



Prisoners and Criminal Proceedings (Scotland) Act 1993

1993 CHAPTER 9

PART I **E+W+S**

DETENTION, TRANSFER AND RELEASE OF OFFENDERS

Early release

2 **Duty to release discretionary life prisoners.** **S**

^{F1}[(1) In this Part of this Act “^{F2} . . . life prisoner”, ^{F3} . . . except where the context otherwise requires, means a person—

- (a) sentenced to life imprisonment for an offence for which, subject to paragraph (b) below, such a sentence is not the sentence fixed by law; [^{F4} or
- ^{F4}(aa) sentenced to life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law;]^{F5} or
- (ab) who is subject to an order for lifelong restriction in respect of an offence,]
- (b) whose sentence was imposed under section 205A(2) of the 1995 Act (imprisonment for life on further conviction for certain offences); ^{F6} . . .
- ^{F6}(c)

and in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below.

(2) The order referred to in [^{F7}subsection (1)] above is an order that subsections (4) and (6) below shall apply to the ^{F2} . . . life prisoner as soon as he has served such part of his sentence ([^{F8}the punishment part]) as is specified in the order, being [^{F9}, subject to section 205ZB(2) of the 1995 Act,] such part as the court considers appropriate [^{F10}to satisfy the requirements for retribution and deterrence ^{F11}...,] taking into account—

- (a) the seriousness of the offence, or of the offence combined with other offences [^{F12}of which the life prisoner is convicted on the same indictment as that offence]; ^{F13} . . .

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- ^{F14}(aa)
- (b) any previous conviction of the ^{F2} . . . life prisoner [^{F15}; ^{F14} . . .
- (c) where appropriate [^{F16}(and except in the case of a prisoner to whom section 205ZB of the 1995 Act applies)], the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act][^{F17}; and
- (d) in the case of a life prisoner to whom paragraph (a) or (ab) of subsection (1) above applies, the matters mentioned in section 2A(1).]
- ^{F18}(2A) The matters mentioned in subsection (2)(a) to (c) above (taken together) are for the case of a life prisoner to whom paragraph (aa) of subsection (1) above applies; and, as respects the punishment part in the case of such a prisoner, the court is to ignore any period of confinement which may be necessary for the protection of the public.]
- ^{F19}(3) A court which imposes life imprisonment for an offence such as is mentioned in subsection (1) above [^{F20}or makes an order for lifelong restriction] shall make such order as is mentioned in subsection (2) above and such order shall constitute part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.
- (3A) An order such as is mentioned in subsection (2) above—
- (a) shall specify the period that the court considers appropriate under that subsection in years and months; and
- (b) may specify any such period of years and months notwithstanding the likelihood that such a period will exceed the remainder of the prisoner's natural life.]
- (4) Where this subsection applies, the Secretary of State shall, if directed to do so by the Parole Board, release a ^{F2} . . . life prisoner on licence.
- (5) The Parole Board shall not give a direction under subsection (4) above unless—
- (a) the Secretary of State has referred the prisoner's case to the Board; and
- (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- ^{F21}(5A) Where, on the disposal of any reference of a life prisoner's case under section 28(4) of the 1989 Act, under subsection (5)(a) above, subsection (5C) or (6) below or section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), the Parole Board declines to direct that the prisoner be released on licence, it shall—
- (a) give the prisoner reasons in writing for the decision not to direct his release on licence; and
- (b) fix the date when it will next consider the prisoner's case under this section, being [^{F22}, subject to subsections (5AB) to (5AD) below,] a date not later than two years after the date of its decision to decline to direct the release of the prisoner.
- [Where a reference has been made to the Parole Board under any of the provisions
- ^{F23}(5AB) mentioned in subsection (5A) above and the prisoner receives another sentence of imprisonment (whether for life or for a term) before a date has been fixed for considering his case, the Board shall, if he would not be eligible for release from the other sentence on the date which would (apart from this subsection) have been fixed for considering his case, fix a date (other than that date) for considering his case.
- (5AC) Where, at any time after such a reference has been made—

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- (a) a date has been fixed for considering the prisoner's case; or
- (b) following the disposal of the reference, a date has been fixed under subsection (5A)(b) above,

and, before that date, the prisoner receives any other sentence of imprisonment (whether for life or for a term), the Board shall, if he would not be eligible for release from any such other sentence on that date, fix a different date for considering his case (and where he receives any further sentence of imprisonment from which he would not be eligible for release on that different date, the Board shall fix a further different date).

(5AD) Any date fixed under subsection (5AB) or (5AC) above shall—

- (a) be—
 - (i) the date on which the prisoner would be eligible to be released, or considered for release, from all such other sentences (subject to any change to the date on which he would be so eligible); or
 - (ii) a date as soon as practicable after that date; and
- (b) replace any date previously fixed for considering the prisoner's case.]

