



# Prisoners and Criminal Proceedings (Scotland) Act 1993

## 1993 CHAPTER 9

### PART I

#### DETENTION, TRANSFER AND RELEASE OF OFFENDERS

##### *Early release*

#### **1 Release of short-term, long-term and life prisoners**

- (1) As soon as a short-term prisoner has served one-half of his sentence the Secretary of State shall, without prejudice to any supervised release order to which the prisoner is subject, release him unconditionally.
- (2) As soon as a long-term prisoner has served two-thirds of his sentence, the Secretary of State shall release him on licence.
- (3) After a long-term prisoner has served one-half of his sentence the Secretary of State may, if recommended to do so by the Parole Board under this section, release him on licence.
- (4) If recommended to do so by the Parole Board under this section, the Secretary of State may, after consultation with—
  - (a) the Lord Justice General, whom failing the Lord Justice Clerk; and
  - (b) if available, the trial judge,release on licence a life prisoner who is not a discretionary life prisoner.
- (5) The Parole Board shall not make a recommendation under subsection (4) above unless the Secretary of State has referred the case to the Board for its advice.
- (6) Notwithstanding the foregoing provisions of this section, the Secretary of State shall not release a person who is serving—

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- (a) a sentence of imprisonment for a term and one or more sentences of imprisonment for life; or
  - (b) more than one sentence of imprisonment for life,
- unless and until the requirements of those provisions are satisfied in respect of each of those sentences.
- (7) A person to whom subsection (6) above applies shall, when released on licence under this section, be released on a single licence under subsection (4) above.
- (8) Schedule 1 to this Act, which makes special provision as respects the release of persons serving both a sentence of imprisonment imposed on conviction of an offence and a term of imprisonment or detention referred to in section 5(1)(a) or (b) of this Act, shall have effect.

## **2 Duty to release discretionary life prisoners**

- (1) In this Part of this Act “discretionary life prisoner”, subject to subsection (9)(a) below and except where the context otherwise requires, means a life prisoner—
- (a) whose sentence was imposed for an offence the sentence for which is not fixed by law; and
  - (b) in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below.
- (2) The order referred to in subsection (1)(b) above is an order that subsections (4) and (6) below shall apply to the life prisoner as soon as he has served such part of his sentence (“the relevant part”) as is specified in the order, being such part as the court considers appropriate taking into account—
- (a) the seriousness of the offence, or of the offence combined with other offences associated with it; and
  - (b) any previous conviction of the life prisoner.
- (3) Where a court which imposes life imprisonment for an offence such as is mentioned in subsection (1)(a) above decides not to make such order as is mentioned in subsection (2) above, it shall state its reasons for so deciding; and for the purposes of any appeal or review, any such order and any such decision shall each constitute part of a person’s sentence within the meaning of the 1975 Act.
- (4) Where this subsection applies, the Secretary of State shall, if directed to do so by the Parole Board, release a discretionary life prisoner on licence.
- (5) The Parole Board shall not give a direction under subsection (4) above unless—
- (a) the Secretary of State has referred the prisoner’s case to the Board; and
  - (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- (6) Where this subsection applies, a discretionary life prisoner may, subject to subsection (7) below, at any time require the Secretary of State to refer his case to the Parole Board.
- (7) No requirement shall be made under subsection (6) above—
- (a) where the prisoner is also serving a sentence of imprisonment for a term, before he has served one-half of that sentence; and

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- (b) where less than two years has elapsed since the disposal of any (or the most recent if more than one) previous reference of his case to the Board under subsection (5)(a) or (6) above or under section 17(3) of this Act.
- (8) In determining for the purposes of subsection (4) or (6) above whether a discretionary life prisoner has served the relevant part of his sentence, no account shall be taken of any time during which he was unlawfully at large.
- (9) Where a life prisoner is serving two or more sentences of imprisonment for life—
  - (a) he is a discretionary life prisoner only if the requirements of subsection (1) above are satisfied in respect of each of those sentences;
  - (b) notwithstanding the terms of any order under subsection (2) above, subsections (4) and (6) above shall not apply to him until he has served the relevant part of each of those sentences; and
  - (c) he shall, if released on licence under subsection (4) above, be so released on a single licence.

### **3 Power to release prisoners on compassionate grounds**

- (1) The Secretary of State may at any time, if satisfied that there are compassionate grounds justifying the release of a person serving a sentence of imprisonment, release him on licence.
- (2) Before so releasing any long-term prisoner or any life prisoner, the Secretary of State shall consult the Parole Board unless the circumstances are such as to render consultation impracticable.
- (3) The release of a person under subsection (1) above shall not constitute release for the purpose of a supervised release order.

