

## POLICY NOTE

### THE CRIMINAL CASES (PUNISHMENT AND REVIEW) (SCOTLAND) ACT 2012 (COMMENCEMENT, TRANSITIONAL AND SAVINGS) ORDER 2012

#### SSI 2012/249 (C.22)

1. The above instrument will be made in exercise of powers conferred by section 5(2) and (3) of the Criminal Cases (Punishment and Review) (Scotland) Act 2012 (“the 2012 Act”).

#### Policy Objectives

2. The purpose of this instrument is to commence the remaining provisions of the 2012 Act. Section 5 of the Bill came into force on the day after Royal Assent.

3. Part 1 of the Act seeks to address an issue arising from the Appeal Court’s decision in the case of *Petch and Foye v HMA*<sup>1</sup> that concerned the period of imprisonment a person subject to a discretionary life sentence or Order for Lifelong Restriction must serve before becoming eligible to apply for parole (“the punishment part”).

4. The judgement in that case created an anomaly that some non-mandatory life sentence prisoners would become eligible for parole at an earlier stage than if they had received a determinate sentence for the same offence. Part 1 of the Act amends section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>2</sup> (“the 1993 Act”), which specifies how a punishment part of such sentences are to be calculated. The 2012 Act has no effect on mandatory life sentences imposed for murder.

5. Part 2 of the Act provides a framework for the Scottish Criminal Cases Review Commission to decide whether it is appropriate to disclose information concerning cases they have referred to the High Court for appeal against conviction which have subsequently fallen or been abandoned. Although general in nature, the provisions of Part 2 of the Bill will apply to the circumstances of the case of Abdelbaset Al Megrahi, who was convicted in 2001 of the murder of 270 people in the Lockerbie bombing.

#### Manner of commencement

6. Sections 1(4)-(6), 2, 3 and 4 of the 2012 Act are commenced without any savings or transitional provision.

7. The commencement of section 1(1)-(3) of the 2012 Act is of no effect in respect of criminal proceedings which commenced before the 24th September 2012. Any punishment parts that have already been imposed are unaffected by the provisions of the 2012 Act. Where proceedings have commenced before the 24th September, but are still underway after that date, the provisions of section 1(1)-(3) of the 2012 Act will have no effect, so any

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<sup>1</sup> [2011] HCJAC 20

<sup>2</sup> 1993 c.9

punishment part set in such cases will be calculated in accordance with the unamended provisions of section 2(2) of the 1993 Act.

**SCOTTISH GOVERNMENT**

Directorate for Justice

10 September 2012