

# The Parole Board for Scotland

## **Annual Report 2003**

Presented to Parliament under Schedule 1, paragraph 5 of the Prisons (Scotland) Act 1989 and Schedule 2, paragraph 6 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Laid before the Scottish Parliament by the Scottish Ministers.

June 2004

SE/2004/90

Edinburgh: The Stationery Office  
£10.80

ISBN 0 10 888137 7

## Foreword

The Criminal Justice (Scotland) Act 2003 marked a further, and perhaps final, stage in the transition of the Parole Board from an ordinary non-departmental public body into a quasi-judicial organisation with full responsibility for its own procedures and decisions within a framework laid down by the Scottish Parliament and Ministers. With effect from mid June 2003 the Board ceased to “advise” Ministers on the release of certain categories of prisoner and instead “directed” such releases, and the conditions under which the release is to take place, save when the prisoner is subject to deportation on release. The ending of political involvement in the release decision making process anticipated rulings of the European Court of Human Rights. Ministers retain the legal right to establish guidelines for the operation of the Board and, of course, continue to be responsible for appointments to the Board. They have, however, given up all involvement in the individual decisions of the Board.



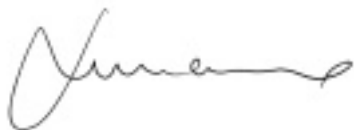
This is a clear sign of the commitment of Ministers to respecting fully the separation of powers in the administration of Justice. It does leave the Board in the same apparently paradoxical situation as Judges within a democracy – though we are a public body, appointed and paid by Ministers, we are not directly *accountable* to them, or to Parliament, for the decisions we make in individual cases. We are, however, *responsible* for our decisions. We must follow the law laid down by Parliament and the Rules of Natural Justice in making our decisions and we are open to Judicial Review by the Courts in relation to them. In addition, we are required by statute to present this annual report to Parliament and it is published for all interested persons to read. We have also participated in a research project into the outcomes of our decisions and the results have been published by the Scottish Executive. We continue to learn from this research and to reflect on our processes and decisions in order that we might constantly improve on our performance. Our overriding concern is minimising the risk to the public of re-offending by long-term prisoners on their release, at whatever stage, from prison.

The very existence of a Parole system provides an incentive and a focus for long-term prisoners to address the issues which may have led them to offend and to plan for a future without offending. The release licence to which all those sentenced to four years or over in custody, and those on extended sentences, are subject is designed to assist in managing any risk posed on release. The Board is responsible for setting the conditions of these licences and for responding appropriately to reported breaches of licence. Recall to custody is the ultimate sanction for breach of licence. In making our decisions about release, conditions of release and recall, we rely heavily on the information presented to us by many other actors within the criminal justice system. A particularly heavy burden falls on staff of the Scottish Prison Service and on local authority Social Workers charged with the supervision of released prisoners. We are ever grateful to all participants

for their efficiency and professionalism in meeting tight deadlines and providing generally high quality information to us. It must always be remembered that they are also responsible for providing the risk-reducing direct services to the prisoners and ex-prisoners with whom we are concerned. The growth in the number of programmes and individual interventions being delivered by them over the last few years has been significant. The expansion of through-care is also offering an improved quality of service in the post-release phase, and National Standards are ensuring greater consistency in the post-release reports being submitted to the Justice Department and, in appropriate cases, the Board.

Indeed, this may be one of the factors which has led to the increase in the numbers of cases referred for consideration of recall over the last two years. While it will be noted that the vast majority of these cases concerns people on non-parole licence, the Board fully shares concerns about the rate of re-offending after release from a prison sentence. We have established a sub-group to review all these cases to see if there are lessons which the Board can learn which might enable it to improve public protection in making decisions about release and the imposition of licence conditions. A more difficult group for us to tackle are those whom we do not release on parole but who subsequently complete the non-parole licence period without any trouble. These “false negatives” may have spent more time in prison than was required for public protection, at a cost to their freedom and the public interest.

Demands on Board members continue to grow. The number of Tribunals for life sentence prisoners, and for recalled extended sentence prisoners, increased again in 2003, while the usual casework meeting continued on a thrice per month basis. Efficient meetings rely on good preparation by members and this can often take in excess of 12 hours. It is always manifest that the preparation has been done fully, enabling decisions to be reached in advance of the relevant dates. As Chapter 3 shows, we continue to exceed almost all our targets in this regard. The staff of the Board’s Secretariat are also crucially important in the efficient conduct of the Board’s business and must be thanked not only for their professionalism but also for their cheerfulness in the discharge of their duties.



**James J McManus**  
**Chairman**

## Contents

	Page
<b>Chapter 1 The Year's Work</b>	5
<b>Chapter 2 Board Membership, Meetings and Visits</b>	15
<b>Chapter 3 Efficiency</b>	17
<b>Chapter 4 Statutory Changes</b>	18
<b>Appendices</b>	
<b>A. Cases Referred for Consideration of Release: Annual Caseloads</b>	
Table 1: Fixed Term Sentences	22
Table 2: Life Prisoners <sup>1</sup>	23
Table 3: Children and Young Persons	23
<b>B. Possible Grounds for Recall Reported to the Board</b>	
Table 1: Persons Released on Parole	24
Table 2: Persons on Non-parole Licence	24
Table 3: Life Sentence Cases	24
<b>C. Time Spent in Custody by Persons Released From Life Sentences<sup>1</sup></b>	25
<b>D. Statutory Provisions and Financial Information</b>	26

<sup>1</sup> Includes those detained without limit of time or at Her Majesty's pleasure only until 1997.

## Membership of the Parole Board for Scotland 2003

Professor James J McManus	Chairman, Professor of Criminal Justice, Glasgow Caledonian University
Mrs Megan Casserly	Vice-Chairman, Former Principal Officer, Strategy, Social Work Department, North Lanarkshire Council
Dr John Baird	Consultant Forensic Psychiatrist
Mr Niall Campbell	Chairman, SACRO
Dr John P Donnelly	Consultant Forensic Clinical Psychologist
Mr Alistair Duff (From April 2003)	Solicitor
Mr John Durno, OBE (From April 2003)	Former Director of Custody, Scottish Prison Service
Mrs Johan Findlay	Justice of the Peace, Honorary Sheriff
Ms Geraldine Gallagher (From April 2003)	Tutor, Social Work Research Centre, Stirling University
Dr Judith Greenwood, OBE	Former Consultant Psychiatrist
Mr Hamish Hyslop (To May 2003)	Former Chief Superintendent, Strathclyde Police
Sheriff Brian A Lockhart (To August 2003)	Sheriff, Glasgow
The Hon Lord MacLean (From May to November 2003)	Senator of College of Justice
Sheriff Principal John J Maguire	Former Sheriff Principal, Tayside, Central and Fife
Mrs Eleanor McLaughlin	Former Lord Provost, Edinburgh
Ms Morag Owens	Former Assistant Director, Criminal Justice Services, Tayside Social Work Department
The Hon Lady Paton (From November 2003)	Senator of College of Justice
Sheriff Rita Rae	Sheriff, Glasgow
Sheriff Richard Scott (From April 2003)	Sheriff, Edinburgh
Ms Morag Slesser	Chartered Forensic Clinical Psychologist
Sheriff James Spy	Sheriff, Paisley
Mr Douglas Thomson	Solicitor
Sheriff Graeme Warner (From April 2003)	Former Sheriff, Aberdeen
The Hon Lord Wheatley (To April 2003)	Senator of College of Justice
Hugh P Boyle	Secretary

## Chapter 1 – The Year’s Work

The tables below provide statistical details of the various cases considered by the Board during 2003.

