Convention Rights (Compliance) (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

**PART 1**
PRISONERS AND PAROLE

1 Release of life prisoners
2 Amendment of Criminal Procedure (Scotland) Act 1995
3 Amendment of provisions relating to transferred life prisoners
4 Transitional provisions

**PART 2**
CONSTITUTION OF PAROLE BOARD FOR SCOTLAND

5 Appointment and removal of Parole Board members

**PART 3**
LEGAL AID

6 Extension of advice and assistance and civil legal aid under Legal Aid (Scotland) Act 1986
7 Fixed payments for criminal legal assistance: exceptional cases
8 Criminal legal assistance: retrospective revision of fixed payments regulations
9 Employment of solicitors by Scottish Legal Aid Board: further provisions

**PART 4**
HOMOSEXUAL OFFENCES

10 Repeal of section 13(2)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995

**PART 5**
PROCURATOR FISCAL OF THE LYON COURT

11 Appointment of procurator fiscal of the Lyon Court

**PART 6**
POWER TO MAKE REMEDIAL ORDERS

12 Remedial orders
13 Procedure for remedial orders: general
14 Procedure for remedial orders: urgent cases
PART 7

GENERAL PROVISIONS

15 Short title and commencement

Schedule—Transitional provisions
   Part 1—Existing life prisoner
   Part 2—Existing life prisoners recommended for release
   Part 3—Transferred life prisoners
   Part 4—Existing members of the parole board
Convention Rights (Compliance) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend certain enactments relating to the sentencing and release of life prisoners, the constitution of the Parole Board, legal advice and assistance and legal aid, homosexual offences and the appointment and removal of the procurator fiscal of the Lyon Court which are or may be incompatible with the European Convention on Human Rights; and to enable further changes in the law where it is or may be incompatible with the Convention.

PART 1

PRISONERS AND PAROLE

1 Release of life prisoners

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (in this Act, “the 1993 Act”) is amended as follows.

(2) In section 1 (release of short-term, long-term and life prisoners), subsections (4) to (7) are repealed.

(3) In section 2 (duty to release discretionary life prisoners)—

(a) in subsection (1)—

(i) the word “designated” is repealed;

(ii) after paragraph (a) there is inserted, “or

(aa) sentenced to life imprisonment for murder;”; and

(iii) paragraph (c) and the word “or” immediately preceding it are repealed;

(b) in subsection (2)—

(i) the word “designated” where it first occurs is repealed;

(ii) for “the designated part” there is substituted “the punishment part”;

(iii) after “appropriate” where it first occurs there is inserted “to satisfy the requirements for retribution and deterrence (ignoring the period of confinement, if any, which may be necessary for the protection of the public),”; and
(iv) in paragraph (b), the word “designated” is repealed;

(c) for subsection (3) there is substituted—

“(3) A court which imposes life imprisonment for an offence such as is mentioned in subsection (1) above 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.”;

(d) in each of subsections (4) and (6), the word “designated” is repealed;

(e) in subsection (8)—

(i) the word “designated” where it first occurs is repealed; and

(ii) for “designated” where it second occurs there is substituted “punishment”; and

(f) in subsection (9)—

(i) paragraph (a) is repealed; and

(ii) in paragraph (b), for “designated” there is substituted “punishment”.

(4) In section 6 (application of Part I of the Act to young offenders and to children detained without limit of time), subsections (2) and (3) are repealed.

(5) In section 17 (revocation of licence)—

(a) in subsection (2), for “make written representations to the Secretary of State in that regard” there is substituted “require the Scottish Ministers to refer his case to the Parole Board”;

(b) in subsection (3), in paragraph (a), for “makes representations” there is substituted “has required the Scottish Ministers to refer his case to the Parole Board”; and

(c) after subsection (4) there is inserted—

“(4AA) Where the Parole Board direct the release of a prisoner under subsection (4) above they may recommend that the Scottish Ministers insert, vary or cancel conditions in the prisoner’s licence.”.

(6) In section 27 (interpretation), in subsection (1), the definition of “discretionary life prisoner” is repealed.

(7) In Schedule 6 (transitional provisions and savings)—

(a) in paragraph 6—

(i) in sub-paragraph (2), for “sections 1(4) and 2(9)” there is substituted “section 2(9)”;

(ii) in each of sub-paragraphs (2)(a) and (3)(a), the word “designated” is repealed; and
(iii) in each of sub-paragraphs (2)(b) and (3)(b), for “designated” there is substituted “punishment”; and

(b) in paragraph 6A(2)—

(i) the word “designated” where it first occurs is repealed; and

(ii) for “designated” where it second occurs there is substituted “punishment”.

(8) In section 16 (designated life prisoners) of the Crime and Punishment (Scotland) Act 1997 (c.48)—

(a) in subsection (3)—

(i) for “sections 1(4) and 2(9)” there is substituted “section 2(9)”;

(ii) in paragraph (a), the word “designated” is repealed; and

(iii) in paragraph (b), for “designated” there is substituted “punishment”; and

(b) in subsection (4)—

(i) in paragraph (a), the word “designated” is repealed; and

(ii) in paragraph (b), for “designated” there is substituted “punishment”.

