2003;

“the 1989 Act” means the Prisons (Scotland) Act 1989(b); and

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993(c).

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(a) 2003 asp 7.

(b) 1989 c.45.

(c) 1993 c.9.

## **Saving and transitional provisions**

2.—(1) This article applies in any case where, in respect of a prisoner, the Scottish Ministers have, prior to the commencement of sections 27, 28 and 38 of the Act, received a recommendation from the Parole Board for Scotland for the purpose of section 22(1) of the 1989 Act(a), section 1(3)(b) or 7(2)(c) of the 1993 Act or following consultation under section 22(7) of the 1989 Act or section 12(3)(b) of the 1993 Act.

(2) Where this article applies the provisions in paragraphs (a) and (b) below shall have the effect they had prior to amendment by section 27, 28 or 38 of the Act, as the case may be, and shall continue to do so, notwithstanding such amendment, until immediately after the Scottish Ministers have made a decision in respect of the prisoner in terms of those provisions—

- (a) sections 22(1) and (7) of the 1989 Act; and
- (b) sections 1(3), 7(2) and 12(3)(d) of the 1993 Act.

3. In respect of section 54 of the Act, that section shall only have effect in relation to prosecutions already commenced, if, at the date of commencement of the section, there are at least 11 clear days before the commencement of the trial diet.

*CATHY JAMIESON*

A Member of the Scottish Executive

St Andrew's House,  
Edinburgh  
5th June 2003

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- (a) 1989 c.45. Section 22 was repealed by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”), Schedule 7, Part I but was saved in respect of prisoners to whom the “existing provisions” as defined in paragraph 1 of Schedule 6 to the 1993 Act apply for the purposes of that Act; paragraph 1 of Schedule 6 was relevantly amended by the Criminal Justice Act 1993 (c.36), section 76(3) and by the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 134(1)(a); section 22 was expressly included in the definition of “existing provisions” by the 1994 Act, section 134(2) and in its application to prisoners to whom the “existing provisions” specified in paragraph 1 of Schedule 6 to the 1993 Act apply, and was amended by the 1994 Act, sections 134(4) and (5); by virtue of the Prisons (Scotland) Act 1989 (Release of Prisoners etc.) Order 1995 (S.I. 1995/910), in relation to the case of a prisoner serving a sentence of imprisonment for a term of less than 10 years which was imposed upon him before 1st October 1993, section 22(1) has effect subject to the modification that for the word “may” there shall be substituted the word “shall”.
  - (b) 1993 c.9. By virtue of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (Release of Prisoners etc.) Order 1995 (S.I. 1995/911) (“the 1995 Order”), in relation to the case of a long-term prisoner serving a sentence of imprisonment for a term of less than 10 years which was imposed upon him on or after 1st October 1993, section 1(3) has effect subject to the modification that for the word “may” there shall be substituted the word “shall”, so however that nothing shall affect the operation of that section as it has effect in relation to a long-term prisoner who is liable to removal from the United Kingdom (within the meaning of section 9 of the 1993 Act).
  - (c) 1993 c.9. Section 7(2) was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraphs 86(2) and (5).
  - (d) 1993 c.9. Section 12(3) was amended by the 1994 Act, section 131 and by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 1, paragraph 14(10)(b); by virtue of the 1995 Order, in relation to the case of a long-term prisoner serving a sentence of imprisonment for a term of less than 10 years which was imposed upon him on or after 1st October 1993, section 12(3)(a) has effect subject to the modification that after the words “licence of a” there shall be inserted the words “long-term or”.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order should be read with the Criminal Justice (Scotland) Act 2003 (Commencement No. 1) Order 2003 (S.S.I. 2003/288), which brings certain provisions of the Criminal Justice (Scotland) Act 2003 into force on 27th June 2003. Those provisions include sections 27, 28, 38 and 54 of that Act.

This Order makes a saving provision in relation to the commencement of sections 27, 28 and 38 (release of prisoners) so that the discretion of the Scottish Ministers in respect of the release of certain prisoners, and in respect of the conditions contained in a prisoner's licence, which they enjoyed immediately before the commencement of those provisions is saved in certain situations. The saving will operate when Scottish Ministers receive a relevant recommendation from the Parole Board prior to commencement of sections 27, 28 and 38 and will have effect until immediately after Scottish Ministers have taken their decision to release the prisoner or to decide upon the conditions that should be in the prisoner's licence.

This Order also makes a transitional provision in respect of section 54 of that Act (certificates relating to physical data: sufficiency of evidence).

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**£1.75**

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland  
150 06/03 19593