### Determinate Sentence Prisoners

Total number of cases eligible for consideration	766
Number not wishing to be considered	60
Number referred to the Board for consideration	706*
Number recommended for parole by the Board	345
Number not recommended by the Board	354
Number of cases waiting further information	7

\*Includes 21 prisoners who had been awarded extended sentences.

### Life Prisoners

Number referred to the Board for consideration	179
Number brought forward from 2002	33
Total cases to be considered	212
Number where release directed	55
Number not recommended for release	117
Number who retained a previously agreed release date	1
Number who had a previously agreed release date withdrawn	1
Number of cases postponed or adjourned	6
Number not yet referred to Tribunals	32

**Non Parole Licences** 64

**Extended Sentence Cases** 20

**Children and Young Persons** 10

## Determinate Sentence Prisoners

The Board has powers to make binding recommendations with regard to the release of determinate sentence prisoners serving 4 years or more once they have served one half of their sentence and it may also make recommendations as to the licence conditions of such prisoners.

During the course of the year there was a total of 766 cases eligible for consideration of early release. Of these, 706 cases were referred to meetings of the Board for consideration. This compares with 691 cases referred to the Board in 2002, an increase of 15 cases. Each prisoner was afforded an interview with a member of the Board. The Board recommended that 345 prisoners or 48.9% of those referred during 2003 be released on parole. This compares with 417 or 60% recommended by the Board in 2002.

In addition the Board had to give further consideration to 65 cases where the prisoner had been granted parole, but a report of an adverse development was referred to the Board before the prisoner's release date. Of these 65 cases, 37 had their parole release date withdrawn, 12 had their release date delayed and in 16 cases the Board agreed that the release date should stand.

Nineteen of the cases recommended for release during 2003 were being considered for a second or subsequent review.

### Summary of Determinate Sentence Cases Where Release Recommended - by Offence

	Violence	Drugs	Sexual	Property	Other	Total
<b>10 years or over</b>	9	5	4	2	-	20
<b>Under 10 Years</b>	161	125	17	13	9	325
<b>Total</b>	170	130	21	15	9	345

Category of Offence	Offences Include
<b>Violence</b>	Culpable Homicide, Attempted Murder, Assault to Severe Injury etc., Assault and Robbery.
<b>Drugs</b>	Contravention of the Misuse of Drugs Act and Customs and Excise Management Act.
<b>Sexual</b>	Rape, Attempted Rape, Sodomy, Incest, Clandestine Injury, Lewd and Libidinous Practices.
<b>Property</b>	Theft, Conspiracy to Rob, Embezzlement.
<b>Other</b>	Road Traffic Act, Fire-raising.

Fifty-three of the 354 cases considered by the Board but not recommended for parole were recommended for a further review in less than the normal 12 month period that normally elapses between reviews.



As can be seen from the following table, the proportion of persons eligible for consideration for parole who opt out of the process has increased in the last year.

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Eligible</b>	1,301	744	633	674	687	680	719	690	749	766
<b>Opting out</b>	127	73	75	76	70	46	63	43	58	60
<b>%</b>	9.8	9.8	11.8	11.3	10.2	6.8	8.8	6.2	7.7	7.8

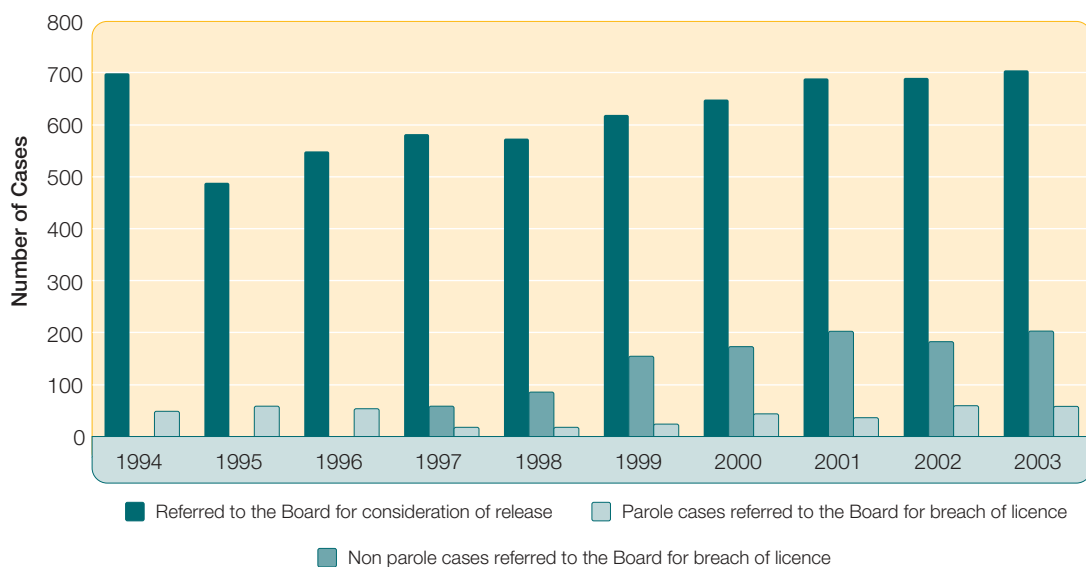
## Non Parole Licences

**The Board advises the Scottish Ministers on additional conditions to be attached to prisoners' release licences.**

Those prisoners sentenced to 4 years imprisonment or more on or after 1 October 1993 are released on licence when they have served two thirds of their sentence. These licences expire at the sentence end date and the term non-parole licence is used to describe this non-discretionary period of supervision in the community.

During 2003 the Board recommended that additional conditions be attached to the non-parole licences of 187 prisoners who were not released on parole. A further 64 cases were returned to the Board specifically in order that the members might consider whether or not additional conditions should be attached to the offender's non-parole licence. In 62 of these cases the Board recommended that additional conditions be attached to the offender's release licence.

