

*Status: Point in time view as at 27/06/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Convention Rights (Compliance) (Scotland) Act 2001, SCHEDULE. (See end of Document for details)*

## SCHEDULE

*(introduced by sections 4 and 5)*

### TRANSITIONAL PROVISIONS

#### PART 1

##### EXISTING LIFE PRISONERS

- 1 This Part of this schedule applies to a life prisoner—
- (a) who was, prior to the relevant date, sentenced for murder committed by the prisoner when aged 18 or over; or
  - (b) in respect of whom, the Lord Justice General or the Lord Justice Clerk has issued a certificate under—
    - (i) paragraph 6(1) of Schedule 6 to the 1993 Act; or
    - (ii) section 16(2) of the Crime and Punishment (Scotland) Act 1997 (c.48).
- 2 In this Part of this schedule—
- “existing life prisoner” means a life prisoner to whom this Part of this schedule applies by virtue of paragraph 1 above;
  - “incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise);
  - “life prisoner” has the same meaning as it has in section 27(1) as read with section 6 of the 1993 Act;
  - “mental disorder” has the same meaning as it has in section 87 of the Adults with Incapacity (Scotland) Act 2000 (asp 4);
  - “punishment part” has the same meaning as it has in section 2(2) of the 1993 Act;
  - “relevant date” means the date when this Part of this schedule comes into force.
- 3 The Scottish Ministers shall, as soon as reasonably practicable after the relevant date, refer the case of an existing life prisoner, except the case of such a prisoner who was released on licence under section 3 of the 1993 Act, to the High Court of Justiciary for a hearing under paragraph 12 below.
- 4 The Scottish Ministers shall not so refer the case of an existing life prisoner to whom Part 3 of this schedule applies if the prisoner has, under paragraph 7 below, waived the entitlement to such a hearing.
- 5 The Scottish Ministers shall not refer the case of an existing life prisoner who was released on licence under section 3 of the 1993 Act to the High Court of Justiciary under paragraph 3 above unless—
- (a) the prisoner has been recalled to prison under section 17(1) of the 1993 Act; and
  - (b) the Parole Board has not directed that the prisoner be released on licence immediately under section 17(4) of that Act.
- 6 The Scottish Ministers shall not so refer the case of an existing life prisoner to whom paragraph 1(b) above applies if the prisoner—

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- (a) has, under paragraph 7 below, waived the entitlement to such a hearing; or  
 (b) has served the part of the sentence specified in the certificate referred to in paragraph 1(b) above issued in respect of that prisoner.
- 7 An existing life prisoner to whom Part 3 of this schedule or paragraph 1(b) above applies may waive the entitlement to a hearing under paragraph 12 below provided—
- (a) the prisoner has had independent legal advice or has declined such advice; and  
 (b) a copy in writing of the waiver is sent to the Scottish Ministers.
- [<sup>F1</sup>7A In the case of a prisoner to whom paragraph 6 above applies, Part 1 of the 1993 Act as amended by this Act shall apply as if the part of the prisoner’s sentence specified in the certificate mentioned in paragraph 1(b) above were a punishment part specified under section 2(2) of the 1993 Act as amended by this Act.]

#### Textual Amendments

- F1** Sch. Pt. 1 para. 7A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(a), 89; S.S.I. 2003/288, art. 2, Sch.

