



PRISONS, PRISONERS & PAROLE

DOUGLAS THOMSON

2ND EDITION

W.GREEN

First Edition published in 2007

Published in 2013 by W. Green,
21 Alva Street, Edinburgh EH2 4PS

Part of Thomson Reuters (Professional) UK Limited
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
Aldgate House, 33 Aldgate High Street, London EC3N 1DL)

www.wgreen.co.uk

Typeset by Alex Nashed, W. Green, Edinburgh
Printed and bound in the UK by CPI Group (UK) Ltd, Croydon, CR0 4YY

No natural forests were destroyed to make this product;
only farmed timber was used and replanted.

A CIP catalogue record of this book is available from the British Library.

ISBN 978-0-414-01868-6

Thomson Reuters and the Thomson Reuters logo are
trademarks of Thomson Reuters.

© Thomson Reuters (Professional) UK Limited 2013

Crown copyright material is reproduced with the permission of the
Controller of HMSO and the Queen's Printer for Scotland.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgment of author, publisher and source must be given.

PRISONS, PRISONERS AND PAROLE

SECOND EDITION

FOREWORD TO FIRST EDITION

This book fills a long standing gap in Scottish legal writing.

Deprivation of liberty is the harshest punishment which can be passed in a Scottish court. It should only be imposed when the severity of the crime that has been committed or the safety of the public leaves the court with no other possible disposal

For many years the court and the legal system regarded its task as completed once the prison gates clanged shut. What happened thereafter was a matter for the prison administration. Over the last twenty years or so it has been increasingly understood that this position is no longer tenable. The law does not end at the prison gate. Rather, it must shine into the deepest recesses of the prison. This is in the interests of prisoners, prison staff and the public.

Douglas Thomson has written a much needed book which is legally sound and eminently readable. It places Scottish prisons in their historical context and describes their daily reality from the perspective of the applicable law and regulations. It is also a useful reference point for the relevant case law.

Prisons, Prisoners and Parole is likely to become required reading for those involved in prisons, from whichever perspective.

*Andrew Coyle CMG
Professor of Prison Studies
King's College
University of London*

PREFACE TO SECOND EDITION

In 1931, when W. Green & Son published their *Encyclopaedia of the Laws of Scotland*, the section in respect of prisons occupied 11 pages, referred to no statute more recent than 1914 and not a single reference to case law. It is a little under six years since the text of the first edition of this book was completed, yet that brief period has seen the publication and enactment of a wholly revised set of Prisons and Young Offenders Institutions Rules, several massive legislative changes in the field of sentencing and a plethora of reported cases on issues covered within the previous volume. Indeed, in writing the second volume it has been sobering to note on the one hand the quiet death of the district court and on the other the noisy birth of the Supreme Court.

When the first edition of this book was published in 2007, the two most striking developments apparent were the huge changes in prisons law and practice necessitated by the coming into force of the Human Rights Act 1998 and the vast amount of new legislation that emanated from the Scottish Parliament. The latter of these continues apace and this volume incorporates the changes in law and practice introduced by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and the Criminal Justice and Licensing (Scotland) Act 2010. In addition, while largely not in force, reference in the text to the Custodial Sentences and Weapons (Scotland) Act 2007 remains. Without the ECHR, it is unlikely that every life prisoner would know the date upon which his case will first be considered by the parole board, or have the case considered by a tribunal, nor would prisoners find it quite so easy to obtain a hearing in court in respect of any grievance they may perceive. Litigation by prisoners has continued, and indeed some of the key constitutional issues arising from the devolution settlement have been determined in the context of prisoner-based litigation.

In July 2008 the Scottish Prisons Commission published its report *Scotland's Choice*. While its recommendation in favour of the introduction of community payback orders for less serious offences has been enacted by statute, sheriffs still continue to send numerous minor offenders to prison and the prison population shows no signs of reaching the Commission's desired optimum of around 5,000.

The prison estate in Scotland has seen, and continues to see, major changes. The open prison at Noranside has closed and the old and ramshackle buildings of Low Moss disappeared, to be replaced by a brand new purpose built modern prison. West Lothian has its first prison since the 19th century at Addiewell. Edinburgh, Shotts and Barlinnie have seen much needed modernisation, while the closure of prisons in Aberdeen and Peterhead, to be replaced by HMP Grampian, and the replacement of HMP Greenock by HMP Inverclyde, are now on the horizon. Not before time, since the recommendations of the *Report of the Commission on Women Offenders*, it is now proposed that the women's prison at Cornton Vale be closed and replaced by new establishments more geared to the needs of

21st century women offenders.