## Determinate Sentences 1994-2003



## Extended Sentences

**Scottish Ministers consult the Parole Board about the additional conditions that are to be attached to the release licences of extended sentence prisoners where the combined custodial term and the extension period is 4 years or more.**

During 2003 Scottish Ministers referred to the Board 20 cases where the courts had imposed extended sentences where the combined custodial term and the extension period totalled 4 years or more in order that the Board could consider whether or not additional conditions should be attached to the prisoners' release licences. In 19 of these cases the Board recommended that additional conditions be attached to the offenders' licences and consideration of one case was deferred in order to await sight of further information.

## Life Prisoners

**The Board has the powers to direct the Scottish Ministers to release on licence life prisoners in circumstances where a Tribunal of the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.**

A Tribunal consists of 3 members of the Parole Board for Scotland, appointed by the Chairman of the Board. The individual who is appointed to act as Chairman of the Tribunal must be either:

- A person who holds or has held judicial office; or
- A solicitor or advocate of not less than 10 years standing.

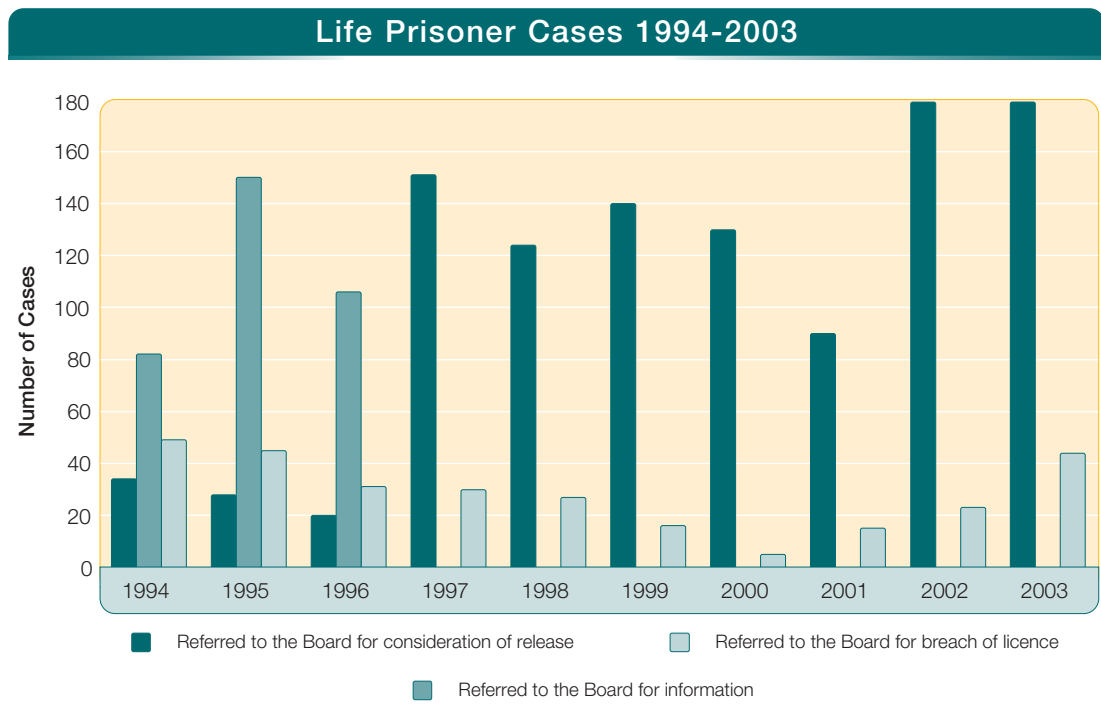
During 2003 the Scottish Ministers referred to the Board the cases of 177 life prisoners in order that Tribunals could determine whether or not the individuals concerned should be released on life licence. In addition, the Board was also required to conclude the consideration of 9 cases that had been postponed or adjourned during 2002 and 24 cases that had been carried over from 2002.

Consideration of 172 cases was concluded in 2003. In 55 cases, the Tribunals directed Scottish Ministers to release the prisoner and, in 50 of these cases, the Tribunals recommended that additional conditions be attached to the prisoners' life licences. In 117 of the hearings, the Tribunals did not direct release, but recommended a further review take place. Six cases were adjourned or postponed and in 32 cases Tribunals will be convened early in 2004.

In addition, Scottish Ministers had referred to the Board the cases of two other life prisoners who had previously been awarded provisional release dates but who were the subject of adverse reports from prison staff. As a result the Board was required to convene Tribunals to deal with these cases and determine whether:

- the provisional release date should be adhered to; or
- the provisional release date should no longer apply.

In one case the Tribunal withdrew the previously agreed provisional release date and in the other case the Tribunal agreed that the release date should be adhered to.

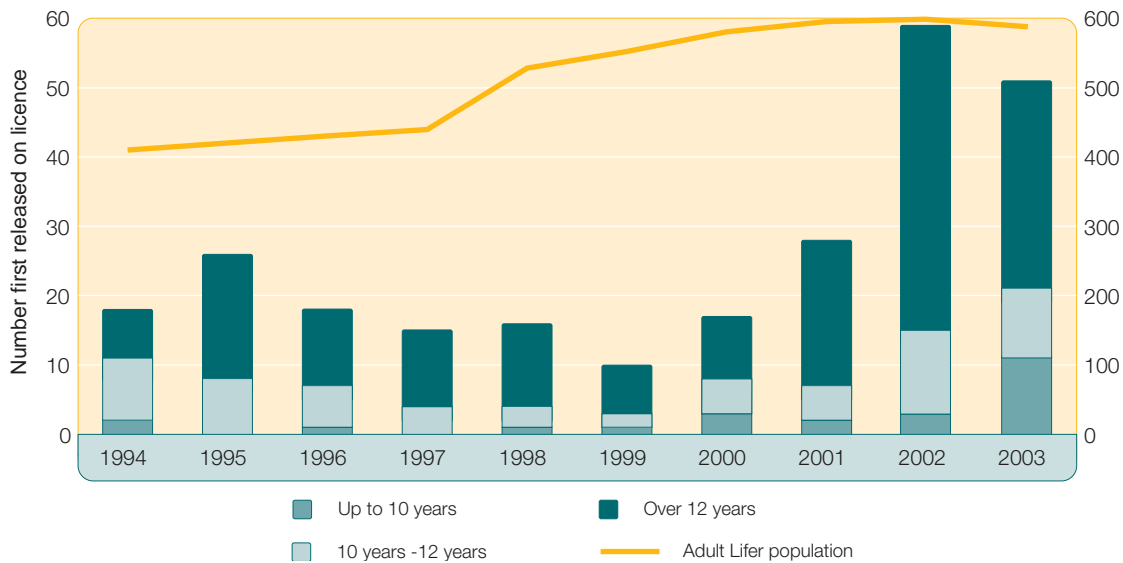


The following table shows the number of Tribunals convened to consider the cases of life prisoners since 1994 and the outcome of these Tribunals.