2 Amendment of Criminal Procedure (Scotland) Act 1995

In section 205 (punishment for murder) of the Criminal Procedure (Scotland) Act 1995 (c.46), subsections (4) to (6) are repealed.

3 Amendment of provisions relating to transferred life prisoners

(1) In section 10 (life prisoners transferred to Scotland) of the 1993 Act—

(a) in subsection (1)—

(i) after “enactment” there is inserted “or section 3 of the Convention Rights (Compliance) Scotland Act 2001 (asp 00)”;

(ii) after “prisoners)” there is inserted “or section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) (determination of tariffs)”;

(iii) for “sections 1(4) and 2(9)” there is substituted “section 2(9)”;

(iv) in paragraph (a), the word “designated” is repealed; and

(v) in paragraph (b), for “designated” there is substituted “punishment” and for “section 28” there is substituted “sections 28 or 82A”;

(b) for subsection (2) there is substituted the following—

“(2) In the case of any other transferred life prisoner, being one whose transfer occurred after the coming into force of section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 00), except such case as is mentioned in paragraph 7 of Schedule 6 to this Act, subsection (3) below applies where the court, following a hearing under subsection (2F) below, makes an order under that subsection 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 this Act if—

(a) the prisoner had been sentenced for the offence in Scotland; and
(b) that section (as amended by section 3 of the Convention Rights (Compliance) (Scotland) Act 2001) had been in force at the time when the prisoner was sentenced.

(2A) The Scottish Ministers shall, as soon as reasonably practicable after the transferred life prisoner is transferred to Scotland, refer the case of the transferred life prisoner to the High Court of Justiciary for a hearing under subsection (2F) below.

(2B) Notwithstanding subsection (2A) above, a transferred life prisoner may, after his transfer to Scotland, refer his case for a hearing under subsection (2F) below.

(2C) The Scottish Ministers shall, no later than two weeks after the referral of a transferred life prisoner’s case under subsection (2A) or (2B) above, send the documents and other information mentioned in subsection (2D) below to—

(a) the High Court of Justiciary;

(b) the Lord Advocate; and

(c) the transferred life prisoner.

(2D) The documents and other information referred to in subsection (2C) above are—

(a) a copy of the indictment or any corresponding document;

(b) subject to subsection (2E) below, a copy of any report by the trial judge; and

(c) any other documents or information which the Scottish Ministers consider relevant.

(2E) A report prepared by the trial judge—

(a) may be sent under subsection (2C) above notwithstanding that it was prepared on the basis that it would not be disclosed to the transferred life prisoner; and

(b) shall be so sent for the purposes only of the hearing under subsection (2F) below.

(2F) There shall be a hearing at which the High Court of Justiciary shall make the order referred to in subsection (2G) below.

(2G) 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 this Act, if—

(a) the prisoner had been sentenced for the offence in Scotland; and

(b) that section (as amended by the Convention Rights (Compliance) (Scotland)) Act 2001 (asp 00) had been in force at the time when the prisoner was sentenced.

(2H) The court shall pronounce the order under subsection (2F) above in open court.

(2I) A hearing under subsection (2F) 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)."
(c) in subsection (3)—

(i) for “sections 1(4) and 2(9)” there is substituted “section 2(9)”;

(ii) in paragraph (a), the word “designated” is repealed; and

(iii) in paragraph (b), for “designated” there is substituted “punishment” and for the word “certificate” there is substituted “order under subsection (2F) above”;

(d) in subsection (4), in paragraph (b), in sub-paragraph (i), after “1997” there is inserted “, other than an order for a restricted transfer within the meaning of paragraph 6(1) of that Schedule to that Act,”; and

(e) in subsection (5)—

(i) in paragraph (a), the word “designated” is repealed; and

(ii) in paragraph (b), for “certificate under subsection (2)” there is substituted “order under subsection (2F)” and for “relevant” there is substituted “punishment”.

(2) For paragraph 7 of Schedule 6 to the 1993 Act there is substituted the following—

“7 Subsections (2A) to (3) of section 10 of this Act apply in the case of a transferred life prisoner who is a discretionary life prisoner for the purposes of—

(a) Part II of the Criminal Justice Act 1991 (c.53) by virtue of paragraph 9 of Schedule 12 to that Act; or

(b) Chapter II of Part II of the Crime (Sentences) Act 1997 (c.43) by virtue of section 33 of that Act,

but not so as to prevent the High Court of Justiciary from having regard to any certificate under the said paragraph 9 or section 33 relating to the prisoner when making an order under section 10(2F) of this Act (as so applied).

7A A transferred life prisoner to whom section 10(2A) to (3) of this Act applies by virtue of paragraph 7 above may waive the entitlement to a hearing under those provisions 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.

7B Notwithstanding section 10(2A) of this Act, such a transferred life prisoner who has not waived the entitlement to a hearing may refer his case for a hearing under section 10(2F) of this Act.

7C Where the court has made an order under section 10(2F) of this Act in the case of such a transferred life prisoner any such certificate relating to the prisoner as is mentioned in paragraph 7 above shall have no further effect.