There can be no doubt that, in a time of straitened finances and reduced public expenditure, the whole issue of the use of imprisonment as a sanction, and of whether imprisonment yields practical social benefits, will continue to be debated as long as society has a concept of crime. This book is designed to inform those at all levels who come into contact with the Scottish prison system. It is not designed solely for lawyers and prison professionals.

Those practising in the criminal law in any capacity at all are living in interesting times—should this book ever require a third edition the landscape, both physical and emotional, of those within the prison system may well bear little relation to the one we know today.

All errors and omissions from the text are the sole responsibility of the author, who wishes to express his thanks, in no particular order, to those without whom this work might not have been completed on time: the partners and staff at McArthur Stanton; the members of the Dumbarton bar who covered for me during my absences while writing this; the staff at W. Green for their quiet efficiency; the librarian of the SSC Society; and those members of the Scottish Prison Service that have assisted me in my searches for enlightenment

February 2013

PREFACE TO FIRST EDITION

In the 13 years since Dr (as he then was) Jim McManus wrote the first ever book on prisons law in Scotland, the entire legislative and political landscape has been changed out of all recognition. Scotland was still many years from having its own legislature, the European Convention on Human Rights was not incorporated into UK Law, and only a tiny percentage of life prisoners knew when they were due to be considered for parole. Litigation by prisoners in the Scottish courts was rare in the extreme (fewer than 10 cases in the index of *Prisons, Prisoners and the Law* involved actions raised by serving Scottish prisoners), and perhaps most notably, the average daily prison population was causing concern, as it regularly exceeded 5,500.

The two most striking developments are the huge changes in prisons law and practice necessitated by the coming into force of the Human Rights Act 1998, and the vast amount of new legislation that emanates from the Scottish Parliament. Without the ECHR, it is unlikely that every life prisoner would know the date upon which his case will first be considered by the Parole Board, or have the case considered by a Tribunal, nor would prisoners find it quite so easy to obtain a hearing in court in respect of any grievance they may perceive. On the other hand, the Scottish Parliament has found legislative time to bring in measures that increase the level of supervision upon some offenders, and legislation recently passed is expected by all to increase the number of persons incarcerated by a significant percentage. The press and public retain their traditional interest in crime and punishment, although whether their perceptions are always founded in objective reality may be debatable.

There can be no doubt that the whole issue of the use of imprisonment as a sanction, and of whether imprisonment yields practical social benefits will continue to be debated as long as society has a concept of crime. This book is designed to inform those at all levels who come into contact with the Scottish prison system; it is not designed solely for lawyers and prison professionals.

All errors and omissions from the text are the sole responsibility of the author, who wishes to express his thanks, in no particular order, to: the partners and staff of McArthur Stanton, and those members of the Dumbarton bar who have tolerated me as I prepared the text; the membership and the Secretariat of the Parole Board for Scotland, whose helpful suggestions and encouragement are much appreciated, those at SPS who answered my repeated enquiries, and of course the production and editing staff at W. Green, without whom ... *takes out onion*