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Cases Referred</b>	8	4	10	9	38	40	40	44	179	179
<b>Cases Carried Over</b>	None	None	None	None	None	None	None	3	2	33
<b>Total Cases</b>	8	4	10	9	38	40	40	47	181	212
<b>Release Directed</b>	None	None	3	1	6	12	10	9	53	55
<b>Retain Release Date</b>	None	None	None	None	None	None	None	None	2	1
<b>Revised Release Date Awarded</b>	None	None	None	None	None	None	None	None	2	None
<b>Release Date Withdrawn</b>	None	None	None	None	None	None	None	1	2	1
<b>Further Review</b>	8	4	7	8	32	28	27	35	89	117
<b>Postponed or Adjourned</b>	None	None	None	None	None	None	3	2	9	6
<b>Cases yet to be Considered</b>	None	None	None	None	None	None	None	None	24	32

Details of the period of years served by life prisoners prior to release are given at Appendix C together with the corresponding information for preceding years. From the Table at Appendix C, it can be seen that the majority of those released on licence during 2003 had spent less than 14 years in custody.

## Distribution of Time Spent in Prison by Prisoners first released on Life Licence



## Children and Young Persons

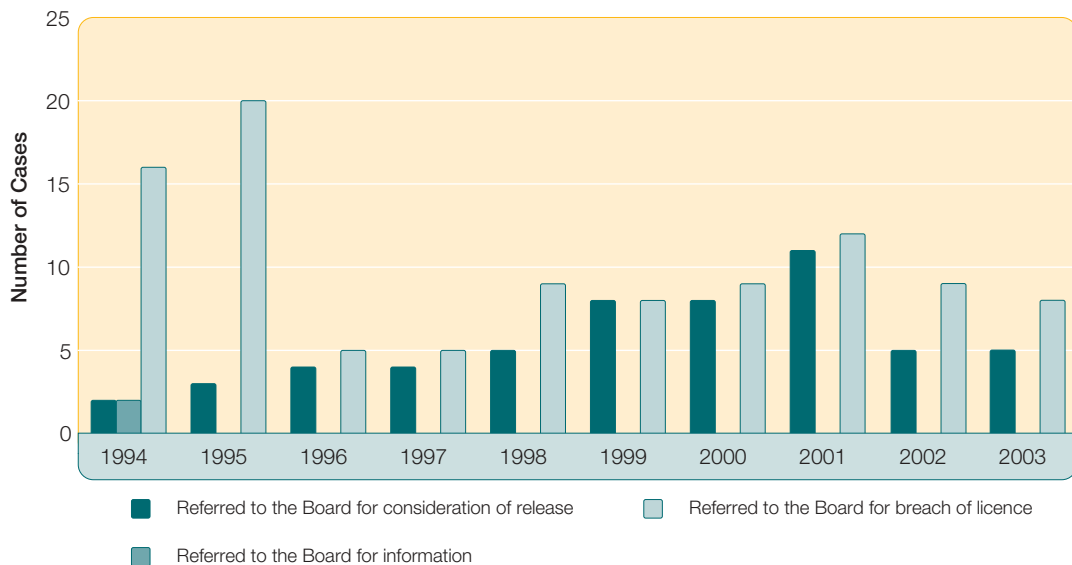
**The Board has responsibility for considering the case for early release of young people sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995 referred to it by Scottish Ministers.**

In 2003 the cases of 10 children and young persons sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995 were referred to the Board. Five of these cases were referred in order that the Board might consider whether or not it was appropriate that the individuals be released on licence. In two cases the Board did recommend early release. In two cases it did not recommend early release and consideration of the other case was deferred pending receipt of further information.

The remaining 5 cases involved children and young persons who were due to be released on licence and whose cases were referred in order that the Board might consider recommending that additional conditions be attached to their release licences. In all 5 cases the Board recommended that additional conditions be attached to the licences.

A further 8 cases were reported to the Board where children and young persons sentenced under section 208 of the Act and released under section 7 of the 1993 Act had breached the conditions of their licence. The Board recommended that 6 be recalled to custody and in two cases no action was deemed to be necessary. Of the 6 recalled, 4 were not subsequently re-released and by the end of the year the other 2 cases had not been referred to the Board in order that the members could consider whether or not it was appropriate to order immediate re-release.

## Children and Young Persons 1994-2003



### Possible Grounds for Recall

The Board has the powers to recommend the recall to custody of determinate sentence prisoners serving sentences of 4 years imprisonment or more and life sentence prisoners who have been released on licence in circumstances where such action is considered necessary in the public interest. The Scottish Ministers are statutorily obliged to accept the Board's recommendation. The Board may direct Scottish Ministers to re-release any prisoner who has been recalled to custody.

### Parole Licensees

As reported in 2002, at the end of the year the Board had yet to conclude consideration of the cases of 17 individuals who had been recalled to custody following their release on parole. Consideration of 12 of these cases was concluded in 2003 and one was re-released and 11 were not re-released.

During 2003 a number of parolees was reported to the Board for behaviour potentially constituting grounds for recall. The Board was obliged to give further consideration to these cases and determine whether to recommend that the individuals be recalled to custody, a warning letter sent or the matter dealt with in another way. There were 59 individual cases reported of parolees who had been released under section 22 (1) of the Prisons (Scotland) Act 1989 and section 1 (3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. See Appendix B Table 1.

Warning letters were issued to 9 licensees. Nine licensees were recalled to custody and subsequently re-released on licence. Twenty-four licensees were recalled to custody and not re-released. Twelve further licensees were recalled to custody and have yet to submit representations against recall to Scottish Ministers. The Board has, therefore, not yet concluded consideration of their cases. Of the remaining 5 cases, no further action was deemed to be necessary.

Further analysis of the cases of the 24 licensees recalled during 2003 and not subsequently re-released showed the following:

Reasons for Recall to Custody				
Index Offence	Charges Involving Violence	Facing MDA Charges	Failure to Comply With Supervision	Other Charges, Including theft, RTA and Carrying of Knives
Violence	9	1	6	3
Drugs	-	3	1	-
Property	1	-	-	-
<b>Total</b>	10	4	7	3

### Non Parole Licensees

As reported in 2002, at the end of that year the Board had still to conclude consideration of the cases of 35 licensees where their representations or further information was awaited. Consideration of 34 of these cases was resumed in 2003. Six were re-released on licence and 28 were not re-released.

