



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART IX

MISCELLANEOUS AMENDMENTS: SCOTLAND

129 Transfer of persons detained by police and customs officers

- (1) In subsection (1) of section 2 of the Criminal Justice (Scotland) Act 1980 (detention of suspect at police station or other premises)—
 - (a) after the word “premises” there shall be inserted the words “and may thereafter for that purpose take him to any other place”; and
 - (b) for the word “there” there shall be substituted the words “at the police station, or as the case may be the other premises or place”
- (2) In subsection (4) of that section—
 - (a) after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) any other place to which the person is, during the detention, thereafter taken;”;and
 - (b) in paragraph (f), for the words “departure from the police station or other premises” there shall be substituted the words “release from detention”.
- (3) In section 3(1)(b) of that Act (intimation to solicitor and other person of detention under section 2)—
 - (a) for the words “in a police station or other premises” there shall be substituted the words “and has been taken to a police station or other premises or place”; and
 - (b) for the words “place where he is being detained” there shall be substituted the words “police station or other premises or place”.
- (4) In subsection (1) of section 48 of the Criminal Justice (Scotland) Act 1987 (detention of suspect by customs officer)—

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- (a) after the word “premises” there shall be inserted the words “and may thereafter for that purpose take him to any other place”; and
 - (b) for the word “there” there shall be substituted the words “at the customs office, or as the case may be the other premises or place.”.
- (5) In subsection (5) of that section—
- (a) after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) any other place to which the person is, during the detention, thereafter taken;”; and
 - (b) in paragraph (f), for the words “departure from the customs office or other premises” there shall be substituted the words “release from detention
- (6) In section 49(1) of that Act (intimation to solicitor and other person of detention under section 48)—
- (a) for the words “at a customs office or other premises” there shall be substituted the words “and has been taken to a customs office or other premises or place”; and
 - (b) for the words “place where he is being detained” there shall be substituted the words “customs office or other premises or place”.

130 Detention and release of children: Scotland

- (1) In section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (children detained in solemn proceedings), after subsection (1) there shall be inserted—
- “(1A) The Secretary of State may by order provide—
- (a) that the reference to—
 - (i) four years, in paragraph (a) of subsection (1) above; or
 - (ii) four or more years, in paragraph (b) of that subsection,
 shall be construed as a reference to such other period as may be specified in the order;
 - (b) that the reference to—
 - (i) half, in the said paragraph (a); or
 - (ii) two thirds, in the said paragraph (b),
 shall be construed as a reference to such other proportion of the period specified in the sentence as may be specified in the order.
- (1B) An order under subsection (1A) above may make such transitional provision as appears to the Secretary of State necessary or expedient in connection with any provision made by the order.”.
- (2) In section 45(3) of that Act (procedure in respect of certain orders), for the words “7(6)” there shall be substituted “7(1A) or (6)”.
- (3) In Schedule 6 to that Act (transitional provisions and savings)—
- (a) in paragraph 8, after the word “revoked” there shall be inserted “by virtue of paragraph 10 of this Schedule”; and
 - (b) after paragraph 9 there shall be added—
 - “10 section 17 of this Act shall apply in respect of a release on licence under paragraph 4 of this Schedule as that section applies in

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respect of the release on licence, under Part I of this Act, of a long-term prisoner.”.

- (4) In section 39(7) of the Prisons (Scotland) Act 1989 (award of additional days), at the end there shall be added—

“; and the foregoing provisions of this subsection (except paragraph (b)) shall apply in respect of a person sentenced to be detained under section 206 of the 1975 Act, the detention not being without limit of time, as those provisions apply in respect of any such short-term or long-term prisoner.”.

131 Conditions in licence of released prisoner: requirement for Parole Board recommendations

In section 12(3)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (requirement of Parole Board recommendations for inclusion of conditions in licences of certain released prisoners), after the word “inclusion” there shall be inserted the words “or subsequent insertion, variation or cancellation”.

