Constitution Rights (Compliance) (Scotland) Bill

Note by the Executive on impact of the Bill on Prisoners and Criminal Proceedings (Scotland) Act 1993

The relevant sections of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), as amended by this Bill, are set out below.

The amendments proposed by the Convention Rights (Compliance) (Scotland) Bill are shown in bold and deletions scored through.

1 Release of short-term, long-term and life prisoners

(1) Subject to section 26A(4) of this Act, as soon as a short-term prisoner has served one-half of his sentence the Scottish Ministers shall, without prejudice to any supervised release order to which the prisoner is subject, release him unconditionally.

(2) As soon as a long-term prisoner has served two-thirds of his sentence, the Scottish Ministers shall release him on licence unless he has before that time been so released, in relation to that sentence, under any provision of this Act.

(3) After a long-term prisoner has served one-half of his sentence the Scottish Ministers may, if recommended to do so by the Parole Board under this section, release him on licence.

(3A) Subsections (1) to (3) above are subject to section 1A of this Act.

(4) If recommended to do so by the Parole Board under this section, the Scottish Ministers may, after consultation with-

(a) the Lord Justice General, whom failing the Lord Justice Clerk; and

(b) if available, the trial judge,

release on licence a life prisoner who is not a designated life prisoner.

(5) The Parole Board shall not make a recommendation under subsection (4) above unless the Scottish Ministers have referred the case to the Board for its advice.

(6) Notwithstanding the foregoing provisions of this section, the Scottish Ministers shall not release a person who is serving-

(a) a sentence of imprisonment for a term and one or more sentences of imprisonment for life; or

(b) more than one sentence of imprisonment for life,

unless and until the requirements of those provisions are satisfied in respect of each of those sentences.

(7) A person to whom subsection (6) above applies shall, when released on licence under this section, be released on a single licence under subsection (4) above.

(8) Schedule 1 to this Act, which makes special provision as respects the release of persons serving both a sentence of imprisonment imposed on conviction of an offence and a term of imprisonment or detention referred to in section 5(1)(a) or (b) of this Act, shall have effect.
2 Duty to release discretionary life prisoners.

(1) In this Part of this Act “designated life prisoner”, subject to subsection (9)(a) below and 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; or

(aa) sentenced to life imprisonment for murder;

(b) [ ]; or

(c) whose sentence was imposed in respect of a murder committed by him before he attained the age of 18 years,

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 subsection (1) above is an order that subsections (4) and (6) below shall apply to the designated life prisoner as soon as he has served such part of his sentence (“the [designated] part” “the punishment part”) as is specified in the order, being such part as the court considers appropriate 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), taking into account—

(a) the seriousness of the offence, or of the offence combined with other offences associated with it;

(b) any previous conviction of the designated life prisoner and

(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.

(3) Where a court which imposes life imprisonment for an offence such as is mentioned in subsection (1) above decides not to make such order as is mentioned in subsection (2) above, it shall state its reasons for so deciding; and for the purposes of any appeal or review, any such order and any such decision shall each constitute part of a person’s sentence within the meaning of the 1995 Act.

(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 Scottish Ministers shall, if directed to do so by the Parole Board, release a designated life prisoner on licence.

(5) The Parole Board shall not give a direction under subsection (4) above unless—

(a) the Scottish Ministers have 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.

(6) Where this subsection applies, a designated life prisoner may, subject to subsection (7) below, at any time require the Scottish Ministers to refer his case to the Parole Board.

(7) No requirement shall be made under subsection (6) above—
(a) where the prisoner is also serving a sentence of imprisonment for a term, before he has served one-half of that sentence; and
(b) where less than two years has elapsed since the disposal of any (or the most recent if more than one) previous reference of his case to the Board under subsection (5)(a) or (6) above or under section 17(3) of this Act.

(8) In determining for the purposes of subsection (4) or (6) above whether a designated life prisoner has served the designated 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 two or more sentences of imprisonment for life—
(a) he is a designated life prisoner only if the requirements of subsection (1) above are satisfied in respect of each of those sentences;
(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 designated 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.