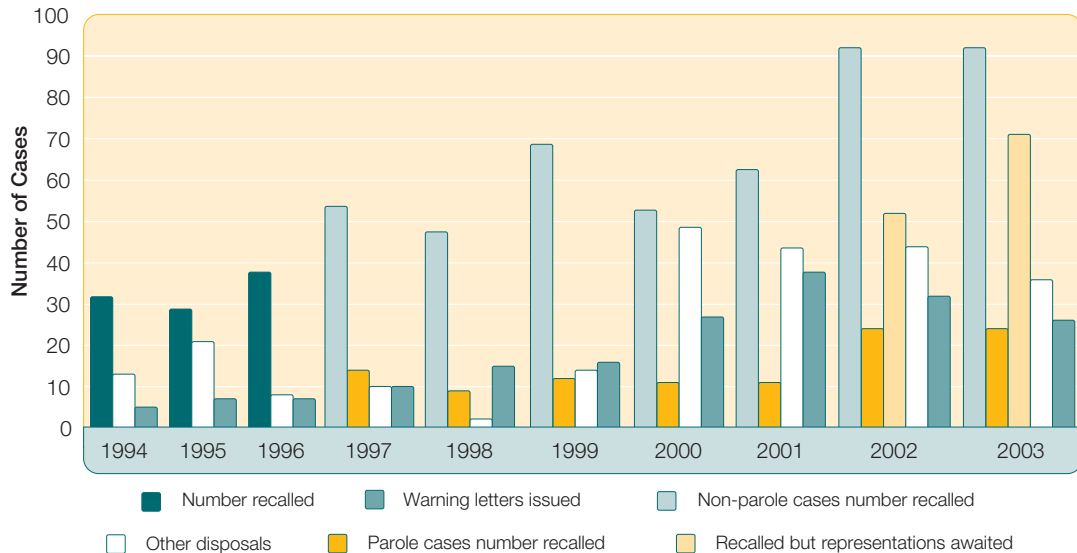
During 2003 the Board was asked to consider the cases of 203 individuals who were the subject of non-parole licences (i.e. those released on having served two-thirds of their sentence and those who were released on parole, but the discretionary period had expired) whose behaviour in the community was giving rise to concern. The Board recommended that 155 of these licensees be recalled to custody. In addition Scottish Ministers revoked the licences of 3 individuals. Of those who were recalled, 8 were subsequently re-released, 91 were not re-released and at the end of the year 59 cases had yet to be referred back to the Board in order that the members may consider whether or not it is appropriate to direct immediate re-release on licence. Warning letters were issued to 17 licensees and no action was taken in 31 cases.

Further examination of the cases of the 91 licensees recalled to custody and not subsequently re-released showed the following:

Reasons for Recall to Custody						
Index Offence	Charges Involving Violence	Facing Charges of a Sexual Nature	Facing MDA Charges	Failure to Comply With Supervision	Charges Involving Theft, Conspiracy to Rob etc.	Other Charges, including RTA and Carrying of Knives etc
Violence	31	2	6	19	12	None
Sexual	None	None	None	3	None	None
Drugs	3	None	4	3	2	1
Property	1	None	None	1	1	1
Other	None	None	None	1	None	None
<b>Total</b>	35	2	10	27	15	2

It was also noted that 35 of the above offenders had initially been released on parole licence and 6 had previously been recalled to custody, but were re-released on licence.

### Grounds for Recall - Determinate Sentences Outcome of cases referred 1994-2003



### Extended Sentences

Scottish Ministers refer to the Board all cases involving grounds for recall of extended sentence prisoners. In the event of an extended sentence prisoner being recalled to custody, the case for re-release must be considered by a Tribunal of the Board. The Tribunal, if not recommending immediate re-release, must be satisfied that it is necessary to hold the offender in custody in order to protect the public from serious harm.

As reported in the Board’s Annual Report for 2002, at the end of that year 3 individuals who had been sentenced to extended sentences and who had been recalled to custody had still to have their cases for immediate re-release considered by Tribunals of the Board. All 3 cases were considered by Tribunals in 2003 and in each case the Board did not direct the prisoner’s immediate re-release.

During 2003 Scottish Ministers referred to the Board 15 cases where the behaviour of the licensee was giving cause for concern. The Board recommended that 10 licensees be recalled to custody, in 3 cases the Board recommended that warning letters be sent to the licensees and in two cases no action was deemed to be necessary.

Of the 10 licensees recalled to custody, 7 had their cases for immediate re-release considered by Tribunals of the Board during 2003. The Board directed that one be immediately re-released, 5 were not re-released and consideration of the other case will be concluded in 2004. The remaining 3 cases had not been referred to the Board for consideration of re-release.

During 2003 the Scottish Ministers referred to the Board the cases of two extended sentence prisoners who had been recalled to custody and who had not subsequently been re-released by Tribunals of the Board. Consideration of both these cases will be concluded by the Tribunals of the Board in 2004.

## Life Licensees

Scottish Ministers refer to the Board all cases involving grounds for recall of life licensees. In the event of a life licensee being recalled to custody, the case for re-release must be considered by a Tribunal of the Board. The Tribunal, if not recommending immediate re-release, must be satisfied that it is necessary for the protection of the public that the offender is held in custody.

During 2003 the Board considered the cases of 44 persons previously released on life licence who had allegedly breached the conditions of their licence or whose behaviour in the community was giving cause for concern.

The Board recommended that 29 licensees be recalled to custody and 4 of these individuals were subsequently re-released and 8 were not re-released. One licensee died before he was returned to custody. In addition the Scottish Ministers revoked the licences of 3 life prisoners and none of them was subsequently re-released. Eight of those who were recalled will have their case for re-release considered by Tribunals of the Board during 2004. One prisoner's case was not referred back to the Board as he had received a further lengthy custodial sentence. The remaining 7 individuals had not had their case for consideration of re-release referred to the Board by the end of the year.

Of the remaining 15 cases referred to the Board as possible grounds for recall, warning letters were issued to 6 licensees, in 2 cases additional conditions were attached to the individual's life licences and in 7 cases it was agreed that no action was necessary.

In addition the Board was required to convene Tribunals to consider the cases of 10 life prisoners who had been recalled to custody in 2002. In three cases the Tribunals of the Board directed that the individual be immediately re-released on life licence and in the remaining 7 cases the prisoners were not re-released.



## Chapter 2 – Board Membership Meetings and Visits

### Board Meetings

2003 was the 36<sup>th</sup> year of the operation of the parole system in Scotland. During the year the Board met on 36 occasions to consider the cases of prisoners and licensees referred by the Scottish Ministers. The Board also convened 205 Life Prisoner Tribunals and 10 Extended Sentence Tribunals during the year. In addition the Board held 3 General Purposes Meetings and an Annual Conference.

### Board Membership

The membership of the Board during 2003 is shown at page 4. During the course of the year Lord Wheatley, Lord MacLean, Hamish Hyslop and Sheriff Brian Lockhart left the Board. They had all made a sterling contribution to the work of the Board and the members of the Board thank them for all the work that they carried out on behalf of the Board.

