

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 - Confinement and Release of Prisoners Chapter 2

Confinement, Review and Release of Prisoners

Life Prisoners

Section 20 - Setting of punishment part

50. This section sets out the provisions for setting the punishment part of a life sentence. The period will be specified in an order made by the court. Subsection (1) provides that this section applies where the court imposes on a person a life sentence. Subsection (2) requires the court to specify the punishment part in an order after imposing the sentence. Subsection (3) defines the punishment part as being that part of the sentence which, taking into account certain specified matters, the court considers appropriate to satisfy the requirements for retribution and deterrence but ignoring any period of confinement that the court feels may be necessary for protection of the public. It is only once this period has been served in full that the offender can be released on life licence, but this will only happen following a direction from the Parole Board, as explained below.
51. Subsection (4) details the matters the court must take account of when setting a punishment part for someone with a mandatory life sentence (for murder), namely
- the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment;
 - any previous convictions;
 - where appropriate, the timing of any guilty plea;
- Subsection (5) deals with the relevant matters for those with a discretionary life sentence (for offence other than murder) or an order for lifelong restriction. They are:
- the determinate period of imprisonment the court considers would have been appropriate had the court not imposed a discretionary life sentence or an order for lifelong restriction; and
 - the part of that period of imprisonment which the court would have specified as the custody part, by reference to the matters set out in section 6(4)
52. Subsections (6), (7) and (8) provide that the punishment part, which must be expressed in years and months, may exceed the person's life expectancy, and forms part of the person's sentence for the purposes of any appeal or review.

Section 21 - Referral to Parole Board

53. This section requires the Scottish Ministers to refer a life prisoner's case to the Parole Board before the expiry of the punishment part.

Section 22 - Review by Parole Board

54. This section requires the Parole Board, on referral of the case by the Scottish Ministers under section 21, to determine before the expiry of the punishment part of the sentence whether or not the life prisoner, if not confined, would be likely to cause serious harm to the public.

Section 23 - Release on life licence following review by Parole Board

55. Where the Parole Board is satisfied (either at the first review before the punishment of the sentence expires or at a subsequent review) that it is no longer necessary to confine a life prisoner for the protection of the public, it must direct the Scottish Ministers to release him or her on life licence and must specify conditions to be included in the licence. Where the direction is given at the first review before the punishment part expires, the Scottish Ministers are obliged to give effect to that direction on the expiry of the punishment part. Subsection (3) provides that where the Parole Board has directed that a life prisoner be released, the Scottish Ministers must release the prisoner on a life licence.

Section 24 - Determination that section 22(3) applicable: consequences

56. This section provides that where the Parole Board is satisfied that it is necessary to continue to confine a life prisoner for the protection of the public, it must give the prisoner reasons in writing and fix a date for a further review of the case. Subsection (3) provides that this must be within the period beginning 4 months after the day of the determination and ending immediately before the second anniversary of the determination. Subsection (4) provides that where the Parole Board has set a date for further review under subsection (2)(b), subsection (5) gives the Parole Board the discretion of replacing that date with an earlier one if the prisoner requests this.

Section 25 - Further referral to Parole Board

57. This section provides that where the Parole Board fixes a date under section 24(2)(b) the Scottish Ministers must, subject to section 26 (which is explained below), refer the case before that date to allow the Board to consider the case. The Board is to determine whether the prisoner would be likely to cause the public serious harm if not confined.