

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 4 – Prisoners

Custody and temporary detention

Section 23 – Remand and committal of children and young persons

107. **Section 23** amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to enable young persons to be remanded in young offenders institutions in certain circumstances. In this context, “young persons” means persons aged 14 or over but under 21 years of age.
108. A young offenders institution is defined in section 19(1)(b) of the 1989 Act as a place in which offenders sentenced to detention in a young offenders institution may be kept. Subsection (1) amends this definition to allow young offenders institutions also to hold persons not less than 14 but under 21 years of age who are remanded or committed for trial or sentence.
109. Subsection (2) amends section 40 of the 1989 Act so that persons committed to a young offenders institution are included in the provisions about persons who are unlawfully at large.
110. Section 51 of the 1995 Act deals with the remanding and committal of young persons. There are various provisions which set out how a court may deal with persons in different age groups and in different circumstances. Subsection (3) amends the section with the effect that:
 - persons aged 14 and 15 (unless they are certified as unruly or depraved) shall be committed to the local authority, which shall then place the young persons in secure accommodation or a suitable place of safety;
 - persons aged 16 and over who are subject to a supervision requirement may be committed to prison, to a local authority or to a young offenders institution; and
 - persons aged 16 and over who are not subject to a supervision requirement, and persons aged 14 and 15 who have been certified by the court as unruly or depraved, shall be committed to a remand centre, if the court has been notified that one is available, or to a young offenders institution or to a prison, if the court has not been so notified.
111. Subsection (4) removes the references to remand centres in section 51(2) of the 1995 Act. The effect of this is that, while the local authority to which a person is committed must be specified in a warrant, there is no similar requirement to specify a particular remand centre.
112. Subsection (5) inserts a new subsection (2A) into section 51 of the 1995 Act to provide that, subject to section 51(4), a person committed to a remand centre under any

provision of the 1995 Act shall continue to be held in a remand centre for the period of committal or until liberated in due course of law.

113. Subsection (6) amends section 51(3)(b) of the 1995 Act so that, where a committal to a local authority of a person aged 14 or 15 is revoked by a court on the basis that the person is unruly or depraved, the court may commit the person to either a young offenders institution or a prison.
114. Subsection (7) amends section 51(4) of the 1995 Act. That section currently gives sheriffs the power to revoke an order committing a person aged 14 or 15 to a remand centre or a prison if they no longer consider that the order is necessary. Instead, the young person can be committed to an appropriate local authority which may then place the person in secure accommodation or a suitable place of safety. The section is amended to give sheriffs the power also to revoke orders committing young persons aged 14 or 15 to a young offenders institution.
115. Subsection (8) adds a new subsection (5) to section 51 of the 1995 Act. The effect of the new subsection is that, where a court commits a person to prison or to a young offenders institution under section 51, the warrant issued by the court allows the Scottish Ministers to detain the person in either a prison or a young offenders institution, without the need for any further court order.

Section 24 - Legal custody

116. **Section 24** amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) to remove the need for prison officers to remain with a prisoner at all times when he or she is in the custody of the police or of a police custody and security officer, and clarifies the relationship between section 13 of the 1989 Act and section 295 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).
117. **Section 24(1)** amends section 13 of the 1989 Act, which defines “legal custody” for the purposes of that Act, to provide that:
 - the definition relates to prisoners and is without prejudice to section 295 of the 1995 Act; and
 - in addition to the existing circumstances in which a prisoner is in legal custody, a prisoner will also be in legal custody in terms of the 1989 Act if under the control of a constable or a police custody and security officer while outside a prison;
 - “constable” includes a constable under any part of the law of the United Kingdom and Channel Islands.
118. **Section 24(2)** amends section 295 of the 1995 Act to provide that it is without prejudice to section 13 of the 1989 Act.

Section 25 – Temporary detention of person being returned to prison in England and Wales etc.

