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SCHEDULE 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—
 - (a) has, under paragraph 7 below, waived the entitlement to such a hearing; or

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- (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.

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[^{F1}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.

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- 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 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 transferred 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.
- 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 subsection shall have no further effect.
- 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.
- 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

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(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.

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