March 2007

TABLE OF CASES

Abсалom v Governor of HM Prison, Kilmarnock [2010] CSOH 109; 2010 G.W.D. 27-519	4-07
Allen (Keith Joseph) v Lord Advocate [2010] HCJAC 74; 2010 S.C.C.R. 861; 2010 G.W.D. 34-699	2-49
Ansari (Yusuf) v HM Advocate, 2003 J.C. 105; 2003 S.L.T. 845; 2003 S.C.C.R. 347; 2003 G.W.D. 15-488 HCJ	8-04, 8-05
Baker v Parole Board and Scottish Ministers [2006] CSOH 31	5-07, 7-25
Becker v Home Office [1972] 2 Q.B. 407; [1972] 2 W.L.R. 1193; [1972] 2 All E.R. 676; (1972) 116 S.J. 256 CA (Civ Div)	1-10
Beggs v Scottish Ministers [2007] UKHL 3; [2007] 1 W.L.R. 455; 2007 S.L.T. 235; 2007 S.C.L.R. 287; (2007) 151 S.J.L.B. 258; 2007 G.W.D. 5-72	4-25
Birrell, Petitioner, 2007 S.L.T. 440; 2007 G.W.D. 1-5 OH	9-15, 9-16
Brown v Selfridge (Allan), 2000 J.C. 9; 2000 S.L.T. 437; 1999 S.C.C.R. 809; 1999 G.W.D. 28-1323 HCJ	2-06
Burn, Petitioner, 2000 J.C. 403; 2000 S.L.T. 538; 2000 S.C.C.R. 384; 2000 G.W.D. 12-418 HCJ	2-09
Campbell (Alistair Iain) v HM Advocate [2008] HCJAC 11; 2008 J.C. 265; 2008 S.C.L. 590; 2008 S.C.C.R. 284; [2009] Extradition L.R. 96	2-49
Campbell (Thomas) v HM Advocate, 2004 S.L.T. 397; 2004 S.C.C.R. 220; 2004 G.W.D. 11-243 HCJ	6-03
Campbell v United Kingdom (A/80) (1985) 7 E.H.R.R. 165 ECHR	1-11, 1-17, 3-14
Campbell v United Kingdom (13590/88) (1993) 15 E.H.R.R. 137 ECHR	4-24
Campbell, Petitioner [2008] CSOH 16; 2008 S.L.T. 231; 2008 G.W.D. 4-58	4-46, 7-09, 10-17
Coyle (James Thomas) v HM Advocate [2007] HCJAC 52; 2008 J.C. 107; 2008 S.C.L. 131; 2007 S.C.C.R. 479; 2007 G.W.D. 29-508	2-21
Curley v United Kingdom (32340/96) (2001) 31 E.H.R.R. 14; [2000] Prison L.R. 65 ECHR	8-08
Davidson v Scottish Ministers (No.1) [2005] UKHL 74; 2006 S.C. (H.L.) 41; 2006 S.L.T. 110; 2006 S.C.L.R. 249; 2006 G.W.D. 4-72	1-18, 4-16
Dempsey v Parole Board for Scotland, 2004 S.L.T. 1107; [2004] Prison L.R. 391; 2004 G.W.D. 30-626 OH	10-14
Docherty v Scottish Ministers [2011] CSIH 58; 2012 S.C. 150; 2011 S.L.T. 1181; 2011 G.W.D. 29-632	4-16
Du Plooy (Devonne) v HM Advocate (No.1), 2005 1 J.C. 1; 2003 S.L.T. 1237; 2003 S.C.C.R. 640; 2003 G.W.D. 31-865 HCJ	2-20, 2-21
Dudley (Fiona Jacqueline) v HM Advocate, 2003 J.C. 53; 2003 S.L.T. 597; 2003 S.C.C.R. 175; 2003 G.W.D. 6-138 HCJ	4-27
Elliott (Angus Gordon) v HM Advocate (No.2), 1997 S.L.T. 1229; 1997 S.C.C.R. 111; 1997 G.W.D. 1-15 HCAJ	2-14
Engler (Krzysztof) v Lord Advocate [2010] HCJAC 42; 2010 J.C. 235; 2010 G.W.D. 21-410	2-49
Findlay, Re [1985] A.C. 318; [1984] 3 W.L.R. 1159; [1984] 3 All E.R. 801; [1985] Crim. L.R. 154; (1985) 82 L.S.G. 38; (1984) 128 S.J. 816 HL	7-04
Flynn (Patrick Anthony) v HM Advocate (No.1) [2004] UKPC D 1; 2004 S.C. (P.C.) 1; 2004 S.L.T. 863; 2004 S.C.C.R. 281; [2004] H.R.L.R. 17; [2005] 1 Prison L.R. 154; 2004 G.W.D. 16-360	2-33, 8-13
Flynn (Patrick Anthony) v HM Advocate (No.2), 2005 1 J.C. 271; 2004 S.L.T. 1195; 2004 S.C.C.R. 702; 2004 G.W.D. 35-715 HCJ	2-33, 8-13
G v B [2011] CSIH 56; 2011 S.L.T. 1253; 2011 G.W.D. 28-630	2-45
Gallagher v Parole Board for Scotland [2005] CSOH 126	7-25, 7-26
Gemmell (James Kelly) v HM Advocate [2011] HCJAC 129; 2012 J.C. 223; 2012 S.L.T. 484; 2012 S.C.L. 385; 2012 S.C.C.R. 176; 2012 G.W.D. 4-78	2-21, 2-22
Gilbey (Julian) v HM Advocate [2011] HCJAC 30; 2012 J.C. 40; 2011 S.L.T. 728; 2011 S.C.L. 603; 2011 S.C.C.R. 291; 2011 G.W.D. 13-316	2-30
Golder v United Kingdom (A/18) (1979-80) 1 E.H.R.R. 524 ECHR	4-24
Greens, Petitioner [2011] CSOH 79; 2011 S.L.T. 549; 2011 G.W.D. 15-354	4-16