119. **Section 25** inserts a new section 40B into the Prisons (Scotland) Act 1989 (“the 1989 Act”) to provide that a person who is unlawfully at large from another jurisdiction in the UK or the Channel Islands can be detained in a Scottish prison or young offenders institution until arrangements can be made for his/her return to the jurisdiction from which he/she is unlawfully at large.
120. Section 40(1) of the 1989 Act provides that any person in Scotland who is unlawfully at large from a Scottish prison or young offenders institution may be arrested by a constable or prison officer without a warrant and taken to the place in which he or she is required in accordance with the law to be detained.
121. By virtue of paragraph 17 of Schedule 1 to the Crime (Sentences) Act 1997, the provisions of section 40(1) of the 1989 Act and the corresponding provisions

for England, Wales and Northern Ireland extend throughout the UK and Channel Islands. However, under section 40(1), the power of a constable or prison officer in Scotland in relation to a person liable to be detained in another part of the UK or in the Channel Islands extends only to taking the person to the place in which he or she is required to be detained and not to detaining that person in a place in Scotland pending their being transported to the other jurisdiction. This has caused practical difficulties for the Scottish Prison Service, which section 25 will remove.

Consecutive sentences

Section 26 – Consecutive sentences: life prisoners etc.

122. **Section 26** amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to provide a new power for a court, when sentencing a person for an offence committed after the section comes into force and where that person is already serving a sentence of imprisonment, to order that:
- a life sentence may commence, in the case of an existing life prisoner, on the expiry of the punishment part of the existing life sentence or, if the prisoner is already serving a determinate sentence, at the point at which the Scottish Ministers would otherwise be required to release the prisoner; and
 - a determinate sentence may commence, in the case of an existing life prisoner, on the expiry of the punishment part of the existing life sentence.
123. At present, a life sentence may not be ordered to commence at a date after the date of sentence, nor may a determinate sentence be ordered to run consecutively to it. The new power will be in addition to the sentencing powers which courts already have.
124. **Section 26(1)** inserts a new section 204B into the 1995 Act to provide courts with this new power. Where the second bullet point above applies, the new section will only apply to solemn proceedings, since summary proceedings are covered elsewhere in the 1995 Act, as explained below.
125. **Section 26(2)** amends section 167 in Part IX (Summary Proceedings) of the 1995 Act to provide that, in summary proceedings, where a sentence is imposed in the circumstances described in the second bullet point (paragraph 124) above, the court may order the later sentence to start on the expiry of the punishment part of the life sentence .

Release of prisoners

Section 27 – Release on licence etc. under 1989 Act

126. **Section 27** amends sections 22 and 23 of the Prisons (Scotland) Act 1989 (“the 1989 Act”) which govern the early release on licence of certain prisoners sentenced to determinate terms of imprisonment prior to 1 October 1993. Although these provisions were repealed by the Prisoners and Criminal Proceedings (Scotland) Act 1993, their application to those prisoners was preserved by that Act.
127. By virtue of the amendments contained in this section the Scottish Ministers become obliged to release on licence those serving a sentence of imprisonment of 10 years or more which was imposed before 1 October 1993, if the Parole Board so recommends. Given that the Parole Board has the power to direct the release of those sentenced before 1 October 1993 to less than 10 years and that the release of all life prisoners is now at the direction of the Parole Board, these amendments will remove from the Scottish Ministers any discretion over the release of any prisoner sentenced before 1 October 1993 whose release on licence is recommended by the Parole Board.
128. In addition, section 22(7) of the 1989 Act, which governs the inclusion on release, and subsequent insertion, variation or cancellation of licence conditions, is modified so that the Scottish Ministers may only include licence conditions on release, or subsequently

insert, vary or cancel such conditions in accordance with the recommendations of the Board.