(5B) The Scottish Ministers shall refer the case of a life prisoner to the Parole Board so as to enable it to consider the case on the date fixed by the Board under subsection (5A) (b) [^{F24}, (5AB) or (5AC)] above.

(5C) The Parole Board, at the request of a life prisoner in respect of whom it has, under subsection (5A)(b) [^{F24}, (5AB) or (5AC)] above, fixed the date of the next consideration of his case, may direct the Scottish Ministers to refer that case to the Board before that date.]

(6) Where this subsection applies, a ^{F2} . . . life prisoner may, subject to [^{F25} subsections (6B) and (7)] below, ^{F26} . . . require the Secretary of State to refer his case to the Parole Board.

[^{F27}(6A) The Scottish Ministers shall not refer the case of a life prisoner to the Parole Board under subsection (6) above if—

- (a) they have previously so referred his case to the Board under that subsection;
- (b) they have referred his case to the Board without the prisoner requiring them to do so under that subsection; or
- (c) the Parole Board has, on a reference to it under section 28(4) of the 1989 Act, under section 17(3) of this Act or under paragraph 34, 38 or 42 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), declined to direct that the prisoner be released on licence.]

[^{F28}(6B) No requirement may be made under subsection (6) by a life prisoner who is also serving or liable to serve a sentence of imprisonment in respect of an offence within section 1AB(2)—

- (a) in the case of a prisoner to whom section 1AB(3) applies, before the day on which the Scottish Ministers are required to refer the prisoner's case to the Parole Board under section 1AB(3), or
- (b) in the case of a prisoner to whom section 1AB(3) does not apply by virtue of section 1AB(2A), before the day on which the Scottish Ministers are required to release the prisoner under section 26ZA(5).]

[^{F29}(7) No requirement shall be made under subsection (6) above by a life prisoner [^{F30} (other than a prisoner to whom subsection (6B) applies)] who is also serving or liable to serve a sentence of imprisonment for a term, before he has served the appropriate part of the term.

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- (7A) The appropriate part of the term is—
- (a) one half, where the term is—
 - (i) less than 4 years; or
 - (ii) 4 years or more and is imposed by a sentence of imprisonment on conviction of an offence; or
 - (b) two thirds, where the term is 4 years or more and is a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of this Act.
- (7B) Section 5(1) of this Act, in so far as relating to the construction of references to sentences of imprisonment, does not apply to subsection (7A)(b) above.]
- (8) In determining for the purposes of subsection (4) or (6) above whether a ^{F2}. . . life prisoner has served the [^{F31}punishment] part of his sentence, no account shall be taken of any time during which he was unlawfully at large.
- (9) Where a life prisoner is serving [^{F32}or is liable to serve] two or more sentences of imprisonment for life—
- ^{F33}(a)
 - (b) notwithstanding the terms of any order under subsection (2) above, subsections (4) and (6) above shall not apply to him until he has served the [^{F31}punishment] part of each of those sentences; and
 - (c) he shall, if released on licence under subsection (4) above, be so released on a single licence.
- ^{F34}(10) In subsection (9) above, the reference to “sentences of imprisonment for life” is to be construed as including a reference to any sentence constituted by an order for lifelong restriction.]

Textual Amendments

- F1** S. 2(1) substituted (20.10.1997 for certain purposes otherwise prosp.) by 1997 c. 48, ss. **16(1)(a)**, 65(2) (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- F2** Words in s. 2(1)(2)(4)(6)(8) repealed (8.10.2001) by 2001 asp 7, s. **1(3)(a)(i)(b)(i)(vi)(d)(f)(i)(i)**; S.S.I. 2001/274, art. **3(3)**
 Word in s. 2(2)(b) repealed (8.10.2001) by 2001 asp 7, s. **1(3)(b)(vi)**; S.S.I. 2001/274, art. **3(3)**
 Word in s. 2(8) repealed (8.10.2001) by 2001 asp 7, s. **1(3)(i)(i)**; S.S.I. 2001/274, art. **3(3)**
- F3** Words in s. 2(1) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 86, 89(2), **Sch. 5**; S.S.I. 2003/288, art. 2, **Sch.**
- F4** S. 2(1)(aa) and the preceding word “or” inserted (8.10.2001) by 2001 asp 7, s. **1(3)(a)(ii)**; S.S.I. 2001/274, art. **3(3)**
- F5** S. 2(1)(ab) and preceding word inserted (19.6.2006 for specified purposes) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 1(2), 89(2), **Sch. 1 para. 1(2)(a)**; S.S.I. 2006/332, art. **2(1)** (with art. 2(2))
- F6** S. 2(1)(c) and the preceding word “or” repealed (8.10.2001) by 2001 asp 7, s. **1(3)(a)(iii)**; S.S.I. 2001/274, art. **3(3)**
- F7** Words in s. 2(2) substituted (20.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 14(3)(a)(i)** (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- F8** Words in s. 2(2) substituted (8.10.2001) by 2001 asp 7, s. **1(3)(b)(ii)**; S.S.I. 2001/274, art. **3(3)**
- F9** Words in s. 2(2) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2) (v), **Sch. 13 para. 52(7)(a)(i)**
- F10** Words in s. 2(2) inserted (8.10.2001) by 2001 asp 7, s. **1(3)(b)(iii)**; S.S.I. 2001/274, art. **3(3)**