H v Lord Advocate [2011] HCJAC 77; 2011 S.C.L. 978; 2012 S.C.C.R. 1; 2011 G.W.D. 26-587.....	2-49
Herron v ABC & D. 1977 S.L.T. (Sh. Ct) 24.....	2-09
Hirst v United Kingdom (74025/01) (2004) 38 E.H.R.R. 40; 16 B.H.R.C. 409; (2004) 154 N.L.J. 553 ECHR.....	4-54, 4-55
HM Advocate v Boyle (Brian Robert) [2009] HCJAC 89; 2010 J.C. 66; 2010 S.L.T. 29; 2010 S.C.L. 198; 2010 S.C.C.R. 103; 2009 G.W.D. 39-674.....	2-34, 8-14
HM Advocate v Fiddes (James) (Sentencing), 1967 S.L.T. 2 HCJ.....	8-01
HM Advocate v Forrester, 2007 S.C.C.R. 216.....	2-11
HM Advocate v K [2011] HCJAC 61; 2012 J.C. 165; 2011 S.L.T. 931; 2011 S.C.L. 721; 2011 S.C.C.R. 381; 2011 G.W.D. 21-478.....	4-31
Horribine v Thomson [2008] HCJAC 21; 2008 J.C. 306; 2008 S.L.T. 503; 2008 S.C.L. 724; 2008 S.C.C.R. 377; 2008 G.W.D. 13-249.....	2-21
Howden v Parole Board, 1992 G.W.D. 20-1186.....	10-05
Hussain v United Kingdom (21928/93) (1996) 22 E.H.R.R. 1; 1 B.H.R.C. 119 ECHR.....	8-08
Hutcheson v HM Advocate (Sentencing), 2001 S.C.C.R. 43; 2000 G.W.D. 39-1450 HCAJ.....	2-14
Hynd v Ritchie, 2002 S.L.T. 984; 2002 S.C.C.R. 755; 2002 G.W.D. 17-558 HCJ.....	2-06
Johnston (Steven Alexander) v HM Advocate [2006] HCJAC 30; 2006 S.C.C.R. 236; 2006 G.W.D. 17-341.....	6-03
Laidlaw v Parole Board for Scotland [2007] CSOH 98; 2008 S.C.L.R. 51; 2007 G.W.D. 19-341.....	7-17, 7-25, 7-27
Leech v Secretary of State for Scotland, 1991 S.L.T. 910 OH.....	4-24
Low (Graham Ian) v HM Advocate, 2004 S.C.C.R. 82; 2004 G.W.D. 7-143 HCJ.....	2-20
M v S [2009] CSIH 44; 2011 S.L.T. 918; 2010 S.C.L.R. 677; 2009 Fam. L.R. 149; 2009 G.W.D. 22-366.....	2-45
Malone, Petitioner Unreported December 18, 2002 OH.....	10-10
MAR v Dyer, 2005 S.C.C.R. 818 HCJ.....	2-07
Matthewson v Scottish Ministers [2001] Prison L.R. 390; 2001 G.W.D. 23-875 OH.....	5-07
McBrearty, Petitioner Unreported December 2006 OH.....	7-17
McCreaddie (Derek Alexander) v HM Advocate (Appeal against Sentence), 2002 S.L.T. 1311; 2002 S.C.C.R. 912 HCAJ.....	2-33, 8-11
McGeoch v Lord President of the Council [2011] CSIH 67; 2012 S.C. 410; 2012 S.L.T. 224; [2012] Eu. L.R. 345; 2011 G.W.D. 38-773.....	4-55
McGoldrick v Normand, 1988 S.L.T. 273; 1988 S.C.C.R. 83 HCAJ.....	2-12
McRae v Parole Board for Scotland, 1997 S.L.T. 97 OH.....	10-05
Murray (Neil Grant) v HM Advocate, 2000 J.C. 102; 1999 S.C.C.R. 946; 1999 G.W.D. 32-1541 HCJ.....	8-12
Napier v Scottish Ministers, 2005 S.C. 229; 2004 S.L.T. 555; 2004 S.C.L.R. 558; [2004] U.K.H.R.R. 881; [2005] 1 Prison L.R. 176; 2004 G.W.D. 14-316 OH.....	1-18, 4-13, 4-14, 4-15, 4-16
O'Neill (John) v HM Advocate, 1999 S.L.T. 958; 1999 S.C.C.R. 300; 1999 G.W.D. 16-754 HCAJ.....	8-03, 8-04, 8-05
Ottaway v Nisbet [2012] HCJAC 36; 2012 S.L.T. 662; 2012 S.C.L. 624; 2012 G.W.D. 11-219.....	2-22
Peers v Greece (28524/95) (2001) 33 E.H.R.R. 51; 10 B.H.R.C. 364; [2001] Prison L.R. 245 ECHR.....	4-13
Petch (Morris) v HM Advocate [2011] HCJAC 20; 2011 J.C. 210; 2011 S.L.T. 391; 2011 S.C.L. 372; 2011 S.C.C.R. 199; 2011 G.W.D. 8-207.....	1-19, 2-34, 8-05, 11-02
Potter v Scottish Ministers [2010] CSOH 85; 2010 S.L.T. 779; 2010 G.W.D. 25-481.....	1-18, 4-27, 4-28
Pretty v United Kingdom (2346/02) [2002] 2 F.L.R. 45; [2002] 2 F.C.R. 97; (2002) 35 E.H.R.R. 1; 12 B.H.R.C. 149; (2002) 66 B.M.L.R. 147; [2002] Fam. Law 588; (2002) 152 N.L.J. 707 ECHR.....	4-15
R. (on the application of Brooke) v Parole Board [2008] EWCA Civ 29; [2008] 1 W.L.R. 1950; [2008] 3 All E.R. 289; [2008] H.R.L.R. 21; [2008] U.K.H.R.R. 500; [2008] Prison L.R. 99; (2008) 152(6) S.J.L.B. 31.....	7-06
R. (on the application of Carroll) v Secretary of State for the Home Department [2001] EWHC Admin 110; [2001] H.R.L.R. 34; [2001] Prison L.R. 33.....	5-07