### **4 Persons detained under Mental Health (Scotland) Act 1984**

- (1) Notwithstanding that a transfer direction and a restriction direction (those expressions having the same meanings as in the Mental Health (Scotland) Act 1984) have been given in respect of a person serving a sentence of imprisonment, this Part of this Act shall apply to the person as if he continued to serve that sentence while detained in, and as if he had not been removed to, hospital.
- (2) In section 71(7)(a) of the said Act of 1984 (categories of prisoner who may be transferred to hospital), the words “in criminal proceedings” shall cease to have effect.
- (3) For sections 74 and 75 of the said Act of 1984 there shall be substituted the following section—

#### **“74 Further provision as to transfer directions and restriction directions**

- (1) This subsection applies where a transfer direction and a restriction direction have been given in respect of a person—
  - (a) serving a sentence of imprisonment; or
  - (b) who is detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971,if the Secretary of State is satisfied, at a time when the person would but for those directions be, by virtue of the circumstance mentioned in paragraph (a)

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or (b) above, in prison or being detained other than in a hospital, as to the matters mentioned in subsection (2) below.

- (2) The matters referred to in subsection (1) above are—
  - (a) that either—
    - (i) the person is not suffering from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
    - (ii) that it is not necessary for the health or safety of the person or for the protection of other persons that he should receive such treatment; and
  - (b) that it is not appropriate for the person to remain liable to be recalled to hospital for further treatment.
- (3) Where subsection (1) above applies, the Secretary of State shall by warrant direct that the person be remitted to any prison or other institution or place in which he might have been detained had he not been removed to hospital and that he be dealt with there as if he had not been so removed.
- (4) Where subsection (1) above does not apply only because the Secretary of State is not satisfied as to the matter mentioned in subsection (2)(b) above, he may either—
  - (a) by warrant give such direction as is mentioned in subsection (3) above; or
  - (b) decide that the person shall continue to be detained in hospital.
- (5) If a direction is given under subsection (3) or (4)(a) above, then on the person's arrival in the prison or other institution or place to which remitted by virtue of that subsection the transfer direction and the restriction direction shall cease to have effect.
- (6) This subsection applies where a transfer direction and a restriction direction have been given in respect of such person as is mentioned in subsection (1) above and he has thereafter been released under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- (7) Where subsection (6) above applies—
  - (a) the transfer direction and the restriction direction shall forthwith cease to have effect; and
  - (b) the person shall thereupon be discharged from hospital unless a report is furnished in respect of him under subsection (9) below.
- (8) A transfer direction or restriction direction given in respect of a person detained (other than in respect of a criminal offence) under or by virtue of the Immigration Act 1971 shall, if it does not first cease to have effect under subsection (5) above or under section 65(2) of this Act, cease to have effect when his liability to be so detained comes to an end.
- (9) Not earlier than 28 days before a restriction direction given in respect of a person ceases to have effect other than by virtue of subsection (8) above, the responsible medical officer shall obtain from another medical practitioner a report on the condition of the person in the prescribed form and thereafter shall assess the need for the detention of the person to be continued; and, if it appears to the responsible medical officer that it is necessary in the interests of

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the health or safety of the person or for the protection of others that the person should continue to be liable to be detained in hospital, the officer shall furnish to the managers of the hospital where the person is liable to be detained and to the Mental Welfare Commission a report to that effect in the prescribed form along with the report of the other medical practitioner.

- (10) Where a report has been furnished under subsection (9) above the person shall, after the restriction direction ceases to have effect, be treated as if he had, on the date on which the restriction direction ceased to have effect, been admitted to the hospital in pursuance of an application for admission; but the provisions of sections 30(5) and (6) and 35 of this Act shall apply to the person and that report as they apply to a patient the authority for whose detention in hospital has been renewed in pursuance of subsection (4) of, and to a report under subsection (3) of, the said section 30.
- (11) For the purposes of section 40(2) of the Prisons (Scotland) Act 1989 (discounting from sentence periods while unlawfully at large) a person who, having been transferred to hospital in pursuance of a transfer direction from a prison or young offenders institution, is at large in circumstances in which he is liable to be taken into custody under any provision of this Act, shall be treated as unlawfully at large and absent from the prison or young offenders institution.
- (12) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”.

## **5 Fine defaulters and persons in contempt of court**

- (1) Subject to section 1(8) of this Act and to subsections (2) and (3) below, this Part of this Act (except sections 1(3), 16 and 27(5)) applies to a person on whom imprisonment, or as the case may be detention in a young offenders institution, has been imposed—
- (a) under section 407 of the 1975 Act (imprisonment for non-payment of fine: summary proceedings) or under that section as applied by section 194 of that Act (imprisonment for non-payment of fine: solemn proceedings) or, by virtue of the appropriate one of those sections, under section 415(2) or 207(2) of that Act (detention of young offenders); or
  - (b) for contempt of court,
- as it applies to a person sentenced to imprisonment, or on whom detention has been imposed, on conviction of an offence; and references in this Part of this Act to prisoners (whether short-term or long-term), or to prison, imprisonment, detention or sentences of imprisonment shall be construed accordingly.
- (2) Where section 1(1) or (2) of this Act applies to a person by virtue of subsection (1) above, that section shall be construed as requiring the Secretary of State to release the person unconditionally as soon as, in the case of—
- (a) a short-term prisoner, he has served one-half of his term of imprisonment; or
  - (b) a long-term prisoner, he has served two-thirds of his term of imprisonment,
- and if during the term in question the prisoner is both released under section 3 of this Act and subsequently recalled under section 17(1) thereof, the period during which he is thereby lawfully at large shall be taken, for the purposes of paragraph (a) or (b) above, to be a period of imprisonment served.