### Visitors

The Board welcomed a number of visitors to its casework meetings throughout the year including prison officers; prison and community based social workers; officials of the Scottish Executive Justice Department; and two Senators of the College of Justice.

### General Purposes Meetings

The Board held three General Purposes Meetings during the year. At these meetings the members of the Board discussed matters such as developments at the Scottish Prison Service's Open Estate; the Board's procedures at Tribunals and in dealing with recall cases; the purpose of the interview that members of the Parole Board conduct with prisoners; alternatives to recall; the content and quality of reports contained in parole review dossiers; the review of parole dossiers; the setting up of the Board's website and scrutiny of the Board's decisions.

### Visits

During the year the members of the Board visited Clackmannanshire and Falkirk Social Work Departments. At these visits the Board members met with officials of the local authority social work departments and discussed matters such as the development of Throughcare between prison and community based social workers, the management of offenders in the community and the provision of accommodation for offenders on their release from custody.

### Parole Board Conference

The Board held its eleventh annual conference on Friday 28<sup>th</sup> and Saturday 29<sup>th</sup> November 2003 at Uphall. The Conference provides the members with the opportunity to gather together to discuss in depth matters relating to the work of the Board. The main focus of the Conference was Supervision in the Community



and the members heard interesting presentations from representatives of Dumfries and Galloway, Edinburgh, Glasgow and North Lanarkshire social work departments as well as Gerry Hart of the Scottish Executive's Social Work Services Inspectorate and John Newton of the social work department at HM Prison, Glenochil. In addition the members heard from two life licensees about the transition from prison to life in the community and the difficulties that may be encountered. The Board also enjoyed an interesting presentation from Mr Andrew Lothian, a partner in Anderson Strathern, WS, the Board's legal advisers, on judicial review. Jim Gallagher, Secretary of the Scottish Executive Justice Department gave a comprehensive presentation on developments in the criminal justice field and Sue Moody of the Crown Office addressed the Board on issues affecting the victims of crime.

**Parole Board Website**

During 2003 the Board employed a company called 2F2 to design its website. The Board's website is at <http://www.scottishparoleboard.gov.uk>. The website contains information about the members of the Board, the Board's statutory powers and functions as well as providing responses to some frequently asked questions about parole. In addition the Board's Annual Report for 2003 and earlier years can be viewed on the website.

## Chapter 3 – Efficiency

In its Corporate Plan for 2002 the Board set specific performance measures and objectives designed to monitor the Board's effectiveness in dealing with cases referred to it by the then Secretary of State and now Scottish Ministers. These were:

### Determinate Sentence Prisoners

**The Board will endeavour to ensure that no less than 85% of interviews are conducted within 5 weeks of a determinate sentence prisoner's case being referred to the Board. The Board exceeded this target in respect of 89% of cases.**

Prisoners interviewed in 2003	698
Target met or exceeded	89%

**The Board will endeavour to ensure that 85% of determinate sentence prisoners have their case considered at a meeting of the Board within 9 weeks of the case being referred to the Board by the Scottish Executive Justice Department. The Board exceeded this target in respect of 88% of cases.**

Cases to meetings in 2003	706
Target met or exceeded	88%

### Life Prisoners

- (1) Unless the prisoner, his legal agent or Scottish Ministers request a postponement, the first review of a life prisoner's case will be heard by a Tribunal within 3 days of the expiry of the punishment part set by the judiciary. The Board met this target in all cases.**
- (2) Unless the prisoner, his legal agent or Scottish Ministers request a postponement, all second or subsequent reviews of a life prisoner's case will be heard by a Tribunal within 8 weeks of the case being referred to the Board. The Board met this target in all cases.**
- (3) That the Tribunal will issue its decision letter within 14 days of the end of the Tribunal hearing. The Board met this target in all cases.**

### Cost Effectiveness

The Board recognises the need to have due regard to economy and cost effectiveness in carrying out its functions. Examination of the costs incurred by the Board during 2003 reveal that the work of the Board continues to represent good value for money. The average cost of a Life Prisoner Tribunal is £1,048, the average cost of considering a case at a meeting of the Board is £144 and the average cost of conducting an interview is £101.

## Chapter 4 – Statutory Change

The Criminal Justice (Scotland) Act 2003 contains a number of provisions that came into effect during 2003 and had an impact on the work of the Parole Board during 2003. The Act also contains a number of provisions that will come into force during 2004 and which will affect the work of the Parole Board.

The first wave of provisions came into effect on 27 June 2003. The main ones which affected the work of the Board were as follows:

### **Section 27 – Release on licence etc. under 1989 Act.**

Section 27 amended sections 22 and 23 of the Prisons (Scotland) Act 1989 which govern the early release on licence of certain prisoners sentenced to determinate terms of imprisonment prior to 1 October 1993. Although these provisions were repealed by the Prisoners and Criminal Proceedings (Scotland) Act 1993, their application to those prisoners was preserved by that Act.

By virtue of the amendments contained in this section the Scottish Ministers became obliged to release on licence those serving a sentence of imprisonment of 10 years or more which was imposed before 1 October 1993, if the Parole Board so recommends. Given that the Parole Board already had the power to direct release of those sentenced before 1 October 1993 to less than 10 years as well as the power to direct the release of life prisoners, these amendments removed from the Scottish Ministers any discretion over the release of any prisoners sentenced before 1 October 1993 whose release on licence is recommended by the Board.

In addition, section 22(7) of the 1989 Act, which governs the inclusion on release and subsequent insertion, variation or cancellation of licence conditions, was modified so that the Scottish Ministers may only include licence conditions in accordance with the recommendations of the Board.

### **Section 28 – Release on licence etc. under 1993 Act.**

This section amended sections 1(3) and 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 which apply to the early release of long term prisoners who were sentenced on or after 1 October 1993. It also repealed section 20(3) of that Act.

Section 1(3) of the 1993 Act, read with section 53 of the Scotland Act 1998, provided that after a long term prisoner has served half of his or her sentence the Scottish Ministers may, if recommended to do so by the Parole Board, release him or her on licence. This was modified on 1 April 1995 with the effect that the Scottish Ministers are statutorily obliged to release such a prisoner who is sentenced to a term of less than 10 years, if that sentence was imposed on or after 1 October 1993 and provided that the person is not liable to deportation from the United Kingdom. In other cases where the Board recommended early release on licence the Scottish Ministers exercised discretion over whether or not to accept that recommendation. The amendment to section 1(3) removed the Scottish Ministers' discretion and they are now required to release such prisoners on licence if recommended to do so by the Board.

Section 12 of the 1993 Act provides that in the case of a life prisoner or a long term prisoner, sentenced on or after 1 October 1993, no licence condition may be included or varied except in accordance with the recommendation of the Board. The amendment to section 12 brought the arrangements governing licence conditions into line with those applicable to the classes of cases referred to above. It also provided, by way of exception to this, that the Scottish Ministers may include conditions in a licence on the release of a person on compassionate grounds where the Board was not consulted before release.