- R. (on the application of Gardner) v Parole Board [2006] EWCA Civ 1222; [2007] Prison L.R. 78; (2006) 103(36) L.S.G. 35; (2006) 156 N.L.J. 1401; (2006) 150 S.J.L.B. 1187 9-14
- R. (on the application of Giles) v Parole Board [2003] UKHL 42; [2004] 1 A.C. 1; [2003] 3 W.L.R. 736; [2003] 4 All E.R. 429; [2003] H.R.L.R. 37; [2003] U.K.H.R.R. 1035; (2003) 153 N.L.J. 1426; (2003) 147 S.J.L.B. 936 10-03, 10-06
- R. (on the application of Greenfield) v Secretary of State for the Home Department [2001] EWHC Admin 129; [2001] 1 W.L.R. 1731; [2001] H.R.L.R. 35; [2001] Prison L.R. 52 5-07
- R. (on the application of Hirst) v Secretary of State for the Home Department [2006] EWCA Civ 945; [2006] 1 W.L.R. 3083; [2006] 4 All E.R. 639; [2007] Prison L.R. 232; (2006) 103(29) L.S.G. 30 10-07
- R. (on the application of Noorkoiv) v Secretary of State for the Home Department (No.2) [2002] EWCA Civ 770; [2002] 1 W.L.R. 3284; [2002] 4 All E.R. 515; [2002] H.R.L.R. 36; [2002] Prison L.R. 311; [2002] A.C.D. 66; (2002) 99(27) L.S.G. 34; (2002) 146 S.J.L.B. 145 9-01
- R. (on the application of Roberts) v Parole Board [2005] UKHL 45; [2005] 2 A.C. 738; [2005] 3 W.L.R. 152; [2006] 1 All E.R. 39; [2005] H.R.L.R. 38; [2005] U.K.H.R.R. 939; (2005) 155 N.L.J. 1096 7-11
- R. (on the application of Sim) v Parole Board [2003] EWCA Civ 1845; [2004] Q.B. 1288; [2004] 2 W.L.R. 1170; [2004] H.R.L.R. 15; [2004] Prison L.R. 44; (2004) 101(5) L.S.G. 29; (2004) 148 S.J.L.B. 60 10-12
- R. (on the application of Smith) v Parole Board [2005] UKHL 1; [2005] 1 W.L.R. 350; [2005] 1 All E.R. 755; [2005] H.R.L.R. 8; 18 B.H.R.C. 267; [2005] 2 Prison L.R. 14; (2005) 102(12) L.S.G. 26; (2005) 149 S.J.L.B. 145 7-09, 10-07, 10-16
- R. (on the application of Wells) v Parole Board [2009] UKHL 22; [2010] 1 A.C. 553; [2009] 2 W.L.R. 1149; [2009] 4 All E.R. 255; [2009] H.R.L.R. 23; [2009] U.K.H.R.R. 809; 26 B.H.R.C. 696; [2009] Prison L.R. 371 8-02
- R. v Lichniak (Daniella Helen) [2002] UKHL 47; [2003] 1 A.C. 903; [2002] 3 W.L.R. 1834; [2002] 4 All E.R. 1122; [2003] 1 Cr. App. R. 33; [2003] H.R.L.R. 8; [2003] U.K.H.R.R. 62; 13 B.H.R.C. 437; [2003] Prison L.R. 55; (2003) 100(5) L.S.G. 29; (2002) 146 S.J.L.B. 272 9-18
- R. v M (Young Offender: Time in Custody on Remand) [1999] 1 W.L.R. 485; [1998] 2 All E.R. 939; [1999] 1 Cr. App. R. (S.) 6; [1998] Crim. L.R. 512 CA (Crim Div) 8-04
- R. v Parole Board Ex p. Oyston [2000] Prison L.R. 45 CA (Civ Div) 7-17
- R. v Secretary of State for the Home Department Ex p. Handscomb (1988) 86 Cr. App. R. 59; (1987) 84 L.S.G. 1328; (1987) 131 S.J. 326 QBD 8-03
- R. v Secretary of State for the Home Department Ex p. Leech (No.2) [1994] Q.B. 198; [1993] 3 W.L.R. 1125; [1993] 4 All E.R. 539; (1993) 137 S.J.L.B. 173 CA (Civ Div) 4-24
- R. v Secretary of State for the Home Department Ex p. Lillycrop [1996] EWHC (Admin) 281 7-17
- R. v Secretary of State for the Home Department Ex p. Stafford [1999] 2 A.C. 38; [1998] 3 W.L.R. 372; [1998] 4 All E.R. 7; (1998) 95(34) L.S.G. 31; (1998) 148 N.L.J. 1142; (1998) 142 S.J.L.B. 244 HL 10-06, 10-09, 10-10, 10-12
- R. v Secretary of State for the Home Department Ex p. Tarrant (James) [1985] Q.B. 251; [1984] 2 W.L.R. 613; [1984] 1 All E.R. 799; (1984) 81 L.S.G. 1045; (1984) S.J. 223 3-14
- Ralston v Scottish Ministers, 2004 S.L.T. 1263; 2005 S.C.L.R. 385 OH 4-38
- Rea v Parole Board for Scotland, 1993 S.L.T. 1074 OH 8-06
- Scoppola v Italy (126/05) [2013] 1 Costs L.O. 62; 33 B.H.R.C. 126 ECHR 4-55
- Secretary of State for Justice v James. See R. (on the application of Wells) v Parole Board
- Shahid v Scottish Ministers [2011] CSOH 192; 2012 S.L.T. 178; 2012 Rep. L.R. 2; 2011 G.W.D. 40-816 5-17
- Smith v M, 1982 J.C. 67; 1982 S.L.T. 421; 1982 S.C.C.R. 115 HCAJ 2-07
- Smith v Scott [2007] CSIH 9; 2007 S.C. 345; 2007 S.L.T. 137; 2007 S.C.L.R. 268; [2008] Prison L.R. 177; 2007 G.W.D. 3-46 4-55
- Somerville v Scottish Ministers [2007] UKHL 44; [2007] 1 W.L.R. 2734; 2008 S.C. (H.L.) 45; 2007 S.L.T. 1113; 2007 S.C.L.R. 830; [2008] H.R.L.R. 3; [2008] U.K.H.R.R. 570; (2007) 151 S.J.L.B. 1398; 2007 G.W.D. 37-656 1-18, 4-06, 5-17