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- (3) Notwithstanding subsection (1) above, section 11 of this Act shall not apply to a person to whom this Part of this Act applies by virtue of that subsection but whose release on licence is under section 3 of this Act; and that licence shall (unless revoked) remain in force only until the date on which, by virtue of subsection (2) above, his release would have been required had he not been released earlier.

## **6 Application to young offenders and to children detained without limit of time**

- (1) This Part of this Act applies—
- (a) to persons on whom detention in a young offenders institution (other than detention without limit of time or for life) has been imposed under section 207(2) or 415(2) of the 1975 Act as the Part applies to persons serving equivalent sentences of imprisonment; and
  - (b) to—
    - (i) persons sentenced under section 205 of that Act to be detained without limit of time or for life;
    - (ii) children sentenced to be detained without limit of time under section 206 of that Act; and
    - (iii) persons on whom detention without limit of time or for life is imposed under section 207(2) of that Act,
 as the Part applies to persons sentenced to imprisonment for life, and references in the Part (except in this section, sections 1(8) and 5(1) and paragraph 1(b) of Schedule 1) to prisoners (whether short-term, long-term or life) or to prison, imprisonment or sentences of imprisonment shall be construed accordingly.
- (2) A child detained without limit of time under section 206 of the 1975 Act may, on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.
- (3) The Secretary of State may, after consultation with the Parole Board, by order provide that, in relation to all children detained without limit of time under section 206 of the 1975 Act or to such class of those children as may be specified in the order, this section shall have effect subject to the modification that, in subsection (2), for the word “may” there shall be substituted the word “shall”.

## **7 Children detained in solemn proceedings**

- (1) Where a child is detained under section 206 of the 1975 Act (detention of children convicted on indictment) and the period specified in the sentence—
- (a) is less than four years, he shall be released on licence by the Secretary of State as soon as (following commencement of the sentence) half the period so specified has elapsed;
  - (b) is of four or more years, he shall be so released as soon as (following such commencement) two thirds of the period so specified has elapsed.
- (2) A child detained under section 206 of the 1975 Act or in pursuance of an order under subsection (3) below may, on the recommendation of the Parole Board made at any time, be released on licence by the Secretary of State.
- (3) If, after release under subsection (1) or (2) above and before the date on which the entire period specified in the sentence elapses (following commencement of the

sentence), a child commits an offence in respect of which it is competent to impose imprisonment on a person aged 21 years or more (other than an offence in respect of which imprisonment for life is mandatory) and, whether before or after that date, pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding—

- (a) in a case other than that mentioned in paragraph (b) below, order that he be returned to detention for the whole or any part of the period which—
    - (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period so elapses; and
  - (b) in a case where that court is inferior to the court which imposed the sentence, refer the case to the superior court in question; and a court to which a case is so referred may make such order with regard to it as is mentioned in paragraph (a) above.
- (4) The period for which a child is ordered under subsection (3) above to be returned to detention—
- (a) shall be taken to be a sentence of detention for the purposes of this Act and of any appeal; and
  - (b) shall, as the court making that order may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence (being in either case disregarded in determining the appropriate length of that sentence).
- (5) Sections 11(1), 12, 17 and 20(2) of this Act apply to children detained under section 206 of the 1975 Act as they apply to long-term prisoners; and references in those sections of this Act to prisoners, or to prison, imprisonment or sentences of imprisonment shall be construed accordingly.
- (6) The Secretary of State may, after consultation with the Parole Board, by order provide that, in relation to all children detained under section 206 of the 1975 Act or to such class of those children as may be specified in the order, this section shall have effect subject to the modification that, in subsection (2), for the word “may” there shall be substituted the word “shall”.
- (7) In the foregoing provisions of this section any reference to a child being detained does not include a reference to his being detained without limit of time.