7D Where, however, the transferred life prisoner has waived the entitlement to a hearing, and the court in consequence has made no such order, section 10(3) of this Act shall apply to the prisoner as if he were a life prisoner and as if the part of the prisoner’s sentence referred to in that certificate were the punishment part.”.
4 Transitional provisions

Parts 1 to 3 of the schedule to this Act have effect for the purpose of making transitional provision in connection with sections 1 to 3 above.

PART 2

CONSTITUTION OF PAROLE BOARD FOR SCOTLAND

5 Appointment and removal of Parole Board members

(1) In section 20 (the Parole Board for Scotland) of the 1993 Act, in subsection (1) the words “this Part of” are repealed.

(2) After paragraph 1 of Schedule 2 to that Act, there is inserted—

“1A In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed in regulations made by them.

1B In making regulations under paragraph 1A above, the Scottish Ministers may make different provision for different kinds of members of the Board, including the kinds of members having the respective qualifications for office specified in paragraph 2 below.”.

(3) After paragraph 2 of that Schedule, there is inserted—

“Limitation, termination etc. of appointment of members

2A An appointment as a member of the Parole Board shall, subject to paragraphs 2B to 2D below, last for such period, being not shorter than six years nor longer than seven years, as is specified in the instrument of appointment.

2B A member of the Parole Board may resign at any time by giving notice to that effect to the Scottish Ministers.

2C An appointment of a person as a member of the Parole Board shall not extend beyond the day when the person reaches the age of 75.

2D The appointment of a member of the Parole Board shall come to an end upon the member’s being removed from office under paragraph 3 below.

2E A person may be reappointed to be a member of the Parole Board but only if—

(a) six years or more have passed since the person ceased to be a member of the Parole Board; and

(b) the person has not previously been reappointed under this paragraph.

2F A person whose membership of the Parole Board came to an end by resignation under paragraph 2B above may be reappointed under paragraph 2E above.

2G A person whose membership of the Parole Board came to an end on removal from office under paragraph 3 below shall not be reappointed.

2H The provisions of paragraphs 1 to 2D above apply to a reappointment under paragraph 2E above as they apply to an appointment.
Performance of duties

21 The Chairman of the Parole Board shall have regard to the desirability of securing that every member of the Parole Board is given the opportunity of participating appropriately in the functions of the Board under this Act on not fewer than 20 days in each successive period of 12 months beginning with the day of the member’s appointment as such.”.

(4) For paragraph 3 of that Schedule, there is substituted—

“Removal of members from office

3 A member of the Parole Board may be removed from office by and only by order of the tribunal constituted by and under paragraph 3B below (“the tribunal”).

3A The tribunal may order the removal from office of a member only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

3B The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session—

(a) either a Senator of the College of Justice or a sheriff principal (who shall preside);

(b) a person who is, and has been for at least ten years, legally qualified; and

(c) one other person.

3C For the purposes of paragraph 3B above, a person is legally qualified if that person is an advocate or a solicitor.

3D Regulations, made by the Scottish Ministers—

(a) may make provision enabling the tribunal, at any time during an investigation, to suspend a member from office and providing as to the effect and duration of such suspension; and

(b) shall make such further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.”.

(5) After paragraph 6 of that Schedule there is inserted—

“Regulations

6A Regulations under paragraphs 1A and 3D above shall be made by statutory instrument.

6B No such regulations shall be made unless laid in draft before, and approved by resolution of, the Scottish Parliament.”.

(6) Part 4 of the schedule to this Act has effect for the purpose of making transitional provision in connection with this section.
**Part 3**

**Legal Aid**

6 **Extension of advice and assistance and civil legal aid under Legal Aid (Scotland) Act 1986**

5 (1) In section 6(2) (definitions for purposes of Part II – advice and assistance) of the Legal Aid (Scotland) Act 1986 (c.47) (the “1986 Act”) after the definition of “tribunal” there is added—

“and references to a court, tribunal or statutory inquiry include references to any court, tribunal or statutory inquiry which is established by law for purposes which are or include those of determining persons’ civil rights and obligations and to any person who or group of persons or body or procedure which (however described) is appointed or established by law for such purposes.”.

10 (2) In section 13 (meaning of “civil legal aid”) of the 1986 Act, after subsection (5) there is added—

“(6) In subsections (4) and (5) above, the references to a court or tribunal include references to a court or tribunal which is established by law for purposes which are or include those of determining persons’ civil rights and obligations and to any person who or group of persons, body, statutory inquiry or other procedure which (however described) is appointed or established by law for such purposes.”.

15 (3) In section 14 (availability of civil legal aid) of the 1986 Act, after subsection (1), there is inserted—

“(1A) In the case of proceedings in such courts or tribunals as may be specified in regulations under this Act, civil legal aid shall be available to a person only if, in addition to the requirements which have to be met under subsection (1) above and section 15 of this Act, such criteria as may be prescribed in those regulations are met.

(1B) In subsection (1A) above, the reference to courts or tribunals shall be construed in accordance with section 13(6) of this Act.”.

20 (4) In section 16 (which includes provision that, in sections 17 to 20, “court” includes tribunal) of the 1986 Act, in subsection (2), at the end of the definition of “court”, there is added “and references to either shall be construed in accordance with section 13(6) of this Act”.