Spence (Paul) v HM Advocate [2007] HCJAC 64; 2008 J.C. 174; 2007 S.L.T. 1218; 2008 S.C.L. 256; 2007 S.C.C.R. 592; 2007 G.W.D. 36-629	2-21
Stafford v United Kingdom (46295/99) (2002) 35 E.H.R.R. 32; 13 B.H.R.C. 260; [2002] Po. L.R. 181; [2002] Crim. L.R. 828; (2002) 152 N.L.J. 880	
ECHR	8-09, 10-09, 10-10
Stewart (William) v HM Advocate (Sentencing), 2002 S.L.T. 1307; 2002 S.C.C.R. 915; 2002 G.W.D. 28-971 HCAJ	2-33, 8-11, 8-12, 8-13
Strawhorn v McLeod (Sentencing), 1987 S.C.C.R. 413 HCAJ	2-20
Stuart (Simon) v HM Advocate [2010] HCJAC 34; 2010 S.L.T. 981; 2010 S.C.L. 1021; 2010 S.C.C.R. 498; 2010 G.W.D. 14-271	10-02
Thomson (Arthur), Petitioner, 1989 S.L.T. 343; 1989 S.C.L.R. 161 OH	1-10
Thomson v Scottish Ministers [2011] CSOH 90; 2011 S.L.T. 683; 2012 S.C.L.R. 19; 2011 G.W.D. 18-439	4-06
Thynne v United Kingdom (11787/85) (1991) 13 E.H.R.R. 666	
ECHR	1-15, 2-32, 8-03, 8-08, 8-09
Traynor and Fisher, Petitioners [2007] CSOH 78	4-55
Varey v Scottish Ministers, 2001 S.C. 162; 2000 S.L.T. 1432; [2000] Prison L.R. 213; 2000 G.W.D. 27-1064 OH	10-06
Waite v United Kingdom (53236/99) (2003) 36 E.H.R.R. 54; [2003] Prison L.R. 160	
ECHR	10-10
Weeks v United Kingdom (A/114) (1988) 10 E.H.R.R. 293 ECHR	8-03, 9-18, 10-03
Windsor (Stephen John), Petitioner, 1994 J.C. 41; 1994 S.L.T. 604; 1994 S.C.C.R. 59	
HCJ	6-03
Wright and Brown, Petitioners, 2005 1 J.C. 11; 2004 S.L.T. 491; 2004 S.C.C.R. 324; 2004 G.W.D. 13-289 HCJ	2-49
Wright, Petitioner, 2005 S.C. 453	2-49
Yankov v Bulgaria (39084/97) (2005) 40 E.H.R.R. 36; 15 B.H.R.C. 592; [2004] Prison L.R. 424 ECHR	4-13
Zamir v United Kingdom (9174/80) (1983) 5 E.H.R.R. 242; (1983) 5 E.H.R.R. CD274	
ECommHR	9-18