6 Application to young offenders and to children detained without limit of time.

(1) This Part of this Act applies—
(a) to persons on whom detention in a young offenders institution (other than detention without limit of time or for life) has been imposed under section 207(2) of the 1995 Act as the Part applies to persons serving equivalent sentences of imprisonment; and
(b) to—
(i) persons sentenced under section 205(1) to (3) of that Act to be detained without limit of time or for life;
(ii) children sentenced to be detained without limit of time under section 208 of that Act; and
(iii) persons on whom detention without limit of time or for life is imposed under section 207(2) of that Act, as the Part applies to persons sentenced to imprisonment for life,

and references in the Part (except in this section, sections 1(8) and 5(1) and paragraph 1(b) of Schedule 1) to prisoners (whether short-term, long-term or life) or to prison, imprisonment or sentences of imprisonment shall be construed accordingly.

(2) A child detained without limit of time under section 208 of the 1995 Act may, on the recommendation of the Parole Board made at any time, be released on licence by the Scottish Ministers.
The Scottish Ministers may, after consultation with the Parole Board, by order provide that, in relation to all children detained without limit of time under section 208 of the 1995 Act or to such class of those children as may be specified in the order, this section shall have effect subject to the modification that, in subsection (2), for the word "may" there shall be substituted the word "shall".

10 Life prisoners transferred to Scotland.

(1) In a case where a transferred life prisoner transferred from England and Wales (whether before or after the commencement of this enactment or section 3 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 00)) is a life prisoner to whom section 28 of the Crime (Sentences) Act 1997 (duty to release certain life prisoners) or section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) (determination of tariffs) applies, this Part of this Act except sections 1(4) and 2(9) shall apply as if—

(a) the prisoner were a designated life prisoner within the meaning of section 2 of this Act; and

(b) the designated punishment part of his sentence within the meaning of that section were the relevant part specified in an order or direction made under the said sections 28 or 82A.

(2) In the case of any other transferred life prisoner, except such case as is mentioned in paragraph 7 of Schedule 6 to this Act, subsection (3) below applies where the Lord Justice General, whom failing the Lord Justice Clerk, certifies his opinion that, if the prisoner had been sentenced for his offence in Scotland after the commencement of section 2 of this Act, the court by which he was so sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.

(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 if 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).

(3) In a case to which this subsection applies, this Part of this Act except sections 1(4) and 2(9) section 2(9) shall apply as if—
(a) the transferred life prisoner were a designated life prisoner within the meaning of section 2 of this Act; and
(b) the designated punishment part of his sentence within the meaning of that section were the part specified in the certificate order under subsection (2F) above.

(4) In this section "transferred life prisoner" means a person—
(a) on whom a court in a country or territory outside Scotland or a court-martial has or, in the case of a sentence imposed by a court-martial in Scotland to a prison in Scotland (in either case whether before or after the commencement of this section) imposed one or more sentences of imprisonment or detention for an indeterminate period; and
(b) who has been transferred to Scotland (whether before or after that commencement), in pursuance of—
(i) an order made by the Scottish Ministers under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997, other than an order for a restricted transfer within the meaning of paragraph 6(1) of that Schedule to that Act, or section 2 of the Colonial Prisoners Removal Act 1884; or

(ii) a warrant issued by the Scottish Ministers under the Repatriation of Prisoners Act 1984, there to serve, or to serve the remainder of, his sentence or sentences; 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 in this subsection “prison” has the same meaning as in the 1989 Act.

(5) Where a transferred life prisoner has been transferred to Scotland to serve the whole or part of two or more sentences referred to in subsection (4)(a) above—

(a) he shall be treated as a designated life prisoner (within the meaning of section 2 of this Act) for the purposes of subsection (3) above only if the requirements of subsection (2) above are satisfied in respect of each of those sentences; and

(b) notwithstanding the terms of any order under the said section 28 of the Crime (Sentences) Act 1997 or of any certificate under subsection (2) order under subsection (2F) above, subsections (4) and (6) of section 2 of this Act shall not apply to him until he has served the relevant punishment part of each of those sentences.