25 (5) In section 38 (which, amongst other things, enables the Court of Session to regulate the procedure of the civil courts in relation to legal aid) of the 1986 Act, after subsection (1), there is inserted—

“(1A) In subsection (1)(a) above, the reference to any court or tribunal shall be construed, except in relation to criminal proceedings, in accordance with section 13(6) of this Act.”.

30 7 **Fixed payments for criminal legal assistance: exceptional cases**

In section 33 of the 1986 Act, after subsection (3B) (which provides that where fixed payments to solicitors for criminal legal assistance are prescribed, a solicitor providing it is not entitled to any other legal aid payment), there is inserted—
“(3C) The Scottish Ministers may, however, for the purpose of enabling the Board to ensure that a person to whom fixed payment criminal legal assistance is provided is not, for the reason specified in subsection (3D) below, deprived of the right to a fair trial, by regulations under this subsection, provide that—

(a) in such circumstances; and

(b) under such conditions,

as may be prescribed by the regulations, a solicitor who provides such criminal legal assistance shall, instead of receiving fixed payments, be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above.

(3D) The reason referred to in subsection (3C) above is the amount of the fixed payments payable for the criminal legal assistance provided.

(3E) In subsection (3C) above—

“fixed payment criminal legal assistance” means criminal legal assistance in respect of which fixed payments are prescribed under subsection (3A) above;

“fixed payments” means fixed payments so prescribed.

(3F) Regulations made under subsection (3C) above shall provide that it is for the Board to determine whether any prescribed circumstances exist and whether any prescribed conditions are met.

(3G) Circumstances may be prescribed under subsection (3C)(a) above by reference to such factors as the Scottish Ministers think fit.

(3H) The conditions which may be prescribed under subsection (3C)(b) above include those which stipulate that a solicitor providing criminal legal assistance—

(a) applies to the Board to exercise its power of determination under subsection (3F) above;

(b) does so in such manner and form as the Board may specify and at as early a stage in the provision of the criminal legal assistance as is reasonably practicable; and

(c) keeps proper records of all professional services provided by way of and outlays incurred in the provision of that criminal legal assistance, whether before or after the exercise of that power of determination.

(3I) Regulations may be made under subsection (3C) above so as to relate to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of coming into force of section 7 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 00), and regulations so relating may disapply any condition which would otherwise apply under subsection (3C)(b) above.

(3J) The Board shall establish a procedure under which any person—

(a) whose solicitor’s application under subsection (3H) above has been refused; or

(b) on whose solicitor’s application under that subsection the Board has made a determination which is such that the solicitor will not be paid out
of the Fund in accordance with regulations made under subsections (2) and (3) above,
may apply to the Board for review of that refusal or determination.”.

8 Criminal legal assistance: retrospective revision of fixed payments regulations

In section 33 of the 1986 Act, after subsection (3A) (prescription of fixed payments for criminal legal assistance), there is inserted—

“(3AA) Regulations amending or replacing regulations made under subsection (3A) above may, for the purpose specified in subsection (3AB) below, make provision as to fixed payments in relation to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of the making or coming into force of the amendment or replacement of the regulations.

(3AB) The purpose referred to in subsection (3AA) above is that of ensuring that persons to whom fixed payment criminal legal assistance is being provided are not, by reason of the amount of the fixed payments payable in respect of that criminal legal assistance under the regulations as they have effect immediately before the coming into force of the amendment or replacement of the regulations, deprived of the right to a fair trial.

(3AC) In subsection (3AB) above “fixed payment criminal legal assistance” and “fixed payments” have respectively the meanings given by subsection (3E) below.”.

9 Employment of solicitors by Scottish Legal Aid Board: further provisions

(1) In section 4 of the 1986 Act, in subsection (3), after paragraph (aa), there is inserted—

“(aaa) any award of expenses made by a criminal court to a person to whom criminal legal assistance has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act.”.

(2) In section 11 (which includes provision about contributions by clients in respect of criminal legal assistance by solicitors employed by the Board) of the 1986 Act—

(a) after subsection (2) there is inserted—

“(2A) A client to whom paragraphs (a) and (b) of subsection (2) above apply and to whom criminal legal assistance has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act shall pay to the Board such contribution in that respect as the Board may, subject to subsection (3A) below, determine.”; and

(b) after subsection (3) there is inserted—

“(3A) The amount determined by the Board under subsection (2A) above shall not exceed the amount which would be charged by a solicitor who is not employed by the Board under sections 26 and 27 of this Act.”.

(3) In section 12 of the 1986 Act, in subsection (2) (which provides that the rules in that section about the payment of solicitor’s fees etc. do not apply to the salary of a solicitor employed by the Board under section 28A), after “Board” there is inserted “under sections 26 and 27 of this Act or to the salary payable to a solicitor employed by the Board”.

Constitution Rights (Compliance) (Scotland) Bill
Part 3—Legal aid
(4) In section 25A (Criminal Legal Assistance Register) of the 1986 Act, after subsection (3) there is inserted—

“(3A) A solicitor employed by the Board under sections 26 and 27 of this Act to provide criminal legal assistance shall require to be registered, and the entry relating to his name on the Register shall include a note that he is so employed; but the Board shall not be regarded as a firm for the purposes of this section, and shall not itself require to be registered.”.

