

# CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### THE ACT

#### Schedule

#### *Transitional Provisions*

#### Part 3

#### Existing life prisoners recommended for release

112. [Part 3](#) of the schedule makes additional transitional provision to ensure that certain existing adult mandatory life prisoners who have been recommended for release before the new provisions come into force are not disadvantaged.
113. [Paragraph 31](#) specifies the categories of prisoner to whom Part 3 applies. In order to obtain the benefit of the transitional provisions the prisoner must satisfy the requirements of paragraphs 31(a) to (c). Paragraph 31(a) and (c) apply Part 3 to prisoners who have had a recommendation for release from the Parole Board prior to the relevant date and to whose release the judiciary do not object. Paragraph 31(b) provides that the provisions of Part 3 apply only to those prisoners who have not received a hearing under Part 1. Once a hearing has taken place and a punishment part has been set under Part 1, Part 3 ceases to apply and the prisoner is dealt with under section 2 of the 1993 Act as amended by this Act.
114. [Paragraph 32](#) provides that “existing life prisoner” has the meaning given in paragraph 1(a) of Part 1 of the schedule, namely a person who was prior to the relevant date sentenced for a murder committed when the person was aged 18 years or over. “Punishment part” has the same meaning as in Part 1. “Relevant date” means the date when this Part of the schedule comes into force. “Provisional release date” (“PRD”) is defined to ensure that, if the PRD fixed by the Scottish Ministers or the Parole Board has been fixed by reference to a month but not to a particular day in that month, e.g. release in July 2001, the prisoner would be released on the first day of that month provided that day was not a Saturday, Sunday or public holiday. In the latter case, the prisoner would be released on the last preceding day which was not a Saturday, Sunday or public holiday. “Public holiday” has the meaning given in section 27(8) of the 1993 Act, that is, any day on which in the opinion of the Scottish Ministers, public offices or facilities the prisoner is likely to need in the area he is likely to be following release will be closed.
115. [Paragraph 33](#) provides that, where a PRD has been fixed by the Scottish Ministers, the prisoner will be released on licence on that date and deemed to be released as if he had already served his punishment part and the Parole Board had directed his release under 2(4) of the 1993 Act. The requirement that the Scottish Ministers release the prisoner on the PRD is, however, subject to paragraph 34.

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Act 2001 (asp 7) which received Royal Assent on 5 July 2001*