### **Section 29 – Release on Licence: Life Prisoners.**

Section 29 amended section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to provide that in certain circumstances where a life prisoner who has served the punishment part of a life sentence receives a further sentence, either for life or for a term, that prisoner will not have the right to require that his or her case should be reviewed by the Parole Board at a maximum interval of 2 years.

Section 29(2) provides that where a life prisoner, who has served the punishment part, is given one or more other sentences (whether determinate or indeterminate) at a time between the case being referred to the Board and a date being fixed for its determination, the Board may, in fixing a date for the next review of the case, set a date which is more than 2 years ahead. Where a life prisoner receives any other sentence after his or her case has been referred to the Parole Board and a date has been fixed by the Board for considering the prisoner's case, or where the Board has fixed a date for a subsequent consideration for parole, then in such circumstances the Board shall fix a different date for considering the case and that shall be a date on which the prisoner would be eligible to be released, or to be considered for release from all other sentences, or a date that is as soon as practicable after that date.

Section 29(2) also amended the 1993 Act to provide that until the "appropriate part" of any further determinate term of imprisonment has been served, the life prisoner may not require the Scottish Ministers to refer the case to the Board. In addition, it provided that those with more than one life sentence need to serve the punishment part of any such sentence before being eligible for parole.

### **Section 30 – Release on Licence: Certain Consecutive Sentences.**

This section amended the 1993 Act to provide that where a prisoner who is serving a determinate sentence receives a sentence of imprisonment or detention for life or without limit of time which is to take effect on the day after he/she would, but for the indeterminate sentence, be entitled to be released from the determinate term, the Scottish Ministers shall not be required to release the prisoner until they are required to release that person from the indeterminate term. Neither are the Scottish Ministers nor the Parole Board under any obligation to consider the prisoner for release from the determinate term until they are required to consider the person's case for release from the indeterminate sentence.

### **Section 31 – Release: Prisoners Serving Extended Sentences.**

This section amended section 3A of the 1993 Act so that where a prisoner subject to an extended sentence is recalled to custody and receives a life sentence before the Parole Board considers whether or not to direct immediate re-release, the prisoner will not be eligible for release until after having served the punishment part of the life sentence. It also provides that if in the interval between recall to custody and consideration of immediate re-release, the prisoner receives another determinate sentence, the Parole Board shall not be empowered to consider the case until the prisoner is eligible for release from the new sentence.

### **Section 37 – Extended Sentences: Recall to Prison and Revocation of Licences**

This section amended section 26A of the 1993 Act to clarify when an extended sentence prisoner who has been recalled to custody has an unconditional right of re-release. The effect is that following the recall to custody of any prisoner serving an extended sentence, an automatic right to re-release will arise once the prisoner reaches the expiry date of the extension period.

### **Section 38 – Special Provisions in Relation to Children**

This section amended section 7 of the 1993 Act which provides for the early release of children who have been sentenced under section 208 of the Criminal Procedure (Scotland) Act to determinate periods of detention. Such children are treated in a comparable manner to adults except that there is no provision for a minimum period to be served before they can be considered for discretionary release, even if serving less than 4 years, so that social work supervision is available to assist their re-settlement in the community.

The amendments made to this section are in line with the changes made to the early release provisions for adults by sections 28, 35 and 36 of the Act.

The Board wishes to thank the many individuals and agencies who continue to support the parole scheme for all their help and encouragement. The Board also wishes to thank the officials and staff of the Scottish Executive Justice Department and the Scottish Prison Service for their help throughout the year. In addition, the Board wishes to record its appreciation to its Secretariat for its continuing support and service throughout the year.

Hugh P Boyle  
Secretary  
Parole Board for Scotland  
Saughton House  
Edinburgh  
April 2004

### **Members of the Board**

James J McManus	John P Donnelly	John J Maguire	Richard Scott
Megan Casserly	John Durno	Eleanor McLaughlin	Morag Slesser
John Baird	Johan Findlay	Morag Owens	James Spy
Niall Campbell	Geraldine Gallagher	Lady Paton	Douglas Thomson
Alistair Duff	Judith Greenwood	Rita Rae	Graeme Warner

## Survey of Annual Caseloads During the Period 1. 1. 94 to 31. 12. 03

### Table 1 Fixed Term Sentences

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>a. Total cases processed by the Department</b>	1,301	744	633	674	687	680	719	690	749	766
Prisoners not wishing to be considered	127	73	75	76	70	46	63	43	58	60
Parole cases not referred to the Board	482	189	21	14	39	14	-	-	-	-
<b>b. Total cases referred to the Parole Board</b>	692	482	537	584	578	620	656	647	691	706
<b>c. Total cases not recommended by the Parole Board</b>	324	273	329	384	310	304	279	301	272	354
Cases not recommended by the Parole Board	259	233	279	328	262	253	240	261	240	301
Cases not recommended but early review requested	65	40	50	56	48	51	39	40	32	53
<b>d. Total cases recommended for parole by the Parole Board</b>	368	209	196	209	262	311	374	340	417	345
<b>e. Total cases where further information awaited</b>	-	-	12	3	6	5	3	6	2	7



**Table 2 Life Prisoners**

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Cases Carried Forward	-	-	-	-	-	-	-	-	2	33
Cases referred to the Parole Board	119	179	125	151	123	140	131	93	179	179
Total of cases to be considered	119	179	125	151	123	140	131	93	181	212
Cases where release recommended/directed	34	28	20	29	29	26	46	39	53	55
Cases where release not recommended	85	151	105	122	94	114	83	51	89	117
Release date retained	-	-	-	-	-	-	-	1	2	1
Revised release date awarded	-	-	-	-	-	-	-	-	2	-
Release date withdrawn	-	-	-	-	-	-	-	1	2	1
Cases postponed or adjourned	-	-	-	-	-	-	-	-	9	6
Cases awaiting sitting of Tribunal	-	-	-	-	-	-	2	-	24	32

**Table 3 Children and Young Persons**

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Cases referred to the Parole Board for Consideration of release	2	3	4	5	5	8	4	5	5	10
Cases not recommended	2	3	4	4	1	4	2	2	-	2
Cases not recommended but early review requested or further information awaited	-	-	-	-	2	1	1	1	1	-
Case deferred	-	-	-	-	-	-	-	-	-	1
Cases recommended for release	-	-	-	1	2	3	1	2	4	2
Cases referred to the Board for information	2	-	-	-	-	-	4	6	8	5

## Appendix B

### Determinate Sentence Cases Possible Grounds for Recall Reported to the Parole Board Annually During the Period 1. 1. 98 to 31. 12. 03

**Table 1: Persons released on parole before the two-thirds stage of sentence**

Year	Total Cases Referred	Recalled and Re-released	Recalled and not Re-released	Recalled and Representations Awaited	Warning Letters Issued	Other Disposals
1998	20	4	7	2	6	1
1999	26	2	12	8	4	-
2000	44	10	12	13	3	6
2001	38	6	11	8	9	4
2002	60	8	24	17	7	4
2003	59	9	24	12	9	5

**Table 2: Persons who were not released on parole or who were released on parole, but the discretionary period had expired (known as non-parole licence)**

Year	Total Cases Referred	Recalled and Re-released	Recalled and not Re-released	Recalled and Representations Awaited	Warning Letters Issued	Other Disposals
1998	96	13	47	23	9	4
1999	156	24	69	47	12	4
2000	168	24	53	47	24	20
2001	204	15	63	71	29	26
2002	191	18	92	35	25	21
2003	206*	8	91	59	17	31

\* Includes 3 licensees recalled by Scottish Ministers.