(5) In section 25B of the 1986 Act, in subsection (2) (which enables provision in the criminal legal assistance code of practice which is different for solicitors employed by the Board under section 28A from that for solicitors generally), after “including” there is inserted “in relation to solicitors employed by the Board under sections 26 and 27 of this Act to provide criminal legal assistance, different provision to reflect the fact that they are so employed and including”.

(6) In section 26 of the 1986 Act, in subsection (1), in paragraph (a) (which provides that the purposes for which solicitors may be employed by the Board include those of giving advice and assistance to which Part II of the Act applies), there is added at the end “either generally or in cases of any such description as may be prescribed by regulations made under this section”.

(7) In section 28A (feasibility study of provision of criminal legal assistance by solicitors employed by the Board) of the 1986 Act—

(a) in subsection (12) (provisions which cease to have effect five years after employed solicitors regulations come into effect)—

(i) in paragraph (c), for “but does not apply” there is substituted “or”; and

(ii) in paragraph (e), after “including” there is inserted “, where it second occurs,”; and

(b) at the end, there is inserted—

“(15) The power to bring sections 26 to 28 of this Act into force is not affected—

(a) by the provisions of this section; or

(b) by the fact that it is exercised before the expiry of the period of five years referred to in subsection (11) above.”.

(8) In section 31 of the 1986 Act, in subsection (1A) (exceptions to provision entitling person receiving legal aid or advice and assistance to select a solicitor and counsel) there is added at the end “and does not apply where the person is being provided with criminal legal assistance by a solicitor employed by the Board under section 26 and 27 of this Act.”.

**PART 4**

**HOMOSEXUAL OFFENCES**

10 **Repeal of section 13(2)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995**

In section 13 (homosexual offences) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)—

(a) in subsection (2), paragraph (a) and the word “or” immediately following it are repealed; and
(b) in subsection (5), in paragraph (b), for “both” there is substituted “the”.

PART 5

PROCURATOR FISCAL OF THE LYON COURT

11 Appointment of procurator fiscal of the Lyon Court

(1) The Lyon King of Arms Act 1867 (c.17) is amended as follows.

(2) In section 9 (duties and fees of herald painter and procurator fiscal of Lyon Court)—

(a) the words—

(i) “and procurator fiscal of the Lyon Court”;

(ii) “respectively”; and

(iii) “or procurator fiscal”,

are repealed; and

(b) for “and procurator fiscal aforesaid have” there is substituted “has”.

(3) After section 9, there is inserted—

“9A Appointment of procurator fiscal of the Lyon Court

The procurator fiscal of the Lyon Court shall be appointed by the Scottish Ministers on such terms and conditions as they determine.”.

(4) The procurator fiscal of the Lyon Court holding office immediately before the coming into force of this section shall cease to hold that office on the day this Part of this Act comes into force.

PART 6

POWER TO MAKE REMEDIAL ORDERS

12 Remedial orders

(1) The Scottish Ministers may, by order (in this Part of this Act, a “remedial order”), make such provision as they consider necessary or expedient in consequence of—

(a) an Act of Parliament or an Act of the Scottish Parliament;

(b) any subordinate legislation made under any such Act;

(c) any provision of any such Act or subordinate legislation; or

(d) any exercise or purported exercise of functions by a member of the Scottish Executive,

which is or may be incompatible with any of the Convention rights.

(2) A remedial order may—

(a) make different provision for different purposes;

(b) relate to—

(i) all cases to which the power to make it extends;

(ii) those cases subject to specified exceptions; or
(iii) any particular case or class of case;

(c) make—

(i) any supplementary, incidental or consequential provision; or

(ii) any transitory, transitional or saving provision,

which the Scottish Ministers consider necessary or expedient;

(d) modify any enactment, prerogative instrument or other instrument or document;

(e) make provision (other than provision creating criminal offences or increasing the
punishment for criminal offences) which has retrospective effect;

(f) provide for the delegation of functions.

(3) A remedial order shall not, however, create any criminal offence punishable—

(a) on summary conviction, with imprisonment for a period exceeding three months
or with a fine exceeding the amount specified as level 5 on the standard scale;

(b) on conviction on indictment, with a period of imprisonment exceeding two years.

(4) The conferring by subsection (1) above of the power to make remedial orders does not
prejudice the extent of any other power.

13 Procedure for remedial orders: general

(1) A remedial order shall be made by statutory instrument.

(2) No remedial order shall be made unless laid in draft before and approved by resolution
of the Scottish Parliament.

(3) Before laying a draft remedial order for the purposes of subsection (2) above, the
Scottish Ministers shall—

(a) lay a copy of the proposed draft order, together with a statement of their reasons
for proposing to make the order, before the Scottish Parliament;

(b) give such public notice of the contents of the proposed draft order as they consider
appropriate and invite persons wishing to make observations on the draft order to
do so, in writing, within the period of 60 days beginning with the day on which
that public notice was given or the day on which the draft order was laid under
this subsection, whichever is earlier, or, if both those actions occurred on the same
day, that day;

(c) have regard to any written observations submitted within that period.

(4) When laying a draft remedial order for the purposes of subsection (2) above, the
Scottish Ministers shall lay before the Scottish Parliament a statement—

(a) summarising all the observations to which they had to have regard under
subsection (3)(c) above; and

(b) specifying the changes (if any) which they have made in the draft order and the
reasons for them.