- 8 Notwithstanding paragraph 3 above, an existing life prisoner—
- (a) who has not, under paragraph 7 above, waived the entitlement to a hearing; or  
 (b) who has not served the part of the sentence specified in the certificate referred to in paragraph 1(b) above issued in respect of that prisoner,  
 may refer his or her case for a hearing under paragraph 12 below.
- 9 The Scottish Ministers shall, no later than two weeks after the referral of an existing life prisoner’s case under paragraph 3 or 8 above, send the documents and other information mentioned in paragraph 10 below to—
- (a) the High Court of Justiciary;  
 (b) the Lord Advocate; and  
 (c) the existing life prisoner.
- 10 The documents and other information referred to in paragraph 9 above are—
- (a) a copy of the indictment;  
 (b) subject to paragraph 11 below, a copy of any report by the trial judge;  
 (c) a copy of any certificate as is referred to in paragraph 1(b) above;  
 (d) any other documents or information which the Scottish Ministers consider relevant.
- 11 A report prepared by the trial judge—
- (a) may be sent under paragraph 9 above notwithstanding that it was prepared on the basis that it would not be disclosed to the existing life prisoner; and  
 (b) shall be so sent for the purposes only of the hearing under paragraph 12 below.
- 12 There shall be a hearing, at which the High Court of Justiciary shall make the order referred to in paragraph 13 below.
- 13 That order is an order specifying a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2

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of the 1993 Act had that section, as amended by this Act, applied to that prisoner at the time he or she was sentenced.

14 It shall not be a ground of appeal in relation to the part of the sentence specified in the order made under paragraph 12 above that the court had regard to any certificate as is referred to in paragraph 1(b) above or to any recommendation made under section 205(4) of the 1995 Act as to the minimum period which should elapse before the Scottish Ministers release the prisoner on licence.

15 The court shall pronounce the order under paragraph 12 above in open court.

16 If the court is satisfied that the [<sup>F2</sup>existing life prisoner] is incapable of properly instructing a solicitor in relation to the hearing under paragraph 12 above, whether or not the prisoner has so instructed a solicitor, it shall not make the order under that paragraph.

#### Textual Amendments

**F2** Words in [Sch. para. 16](#) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 85, 89, [Sch. 4 para. 5\(a\)](#); [S.S.I. 2003/288](#), [art. 2](#), [Sch.](#)

17 If the Scottish Ministers are satisfied that the prisoner is no longer incapable of instructing a solicitor in relation to the hearing under paragraph 12 above, they shall, as soon as reasonably practicable thereafter, refer the case of the prisoner to the court for such a hearing.

18 Nothing in this Part of this schedule shall be taken as preventing a prisoner, in respect of whom the court declined, under paragraph 16 above, to make the order under paragraph 12 above, from again referring his or her case for a hearing under paragraph 12 above.

19 Where the court has made an order under paragraph 12 above in the case of an existing life prisoner to whom paragraph 1(b) above applies, the certificate referred to in that [<sup>F3</sup>paragraph] shall have no further effect.

#### Textual Amendments

**F3** Word in [Sch. para. 19](#) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 85, 89, [Sch. 4 para. 5\(b\)](#); [S.S.I. 2003/288](#), [art. 2](#), [Sch.](#)

20 Section 2 of the 1993 Act as amended by this Act shall apply to the existing life prisoner as if the order under paragraph 12 above were an order such as is mentioned in subsection (2) of that section and had been made at the time the existing life prisoner was sentenced.

21 A hearing under paragraph 12 above shall be criminal procedure for the purposes of section 305 of the 1995 Act (power of High Court of Justiciary to regulate criminal procedure by Act of Adjournal).

22 The court, in considering the case of an existing life prisoner—  
(a) who is serving more than one sentence of imprisonment for life; and  
(b) two or more of whose life sentences were imposed in proceedings on a single indictment,  
shall, in making the order under paragraph 12 above, proceed as if section 205D of the 1995 Act had been in force at the time the prisoner was sentenced.