17 Revocation of licence

(1) Where—

(a) a long-term or life prisoner has been released on licence under this Part of this Act, the Scottish Ministers may revoke that licence and recall him to prison—

(i) if recommended to do so by the Parole Board; or

(ii) if revocation and recall are, in the opinion of the Scottish Ministers, expedient in the public interest and it is not practicable to await such recommendation;

(b) a short-term prisoner has been so released, the Scottish Ministers may revoke his licence and recall him to prison if satisfied that his health or circumstances have so changed that were he in prison his release under section 3(1) of this Act would no longer be justified.

(2) A person recalled under subsection (1) above shall, on his return to prison, be informed of the reasons for his recall and that he has the right to make written representations to the Scottish Ministers in that regard require the Scottish Ministers to refer his case to the Parole Board.

(3) The Scottish Ministers shall refer to the Parole Board the case of—

(a) a person recalled under subsection (1)(a)(i) above who makes representations has required the Scottish Ministers to refer his case to the Parole Board under subsection (2) above; or
(b) a person recalled under subsection (1)(a)(ii) above.

(4) Where on a reference under subsection (3) above the Parole Board directs a prisoner’s immediate release on licence, the Scottish Ministers shall under this section give effect to that direction.

(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.

(4A) Where the case of a prisoner to whom section 3A of this Act applies is referred to the Parole Board under subsection (3) above, subsection (4) of that section shall apply to that prisoner in place of subsection (4) above.

(5) On the revocation of the licence of any person under the foregoing provisions of this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

(6) A licence under this Part of this Act, other than the licence of a life prisoner, shall be revoked by the Scottish Ministers if all conditions in it have been cancelled; and where a person’s licence has been revoked under this subsection the person shall be treated in all respects as if released unconditionally.

20 The Parole Board for Scotland.

(1) There shall continue to be a body to be known as the Parole Board for Scotland, which shall discharge the functions conferred on it by, or by virtue of, this Part of this Act.

(2) It shall be the duty of the Board to advise the Scottish Ministers with respect to any matter referred to it by him which is connected with the early release or recall of prisoners.

(3) The Scottish Ministers may, after consultation with the Board, by order provide that, in relation to such class of case as may be specified in the order, this Act shall have effect subject to the modifications that—

(a) in subsection (3) of section 1, for the word "may" there shall be substituted the word "shall" so however that nothing in this paragraph shall affect the operation of that subsection as it has effect in relation to a long-term prisoner who is liable to removal from the United Kingdom (within the meaning of section 9 of this Act);

(b) in section 12—

(i) in subsection (3)(a), after the words "licence of a" there shall be inserted the words "long-term or"; and

(ii) subsection (4) shall be omitted; and

(c) in section 17(1)(a), for the word "may" there shall be substituted the word "shall".

(4) The Scottish Ministers may by rules make provision with respect to the proceedings of the Board, including provision—

(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,
and rules under this section may make different provision for different classes of prisoner.

(5) The Scottish Ministers 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 Scottish Ministers 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.

(6) The supplementary provisions in Schedule 2 to this Act shall have effect with respect to the Board.

27 Interpretation of Part I.

(1) In this Part of this Act, except where the context otherwise requires—

"court" does not include a court-martial;

"discretionary life prisoner" has the meaning given by section 2 of this Act;

"life prisoner" means a person serving a sentence of imprisonment for life;

"local authority" means a regional or islands council;

"long-term prisoner" means a person serving a sentence of imprisonment for a term of four years or more;

"Parole Board" means the Parole Board for Scotland;

"petty sessions area" has the same meaning as in the Justices of the Peace Act 1979;

"relevant officer", in relation to a local authority, means an officer of that authority employed by them in the discharge of their functions under section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.);

"short-term prisoner" means a person serving a sentence of imprisonment for a term of less than four years;

"supervised release order" has the meaning given by section 209 (as inserted by section 14 of this Act) of the 1995 Act but includes any order under subsection (2) of the said section 14; and

"supervising officer" has the meaning given by the said section 209.

(2) The Scottish Ministers may by order provide—
(a) that the references to four years in the definitions of "long-term prisoner" and "short-term prisoner" in subsection (1) above shall be construed as references to such other period as may be specified in the order;

(b) that any reference in this Part of this Act to a particular proportion of a prisoner’s sentence shall be construed as a reference to such other proportion of a prisoner’s sentence as may be so specified.