(5) In reckoning, for the purposes of subsection (3)(b) above, any period of 60 days no
account shall be taken of any time during which the Scottish Parliament is dissolved or
is in recess for more than four days.
14 Procedure for remedial orders: urgent cases

(1) Where it appears to the Scottish Ministers that, for reasons of urgency, it is necessary to make a remedial order without following the procedure under section 13(2) to (4) above, they may do so.

(2) After so making a remedial order, the Scottish Ministers shall forthwith—

(a) give such public notice of the contents of the order as they consider appropriate and invite persons wishing to make observations on the order to do so, in writing, within the period of 60 days beginning with the day on which it was made;

(b) lay the order, together with a statement of their reasons for having made it, before the Scottish Parliament.

(3) The Scottish Ministers shall have regard to any written observations submitted within the period mentioned in subsection (2)(a) above.

(4) As soon as practicable after the end of that period, the Scottish Ministers shall lay before the Scottish Parliament a statement—

(a) summarising all the observations to which they had to have regard under subsection (3) above; and

(b) specifying the modifications (if any) which they consider it appropriate to make to the remedial order.

(5) If modifications have been specified under subsection (4)(b) above, the Scottish Ministers shall—

(a) make a remedial order by virtue of this subsection giving effect to those modifications and replacing the remedial order made under subsection (1) above; and

(b) lay the remedial order made by virtue of this subsection before the Scottish Parliament,

or, by order, simply revoke the remedial order made under subsection (1) above.

(6) If, at the end of the period of 120 days beginning with the day on which a remedial order was made under subsection (1) above, the Scottish Parliament has not, by resolution, approved the order or any remedial order made by virtue of subsection (5) above replacing it, then the remedial order or, as the case may be the replacement remedial order ceases to have effect (but without that affecting anything done under that order or the power to make a fresh remedial order, whether under the procedure set out in section 13 above or this section).

(7) Subsection (6) above has no effect where the Scottish Ministers have, before the end of the period referred to in that subsection, simply revoked the remedial order made under subsection (1) above.

(8) An order made under subsection (5) above simply revoking a remedial order made under subsection (1) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(9) In reckoning, for the purposes of subsections (2)(a), (6) and (7) above, any period of 60 or 120 days, no account shall be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days.
PART 7
GENERAL PROVISIONS

15 Short title and commencement

(1) This Act may be cited as the Convention Rights (Compliance) (Scotland) Act 2001.

(2) Parts 1, 2 and 5 of this Act come into force on such day as the Scottish Ministers, by order made by statutory instrument, appoint, and different days may be so appointed for different purposes.

(3) The other provisions (except this section) of this Act come into force on the day after it receives Royal Assent.
SCHEDULE
(introduced by sections 4 and 5)

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;
   “life prisoner” has the same meaning as it has in section 27(1) as read with section 6 of the 1993 Act;
   “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 to the High Court of Justiciary for a hearing under paragraph 10 below.

4. 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 5 below, waived the entitlement to such a hearing; or
   (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.

5. An existing life prisoner to whom paragraph 1(b) above applies may waive the entitlement to a hearing under paragraph 10 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.

6. Notwithstanding paragraph 3 above, an existing life prisoner—
   (a) who has not, under paragraph 5 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 10 below.
The Scottish Ministers shall, no later than two weeks after the referral of an existing life prisoner’s case under paragraph 3 or 6 above, send the documents and other information mentioned in paragraph 8 below to—

(a) the High Court of Justiciary;
(b) the Lord Advocate; and
(c) the existing life prisoner.

The documents and other information referred to in paragraph 7 above are—

(a) a copy of the indictment;
(b) subject to paragraph 9 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.

A report prepared by the trial judge—

(a) may be sent under paragraph 7 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 10 below.

There shall be a hearing, at which the High Court of Justiciary shall make the order referred to in paragraph 11 below.

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.

The court shall pronounce the order under paragraph 10 above in open court.

Where the court has made an order under paragraph 10 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.

Section 2 of the 1993 Act as amended by this Act shall apply to the existing life prisoner as if the order under paragraph 10 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.

A hearing under paragraph 10 above shall be criminal procedure for the purposes of section 305 of the Criminal Procedure (Scotland) Act 1995 (c.44) (power of High Court of Justiciary to regulate criminal procedure by Act of Adjournal).

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.

Where an existing life prisoner released on licence is treated by virtue of paragraph 16 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.
PART 2
EXISTING LIFE PRISONERS RECOMMENDED FOR RELEASE

18 This Part of this schedule applies to an existing life prisoner—

(a) in respect of whom, before the relevant date, the Parole Board has recommended a provisional release date on which the prisoner should be released on licence under the 1989 Act or the 1993 Act;

(b) whose case has not been the subject of a hearing under paragraph 10 above; and

(c) to whose release neither the Lord Justice General, whom failing the Lord Justice Clerk, nor, if available, the trial judge objects.