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- 23 In the case of an existing life prisoner—
- (a) whose case was, before the relevant date, referred to the Parole Board under section 28(4) of the Prisons (Scotland) Act 1989 (c.45) (in this schedule, “the 1989 Act”) or under section 2 or 17(3) of the 1993 Act and, in respect of whom, the Board declined to direct the prisoner’s release on licence; or
  - (b) who was, before the relevant date, recalled to prison under section 28(1) or (2) of the 1989 Act or section 17(1) of the 1993 Act and not thereafter released,
- the Board shall, as soon as reasonably practicable after the relevant date, fix the date when it will next consider the prisoner’s case, being a date no later than two years after the date of its decision to decline to direct the release of the prisoner or the date when the prisoner was recalled to prison, whichever is the later; and the date so fixed shall be treated as fixed under section 2(5A)(b) of the 1993 Act.
- 24 The references in sub-paragraphs (a) and (b) of paragraph 23 above to sections 2 and 17 of the 1993 Act are references to those sections as they had effect immediately before the relevant date.
- 25 An existing life prisoner who, before the relevant date, has been or is released on licence, otherwise than under section 3 (release on compassionate grounds) of the 1993 Act, shall, at the relevant date, be deemed to have been released on licence under section 2(4) of the 1993 Act as if that prisoner had been a life prisoner to whom that section applied and who had served the punishment part of his or her sentence.
- 26 Where an existing life prisoner released on licence is treated by virtue of paragraph 25 above as a prisoner whose licence was granted under section 2(4) of the 1993 Act, the validity of his or her licence shall not be affected by the absence in the licence of such a condition as is specified in section 12(2) of that Act.

## PART 2

### EXISTING DESIGNATED LIFE PRISONERS

- 27 This Part of this schedule applies to a life prisoner (an “existing designated life prisoner”)—
- (a) who was sentenced before the relevant date; and
  - (b) in respect of whom the court made an order under section 2(2) of the 1993 Act that subsections (4) to (6) of that section apply to the prisoner as soon as the prisoner has served the part of the sentence (“the designated part”) specified in the order.
- 28 In this Part of this schedule—
- “life prisoner” and “punishment part” have respectively the same meanings as they have in Part 1 of this schedule;
- “relevant date” means the date when this Part of this schedule comes into force; and
- the references in paragraph 27(b) above and paragraph 30(a) and (b) below to sections 2 and 17 of the 1993 Act are references to those sections as they had effect immediately before the relevant date.
- 29 Part 1 of the 1993 Act, as amended by this Act, shall, on the relevant date, apply to an existing designated life prisoner as if the designated part of the prisoner’s

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sentence were a punishment part specified under section 2(2) of the 1993 Act as amended by this Act.

- 30 In the case of an existing designated life prisoner—
- (a) whose case was, before the relevant date, referred to the Parole Board under section 2 or 17(3) of the 1993 Act and, in respect of whom, the Board declined to direct the prisoner’s release on licence; or
  - (b) who was, before the relevant date, recalled to prison under section 17(1) of the 1993 Act and not thereafter released,
- the Board shall, as soon as reasonably practicable after the relevant date, fix the date when it will next consider the prisoner’s case, being a date not later than two years after the date of its decision to decline to direct the release of the prisoner or the date when the prisoner was recalled to prison, whichever is the later; and the date so fixed shall be treated as fixed under section 2(5A)(b) of the 1993 Act.

### PART 3

#### EXISTING LIFE PRISONERS RECOMMENDED FOR RELEASE

- 31 This Part of this schedule applies to an existing life prisoner—
- (a) in respect of whom, before the relevant date, the Parole Board has recommended a provisional release date on which the prisoner should be released on licence under the 1989 Act or the 1993 Act;
  - (b) whose case has not been the subject of a hearing under paragraph 12 above; and
  - (c) to whose release neither the Lord Justice General, whom failing the Lord Justice Clerk, nor, if available, the trial judge objects.
- 32 In this Part of this schedule—
- “existing life prisoner” means a person who is an existing life prisoner for the purposes of Part 1 of this schedule by virtue only of paragraph 1(a) above;
  - “provisional release date” means, where that date has been fixed by reference to a month but not to a specific day in the month, the first day of that month, and, where that date would (but for this provision) be a Saturday, Sunday or public holiday and the prisoner would fall to be released then, means the last preceding day which is not a Saturday, Sunday or public holiday;
  - “public holiday” has the meaning given by section 27(8) of the 1993 Act;
  - “punishment part” has the same meaning as it has in Part 1 of this schedule;
  - “relevant date” means the date when this Part of this schedule comes into force.
- 33 If the Scottish Ministers have fixed a provisional release date in respect of the prisoner, the prisoner shall on that date be released on licence as if the prisoner had been a life prisoner to whom section 2(4) of the 1993 Act applied and had served the punishment part of his or her sentence.
- 34 If, however, the Scottish Ministers, having regard to the need to protect the public, are of the view, at any time between the time when they fixed the provisional release date for the prisoner and that date, that the prisoner’s conduct has been such that or that there has been a material change of circumstances such that the Parole Board should review the recommendation to release the prisoner on licence, they may refer to the Board the question of such release in the light of that conduct or that change of circumstances.