## **8 Children detained in summary proceedings**

For subsection (6) of section 413 of the 1975 Act (review of case and release of child detained in summary proceedings) there shall be substituted the following subsections—

- “(6) Where a child is detained in residential care in pursuance of an order under—
- (a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (6A) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;

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- (b) subsection (1) above or (6B) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
  - (i) for such period and on such conditions as the local authority consider appropriate; or
  - (ii) unconditionally.
- (6A) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement within the meaning of the 1968 Act, the effect of that requirement shall commence, or as the case may be resume, upon such release.
- (6B) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential care of the authority which released him and that his detention in their care shall continue for the whole or any part of the period which—
  - (a) begins with the date of the order for his return; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.
- (6C) An order under subsection (6B) above for return to residential care—
  - (a) shall be taken to be an order for detention in residential care for the purposes of this Act and of any appeal; and
  - (b) shall, as the court making that order may direct, either be for a period of residential care before and to be followed by, or to be concurrent with, any period of residential care to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).”.

## **9 Persons liable to removal from the United Kingdom**

- (1) In relation to a long-term prisoner who is liable to removal from the United Kingdom, section 1(3) of this Act shall have effect as if the words “, if recommended to do so by the Parole Board,” were omitted.
- (2) In relation to a person who is liable to removal from the United Kingdom, section 12 of this Act shall have effect as if subsection (2) were omitted.
- (3) For the purposes of this section, a person is liable to removal from the United Kingdom if he—
  - (a) is liable to deportation under section 3(5) of the Immigration Act 1971 and has been notified of a decision to make a deportation order against him;
  - (b) is liable to deportation under section 3(6) of that Act;
  - (c) has been notified of a decision to refuse him leave to enter the United Kingdom; or
  - (d) is an illegal immigrant within the meaning of section 33(1) of that Act.



## 10 Life prisoners transferred to Scotland

- (1) In a case where a transferred life prisoner transferred from England and Wales (whether before or after the commencement of this section) is, by virtue of an order under section 34 of the Criminal Justice Act 1991, a discretionary life prisoner for the purposes of Part II of that Act, this Part of this Act except sections 1(4) and 2(9) shall apply as if—
  - (a) the prisoner were a discretionary life prisoner within the meaning of section 2 of this Act; and
  - (b) the relevant part of his sentence within the meaning of that section were the relevant part specified in the order under the said section 34.
- (2) In the case of any other transferred life prisoner, subsection (3) below applies where the Lord Justice General, whom failing the Lord Justice Clerk, certifies his opinion that, if the prisoner had been sentenced for his offence in Scotland after the commencement of section 2 of this Act, the court by which he was so sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.
- (3) In a case to which this subsection applies, this Part of this Act except sections 1(4) and 2(9) shall apply as if—
  - (a) the transferred life prisoner were a discretionary life prisoner within the meaning of section 2 of this Act; and
  - (b) the relevant part of his sentence within the meaning of that section were the part specified in the certificate.
- (4) In this section “transferred life prisoner” means a person—
  - (a) on whom a court in a country or territory outside Scotland has imposed one or more sentences of imprisonment or detention for an indeterminate period; and
  - (b) who has been transferred to Scotland, in pursuance of—
    - (i) an order made by the Secretary of State under section 26 of the Criminal Justice Act 1961 or section 2 of the Colonial Prisoners Removal Act 1884; or
    - (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984,  
there to serve, or to serve the remainder of, his sentence or sentences.
- (5) Where a transferred life prisoner has been transferred to Scotland to serve the whole or part of two or more sentences referred to in subsection (4)(a) above—
  - (a) he shall be treated as a discretionary life prisoner (within the meaning of section 2 of this Act) for the purposes of subsection (3) above only if the requirements of subsection (2) above are satisfied in respect of each of those sentences; and
  - (b) notwithstanding the terms of any order under section 34 of the said Act of 1991 or of any certificate under subsection (2) above, subsections (4) and (6) of section 2 of this Act shall not apply to him until he has served the relevant part of each of those sentences.

## **11 Duration of licence**

- (1) Where a long-term prisoner is released on licence under this Part of this Act, the licence shall (unless revoked) remain in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed.
- (2) Where a life prisoner is so released, the licence shall (unless revoked) remain in force until his death.
- (3) Without prejudice to any order under section 212A of the 1975 Act, where a short-term prisoner is released on licence—
  - (a) under section 3(1) of this Act, the licence shall (unless revoked) remain in force until the date on which, but for such release, he would have been released under section 1(1) of this Act;
  - (b) by virtue of section 16(7) of this Act, the licence shall, unless revoked, remain in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed or, if resulting in a later date, until the period for which he was ordered to be returned to prison under or by virtue of subsection (2)(a) of that section has elapsed.

## **12 Conditions in licence**

- (1) A person released on licence under this Part of this Act shall comply with such conditions as may be specified in that licence by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1) above and to the power of the Secretary of State under subsection (3) below to vary or cancel any condition, a licence granted under this Part of this Act shall include a condition requiring that the person subject to it—
  - (a) shall be under the supervision of a relevant officer of such local authority, or of a probation officer appointed for or assigned to such petty sessions area, as may be specified in the licence; and
  - (b) shall comply with such requirements as that officer may specify for the purposes of the supervision.
- (3) The Secretary of State may from time to time under subsection (1) above insert, vary or cancel a condition in a licence granted under this Part of this Act; but in the case of a long-term or life prisoner no licence condition shall be included on release or subsequently inserted, varied or cancelled except—
  - (a) in the case of the inclusion of a condition in the licence of a discretionary life prisoner, in accordance with the recommendations of the Parole Board; and
  - (b) in any other case, after consulting the Board.
- (4) For the purposes of subsection (3) above, the Secretary of State shall be treated as having consulted the Parole Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.