19 In this Part of this schedule—

“existing life prisoner” means a person who is an existing life prisoner for the purposes of Part 1 of this schedule by virtue only of paragraph 1(a) above;

“provisional release date” means, where that date has been fixed by reference to a month but not to a specific day in the month, the first day of that month, and, where that date would (but for this provision) be a Saturday, Sunday or public holiday and the prisoner would fall to be released then, means the last preceding day which is not a Saturday, Sunday or public holiday;

“public holiday” has the meaning given by section 27(8) of the 1993 Act;

“punishment part” has the same meaning as it has in Part 1;

“relevant date” means the date when this Part of this schedule comes into force.

20 If the Scottish Ministers have fixed a provisional release date in respect of the prisoner, the prisoner shall on that date be released on licence as if the prisoner had been a life prisoner to whom section 2(4) of the 1993 Act applied and had served the punishment part of his or her sentence.

21 If, however, the Scottish Ministers, having regard to the need to protect the public, are of the view that the prisoner’s conduct between the time when they fixed the provisional release date for the prisoner and that date has been such that the Parole Board should review the recommendation to release the prisoner on licence, they may refer to the Board the question of such release in the light of that conduct.

22 Such a review as is referred to in paragraph 21 above is, for the purposes of section 20 of the 1993 Act, within the functions of the Parole Board.

23 On such a review, the Parole Board shall either—

(a) direct that the provisional release date fixed for the prisoner be adhered to and that he or she be released then in accordance with paragraph 20 above; or

(b) direct that the provisional release date so fixed no longer applies.

24 Notwithstanding that the Parole Board has made a direction under paragraph 23(a) above, the Scottish Ministers, if they are of the view that, having regard to the need to protect the public, the prisoner’s conduct between the time of that direction and the provisional release date has been such that the Parole Board should review that direction, may refer the question of such release to the Parole Board in the light of that conduct; and paragraphs 22 and 23 above and paragraph 25 below shall apply to such a referral as they apply to a referral under paragraph 21.
25 Notwithstanding that the Parole Board has made a direction under paragraph 23(b) above, the punishment part of the prisoner’s sentence shall be regarded as having been served as at the end of the day immediately before the provisional release date and section 2 of the 1993 Act as amended by this Act shall apply to the prisoner as if an order such as mentioned in subsection (2) of that section had been made in respect of the prisoner when sentenced.

26 If the Scottish Ministers have not fixed a provisional release date in respect of the prisoner, then, subject to paragraphs 21 to 25 above, the prisoner shall be released on the provisional release date recommended by the Parole Board as if released on licence under section 2(4) of the 1993 Act as a life prisoner to whom that section applied and who had served the punishment part of his or her sentence.

27 If, however, the Scottish Ministers, having regard to the need to protect the public, are of the view that the Parole Board should consider afresh whether the prisoner should be released, they may refer to the Board the question of such release in the light of that need.

28 No such reference shall be made after the expiry of two weeks beginning with the relevant date.

29 The consideration and disposal of such a reference is, for the purposes of section 20 of the 1993 Act, within the functions of the Parole Board.

30 On such a reference, the Parole Board shall either—

(a) direct that the provisional release date fixed for the prisoner be adhered to and that the prisoner be released then; or

(b) direct that the provisional release date so fixed no longer applies.

31 Notwithstanding that the Parole Board has made a direction under paragraph 30(b) above, the punishment part of the prisoner’s sentence shall be regarded as having been served as at the end of the day immediately before the provisional release date and section 2 of the 1993 Act as amended by this Act shall apply to the prisoner as if an order such as is mentioned in subsection (2) of that section had been made in respect of the prisoner when sentenced.

**PART 3**

**TRANSFERRED LIFE PRISONERS**

32 This Part of this schedule applies to a life prisoner—

(a) to whom subsection (2), but not subsections (1) or (3), of section 10 of the 1993 Act applies; or

(b) to whom subsections (2) to (3) of that section apply, including one to whom those provisions apply by virtue of paragraph 7 of Schedule 6 to that Act, and who was transferred to Scotland before the relevant date.

33 In this Part of this schedule—

“existing transferred life prisoner” means a life prisoner to whom this Part of this schedule applies by virtue of paragraph 32 above;

“life prisoner” and “punishment part” have respectively the same meanings as they have in Part 1;
“relevant date” means the date when this Part of this schedule comes into force.

34 The Scottish Ministers shall, as soon as reasonably practicable after the relevant date, refer the case of an existing transferred life prisoner to the High Court of Justiciary for a hearing under paragraph 41 below.

35 The Scottish Ministers shall not so refer the case of an existing transferred life prisoner to whom paragraph 32(b) above applies if the prisoner—

(a) has, under paragraph 36 below, waived the entitlement to such a hearing; or

(b) has served the part of the sentence specified in the certificate referred to in sub-paragraph (c) of paragraph 39 below issued in respect of that prisoner.

36 An existing transferred life prisoner to whom paragraph 32(b) above applies may waive the entitlement to a hearing under paragraph 41 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.

37 Notwithstanding paragraph 34 above, an existing transferred life prisoner—

(a) who has not, under paragraph 36 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 sub-paragraph (c) of paragraph 39 below issued in respect of that prisoner, may refer his or her case for a hearing under paragraph 41 below.

38 The Scottish Ministers shall, no later than two weeks after the referral of an existing transferred life prisoner’s case under paragraph 34 or 37 above, send the documents and other information mentioned in paragraph 39 below to—

(a) the High Court of Justiciary;

(b) the Lord Advocate; and

(c) the existing transferred life prisoner.