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- 35 Such a review as is referred to in paragraph 34 above is, for the purposes of section 20 of the 1993 Act, within the functions of the Parole Board.
- 36 The Parole Board shall carry out such a review as is referred to in paragraph 34 above or 38 below as soon as is reasonably practicable after the question there mentioned is referred to the Board by the Scottish Ministers.
- 37 On such a review, the Parole Board shall either—
- (a) direct that the provisional release date fixed for the prisoner be adhered to and that he or she be released then in accordance with paragraph 33 above or, if the direction is made on or after that provisional release date, that the prisoner be released as soon as reasonably practicable after the direction is made in accordance with paragraph 39 below; or
  - (b) direct that the provisional release date so fixed no longer applies.
- 38 Notwithstanding that the Parole Board has made a direction under paragraph 37(a) above, the Scottish Ministers, if they are of the view that, having regard to the need to protect the public, at any time between the time of that direction and the provisional release date, the prisoner's conduct has been such that or that there has been a material change of circumstances such that the Parole Board should review that direction, may refer the question of such release to the Parole Board in the light of that conduct or that change of circumstances; and paragraphs 35 to 37 above and paragraphs 39 and 40 below shall apply to such a referral as they apply to a referral under paragraph 34.
- 39 Where the Parole Board has made a direction under paragraph 37(a) above in respect of a prisoner on or after the provisional release date fixed in respect of that prisoner, the Scottish Ministers shall release the prisoner on licence as soon as reasonably practicable after that direction is made; and paragraph 33 above shall apply to the prisoner as if the prisoner had been released on the provisional release date.
- 40 Notwithstanding that the Parole Board has made a direction under paragraph 37(b) above, the punishment part of the prisoner's sentence shall be regarded as having been served as at the end of the day immediately before the provisional release date and section 2 of the 1993 Act as amended by this Act shall apply to the prisoner as if an order such as mentioned in subsection (2) of that section had been made in respect of the prisoner when sentenced.
- 41 If the Scottish Ministers have not fixed a provisional release date in respect of the prisoner, then, subject to paragraphs 34 to 40 above, the prisoner shall be released on the provisional release date recommended by the Parole Board as if released on licence under section 2(4) of the 1993 Act as a life prisoner to whom that section applied and who had served the punishment part of his or her sentence.
- 42 If, however, the Scottish Ministers, having regard to the need to protect the public, are of the view that the Parole Board should consider afresh whether the prisoner should be released, they may refer to the Board the question of such release in the light of that need.
- 43 No such reference shall be made after the expiry of two weeks beginning with the relevant date.
- 44 The consideration and disposal of such a reference is, for the purposes of section 20 of the 1993 Act, within the functions of the Parole Board.