## **13 Supervision of persons released on licence**

The Secretary of State may make rules for regulating the supervision of any description of person released, under this Part of this Act, on licence.

## 14 Supervised release of short-term prisoners

(1) After section 212 of the 1975 Act there shall be inserted the following section—

### “212A Supervised release orders

- (1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.
- (2) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
  - (a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993); and
  - (b) comply with—
    - (i) such requirements as are specified in the order; and
    - (ii) such requirements as that officer may reasonably specify, for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).
- (3) A supervised release order—
  - (a) shall be as nearly as possible in such form as may be prescribed by Act of Adjournal;
  - (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
  - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.
- (5) The clerk of the court by which a supervised release order is made in respect of a person shall—
  - (a) forthwith send a copy of the order to the person and to the Secretary of State; and
  - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.
- (6) In this section—

“relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

“relevant period” means such period as may be specified in the supervised release order, being a period—

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- (a) not exceeding twelve months after the date of the person's release; and
  - (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and
- “supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.”.
- (2) Notwithstanding section 26 of the Criminal Justice Act 1961 and section 212A(1) of the 1975 Act, where a short-term prisoner within the meaning of the Criminal Justice Act 1991, being a prisoner in respect of whom section 44 of that Act (release of sexual offenders) applies, is transferred to a prison in Scotland to serve his sentence or the remainder of his sentence, the sheriff court for the area in which that prison is situated shall, on the application of the Secretary of State supported by any relevant documents or information received by the Secretary of State on the transfer of the prisoner to Scotland, make under this subsection, but subject to section 212A(2) to (6) of the 1975 Act, a supervised release order in respect of the prisoner.
- (3) For the purposes of a supervised release order under subsection (2) above the relevant period within the meaning of section 212A(2) of the 1975 Act shall be whichever is the shorter of—
- (a) the period of twelve months from the date of the prisoner's release; and
  - (b) the period from that date until the date by which the entire term of imprisonment specified in his sentence has (following commencement of the imprisonment) elapsed.
- (4) The Secretary of State shall, not later than thirty days before the date of release of a short-term prisoner who is subject to a supervised release order, designate—
- (a) the local authority for the area where the prisoner proposes to reside after release;
  - (b) the local authority for the area where the place from which he is to be released is situated; or
  - (c) the justices for the petty sessions area where he proposes to reside after release, as the appropriate authority or, as the case may be, justices for the purposes of the order.
- (5) As soon as practicable after designating a local authority or justices under subsection (4) above the Secretary of State shall—
- (a) inform the prisoner in writing of the designation; and
  - (b) send to the authority or, as the case may be, to the clerk to the justices a copy of the supervised release order and of the relevant documents and information received by the Secretary of State by virtue of section 212A(5)(b) of the 1975 Act.

## **15 Variation of supervised release order etc**

- (1) A person released subject to a supervised release order, or his supervising officer, may request the Secretary of State that a local authority or the justices for a petty sessions area (in this section referred to as the “second” designee) be designated under this subsection as the appropriate authority or justices for the purposes of the order in place

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of that or those for the time being designated under section 14(4) of this Act or this subsection (the “first” designee) if the person resides or proposes to reside in the area of the second designee.

- (2) The Secretary of State shall, if he designates the second designee in accordance with the request, determine the date from which the designation shall have effect.
- (3) As soon as practicable after a designation is made under subsection (1) above—
  - (a) the Secretary of State shall—
    - (i) inform the person subject to the supervised release order, the first designee and the second designee that the designation has been made and of the date determined under subsection (2) above; and
    - (ii) send a copy of the supervised release order to the second designee; and
  - (b) the first designee shall send to the second designee the relevant documents and information received by the first designee by virtue of section 14(5)(b) of this Act (or by virtue of this paragraph).
- (4) The court which made a supervised release order may, on an application under this subsection by a person subject to the order (whether or not he has been released before the application is made) or by his supervising officer (or, if the person is not yet released, but a local authority stands or justices stand designated as the appropriate authority or justices in respect of the order, by a relevant officer of that authority or, as the case may be, a probation officer appointed for or assigned to the petty sessions area)—
  - (a) amend, vary or cancel any requirement specified in or by virtue of the order;
  - (b) insert in the order a requirement specified for the purpose mentioned in section 212A(2)(b) of the 1975 Act,whether or not such amendment, variation, cancellation or insertion accords with what is sought by the applicant; but the period during which the person is to be under supervision shall not thereby be increased beyond any period which could have been specified in making the order.
- (5) If an application under subsection (4) above is by the supervising officer (or other relevant officer or probation officer) alone, the court shall cite the person who is subject to the order to appear before the court and shall not proceed under that subsection until it has explained to the person, in as straightforward a way as is practicable, the effect of any proposed amendment, variation, cancellation or insertion.
- (6) The clerk of the court by which an amendment, variation, cancellation or insertion is made under subsection (4) above shall forthwith send a copy of the resultant order to the person subject to it and to the supervising officer.