Section 28 – Release on licence etc. under 1993 Act

129. **Section 28** amends sections 1(3) and 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) which apply to the early release of long-term prisoners (i.e. those sentenced to a term of 4 years or more) who were sentenced on or after 1 October 1993. It also repeals section 20(3) of that Act.
130. Section 1(3) of the 1993 Act, read with section 53 of the Scotland Act 1998, provides that after a long-term prisoner has served half of his or her sentence the Scottish Ministers may, if recommended to do so by the Parole Board, release him or her on licence. This was modified on 1 April 1995 with the effect that the Scottish Ministers are statutorily obliged to release such a prisoner who is sentenced to a term of less than 10 years, if that sentence was imposed on or after 1 October 1993 and provided that the person is not liable to deportation from the UK. In other cases, where the Board recommends early release on licence, the Scottish Ministers exercise discretion over whether or not to accept the recommendation. The amendment proposed to section 1(3) will remove the Scottish Ministers’ discretion and require them to release such a prisoner on licence if recommended to do so by the Parole Board.
131. Section 9(1) of the 1993 Act modifies the terms of section 1(3) of that Act in relation to persons liable to removal from the UK, for example those subject to an order for deportation. The modification is to the effect that the Scottish Ministers exercise discretion over whether or not to grant early release on licence in respect of such prisoners. The Board is not involved in such a decision. The Act does not affect the operation of these provisions.
132. Section 12 of the 1993 Act provides that in the case of a life prisoner or a long-term prisoner, sentenced on or after 1 October 1993 to a term of less than 10 years, no licence condition may be included on release or subsequently inserted, varied or cancelled except in accordance with the recommendation of the Parole Board. The amendment to section 12 will bring the arrangements governing the inclusion, insertion, variation or cancellation of licence conditions for all other long-term prisoners into line with those applicable to the classes of case referred to above. It will also provide, by way of exception to this, that the Scottish Ministers may include conditions in a licence on the release of a person on compassionate grounds (under section 3 of the 1993 Act), where the Parole Board was not consulted prior to release.
133. Section 20(3) of the 1993 Act – repealed by subsection (3) – provides that sections 1(3), 12(3)(a) and 17(1)(a) of that Act may be modified by order. The provision is redundant by virtue of the amendments being made by this section and section 36 of the Act.

Section 29 – Release on licence: life prisoners

134. **Section 29** amends section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) to provide that in certain circumstances where a life prisoner who has served the punishment part of a life sentence receives a further sentence (either for life or for a term) that prisoner will not have the right to require that his or her case should be reviewed by the Parole Board at a maximum interval of 2 years, as is presently the case. It also makes a minor consequential amendment to section 5 of the 1993 Act.
135. **Section 29(2)** inserts new subsections (5AB) to (5AD) into section 2 of the 1993 Act. Subsection (5AB), read with subsection (5AD), provides that where a life prisoner, who has served the punishment part, is given one or more other sentences (whether determinate or indeterminate) at a time between his or her case being referred to the Parole Board and a date being fixed for its determination, the Board may, in fixing a date under section 2(5A)(b) of the 1993 Act for the next review of the case, set a date which is, if the Board considers it appropriate, more than 2 years ahead.

136. New subsection (5AC), read with subsection (5AD), provides that where a life prisoner receives any other sentence after his or her case has been referred to the Parole Board and a date has been fixed by the Board for considering the prisoner's case, or where the Board has fixed a date for a subsequent consideration for parole, then in such circumstances the Parole Board shall fix a different date for considering the case and that the date shall be that on which the prisoner would be eligible to be released, or to be considered for release from all such other sentences, or a date that is as soon as practicable after that date.
137. **Section 29(2)** additionally amends section 2(7) of the 1993 Act to provide that until the “appropriate part” of any further determinate term of imprisonment has been served, the life prisoner may not require the Scottish Ministers to refer his or her case to the Parole Board. Subsection (7A), which is inserted into section 2 of the 1993 Act, defines the “appropriate part of the term”.
138. Finally, section 29(2) amends section 2(9) of the 1993 Act so that those with more than one life sentence need to serve the punishment part of any such sentence before being eligible for parole.