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- 45 The Parole Board shall carry out such a review as is referred to in paragraph 42 above as soon as is reasonably practicable after the question there mentioned is referred to the Board by the Scottish Ministers.
- 46 On such a reference, the Parole Board shall either—
- (a) direct that the recommended provisional release date be adhered to and that the prisoner be released then or, if the direction is made on or after that recommended provisional release date, that the prisoner be released as soon as reasonably practicable after the direction is made in accordance with paragraph 48 below; or
  - (b) direct that the recommended provisional release date no longer applies.
- 47 Notwithstanding that the Parole Board has made a direction under paragraph 46(b) above, the punishment part of the prisoner's sentence shall be regarded as having been served as at the end of the day immediately before the recommended provisional release date and section 2 of the 1993 Act as amended by this Act shall apply to the prisoner as if an order such as is mentioned in subsection (2) of that section had been made in respect of the prisoner when sentenced.
- 48 Where the Parole Board has made a direction under paragraph 46(a) above in respect of a prisoner on or after the recommended provisional release date, the Scottish Ministers shall release the prisoner on licence as soon as reasonably practicable after that direction is made; and paragraph 41 above shall apply to the prisoner as if the prisoner had been released on the provisional release date.

#### PART 4

##### TRANSFERRED LIFE PRISONERS

- 49 This Part of this schedule applies to—
- (a) a life prisoner to whom subsection (1) of section 10 of the 1993 Act applied and in respect of whom the Secretary of State has issued a certificate under section 28(4) of the Crime (Sentences) Act 1997 (c.43);
  - (b) a life prisoner to whom subsection (2), but not subsections (1) or (3), of section 10 of the 1993 Act applied; or
  - (c) a life prisoner to whom subsections (2) and (3) of that section applied, including one to whom those subsections applied by virtue of paragraph 7 of Schedule 6 to that Act,
- and who was transferred to Scotland before the relevant date; and the references in this paragraph to section 10 of the 1993 Act are references to that section as it had effect at the time the prisoner was so transferred.
- [<sup>F4</sup>49A This Part of this schedule also applies to—
- (a) any life prisoner who was transferred—
    - (i) on or after the coming into force of section 10 of the 1993 Act; and
    - (ii) before the relevant date,and to whom, by virtue of the Crime and Punishment (Scotland) Act 1997 (c. 48), subsections (2) and (3) of that section applied subsequent to the prisoner's transfer; and
  - (b) any other life prisoner who was—
    - (i) transferred to Scotland before the coming into effect of section 10 of the 1993 Act; and

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- (ii) as at the relevant date, a life prisoner such as is mentioned in any of sub-paragraphs (a) to (c) of paragraph 49 above (the references in those sub-paragraphs to that section being construed as references to that section as it had effect on that date).]

#### Textual Amendments

- F4** Sch. Pt. 4 para. 49A inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(b)(i), 89; S.S.I. 2003/288, art. 2, Sch.

- 50 In this Part of this schedule—  
“existing transferred life prisoner” means a life prisoner to whom this Part of this schedule applies by virtue of paragraph 49 [<sup>F5</sup>or 49A] above;  
“incapable”, “life prisoner”, “mental disorder” and “punishment part” have respectively the same meanings as they have in Part 1 of this schedule;  
“relevant date” means the date when this Part of this schedule comes into force.

#### Textual Amendments

- F5** Word in Sch. Pt. 4 para. 50 inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(b)(ii), 89; S.S.I. 2003/288, art. 2, Sch.

- 51 The Scottish Ministers shall, as soon as reasonably practicable after the relevant date, refer the case of an existing transferred life prisoner to the High Court of Justiciary for a hearing under paragraph 59 below.
- 52 The Scottish Ministers shall not so refer the case of an existing transferred life prisoner to whom Part 3 of this schedule applies if the prisoner has, under paragraph 54 below, waived the entitlement to such a hearing.
- 53 The Scottish Ministers shall not so refer the case of an existing transferred life prisoner to whom paragraph 49(c) above applies [<sup>F6</sup>, to whom sub-paragraph (a) of paragraph 49A above applies (whether or not paragraph 49(b) above also applies to the prisoner) or to whom sub-paragraph (b) of paragraph 49A above applies (in so far as that sub-paragraph relates to paragraph 49(c) above)] if the prisoner—  
(a) has, under paragraph 54 below, waived the entitlement to such a hearing; or  
(b) has served the part of the sentence specified in the certificate referred to in sub-paragraph (c) of paragraph 57 below issued in respect of that prisoner.