132 Provision for standard requirements in supervised release orders in Scotland

In section 212A of the Criminal Procedure (Scotland) Act 1975 (which makes provision for the supervised release of short-term prisoners)—

- (a) in subsection (2)—
- (i) for the words from “and”, where it occurs immediately after paragraph (a), to the end of sub-paragraph (i) of paragraph (b), there shall be substituted—
 - “(b) comply with—
 - (i) such requirements as may be imposed by the court in the order;”; and
 - (ii) at the end there shall be added—

“; and

- (c) comply with the standard requirements imposed by virtue of subsection (3)(a)(i) below”; and
- (b) in subsection (3), for paragraph (a) there shall be substituted—
- “(a) shall—
 - (i) without prejudice to subsection (2)(b) above, contain such requirements (in this section referred to as the “standard requirements”); and
 - (ii) be as nearly as possible in such form, as may be prescribed by Act of Adjournal;”.

133 Extension of categories of prisoner to whom Part I of Prisoners and Criminal Proceedings (Scotland) Act 1993 applies

In section 10(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (interpretation of expression “transferred life prisoner”)—

- (a) in paragraph (a), after the word “Scotland” there shall be inserted the words “or a court-martial”; and

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- (b) in paragraph (b)—
- (i) for the word “(whether” there shall be substituted—
- “, or in the case of a sentence imposed by a court martial in Scotland to a prison in Scotland (in either case whether”;
- (ii) after sub-paragraph (ii) there shall be inserted—
- “; or
- (iii) rules made under section 122(1)(a) of the Army Act 1955 (imprisonment and detention rules); or
- (iv) rules made under section 122(1)(a) of the Air Force Act 1955 (imprisonment and detention rules); or
- (v) a determination made under section 81(3) of the Naval Discipline Act 1957 (place of imprisonment or detention),”; and
- (iii) at the end there shall be added—
- “; and in this subsection “prison” has the same meaning as in the 1989 Act.”.

134 Amendment of provisions continued in effect for certain prisoners by Prisoners and Criminal Proceedings (Scotland) Act 1993

- (1) In Schedule 6 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (transitional provisions and savings)—
- (a) in paragraph 1—
- (i) in the definition of “existing provisions”, at the end there shall be added “except that an amendment or repeal effected by any enactment shall apply for the purposes of the existing provisions if expressly stated to do so”; and
- (ii) in the definition of “new provisions”, after the word “amended” there shall be added “by this Act”; and
- (b) in paragraph 2(1), for the words from “and to” to “Schedule” there shall be substituted—
- “, to the following provisions of this Schedule and to the exception in the definition of “existing provisions” in paragraph 1 above,”.
- (2) Sections 18 (constitution and functions of Parole Board etc.), 22 (release on licence of persons serving determinate sentences), 28 (revocation of licences and conviction of prisoners on licence) and 42(3) (exercise of power to make rules etc.) of the Prisons (Scotland) Act 1989, being provisions which, notwithstanding their repeal by the Prisoners and Criminal Proceedings (Scotland) Act 1993, are “existing provisions” for the purposes of that Act of 1993, shall for those purposes be amended in accordance with the following subsections.
- (3) In the said section 18, for subsections (3) and (4) there shall be substituted—
- “(3A) The Secretary of State may by rules make provision with respect to the proceedings of the Board, including provision—

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- (a) authorising cases to be dealt with in whole or in part by a prescribed number of members of the Board in accordance with such procedure as may be prescribed;
 - (b) requiring cases to be dealt with at prescribed times; and
 - (c) as to what matters may be taken into account by the Board (or by such number) in dealing with a case.
- (3B) The Secretary of State may give the Board directions as to the matters to be taken into account by it in discharging its functions under this Part of this Act; and in giving any such directions the Secretary of State shall in particular have regard to—
 - (a) the need to protect the public from serious harm from offenders; and
 - (b) the desirability of preventing the commission by offenders of further offences and of securing their rehabilitation.”.
- (4) In each of the said sections 22 and 28, after subsection (1) there shall be inserted—