TABLE OF UK STATUTES

1597 Prisons Act	1-02
1819 Building of Gaols (Scotland) Act (c.61)	1-04
1839 Prisons (Scotland) Act	1-07
1864 Penal Servitude Act (c.47)	
s.9	7-01
1870 Forfeiture Act (c.23)	4-54
1877 Prisons (Scotland) Act (c.53)	3-01
s.4	1-07
s.5	1-07
s.14	1-07
s.15	1-07
s.16	1-07
1908 Prevention of Crime Act (c.59)	2-37
1914 Criminal Justice Administration Act (c.58)	7-01
1928 Reorganisation of Offices (Scotland) Act (c.34)	1-08
1940 Law Reform (Miscellaneous Provisions) (Scotland) Act (c.42)	
s.1(1)	2-45
1947 Crown Proceedings Act (c.44)	1-18
s.21(1)(a)	4-16
1948 Criminal Justice Act (c.58)	
s.2	1-02
1949 Criminal Justice (Scotland) Act (c.94)	1-08, 1-09, 2-38
1951 Courts Martial (Appeals) Act (c.46)	2-43
1952 Prisons (Scotland) Act (c.61)	1-08
s.7	3-14
s.20(1)	7-01
1963 Criminal Justice (Scotland) Act (c.39)	2-38
1965 Murder (Abolition of the Death Penalty) Act (c.71)	
s.1	8-01
1967 Criminal Justice Act (c.80)	1-09, 7-03, 7-07
Pt III	7-02
s.60	7-02
s.61	7-02
Sch.2	7-02
1968 Social Work (Scotland) Act (c.49)	2-13
1971 Misuse of Drugs Act (c.38)	5-03, 5-04, 10-10
s.4(1)	5-09
s.5(2)	5-04
s.28(2)	10-06
1971 Immigration Act (c.77)	
s.3(5)	2-44
(6)	2-44
Sch.2	2-44
Sch.3	2-44
1975 Criminal Procedure (Scotland) Act (c.21)	
s.218	2-14
s.432	2-14
1980 Criminal Justice (Scotland) Act (c.62)	2-08, 11-02
1981 Matrimonial Homes (Family Protection) (Scotland) Act (c.59)	
s.15	2-45
1983 Representation of the People Act (c.2)	4-55
s.3	4-54, 4-55
(1)	4-55
1984 Mental Health (Scotland) Act (c.36)	9-12
s.71	7-12
1984 Repatriation of Prisoners Act (c.47)	2-30
Sch.1 para.2	2-30
1985 Law Reform (Miscellaneous Provisions) (Scotland) Act (c.73)	2-38