#### Textual Amendments

- F6** Word in Sch. Pt. 4 para. 53 inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(b)(iii), 89; S.S.I. 2003/288, art. 2, Sch.

- 54 An existing transferred life prisoner [<sup>F7</sup>such as is mentioned in paragraph 52 or 53 above] may waive the entitlement to a hearing under paragraph 59 below provided—  
(a) the prisoner has had independent legal advice or has declined such advice; and  
(b) a copy in writing of the waiver is sent to the Scottish Ministers.



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### Textual Amendments

**F7** Words in *Sch. Pt. 4 para. 54* substituted (27.6.2003) by *Criminal Justice (Scotland) Act 2003 (asp 7)*, **ss. 39(b)(iv)**, 89; *S.S.I. 2003/288*, **art. 2**, *Sch.*

- 55 Notwithstanding paragraph 51 above, an existing transferred life prisoner—
- (a) who has not, under paragraph 54 above, waived the entitlement to a hearing; or
  - (b) who has not served the part of the sentence specified in the certificate referred to in sub-paragraph (c) of paragraph 57 below issued in respect of that prisoner,
- may refer his or her case for a hearing under paragraph 59 below.
- 56 The Scottish Ministers shall, no later than two weeks after the referral of an existing transferred life prisoner’s case under paragraph 51 or 55 above, send the documents and other information mentioned in paragraph 57 below to—
- (a) the High Court of Justiciary;
  - (b) the Lord Advocate; and
  - (c) the existing transferred life prisoner.
- 57 The documents and other information referred to in paragraph 56 above are—
- (a) a copy of any indictment or corresponding document;
  - (b) subject to paragraph 58 below, a copy of any report by the trial judge;
  - (c) a copy of any certificate under—
    - (i) section 10(2) of the 1993 Act;
    - (ii) section 48 of or paragraph 9 of Schedule 12 to the Criminal Justice Act 1991 (c.53); or
    - (iii) section 28(4) or 33 of the Crime (Sentences) Act 1997 (c.43);
  - (d) any other documents or information which the Scottish Ministers consider relevant.
- 58 A report prepared by the trial judge—
- (a) may be sent under paragraph 56 above notwithstanding that it was prepared on the basis that it would not be disclosed to the existing transferred life prisoner; and
  - (b) shall be so sent for the purposes only of the hearing under paragraph 59 below.
- 59 There shall be a hearing, at which the High Court of Justiciary shall make the order referred to in paragraph 60 below.
- 60 That order is an order specifying a part of the sentence which the court considers would have been specified as the punishment part under subsection (2) of section 2 of the 1993 Act, if—
- (a) the prisoner had been sentenced for the offence in Scotland; and
  - (b) that section, as amended by this Act, had been in force at the time when the prisoner was sentenced.
- 61 It shall not be a ground of appeal in relation to the part of the sentence specified in the order made under paragraph 59 above that the court had regard to—
- (a) any certificate referred to in paragraph 57(c) above;