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- F11** Words in s. 2(2) repealed (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), **ss. 1(2)(a)**, 5(2); S.S.I. 2012/249, art. 2 (with arts. 2(2)4)
- F12** Words in s. 2(2)(a) substituted (8.10.2001) by 2001 asp 7, **s. 1(3)(b)(iv)**; S.S.I. 2001/274, **art. 3(3)**
- F13** Word in s. 2(2)(a) repealed (20.10.1997) by 1997 c. 48, **ss. 16(1)(b)(i)**, 62(2), **Sch. 3** (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- F14** S. 2(2)(aa) and word preceding s. 2(2)(c) repealed (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), **ss. 1(2)(b)**, 5(2); S.S.I. 2012/249, art. 3 (with arts. 2(2), 4)
- F15** S. 2(2)(c) and the preceding word “; and” inserted (20.10.1997) by 1997 c. 48, **s. 16(1)(b)(ii)** (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- F16** Words in s. 2(2)(c) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 52(7)(a)(ii)**
- F17** S. 2(2)(d) and word inserted (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), **ss. 1(2)(c)**, 5(2); S.S.I. 2012/249, art. 3 (with arts. 2(2), 4)
- F18** S. 2(2A) inserted (24.9.2012) by Criminal Cases (Punishment and Review) (Scotland) Act 2012 (asp 7), **ss. 1(2)(d)**, 5(2); S.S.I. 2012/249, art. 3 (with arts. 2(2), 4)
- F19** S. 2(3)(3A) substituted for s. 2(3) (8.10.2001) by 2001 asp 7, **s. 1(3)(c)**; S.S.I. 2001/274, **art. 3(3)**
- F20** Words in s. 2(3) inserted (19.6.2006 for specified purposes) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 1(2)**, 89(2), **Sch. 1 para. 1(2)(c)**; S.S.I. 2006/332, **art. 2(1)** (with art. 2(2))
- F21** S. 2(5A)-(5C) inserted (8.10.2001) by 2001 asp 7, **s. 1(3)(e)**; S.S.I. 2001/274, **art. 3(3)**
- F22** Words in s. 2(5A)(b) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(a)**, 89(2); S.S.I. 2003/288, **art. 2**, **Sch.**
- F23** S. 2(5AB)-(5AD) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(b)**, 89(2); S.S.I. 2003/288, **art. 2**, **Sch.**
- F24** Words in s. 2(5B)(5C) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(c)**, 89(2); S.S.I. 2003/288, **art. 2**, **Sch.**
- F25** Words in s. 2(6) substituted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 52(7)(b)**
- F26** Words in s. 2(6) repealed (8.10.2001) by 2001 asp 7, **s. 1(3)(f)**; S.S.I. 2001/274, **art. 3(3)**
- F27** S. 2(6A) inserted (8.10.2001) by 2001 asp 7, **s. 1(3)(g)**; S.S.I. 2001/274, **art. 3(3)**
- F28** S. 2(6B) inserted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 52(7)(c)**
- F29** S. 2(7)-(7B) substituted for s. 2(7) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(d)**, 89(2); S.S.I. 2003/288, **art. 2**, **Sch.**
- F30** Words in s. 2(7) inserted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 52(7)(d)**
- F31** Words in s. 2(8)(9)(b) substituted (8.10.2001) by 2001 asp 7, **s. 1(3)(i)(ii)(j)(ii)**; S.S.I. 2001/274, **art. 3(3)**
- F32** Words in s. 2(9) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 29(2)(e)**, 89(2); S.S.I. 2003/288, **art. 2**, **Sch.**
- F33** S. 2(9)(a) repealed (8.10.2001) by 2001 asp 7, **s. 1(3)(j)(i)**; S.S.I. 2001/274, **art. 3(3)**
- F34** S. 2(10) added (19.6.2006 for specified purposes) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 1(2)**, 89(2), **Sch. 1 para. 1(2)(d)**; S.S.I. 2006/332, **art. 2(1)** (with art. 2(2))

Modifications etc. (not altering text)