Section 30 - Release on licence: certain consecutive sentences

139. **Section 30** amends section 1A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) by adding a new subsection (2) which provides that where a prisoner who is serving a determinate sentence receives a sentence of imprisonment or detention for life or without limit of time which is to take effect on the day after he would, but for the indeterminate sentence, be entitled to be released from the determinate term, the Scottish Ministers shall not be required to release the prisoner until they are required to release him or her from the indeterminate term. Neither are the Scottish Ministers nor the Parole Board under any obligation to consider the prisoner for release from the determinate term until they are required to consider his or her release from the indeterminate sentence.

Section 31 - Release: Prisoners serving extended sentences

140. **Section 31** amends section 3A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) so that where a prisoner subject to an extended sentence is recalled to custody and receives a life sentence before the Parole Board considers whether or not to direct immediate re-release, the prisoner will not be eligible for release until after having served the punishment part of the life sentence. (In such a case, the effect of the amendments in section 31 is that release will be in terms of section 2 of the 1993 Act.) It further provides that if in the interval between recall to custody and consideration of immediate re-release, the prisoner receives another determinate sentence, the Parole Board shall not be empowered to consider the case until the prisoner is eligible for release from the new sentence.

Section 32 – Release etc. under 1993 Act of prisoner serving consecutive or concurrent offence and non-offence terms

141. **Section 32** amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”).
142. **Section 32(2)** adds a new subsection (4A) to section 27 of the 1993 Act to define the meaning of the terms “wholly concurrent” and “partly concurrent”. It provides that terms of imprisonment will be wholly concurrent if they are imposed on, and expire on, the same date. Terms will be partly concurrent if they are imposed on the same date but expire on different dates, or if they overlap but are imposed on different dates.
143. **Section 32(3)** amends Schedule 1 to the 1993 Act in relation to offence and non-offence terms which are consecutive or wholly or partly concurrent. Schedule 1 defines an “offence term” as a term of imprisonment on conviction of an offence and a “non-

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offence term” as a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of the 1993 Act, namely a term imposed for non-payment of a fine or contempt of court.

144. **Section 32(3)(a)** replaces paragraph 2 of Schedule 1 (consecutive terms) with a new paragraph 2 to provide that where an offence term and a non-offence term are consecutive, the second term will be taken as beginning on the date following the person’s release from the first term. Where an offence term and a non-offence term are consecutive but have been imposed on the same date, the non-offence term will follow the offence term.
145. **Section 32(3)(a)** also adds a new paragraph 2A to Schedule 1 to the 1993 Act. It provides that where offence and non-offence terms are wholly or partly concurrent, the early release provisions contained in sections 1(1) to (3) and 5(2) of the 1993 Act shall apply separately to each term.
146. **Section 32(3)(b)** repeals paragraph 3 and 4 of Schedule 1 to the 1993 Act, which set out how the early release provisions contained in section 1 of the 1993 Act applied to offence and non-offence terms that were wholly or partly concurrent. Those paragraphs have been superseded by the new provisions in paragraph 2A, described above.