39 The documents and other information referred to in paragraph 38 above are—

(a) a copy of any indictment or corresponding document;

(b) subject to paragraph 40 below, a copy of any report by the trial judge;

(c) a copy of any certificate under—

(i) section 10(2) of the 1993 Act;

(ii) section 48 of or paragraph 9 of Schedule 12 to the Criminal Justice Act 1991 (c.53); or

(iii) section 33 of the Crime (Sentences) Act 1997 (c.43);

(d) any other documents or information which the Scottish Ministers consider relevant.

40 A report prepared by the trial judge—

(a) may be sent under paragraph 38 above notwithstanding that it was prepared on the basis that it would not be disclosed to the existing transferred life prisoner; and

(b) shall be so sent for the purposes only of the hearing under paragraph 41 below.
There shall be a hearing, at which the High Court of Justiciary shall make the order referred to in paragraph 42 below.

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, if—

(a) the prisoner had been sentenced for the offence in Scotland; and

(b) that section, as amended by this Act, had been in force at the time when the prisoner was sentenced.

The court shall pronounce the order under paragraph 41 above in open court.

Where the court has made an order under paragraph 41 above—

(a) Part 1 of the 1993 Act, except section 2(9), as amended by this Act shall apply to the existing transferred life prisoner as if—

(i) the existing transferred life prisoner were a life prisoner within the meaning of section 2 of that Act; and

(ii) the punishment part of that prisoner’s sentence within the meaning of that section were the part specified in the order under paragraph 41 above; and

(b) any certificate such as is referred to in sub-paragraph (c) of paragraph 39 above shall have no further effect.

Where, however, the existing transferred life prisoner has waived, under paragraph 36 above, the entitlement to a hearing under paragraph 41 above, section 10(3) of the 1993 Act shall apply to the prisoner as if the prisoner were a life prisoner and as if the part of the prisoner’s sentence specified in the certificate mentioned in sub-paragraph (c) of paragraph 39 above were the punishment part.

A hearing under paragraph 41 above shall be criminal procedure for the purposes of section 305 of the Criminal Procedure (Scotland) Act 1995 (c.44) (power of High Court of Justiciary to regulate criminal procedure by Act of Adjournal).

An existing transferred life prisoner to whom paragraph 32(a) above applies and who, before the relevant date, has been or is released on licence (otherwise than under section 3 of the 1993 Act (release on compassionate grounds)) 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.

Where such an existing transferred life prisoner released on licence is treated by virtue of paragraph 47 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.

Part 2 of this schedule applies to an existing transferred life prisoner to whom paragraph 32(a) above applies as it applies to an existing life prisoner of the kind mentioned in paragraph 18 above with the substitution in paragraph 18(b) above of a reference to a hearing under paragraph 41 above for the reference to a hearing under paragraph 10 above.
Part 4

Existing members of the parole board

50 Subject to paragraphs 51 to 54 below, the modifications made by section 5 of this Act have effect as respects existing members.

51 Any period of appointment occurring prior to—
   (a) an existing member’s most recent appointment or reappointment; and
   (b) the coming into force of section 5 of this Act,
shall be disregarded for the purposes of paragraph 2E of Schedule 2 to the 1993 Act.

52 Any existing member whose current appointment proceeded upon selection following public advertisement seeking applications for membership of the Board shall, for the purposes of Schedule 2 to the 1993 Act and notwithstanding the terms of the instrument of appointment of the member, be regarded, on the commencement of section 5 of this Act as serving a period of appointment of six years in accordance with that Schedule beginning with the date when that current appointment began.

53 An existing member whose current appointment proceeded otherwise than as mentioned in paragraph 52 above shall, for the purposes of Schedule 2 to the 1993 Act, be regarded on the commencement of section 5 of this Act as serving whichever of the following expires later—
   (a) the period of appointment provided for in the member’s instrument of appointment; or
   (b) a period of appointment of six years beginning with the date when the member was first appointed to the Parole Board.

54 In this Part of this schedule—
   “existing member” means a person who is a member of the Parole Board when section 5 of this Act comes into force;
   “current appointment”, in relation to any existing member, means the appointment then held by that member;
   “public advertisement” means advertisement in a newspaper circulating throughout Scotland.
Convention Rights (Compliance) (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to amend certain enactments relating to the sentencing and release of life prisoners, the constitution of the Parole Board, legal advice and assistance and legal aid, homosexual offences and the appointment and removal of the procurator fiscal of the Lyon Court which are or may be incompatible with the European Convention on Human Rights; and to enable further changes in the law where it is or may be incompatible with the Convention.

Introduced by: Mr Jim Wallace
On: 10 January 2001
Supported by: Iain Gray
Bill type: Executive Bill

© Copyright The Scottish Parliamentary Corporate Body 2001

EDINBURGH: THE STATIONERY OFFICE

Printed in the United Kingdom by The Stationery Office Limited

£3.30

Applications for reproduction should be made in writing to the Copyright Unit, Her Majesty’s Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax 01603 723000.

Produced and published in Scotland on behalf of the Scottish Parliament by The Stationery Office Ltd.

Her Majesty’s Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliament publications.