(3) An order under subsection (2) above may make such transitional provisions as appear to the Scottish Ministers necessary or expedient in connection with any provision made by the order.

(4) For the purposes of this Part of this Act so far as relating to licences or persons released on licence, the age of any person at the time when sentence was passed on him shall be deemed to have been that which appears to the Scottish Ministers to have been his age at that time.

(5) For the purposes of any reference, however expressed, in this Part of this Act to the term of imprisonment or other detention to which a person has been sentenced or which, or any part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term if—

(a) the sentences were passed at the same time; or

(b) where the sentences were passed at different times, the person has not been released under this Part of this Act at any time during the period beginning with the passing of the first sentence and ending with the passing of the last.

(6) If additional days are awarded in accordance with rules made under section 39(7) of the 1989 Act (and are not remitted in accordance with such rules), the period which the prisoner (or eventual prisoner) must serve before becoming entitled to or eligible for release shall be extended by those additional days.

(7) Where (but for this subsection) a prisoner would, under any provision of this Act or of the 1995 Act, fall to be released on or by a day which is a Saturday, Sunday or public holiday he shall instead be released on or by the last preceding day which is not a Saturday, Sunday or public holiday.

(8) For the purposes of this section “public holiday” means any day on which, in the opinion of the Scottish Ministers, public offices or other facilities likely to be of use to the prisoner in the area in which he is likely to be following his discharge from prison will be closed.
SCHEDULE 2
THE PAROLE BOARD

Membership

1 The Parole Board shall consist of a chairman and not less than four other members appointed by the Scottish Ministers.

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.

2 The Parole Board shall include among its members—

(a) a Lord Commissioner of Justiciary;
(b) a registered medical practitioner who is a psychiatrist;
(c) a person appearing to the Scottish Ministers to have knowledge and experience of the supervision or aftercare of discharged prisoners; and
(d) a person appearing to the Scottish Ministers to have made a study of the causes of delinquency or the treatment of offenders.

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**

2I 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.

3 A member of the Parole Board shall hold and vacate office under the terms of the instrument by which he is appointed, but may at any time resign his office; and a person who ceases to hold office as a member of the Parole Board shall be eligible for reappointment.

**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.

**Remuneration and allowances**

4 There shall be paid to the members of the Board such remuneration and allowances as the Scottish Ministers may with the consent of the Treasury determine.

5 The expenses of the Board under paragraph 4 above and any other expenses incurred by the Board in discharging the functions mentioned in section 20(1) of this Act shall be defrayed by the Scottish Ministers.
Reports

6 The Board shall as soon as practicable after the end of each year make to the Scottish Ministers a report on the performance of its functions during that year, and the Scottish Ministers shall lay a copy of the report before Parliament.

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.

SCHEDULE 6
TRANSITIONAL PROVISIONS AND SAVINGS

6 (1) This paragraph applies where, in the case of an existing life prisoner, the Lord Justice General, whom failing the Lord Justice Clerk, after consultation with the trial judge, if available, certifies his opinion that, if section 2 of this Act had been in force at the time when the prisoner was sentenced, the court by which he was sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.

(2) In a case to which this paragraph applies, sections 1 to 27 of this Act except sections 1(4) and 2(9) shall apply as if—

(a) the existing life prisoner were a designated life prisoner within the meaning of section 2 of this Act; and

(b) the designated punishment part of his sentence within the meaning of that section were the part specified in the certificate.

(3) Where a person is serving two or more sentences of imprisonment for life or detention without limit of time or for life—

(a) he shall be treated as a designated life prisoner within the meaning of section 2 of this Act only if the requirements of sub-paragraph (1) above are satisfied in respect of each of those sentences; and

(b) notwithstanding the terms of any certificate under that sub-paragraph, subsections (4) and (6) of section 2 shall not apply to him until he has served the designated punishment part of each of those sentences.

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 designated-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 designated punishment part of his sentence.
7. In the case of a transferred life prisoner who is a designated life prisoner for the purposes of Part II of the Criminal Justice Act 1991 by virtue of section 48 of or paragraph 9 of Schedule 12 to that Act, subsection (3) of section 10 of this Act applies and the certificate mentioned in paragraph (b) of that subsection is the certificate under the said section 48 or paragraph 9.

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.