Section 33 – Prisoners repatriated to Scotland

147. **Section 33** amends the Repatriation of Prisoners Act 1984 (“the 1984 Act”) to ensure that, for the purposes of early release, the sentence of a prisoner who is repatriated to Scotland is deemed to begin when the repatriation takes place. This means that all prisoners who are repatriated to Scotland will require to serve some period in custody prior to release.
148. As the Schedule to the 1984 Act stands, all long-term prisoners (i.e. those serving a sentence of imprisonment for 4 years or more, as defined in section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”)) require to serve two thirds of the balance of their sentence that is outstanding, following their transfer to Scotland, before they will automatically be released on licence. Their earlier release will only be possible if recommended by the Parole Board. However, the existing Schedule to the 1984 Act does not apply to short-term prisoners (defined in section 27(5) of the 1993 Act as those serving a sentence of imprisonment for less than 4 years). As a result, short-term prisoners who have served more than half of their sentence prior to their repatriation require to be released as soon as they arrive in Scotland. This has the potential to hinder the repatriation of short-term prisoners.
149. **Section 33(1)** therefore contains a new version of paragraph 2 of the Schedule to the 1984 Act. This new version will ensure that, for the purposes of early release, the sentences of all repatriated prisoners will be deemed to begin on the date of their transfer to Scotland. Account will still be taken of the time that the prisoner has served in the foreign jurisdiction. However, a short-term prisoner will require to serve one half of the outstanding balance of a sentence following his or her repatriation to Scotland. The amended Schedule does not change the existing law regarding the release of repatriated long-term prisoners.
150. **Section 33(1)** also amends section 3(9) of the 1984 Act and repeals paragraph 3 of the Schedule, removing provisions which are out of date in view of changes to the regime for repatriated life prisoners brought about by the Convention Rights (Compliance) (Scotland) Act 2001.
151. **Section 33(2)** provides that the new version of paragraph 2 of the Schedule applies only to those who received at least one of their sentences on or after 1 October 1993 (the date when the relevant provisions in the 1993 Act came into force). The early release of repatriated prisoners sentenced before that date does not present difficulties and therefore the original Schedule to the 1984 Act, as amended by paragraph 5 of

Schedule 2 to the Crime (Sentences) Act 1997 (“the 1997 Act”), shall continue to apply to such prisoners.

152. **Section 33(4)** amends paragraph 7 of Schedule 2 to the 1997 Act to make it clear that the Schedule to the 1984 Act, as amended by this paragraph, will apply to prisoners sentenced on or after 1 October 1993 but repatriated before the commencement of the new section. The new version of paragraph 2 of the Schedule to the 1984 Act, contained in section 33, will therefore apply only to prisoners who received at least one of their sentences on or after 1 October 1993 and who were repatriated after the commencement of section 33.

Section 34 – Suspension of conditions and revocation of licences under 1989 Act

153. **Section 34** amends section 22 of the Prisons (Scotland) Act 1989 (“the 1989 Act”) and inserts a new section 22A so as to suspend certain conditions in a prisoner’s licence when the prisoner is being lawfully detained before the expiry of the licence. It also amends section 28 of that Act, to provide that the Scottish Ministers must revoke a person’s licence and recall him or her to prison if the Parole Board so recommends.
154. **Section 34(2)** provides that section 22(6) of the 1989 Act, which obliges a licence holder to comply with the conditions in the licence, is to be subject to section 22A.
155. **Section 34(3)** inserts a new section 22A into the 1989 Act.
156. Subsection (1) of the new section 22A provides that where a prisoner is detained in custody, having been previously released on licence and while the licence is still in force, the effect of certain conditions of the licence is to be suspended. This is because, in such a case, some of the licence conditions will either be impossible to fulfil or will no longer be appropriate, because of the prisoner’s detention in prison.
157. Subsection (2) of the new section provides that the suspension of the conditions will take effect when the prisoner is detained and will continue throughout the period for which he or she is liable to be detained or remanded. Immediately upon release, all the conditions will come back into force, provided that the licence has not already expired.
158. Subsection (3) of the new section specifies the conditions which will not be suspended and which will still remain in force while the prisoner is detained. These are, that the offender shall be of good behaviour and keep the peace, and – if such a condition has been imposed – shall not have contact with any named person or class of person from whom he or she is prohibited from having contact by virtue of his or her licence.
159. Subsection (4) of the new section provides that the Scottish Ministers may by order add to the conditions referred to in subsection (3) as they consider appropriate or remove or vary them.
160. **Section 34(4)** amends section 28 of the 1989 Act (revocation of licences) so that the Scottish Ministers are obliged to accept a recommendation from the Parole Board to recall a person to custody. As a consequence, section 28(1A) of the 1989 Act is rendered redundant, and is repealed.