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- (b) in the case of a prisoner transferred to Scotland from England and Wales, any recommendation made by the Lord Chief Justice to the Secretary of State as to the period of the life sentence that the prisoner should be required to serve before becoming eligible for release on licence;
- (c) any other certificate issued or any recommendation, declaration, decision, direction or order made in respect of the prisoner, under any enactment applying in any part of the United Kingdom or in the Channel Islands or the Isle of Man, as to the period that the prisoner should or must serve before becoming eligible for release on licence.
- 62 The court shall pronounce the order under paragraph 59 above in open court.
- 63 If the court is satisfied that the existing transferred life prisoner is incapable of properly instructing a solicitor in relation to the hearing under paragraph 59 above, whether or not the prisoner has so instructed a solicitor, it shall not make the order under that paragraph.
- 64 If the Scottish Ministers are satisfied that the prisoner is no longer incapable of instructing a solicitor in relation to the hearing under paragraph 59 above, they shall, as soon as reasonably practicable thereafter, refer the case of the prisoner to the court for such a hearing.
- 65 Nothing in this Part of this schedule shall be taken as preventing a prisoner, in respect of whom the court declined, under paragraph 63 above, to make the order under paragraph 59 above, from again referring his or her case for a hearing under paragraph 59 above.
- 66 Where the court has made an order under paragraph 59 above—
- (a) Part 1 of the 1993 Act, except section 2(9), as amended by this Act shall apply to the existing transferred life prisoner as if—
- (i) the existing transferred life prisoner were a life prisoner within the meaning of section 2 of that Act; and
- (ii) the punishment part of that prisoner’s sentence within the meaning of that section were the part specified in the order under paragraph 59 above; and
- (b) any certificate such as is referred to in sub-paragraph (c) of paragraph 57 above shall have no further effect.
- [<sup>F8</sup>67 In the case of a prisoner to whom paragraph 53 above applies, Part 1 of the 1993 Act (except subsection (9) of section 2) as amended by this Act shall apply as if—
- (a) the prisoner were a life prisoner within the meaning of subsection (1) of that section; and
- (b) the part of the prisoner’s sentence specified in the certificate referred to in sub-paragraph (c) of paragraph 57 above were a punishment part specified under subsection (2) of that section.]

#### Textual Amendments

**F8** Sch. Pt. 4 para. 67 substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 39(b)(v), 89; S.S.I. 2003/288, art. 2, Sch.

- 68 A hearing under paragraph 59 above shall be criminal procedure for the purposes of section 305 of the 1995 Act (power of High Court of Justiciary to regulate criminal procedure by Act of Adjournal).

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- 69 The court, in considering the case of an existing transferred life prisoner—
- (a) who is serving more than one sentence of imprisonment for life; and
  - (b) two or more of whose life sentences were imposed in proceedings on a single indictment or corresponding document,
- shall, in making the order under paragraph 59 above, proceed as if the prisoner had been sentenced in Scotland and section 205D of the 1995 Act had been in force at the time the prisoner was sentenced.
- 70 In the case of an existing transferred life prisoner—
- (a) whose case was, before the relevant date, referred to the Parole Board under section 2 or 17(3) of the 1993 Act and, in respect of whom, the Board declined to direct the prisoner’s release on licence; or
  - (b) who was, before the relevant date, recalled to prison under section 17(1) of the 1993 Act and not thereafter released,
- the Board shall, as soon as reasonably practicable after the relevant date, fix the date when it will next consider the prisoner’s case, being a date no later than two years after the date of its decision to decline to direct the release of the prisoner or the date when the prisoner was recalled to prison, whichever is the later; and the date so fixed shall be treated as fixed under section 2(5A)(b) of the 1993 Act.
- 71 The references in sub-paragraphs (a) and (b) of paragraph 70 above to sections 2 and 17 of the 1993 Act are references to those sections as they had effect immediately before the relevant date.
- 72 An existing transferred life prisoner to whom paragraph 49(b) above applies and who, before the relevant date, has been or is released on licence (otherwise than under section 3 of the 1993 Act (release on compassionate grounds)) shall, at the relevant date, be deemed to have been released on licence under section 2(4) of the 1993 Act as if that prisoner had been a life prisoner to whom that section applied and who had served the punishment part of his or her sentence.
- 73 Where such an existing transferred life prisoner released on licence is treated by virtue of paragraph 72 above as a prisoner whose licence was granted under section 2(4) of the 1993 Act, the validity of his or her licence shall not be affected by the absence in the licence of such a condition as is specified in section 12(2) of that Act.
- 74 Part 3 of this schedule applies to an existing transferred life prisoner to whom paragraph 49(b) above applies as it applies to an existing life prisoner of the kind mentioned in paragraph 31 above with the substitution in paragraph 31(b) above of a reference to a hearing under paragraph 59 above for the reference to a hearing under paragraph 12 above.