- C1** S. 2 excluded (17.12.2001) by 2001 asp 13, **s. 24(c)** (with s. 29); S.S.I. 2001/456, **art. 2**
- C2** S. 2 applied (8.10.2001) by 2001 asp 7, **ss. 4, 5**, **Sch. paras. 40, 47**; S.S.I. 2001/274, **art. 3(3)**
- C3** **Ss. 1-3, 5, 6(1)(a)(b)(i)(iii)**, 9, 11-13, 15-21, 27, **Schs. 2, 6** extended (1.10.1997) by 1997 c. 43, 56(1), **Sch. 1 paras. 10(2)(5)**, 11(2)(4), **Sch. 5 paras. 11(1)(3)**, 12(1); S.I. 1997/2200, **art. 2(1)(n)** (subject to art. 5 of the said S.I.) (which amendment fell (30.9.1998) by reason of the repeal of **Sch. 5 paras. 11(1)**, 12(1) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** (subject to arts. 5-8 of the said S.I.)
- C4** **Ss. 1(4)**, 2, 2(4), 3, 11-13, 15, 17, 18, 19 extended (1.10.1997) by 1997 c. 43, **ss. 41, 56(1)**, **Sch. 1 Pt. II paras. 10(2)(a)(5)(a)(6)(7)**, **11(2)(a)(4)(a)(6)**; S.I. 1997/2200, **art. 2(1)(g)** (subject to art. 5) (which

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- amending provisions were amended (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 paras. 135(a)(i)(d)(6)(a)(i)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(oo)** (subject to arts. 5-8))
- S. 2 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, **Sch. 1 paras. 5, 6, 7** (with transitional provisions in art. 5); S.I. 1997/2200, **art. 2(1)(g)**
- S. 2 restricted (20.10.1997) by 1997 c. 48, **s. 16(4)(a)** (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- C5** S. 2(2)(7) modified (*prosp.*) by 1984 c. 47, s. 3(7), **Sch. para. 2** (as substituted (*prosp.*) by 1997 c. 43, ss. 42, 57(2), **Sch. 2 para. 8(2)** (which amending provision was repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), **Sch. 8 para. 136, Sch. 10**; S.I. 1998/2327, **art. 2(2)(pp)(3)(x)**)
- S. 2(2)(7) modified (retrospectively) by 1984 c. 47, **Sch. para. 2(5)** (as amended (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 paras. 6, 7**; S.I. 1997/2200, **art. 2(1)(h)** (subject to art. 5))
- C6** S. 2(4)(6) excluded (20.10.1997) by 1997 c. 48, **s. 16(4)(b)** (with s. 33); S.I. 1997/2323, art. 3, **Sch. 1**
- C7** S. 2(5A)(b) extended (8.10.2001) by 2001 asp 7, ss. 4, 5, **Sch. paras. 30, 70, 77**; S.S.I. 2001/274, **art. 3(3)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3A(3A) inserted by [2019 asp 14 s. 51\(2\)](#)
- s. 3B inserted by [2019 asp 14 s. 51\(3\)](#)
- s. 3B(1)(a) words inserted by [2021 c. 11 Sch. 13 para. 52\(10\)\(a\)](#)
- s. 3B(1)(b) words inserted by [2021 c. 11 Sch. 13 para. 52\(10\)\(b\)\(i\)](#)
- s. 3B(1)(b) words inserted by [2021 c. 11 Sch. 13 para. 52\(10\)\(b\)\(ii\)](#)
- s. 3B(4)(b) words inserted by [2021 c. 11 Sch. 13 para. 52\(10\)\(c\)](#)
- s. 3C-3E and cross-heading inserted by [2023 asp 4 s. 11\(2\)](#)
- s. 3AA(4)(aa) inserted by [2023 asp 4 s. 9\(4\)\(b\)\(ii\)](#)
- s. 3AA(7A) inserted by [2023 asp 4 s. 9\(4\)\(d\)](#)
- s. 3AB3AC inserted by [2023 asp 4 s. 9\(5\)](#)
- s. 11(3C)(3D) inserted by [2023 asp 4 s. 9\(6\)\(b\)](#)
- s. 12(3A) inserted by [2023 asp 4 s. 11\(3\)](#)
- s. 12AA(7) inserted by [2023 asp 4 s. 9\(8\)\(d\)](#)
- s. 12ZA inserted by [2023 asp 4 s. 11\(4\)](#)
- s. 16(2A) inserted by [2016 asp 1 s. 86\(4\)](#)
- s. 17(2A)(2B) inserted by [2023 asp 4 s. 10\(2\)](#)
- s. 17A(2B)(2C) inserted by [2023 asp 4 s. 10\(3\)\(a\)](#)
- s. 17B inserted by [2023 asp 4 s. 10\(4\)](#)
- s. 27(7A)(7B) inserted by [2023 asp 4 s. 8\(2\)\(b\)](#)