Section 35 – Suspension of licence conditions under 1993 Act

161. **Section 35** amends section 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) and adds a new section 12A to the Act, to suspend certain conditions in a prisoner’s licence when, notwithstanding the issuing of a licence, he or she is then lawfully detained in custody. This may be because the prisoner:
- continues to be detained because he or she is serving a non-offence term of imprisonment or detention (for non-payment of a fine or for contempt of court) which is consecutive or partly concurrent with the sentence from which he or she has been released on licence; or

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- is detained after release on licence while the licence remains in force, for example, because of a remand warrant or a subsequent sentence.
162. In such circumstances, some of the licence conditions will either be impossible to fulfil or will no longer be appropriate, because of the prisoner's detention in prison.
163. It also inserts a new section 12B. Its effect is that where a person is released on licence from a sentence under either the Prisons (Scotland) Act 1989 or under the 1993 Act and is then given a further sentence while the licence is still in force, the subsequent release will be on a single licence. This is to prevent the possibility that the person is released from the subsequent sentence on licence and that the licence in respect of the original sentence is also still in force.
164. [Section 35\(2\)](#) provides that section 12 of the 1993 Act, which obliges a licence holder to comply with the conditions in the licence, is to be subject to section 12A.
165. [Section 35\(3\)](#) inserts new sections 12A and 12B into the 1993 Act.
166. Subsection (1) of the new section provides that where a person is detained in custody, having been previously released on licence the licence is still in force, the effect of certain conditions of the licence is to be suspended.
167. Subsection (2) of the new section provides that the suspension of the conditions will take effect when the prisoner is detained and will continue throughout the period for which he or she is liable to be detained or remanded. Immediately upon release, all of the conditions will come back into force, provided that the licence has not already expired.
168. Subsection (3) of the new section specifies the conditions which will not be suspended and which will still remain in force while the prisoner is detained. These are, that the offender shall be of good behaviour and keep the peace, and – if such a condition has been imposed – shall not have contact with any named person or class of person from whom he or she is prohibited from having contact by virtue of the licence.
169. Subsection (4) of the new section provides that the Scottish Ministers may by order add to the conditions referred to in subsection (3) as they consider appropriate or remove or vary them.
170. [Section 35\(3\)](#) also inserts a new section 12B into the 1993 Act.
171. Subsection (1) of new section 12B provides that subsection (2) applies where a person has been released on licence and, while the licence is still in force, receives another sentence of imprisonment.
172. Subsection (2) provides that, in such a situation, the prisoner is to be released from the subsequent sentence on a single licence under Part 1 of the 1993 Act. This licence will be in respect of both the original and the subsequent sentences.
173. Subsection (3) provides that the single licence will take the place of the original licence and any licence which would otherwise have been granted in respect of the subsequent sentence, and that its conditions shall be those contained in the original licence immediately prior to the single licence taking effect. In addition, the single licence shall remain in force until both the original licence and a licence in respect of the subsequent sentence would have expired.

Section 36 – Revocation of licences under 1993 Act

174. [Section 36](#) amends sections 16 and 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) to provide that:
- the making of an order under section 16(2) or (4) of the that Act will no longer have the effect of revoking a person's licence; and

- the Scottish Ministers will be required to revoke a person's licence and recall him or her to prison where the Parole Board has so recommended (under section 17 of the 1993 Act).
175. Subsection (3) repeals section 16(7)(a) of the 1993 Act. This section provides that where a court makes an order under section 16(2) or (4) of that Act in respect of a person released on licence, the making of the order has the effect of revoking the licence. Thus an order under section 16(2) or (4) will no longer automatically have the effect of revoking a licence.
176. Subsection (4) amends section 17 of the 1993 Act to substitute new subsections (1), (1A), (1B), (2) and (3) for the existing subsections (1) to (3). The main effect of the new provisions is that the Scottish Ministers will be obliged to recall a person to prison if recommended to do so by the Parole Board. At present they have a discretion as regards those prisoners sentenced to a term of 10 years or more on or after 1 October 1993. Another effect is that Ministers will only be obliged to revoke a person's licence but not to recall them to custody where the person is at the time of revocation being detained. Otherwise, the effect of the substituted provisions is substantially preserved in the new provisions.