“(1A) The Secretary of State may by order provide that, in relation to such class of case as may be specified in the order, subsection (1) above shall have effect subject to the modification that for the word “may” there shall be substituted the word “shall”.”.
- (5) In the said section 22, at the beginning of subsection (7) there shall be inserted the words “In a case where the Parole Board has recommended that a person be released on licence, and by virtue of subsection (1A) above such release is then mandatory, no licence conditions shall be included in the licence, or subsequently inserted, varied or cancelled in it, except in accordance with recommendations of the Board; and in any other case”.
- (6) In the said section 42—
 - (a) in each of subsections (1) and (4), for the words “22(2)” there shall be substituted “22(1A) or (2), 28(1A).”; and
 - (b) in subsection (3), for the word “(3)” there shall be substituted “(3A)”.

135 Further amendment of Schedule 6 to the Prisoners and Criminal Proceedings (Scotland) Act 1993: application of “new provisions”

In Schedule 6 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (transitional provisions and savings), after paragraph 6 there shall be inserted the following paragraphs—

- “6A (1) This paragraph applies where a prisoner sentenced before the relevant date to a sentence of imprisonment for life for an offence the sentence for which is not fixed by law has been (whether before, on or after that date) released on licence under the 1989 Act.
 - (2) Without prejudice to section 22(6) of the 1989 Act, in a case to which this paragraph applies, the new provisions shall apply as if the prisoner were a discretionary life prisoner, within the meaning of section 2 of this Act, whose licence has been granted under subsection (4) of that section of this Act on his having served the relevant part of his sentence.
- 6B (1) This paragraph applies where—

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- (a) a prisoner was, at the relevant date, serving a sentence or sentences of imprisonment, on conviction of an offence, passed before that date and that sentence was for a term of, or as the case may be those sentences fall to be treated as for a single term of, two or more years; and
 - (b) on or after that date he is, or has been, sentenced to a further term or terms of imprisonment, on conviction of an offence, to be served consecutively to, or concurrently with, the sentence or sentences mentioned in head (a) above.
- (2) In a case to which this paragraph applies—
- (a) the sentence or sentences mentioned in head (b) of sub-paragraph (1) above shall be treated as a single term with the sentences mentioned in head (a) of that sub-paragraph and that single term as imposed on or after the relevant date (so however that nothing in the foregoing provisions of this head shall affect the application of sections 39(7) (which makes provision as respects the award of additional days for breaches of discipline) and 24 (which makes provision as respects remission for good conduct) of the 1989 Act); and
 - (b) the new provisions shall apply accordingly, except that—
 - (i) where the prisoner is a long-term prisoner by virtue only of the aggregation provided for in head (a) of this sub-paragraph, he shall be released unconditionally on the same day as he would have been but for that aggregation;
 - (ii) where, notwithstanding the aggregation so provided for, the prisoner remains a short-term prisoner, subsection (1) of section 1 of this Act shall in its application be construed as subject to the qualification that the prisoner shall be released no earlier than he would have been but for that aggregation;
 - (iii) that section shall in its application be construed as if for subsection (3) there were substituted—

“(3) Without prejudice to subsection (1) above and to sub-paragraph (2)(b)(i) of paragraph 6B of Schedule 6 to this Act, after a prisoner to whom that paragraph applies has either served one-third of the sentence, or as the case may be sentences, mentioned in sub-paragraph (1)(a) of that paragraph, or (if it results in a later date of release) has served twelve months of that sentence or those sentences, the Secretary of State may, if recommended to do so by the Parole Board under this section, release him on licence; and where such a prisoner has been released on licence under section 22 of the 1989 Act, that licence shall be deemed to have been granted by virtue of this subsection.”;
 - (iv) section 11(1) shall in its application be construed as if the sentence referred to were the further term or terms mentioned in head (b) of sub-paragraph (1) above; and

- (v) section 16 shall in its application be construed as if the original sentence (within the meaning of that section) were the further term or terms so mentioned.”.