## **16 Commission of offence by released prisoner**

- (1) This section applies to a short-term or long-term prisoner sentenced to a term of imprisonment (in this section referred to as “the original sentence”) by a court in Scotland and released under this Part of this Act or Part II of the Criminal Justice Act 1991 if—
  - (a) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment (other than an offence in respect of which imprisonment for life is mandatory); and

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- (b) whether before or after that date, he pleads guilty to or is found guilty of that offence (in this section referred to as “the new offence”) in a court in Scotland or England and Wales.
- (2) Where the court mentioned in subsection (1)(b) above is in Scotland it may, instead of or in addition to making any other order in respect of the plea or finding—
    - (a) in a case other than that mentioned in paragraph (b) below, order the person to be returned to prison for the whole or any part of the period which—
      - (i) begins with the date of the order for his return; and
      - (ii) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1)(a) above; and
    - (b) in a case where that court is inferior to the court which imposed the sentence mentioned in the said subsection (1)(a), refer the case to the superior court in question; and a court to which a case is so referred may make such order with regard to it as is mentioned in paragraph (a) above.
  - (3) Where the court mentioned in subsection (1)(b) above is in England and Wales it may, instead of or in addition to making any other order in respect of the plea or finding, refer the case to the court which imposed the original sentence and shall, if it does so, send to that court such particulars of that case as may be relevant.
  - (4) The court to which a case is referred under subsection (3) above may make such an order as is mentioned in subsection (2)(a) above in respect of the person.
  - (5) The period for which a person to whom this section applies is ordered under subsection (2) or (4) above to be returned to prison—
    - (a) shall be taken to be a sentence of imprisonment for the purposes of this Act and of any appeal; and
    - (b) shall, as the court making that order may direct, either be served before and be followed by, or be served concurrently with, any sentence of imprisonment imposed for the new offence (being in either case disregarded in determining the appropriate length of that sentence).
  - (6) In exercising its powers under section 254(3) or 453C(1) of the 1975 Act, the court hearing an appeal against an order under subsection (2) or (4) above may, if it thinks fit and notwithstanding subsection (2)(a), substitute for the period specified in the order a period not exceeding the period between the date on which the person was released and the date mentioned in subsection (1)(a) above.
  - (7) Where an order under subsection (2) or (4) above is made in respect of a person released on licence and he is sentenced in respect of the new offence to a term of imprisonment of less than four years, section 1(1) of this Act shall apply in respect of that sentence as if for the word “unconditionally” there were substituted the words “on licence”.

## 17 Revocation of licence

- (1) Where—
  - (a) a long-term or life prisoner has been released on licence under this Part of this Act, the Secretary of State may revoke that licence and recall him to prison—
    - (i) if recommended to do so by the Parole Board; or

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- (ii) if revocation and recall are, in the opinion of the Secretary of State, expedient in the public interest and it is not practicable to await such recommendation;
  - (b) a short-term prisoner has been so released, the Secretary of State may revoke his licence and recall him to prison if satisfied that his health or circumstances have so changed that were he in prison his release under section 3(1) of this Act would no longer be justified.
- (2) A person recalled under subsection (1) above shall, on his return to prison, be informed of the reasons for his recall and that he has the right to make written representations to the Secretary of State in that regard.
- (3) The Secretary of State shall refer to the Parole Board the case of—
  - (a) a person recalled under subsection (1)(a)(i) above who makes representations under subsection (2) above; or
  - (b) a person recalled under subsection (1)(a)(ii) above.
- (4) Where on a reference under subsection (3) above the Parole Board directs a prisoner's immediate release on licence, the Secretary of State shall under this section give effect to that direction.
- (5) On the revocation of the licence of any person under the foregoing provisions of this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.
- (6) A licence under this Part of this Act, other than the licence of a life prisoner, shall be revoked by the Secretary of State if all conditions in it have been cancelled; and where a person's licence has been revoked under this subsection the person shall be treated in all respects as if released unconditionally.