Section 37 – Extended sentences: recall to prison and revocation of licences

177. **Section 37** amends section 26A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) to clarify when an extended sentence prisoner who is recalled to custody has an unconditional right of re-release. The effect is that, following the recall to custody of any prisoner serving an extended sentence, an automatic right to re-release will arise once the prisoner reaches the expiry date of his or her extension period.
178. Extended sentences are explained in paragraphs 91 and 92 above. They consist of a term of imprisonment (“the custodial term”) and a further period (“the extension period”) for which the offender is to be subject to a licence.
179. For as long as any prisoner is on licence he or she remains liable to have his or her licence revoked and to be recalled to custody in terms of section 17 of 1993 Act. However, following a prisoner's return to prison, the Parole Board must consider whether he or she should be immediately re-released. If the Parole Board decides that the prisoner should not be re-released at that stage, further consideration of his or her suitability for release will take place at regular intervals. However, it is not clear whether, as the law stands, the prisoner has an unconditional right to re-release at the end of the extension period, or whether he or she requires to be detained until the end of the extended sentence, in the event that these dates are different.
180. The dates will be different, by virtue of section 26A(5)(b) of the 1993 Act, if the custodial term that the prisoner receives is for less than 4 years. In this case, in accordance with section 26A(4) of the 1993 Act, the prisoner will be released on licence after serving half of the custodial term and will remain on licence for the duration of the extension period, which will begin on the date of the release on licence. (For those serving a term of 4 years or more the extension period begins at the expiry of the “custodial term” and not on the date on which they are released on licence.) However, at the expiry of the extension period, the prisoner's extended sentence (consisting of the aggregate of the custodial term and the extension period) will not have expired.
181. The current interpretation of section 26A(9) of the 1993 Act is that it requires a prisoner who has been recalled to custody to be detained until the expiry of the entire extended sentence, unless the Parole Board directs the prisoner's earlier release, even though this date may be considerably later than the expiry of the extension period.
182. Subsection (2) clarifies the law by providing that the reference in section 17(5) of the 1993 Act to a prisoner who is recalled to custody being liable to be detained in

“pursuance of his sentence” should be construed as a liability to be detained until the expiry of the extension period.

Section 38 – Special provision in relation to children

183. **Section 38** amends section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). Section 7 provides for the early release of children who are sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on indictment) to determinate periods of detention. Such children are treated in a comparable manner to adults except that there is no minimum period to be served before they can be considered for discretionary release, on the recommendation of the Parole Board; and that they are all issued with a licence on release, even if serving less than 4 years, so that social work supervision is available to assist their resettlement in the community.
184. The definition of a child is the same as that in the 1995 Act, namely a person:
- (i) who has not attained the age of 16 years;
 - (ii) over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision order is in force; or
 - (iii) whose case has been referred to a children’s hearing by virtue of section 33 of the Children (Scotland) Act 1995.
185. The amendments made by this section of the Act to the statutory regime governing the early release of children on licence are in line with to the changes proposed for adult prisoners by sections 28, 35 and 36 of the Act. In particular, it will be a matter for the Parole Board to decide whether a child sentenced under section 208 of the 1995 Act to a determinate term of detention should be released early on licence, and it will also be for the Board to decide whether the licence under which such a person has been released should be revoked (though in exceptional cases this decision may be taken by the Scottish Ministers without a recommendation of the Board). Certain licence conditions may also be suspended if, during the currency of the licence, the child is lawfully detained without the licence being revoked. In addition, if a child is ordered to be returned to detention for committing an offence following release but in the period during which, but for his or her early release, the child would still be serving a sentence, such an order is no longer to have the effect of revoking the licence (if it is still current).