## PART 5

### LIFE PRISONERS TRANSFERRED UNDER THE MENTAL HEALTH ACTS

- 75 This Part of this schedule applies to a life prisoner—
- (a) to whom—
    - (i) section 80 (removal to Scotland of patients from England and Wales) of the Mental Health Act 1983 (c.20) applies; or

*Status: Point in time view as at 27/06/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Convention Rights (Compliance) (Scotland) Act 2001, SCHEDULE. (See end of Document for details)*

- (ii) to whom section 81 (removal to Scotland of patients from Northern Ireland) of the Mental Health (Scotland) Act 1984 (c.36) applies; and
- (b) who was transferred to Scotland before the relevant date.
- 76 In this Part of this schedule—  
“life prisoner” and “punishment part” have respectively the same meanings as they have in Part 1 of this schedule;  
“relevant date” means the date when this Part of this schedule comes into force.
- 77 Paragraphs 51 to 74 of Part 4 of this schedule apply to a life prisoner to whom this Part applies, except a prisoner such as is mentioned in paragraph 78 below, as if section 10 of the 1993 Act had applied to the prisoner when the prisoner was transferred and as if the prisoner were an existing transferred life prisoner within the meaning of that Part.

#### Commencement Information

- II** [Sch. para. 77](#) wholly in force at 8.10.2001; [Sch. para. 77](#) not in force at Royal Assent see [s. 15\(2\)](#); [Sch. para. 77](#) in force for specified purposes at 27.7.2001 and in force at 8.10.2001 insofar as not already in force by [S.S.I. 2001/274](#), [art. 3\(1\)\(d\)\(3\)](#)

- 78 Section 10(1) of the 1993 Act, as amended by this Act, applies to a life prisoner—  
(a) to whom this Part of this schedule applies; and  
(b) to whom, had the prisoner been transferred after the relevant date, section 10(1) would have applied.

## PART 6

### EXISTING MEMBERS OF THE PAROLE BOARD

- 79 Subject to paragraphs 80 to 83 below, the modifications made by section 5 of this Act have effect as respects existing members.
- 80 Any period of appointment occurring prior to—  
(a) an existing member’s most recent appointment or reappointment; and  
(b) the coming into force of section 5 of this Act,  
shall be disregarded for the purposes of paragraph 2E of Schedule 2 to the 1993 Act.
- 81 Any existing member whose current appointment proceeded upon selection following public advertisement seeking applications for membership of the Board shall, for the purposes of Schedule 2 to the 1993 Act and notwithstanding the terms of the instrument of appointment of the member, be regarded, on the commencement of section 5 of this Act as serving a period of appointment of six years in accordance with that Schedule beginning with the date when that current appointment began.
- 82 An existing member whose current appointment proceeded otherwise than as mentioned in paragraph 81 above shall, for the purposes of Schedule 2 to the 1993 Act, be regarded on the commencement of section 5 of this Act as serving whichever of the following expires later—  
(a) the period of appointment provided for in the member’s instrument of appointment; or

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*Status: Point in time view as at 27/06/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Convention Rights (Compliance) (Scotland) Act 2001, SCHEDULE. (See end of Document for details)*

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- (b) a period of appointment of six years beginning with the date when the member was first appointed to the Parole Board.

83 In this Part of this schedule—

“existing member” means a person who is a member of the Parole Board when section 5 of this Act comes into force;

“current appointment”, in relation to any existing member, means the appointment then held by that member;

“public advertisement” means advertisement in a newspaper circulating throughout Scotland.

**Status:**

Point in time view as at 27/06/2003.

**Changes to legislation:**

There are currently no known outstanding effects for the Convention Rights (Compliance) (Scotland) Act 2001, SCHEDULE.