## **18 Breach of supervised release order**

- (1) Where the court which imposed a supervised release order on a person is informed, by statement on oath by an appropriate officer, that the person has failed to comply with a requirement specified in or by virtue of that order, the court may—
  - (a) issue a warrant for the arrest of the person; or
  - (b) issue a citation requiring the person to appear before the court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which a person is brought, or appears, in pursuance of a warrant or citation issued under subsection (1) above that there has been such failure as is mentioned in that subsection, the court may—
  - (a) order him to be returned to prison for the whole or any part of the period which—
    - (i) begins with the date of the order for his return; and
    - (ii) is equal in length to the period between the date of the first proven failure referred to in the statement mentioned in subsection (1) above and the date on which supervision under the supervised release order would have ceased; or
  - (b) do anything in respect of the supervised release order that might have been done under section 15(4) of this Act on an application under that subsection in relation to that order.

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- (3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.
- (4) As soon as the period for which a person is ordered under subsection (2) above to be returned to prison expires, the Secretary of State shall release him unconditionally.
- (5) For the purposes of this Act, any such period as is mentioned in subsection (4) above is neither a sentence nor a part of a sentence.
- (6) The following are “appropriate officers” for the purposes of subsection (1) above—
  - (a) the person’s supervising officer;
  - (b) the director of social work of a local authority which is designated under section 14(4) or 15(1) of this Act as the appropriate authority for the purposes of the order;
  - (c) any officer appointed by that director for the purposes of this section.

## **19 Appeals in respect of decisions relating to supervised release orders**

- (1) Within two weeks after a determination by a court—
  - (a) on an application under section 15(4); or
  - (b) under section 18(2),
 of this Act, or within such longer period as the High Court may allow, the person subject to the supervised release order may lodge a written note of appeal with the Clerk of Justiciary, who shall send a copy to the court which made the determination and to the Secretary of State.
- (2) A note of appeal under subsection (1) above shall be as nearly as possible in such form as may be prescribed by Act of Adjournal and shall contain a full statement of all the grounds of appeal; and except by leave of the High Court on cause shown it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

## **20 The Parole Board for Scotland**

- (1) There shall continue to be a body to be known as the Parole Board for Scotland, which shall discharge the functions conferred on it by, or by virtue of, this Part of this Act.
- (2) It shall be the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is connected with the early release or recall of prisoners.
- (3) The Secretary of State may, after consultation with the Board, by order provide that, in relation to such class of case as may be specified in the order, this Act shall have effect subject to the modifications that—
  - (a) in subsection (3) of section 1, for the word “may” there shall be substituted the word “shall” so however that nothing in this paragraph shall affect the operation of that subsection 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 this Act);
  - (b) in section 12—
    - (i) in subsection (3)(a), after the words “licence of a” there shall be inserted the words “long-term or”; and



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- (ii) subsection (4) shall be omitted; and
  - (c) in section 17(1)(a), for the word “may” there shall be substituted the word “shall”.
- (4) The Secretary of State may by rules make provision with respect to the proceedings of the Board, including provision—
- (a) authorising cases to be dealt with in whole or in part by a prescribed number of members of the Board in accordance with such procedure as may be prescribed;
  - (b) requiring cases to be dealt with at prescribed times; and
  - (c) as to what matters may be taken into account by the Board (or by such number) in dealing with a case.
- (5) The Secretary of State may give the Board directions as to the matters to be taken into account by it in discharging its functions under this Part of this Act; and in giving any such directions the Secretary of State shall in particular have regard to—
- (a) the need to protect the public from serious harm from offenders; and
  - (b) the desirability of preventing the commission by offenders of further offences and of securing their rehabilitation.
- (6) The supplementary provisions in Schedule 2 to this Act shall have effect with respect to the Board.

## **21 Parole advisers**

- (1) The Secretary of State may appoint under this section persons (to be known as “parole advisers”) to give advice to prisoners, or former prisoners, who wish to make representations to the Secretary of State or to the Parole Board as regards any matter concerning their release on licence under this Part of this Act or their return to prison or detention by virtue of this Part of this Act.
- (2) The Secretary of State shall pay to parole advisers such remuneration and allowances as he may with the consent of the Treasury determine.

### *Miscellaneous*

## **22 Place of confinement of prisoners**

For section 10 of the 1989 Act (place of confinement of prisoners) there shall be substituted the following section—

### **“10 Place of confinement of prisoners**

- (1) A prisoner may be lawfully confined in any prison.
- (2) Prisoners shall be committed to such prisons as the Secretary of State may from time to time direct, and may be moved by the Secretary of State from any prison to any other prison.
- (3) The foregoing provisions of this section are without prejudice to section 11 of this Act and section 241 of the 1975 Act (transfer of prisoner in connection with hearing of appeal).”