### Life Sentence Cases Possible Grounds for Recall Reported to the Parole Board Annually During the Period 1. 1. 94 to 31. 12. 03

**Table 3: Life Sentence Cases**

Year	Total Cases Referred	Number Recalled	Warning Letters Issued	Other Disposals
1994	52	15	16	21
1995	48	16	7	25
1996	31	20	2	9
1997	30	16	1	13
1998	25	6	5	14
1999	16	4	6	6
2000	5	3	1	1
2001	15	5	1	9
2002	23	12	4	7
2003	47†	28	6	13‡

† Includes 3 licensees recalled by the Scottish Ministers.

‡ Includes 4 offenders who were recalled to custody and subsequently re-released after consideration of their representations.

## Appendix C

### Time Spent in Custody by Persons Released from Life Sentences<sup>1</sup>

Year of Release	Years Detained in Custody									Total
	6-7	7-8	8-9	9-10	10-11	11-12	12-13	13-14	Over 14	
1968	-	-	-	3	1	-	-	-	-	4
1969	1	-	1	-	-	-	-	-	-	2
1970	-	-	-	1	1	1	-	-	-	3
1971	-	-	1	2	-	-	-	-	-	3
1972	-	-	1	-	2	-	-	-	-	3
1973	-	1	1	1	2	-	-	-	1	6
1974	-	-	2	5	1	1	1	-	-	10
1975	-	1	4	6	3	1	-	-	-	15
1976	-	1	6	5	5	1	-	-	-	18
1977	-	-	2	4	5	1	1	1	1	15
1978	-	-	5	4	1	2	-	-	1	13
1979	1	1	2	5	6	2	2	1	1	21
1980	-	-	3	4	6	4	5	3	-	25
1981	-	1	7	20	4	4	4	1	-	41
1982	1	-	-	9	10	1	3	2	3	29
1983	2	3	4	14	11	2	-	-	2	38
1984	1	-	1	5	6	1	-	-	1	15 <sup>2</sup>
1985	1	1	5	4	6	4	1	-	1	23
1986	-	2	4	3	8	2	5	-	-	24
1987	-	-	1	4	6	2	-	1	1	15
1988	-	-	-	-	5	3	1	1	1	11
1989	-	-	-	2	2	4	8	5	4	25
1990	-	-	-	3	7	6	4	2	4	26
1991	-	-	-	1	5	4	2	1	10	23
1992	-	-	-	3	4	3	6	2	5	23
1993	-	-	-	5	8	7	3	1	10	34
1994	-	-	-	2	-	9	1	2	4	18
1995	-	-	-	-	2	6	7	7	4	26
1996	-	-	-	1	4	2	5	3	3	18
1997	-	-	-	-	2	2	2	1	8	15
1998	-	-	-	1	2	1	4	1	7	16
1999	-	-	-	1	2	-	-	-	7	10
2000	-	-	1	2	2	3	2	1	6	17
2001	-	-	-	2	3	2	3	4	14	28
2002	-	-	2	1	7	5	3	5	36	59
2003	2	2	3	4	6	4	3	2	25 <sup>3</sup>	51
<b>Total</b>	<b>9</b>	<b>13</b>	<b>56</b>	<b>127</b>	<b>145</b>	<b>90</b>	<b>76</b>	<b>47</b>	<b>160</b>	<b>723<sup>4</sup></b>

#### Notes

<sup>1</sup> Includes those detained without limit of time or at Her Majesty's Pleasure only until 1997.

<sup>2</sup> In addition, one prisoner was released on life licence on compassionate grounds after serving 3 years 5 months in custody.

<sup>3</sup> Of these 25 cases, 4 served 14-15 years, 3 served 15-16 years, 2 served 16-17 years, 3 served 18-19 years, 3 served 19- 20 years and 10 served over 20 years.

<sup>4</sup> Does not include those recalled to custody and subsequently re-released.

## Appendix D

### Statutory Provisions

#### Ch9 Prisoners and Criminal Proceedings (Scotland) Act 1993, as amended

#### SCHEDULE 2

#### The Parole Board

##### *Membership*

1. The Parole Board shall consist of a chairman and not less than 4 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 kinds of members of the Board, including 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 after-care 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 paragraph 2B to 2D below, last for such period, being not shorter than 6 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 only if-
  - (a) three 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 paragraph 2E above.
- 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 Board came to an end on removal from office under paragraph 3 below shall not be reappointed.
- 2H. The provisions of paragraph 1 to 2D above apply to a reappointment under paragraph 2E above as they apply to an appointment.

### ***Performance of duties***

- 2J. 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.

### ***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 10 years, legally qualified; and
  - (c) one other person who shall not be legally qualified.
- 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 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 Parole Board such remuneration and allowances as the Scottish Ministers may with the consent of Treasury determine.
5. The expenses of the Board under paragraph 4 above and any other expenses incurred by the Board in discharging its functions mentioned in section 20(1) of this Act shall be defrayed by the Scottish Ministers.

### *Reports*

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

## Financial Information

### *Fees and Expenses*

1. Under the provisions of Schedule 1 of the 1989 Act and Schedule 2 of the 1993 Act, members of the Parole Board for Scotland may receive sessional fees for attendance at Board meetings; and they may also be paid a full fee or part of a fee for undertaking other business of the Board, the sessional rates payable to each category of member in 2003 were as follows:

Chairman	£320
Legal Member	£272
Psychiatrist	£272
Lay Member	£174

2. Members of the Board are also paid allowances for travelling and subsistence in accordance with prescribed scales.
3. On the basis of the current information available, the Board's estimate of its expenditure during 2003/04 is £702,798 made up as follows:

Fees of Members	£326,242
Travel and Subsistence	61,493
Staff Salaries	193,762
Legal Costs	57,925
Other	63,376
<b>Total</b>	<b>702,798</b>