116. [Paragraph 34](#) provides the Scottish Ministers with the power to refer a prisoner for whom they have fixed a PRD back to the Parole Board before his release for a review of the original recommendation to release. This power is restricted to cases where Ministers are of the view that either the prisoner's conduct before release or a material change in the prisoner's circumstances suggests that a review is required to ensure that the Board is still satisfied that there will be no unacceptable risk to the public from that release. The power may be exercised, for example, if, during the pre-release programme, the prisoner commits a serious disciplinary offence or there is a change of some significance in the prisoner's plans on release.
117. [Paragraph 35](#) stipulates that the review referred to in paragraph 34 falls within the functions of the Parole Board which are contained in section 20 of the 1993 Act. This will enable the Parole Board Rules that are made under section 20 to be amended to require the Parole Board to sit in its tribunal capacity when carrying out a review under paragraph 34. Paragraph 36 requires the Parole Board to carry out such a review as soon as reasonably practicable after the case has been referred to it by the Scottish Ministers.
118. [Paragraph 37](#) provides that, where the Scottish Ministers refer a prisoner back to the Parole Board under paragraph 34, it has two options. It can either direct that the PRD should continue to apply and that the Scottish Ministers should release the prisoner on the PRD or, alternatively, it can direct that the PRD no longer applies.
119. [Paragraph 38](#) provides that, even if the Parole Board has made a direction under paragraph 37(a) that the PRD be adhered to, if the Scottish Ministers consider that either the prisoner's behaviour between the time of that direction and the PRD or a material change in the prisoner's circumstances gives rise to concern about the protection of the public, they may refer the case back to the Parole Board for review. In such a case, paragraphs 35 to 37, 39 and 40 apply as they would to a referral made under paragraph 34.
120. [Paragraph 39](#) provides that where the Parole Board has made a direction to the release a prisoner on or after the prisoner's PRD, the Scottish Ministers shall release the prisoner as soon as reasonably practicable after the direction is made and the prisoner shall be regarded as having been released under section 2(4) of the 1993 Act on the PRD.
121. [Paragraph 40](#) provides that if the Parole Board, on undertaking a review under paragraph 37, is of the opinion that the PRD should no longer apply, the end of the day prior to the PRD should be regarded as being the end of the prisoner's punishment part and that punishment part would be deemed to have been given in accordance with the provisions in this Act amending the 1993 Act. This means that at the expiry of the punishment part the prisoner's case would be referred to the Parole Board sitting as a tribunal to consider whether or not he should continue to be confined for the protection of the public. If the Parole Board does not direct release at that stage a further tribunal would be held under section 2 of the 1993 Act.
122. [Paragraph 41](#) deals with those prisoners whose PRD has not yet been fixed by the Scottish Ministers. These are the cases where, although there is a favourable Parole Board recommendation and the judiciary do not object to release in accordance with that recommendation, Ministers have not had an opportunity to consider the prisoner's suitability for release before the new provisions of the Act came into force. It provides that such a prisoner will be released on the date recommended by the Parole Board and deemed to be released on licence as if the prisoner had already served his punishment part and the Board had directed his release under section 2(4) of the 1993 Act. This mirrors the provision in paragraph 33 for prisoners for whom Ministers have fixed a PRD. Paragraph 41 is subject to paragraphs 34 to 40. This means that, as with the cases in which the Scottish Ministers have fixed a PRD, Ministers have the power to refer the case back to the Parole Board in the event of an adverse development occurring before the PRD.

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123. [Paragraph 42](#) provides the Scottish Ministers with an additional power for prisoners whose PRD has been fixed by the Parole Board. In view of the fact that, as mentioned above, Ministers will not have had an opportunity to consider the prisoner's suitability for release before this Act comes into force, they are given power to refer the case back to the Parole Board if they consider, on looking at the available information, that there is a need for a further review. Paragraph 43 provides that if the Scottish Ministers wish to refer a prisoner back to the Board under paragraph 42, they must do so no later than two weeks after this Act comes into force.
124. [Paragraph 44](#) mirrors paragraph 35 and provides that the consideration and disposal of the prisoner referred to in paragraph 42 falls within the functions of the Parole Board which are outlined in section 20 of the 1993 Act. This will enable the Parole Board Rules that are made under section 20 to be amended to require the Parole Board to sit in its tribunal capacity when considering and disposing of the reference by Ministers. Paragraph 45 mirrors paragraph 36 and requires the Board to consider the prisoner's case as soon as reasonably practicable after it has been referred to it by the Scottish Ministers.
125. [Paragraph 46](#) mirrors paragraph 37 and ensures that, where the Scottish Ministers refer a prisoner back to the Parole Board under paragraph 42, the Board has the power to direct the Scottish Ministers to release the prisoner on the PRD, or direct that the PRD no longer applies.
126. [Paragraph 47](#) mirrors paragraph 40 and provides that if the Parole Board, on undertaking a review under paragraph 42, is of the opinion that the PRD should no longer apply, the end of the day prior to the PRD should be regarded as being the end of the prisoner's punishment part and the punishment part would be deemed to have been given in accordance with the provisions in this Act amending the 1993 Act. This means that at the expiry of the punishment part the prisoner's case would be referred to the Parole Board sitting as a tribunal to consider whether or not he should continue to be confined for the protection of the public. Paragraph 48 mirrors 39 and requires the Scottish Ministers to release the prisoner as soon as reasonably practicable after the Board's direction is made. It further provides that the prisoner shall be regarded as having been released under section 2(4) of the 1993 Act.