## **23 Transfer of young offenders to prison or remand centre**

After section 20 of the 1989 Act there shall be inserted the following section—

### **“20A Transfer of young offenders to prison or remand centre**

- (1) Subject to section 21 of this Act, an offender sentenced to detention in a young offenders institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.
- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offenders institution shall be detained in a prison or remand centre instead of in a young offenders institution, but if the offender is under 18 years of age at the time of the direction, only for a temporary purpose.
- (3) Where an offender is detained in a prison or remand centre by virtue of subsection (2) above, any rules under section 39 of this Act which apply in relation to persons detained in that place shall apply to that offender; but subject to the foregoing and to subsection (4) below, the provisions of the 1975 Act, the Prisoners and Criminal Proceedings (Scotland) Act 1993 and this Act relating to the treatment and supervision of persons sentenced to detention in a young offenders institution shall continue to apply to the offender.
- (4) Where an offender referred to in subsection (3) above attains the age of 21 years, subsection (3) of section 21 of this Act shall apply to him as if he had been transferred to prison under that section.”.

## **24 Additional days for disciplinary offences**

The following subsection shall be added at the end of section 39 of the 1989 Act (rules for the management of prisons and other institutions)—

- “(7) Rules made under this section may provide for the award of additional days, not exceeding in aggregate one-sixth of the prisoner’s sentence—
- (a) to a short-term or long-term prisoner within the meaning of Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993; or
  - (b) conditionally on his eventually becoming such a prisoner, to a person remanded in custody,
- where he is guilty, under such rules, of a breach of discipline.”.

## **25 Provision in prison rules for directions**

The following subsections shall be added at the end of section 39 of the 1989 Act (rules for the management of prisons and other institutions) after the subsection added by section 24 of this Act—

- “(8) Without prejudice to any power to make standing orders or to issue directions or any other kind of instruction, rules made under this section may authorise the Secretary of State to supplement the rules by making provision by directions for any purpose specified in the rules; and rules so made or directions made by virtue of this subsection may authorise the governor, or any other officer, of a prison, or some other person or class of persons specified in the rules or directions, to exercise a discretion in relation to the purpose so specified.

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- (9) Rules made under this section may permit directions made by virtue of subsection (8) above to derogate (but only to such extent, or in such manner, as may be specified in the rules) from provisions of rules so made and so specified.
- (10) Any reference, however expressed, in any enactment other than this section to rules made under this section shall be construed as including a reference to directions made by virtue of subsection (8) above.
- (11) Directions made by virtue of subsection (8) above shall be published by the Secretary of State in such manner as he considers appropriate.”.

## **26 Further amendment of Mental Health (Scotland) Act 1984**

In section 73 of the Mental Health (Scotland) Act 1984, subsection (3) (which provides for the continued detention in hospital of persons moved there by virtue of a transfer order while awaiting trial etc. even where that order has ceased to have effect) shall cease to have effect.

### *Interpretation*

## **27 Interpretation of Part I**

- (1) In this Part of this Act, except where the context otherwise requires—
  - “court” does not include a court-martial;
  - “discretionary life prisoner” has the meaning given by section 2 of this Act;
  - “life prisoner” means a person serving a sentence of imprisonment for life;
  - “local authority” means a regional or islands council;
  - “long-term prisoner” means a person serving a sentence of imprisonment for a term of four years or more;
  - “Parole Board” means the Parole Board for Scotland;
  - “petty sessions area” has the same meaning as in the Justices of the Peace Act 1979;
  - “relevant officer”, in relation to a local authority, means an officer of that authority employed by them in the discharge of their functions under section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.);
  - “short-term prisoner” means a person serving a sentence of imprisonment for a term of less than four years;
  - “supervised release order” has the meaning given by section 212A (as inserted by section 14 of this Act) of the 1975 Act but includes any order under subsection (2) of the said section 14; and
  - “supervising officer” has the meaning given by the said section 212A.
- (2) The Secretary of State may by order provide—
  - (a) that the references to four years in the definitions of “long-term prisoner” and “short-term prisoner” in subsection (1) above shall be construed as references to such other period as may be specified in the order;
  - (b) that any reference in this Part of this Act to a particular proportion of a prisoner’s sentence shall be construed as a reference to such other proportion of a prisoner’s sentence as may be so specified.

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- (3) An order under subsection (2) above may make such transitional provisions as appear to the Secretary of State necessary or expedient in connection with any provision made by the order.
- (4) For the purposes of this Part of this Act so far as relating to licences or persons released on licence, the age of any person at the time when sentence was passed on him shall be deemed to have been that which appears to the Secretary of State to have been his age at that time.
- (5) For the purposes of any reference, however expressed, in this Part of this Act to the term of imprisonment or other detention to which a person has been sentenced or which, having been sentenced, he has served (in whole or in part), consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.
- (6) If additional days are awarded in accordance with rules made under section 39(7) of the 1989 Act (and are not remitted in accordance with such rules), the period which the prisoner (or eventual prisoner) must serve before becoming entitled to or eligible for release shall be extended by those additional days.
- (7) Where (but for this subsection) a prisoner would, under any provision of this Act or of the 1975 Act, fall to be released on or by a day which is a Saturday, Sunday or public holiday he shall instead be released on or by the last preceding day which is not a Saturday, Sunday or public holiday.