Section 39 - Convention rights of certain life prisoners

186. **Section 39** amends certain provisions of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”). The schedule contains transitional provisions in respect of prisoners serving a life sentence in Scotland on 8 October 2001, the date on which the provisions of the 2001 Act relating to life sentence prisoners came into force. Those provisions made changes to the early release provisions in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”).
187. Paragraph (a) inserts a new paragraph 7A into Part 1 of the schedule to the 2001 Act. This makes it clear that, where a person has waived the right to a punishment part hearing under paragraph 6 of the schedule, the early release provisions in Part 1 of the 1993 Act shall apply as if the person had had a punishment part specified. The length of the part would be the same as the period specified in their certificate.
188. Paragraph (b) makes certain changes to Part 4 of the schedule. This Part applies to life prisoners who had been transferred to Scotland before 8 October 2001 and who were still serving their sentences on that date. A new paragraph 49A is added to the schedule to make clear that Part 4 also applies to two further categories of prisoner in addition to those specified in paragraph 49. These categories are: certain of those who were transferred to Scotland between 1 October 1993 (when section 10 of the 1993 Act came

into force) and 8 October 2001, and those who were transferred before 1 October 1993 and who were still in prison as at 8 October 2001.

189. Paragraph (b) also amends paragraph 53 of the schedule so as to extend the classes of prisoner whose cases will not, by virtue of that paragraph, be referred to the High Court for a punishment part hearing. These classes of prisoner are some of those covered by the new paragraph 49A.
190. Additionally, paragraph (b) replaces paragraph 67 of the schedule. The effect is that those prisoners whose cases are not, by virtue of paragraph 53, referred for a punishment part hearing are made subject to the early release provisions in Part 1 of the 1993 Act. They are deemed to have had a punishment part specified, and this is of the same length as the period specified in their certificate.

Monitoring on release

Section 40 – Remote monitoring of released prisoners

191. **Section 40** makes provision for the remote monitoring of prisoners released on licence. It provides that the Scottish Ministers may include in a licence a condition that the prisoner comply with such conditions as appropriate to enable the remote monitoring of the prisoner's compliance with any other conditions of the licence or for the purpose of monitoring his or her whereabouts. An example of a licence condition that may be remotely monitored would be a condition requiring the prisoner to remain in or away from a particular place.
192. **Section 40** applies, by virtue of subsection (1), to persons released on licence under section 22 of the Prisons (Scotland) Act 1989 (where the person has been sentenced prior to 1 October 1993) or under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (in respect of persons sentenced on or after that date), except those individuals under 16 at the time of their release under section 7(5) of the 1993 Act.
193. Subsection (3) provides that where a remote monitoring condition is specified in a licence, the Scottish Ministers must designate a person responsible for monitoring the prisoner and send to that person as soon as is practicable a copy of the licence condition together with any information required to fulfil the monitoring responsibility. Subsection (4) provides that the designated person will be responsible for monitoring the prisoner according to the licence conditions from the point at which they receive the copy of the licence condition and remain responsible until the licence condition has been suspended, cancelled, revoked or is otherwise no longer in force.
194. Subsection (5) provides the Scottish Ministers with the power to replace the designated person and amend the licence to reflect this. If this occurs this replacement person will become subject to subsections (3) and (4).
195. Subsection (7) applies section 245C of the Criminal Procedure (Scotland) Act 1995 to the remote monitoring of prisoners released on licence. Section 245C makes provision for the Scottish Ministers to make such arrangements as they see fit for the remote monitoring of compliance of offenders in respect of whom the court makes a restriction of liberty order.
196. **Section 40(8)** has the effect that the Scottish Ministers have the power to designate and amend the designation of the person responsible for monitoring the prisoner without having to consult or receive a recommendation from the Parole Board.

Parole Board to have regard to risk management plans

Section 41 – Parole Board to have regard to risk management plans

197. **Section 41** inserts a new section 26B into the Prisoners and Criminal Proceedings (Scotland) Act 1993 to provide that the Parole Board, when considering the case of an

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

offender who is the subject of a risk management plan, must have regard to that plan on each and every occasion that it considers the offender's case.