1986 Legal Aid (Scotland) Act (c.47)	
s.6	3-14
1988 Court of Session Act (c.36)	
s.45	2-45
1989 Prisons (Scotland) Act (c.45)	1-08, 3-01, 6-11, 10-04, 10-14
s.1	3-01
s.3	3-02
(2)	3-02
s.4	3-02
s.7(1)	3-12
(2)-(5)	3-12
(4)	3-12
s.8	3-14
(2)	3-14
s.10	3-02
s.15(1)	3-19
(2)	3-19
s.19(3)	3-14, 3-16
s.22	7-28
(1)	7-03
(7)	7-28
(8)	7-03
s.22A	10-02
ss.22-29	7-03
s.28	10-01
(1)	9-03, 10-01
(3)	7-04
(4)	9-03, 10-01
ss.30-32	7-03
s.33	3-04
s.39	4-27
(1)	4-28
s.41	4-45, 4-51, 5-01, 5-03, 5-09
(1)	4-45
(2A)	4-51
(2B)(d)	4-51
s.41ZA	4-45
s.41A	5-01
(4)	5-01
(5)	5-01
s.41B	1-14, 5-03, 5-04
s.41C	1-14, 5-10, 5-11
(2)	5-10, 5-11
Sch.1	7-03
1991 Criminal Justice Act (c.53)	1-15, 7-04, 8-03
s.33(2)	7-04
s.35(1)	7-04
(2)	10-09
1993 Prisoners and Criminal Proceedings (Scotland) Act (c.9)	
.....	1-15, 2-03, 2-15, 2-30, 4-54, 6-01, 6-11, 6-19, 7-04, 7-24, 8-03, 9-02, 10-14
s.1	2-28, 6-11, 6-16, 7-08, 7-17
(1)	2-16, 2-21, 2-27, 6-18
(2)	2-29
(3)	6-12, 7-04
s.1A	2-24
s.1AA	6-17
(3)	6-17
(5)	6-17
(6)	6-17
(7)	6-17

(8).....	6-17
s.2.....	1-15, 2-32, 8-03, 8-04, 8-06, 8-07, 8-08, 8-10, 9-01, 9-09
(1).....	8-07
(2).....	8-04, 8-06
(a).....	8-04
(aa).....	9-01
(b).....	8-04
(c).....	8-04
(d).....	8-05
(3).....	8-07
(3A).....	2-32
(4).....	1-17, 8-08, 8-10, 9-19
(5).....	9-19, 10-13
(a).....	9-01
(b).....	1-17, 9-18
(5A).....	2-32, 9-19, 9-21
(b).....	9-14
(5AB)-(5AD).....	9-19
(5C).....	2-22, 9-22
(6).....	8-10
(7).....	8-07, 9-01
(7A).....	9-01
(8).....	9-01
s.2A.....	8-05
s.2B.....	8-05
(5).....	8-05
s.3.....	6-08
(2).....	6-08
s.3A.....	2-27, 10-06, 10-13
(2).....	10-13, 10-14
(a).....	2-26
(4).....	2-26
(5).....	10-14
s.3AA.....	2-16, 2-28, 6-09, 6-11, 6-12, 6-14, 7-21
(1).....	6-12
(3).....	6-09
(4).....	6-10, 6-12
(5).....	6-09
(6).....	6-11
s.6.....	6-19
s.9.....	2-44, 6-11
s.12.....	6-11, 6-12, 9-20
(2A).....	6-11
(3).....	10-11
(4A).....	6-12
s.12AA.....	6-12
s.12AB.....	6-12
(1).....	6-13
(4).....	6-14
(6).....	6-14
s.16.....	2-14, 2-22, 2-23, 2-26, 6-18, 7-12, 7-16, 10-01, 10-02
(2).....	6-11
(b).....	10-04
(4).....	6-11
s.17.....	2-26, 2-27, 2-29, 6-17, 7-16, 9-03, 10-11, 10-13, 10-14
(1).....	10-01
(b).....	10-02
(2).....	10-03
(4A).....	10-11
s.17A.....	6-14, 6-15, 6-16

(1)(b)	6-11
(2)	6-14
(3)	6-15
(4)	6-15
(6)	6-14
s.20A(3)	8-05
s.26A	2-26, 2-27
(5)	2-26, 2-29
s.27(1)	2-16
(5)	2-16, 2-28, 6-17
Sch.2	7-02
para.3	7-06
1994 Criminal Justice and Public Order Act (c.33)	1-14, 3-01
s.107(4)	3-06
1995 Children (Scotland) Act (c.36)	
Pt II Ch.2	2-36, 7-34
Ch.3	2-36, 7-34
s.93	2-36
1995 Criminal Procedure (Scotland) Act (c.46)	2-03, 10-04
s.1AA	1-19
s.5(2)	2-03
(d)	2-19
s.7(5)	2-03
(6)	2-19
s.20(3)	2-12
(4)	2-12
s.23D	2-06
s.24(1)	2-06
(2)	2-11
(6)	4-34
s.25A	2-11
s.34(3)	2-05
ss.35-39	2-09
s.41A	2-36
s.51	2-36
s.51A	2-04
ss.52B-52J	2-04
s.52C	2-04
s.52D(1)	2-04
(2)	2-04
(5)	2-04
(6)	2-04
s.52K	2-04
s.52L	2-04
s.52N	2-04
s.59A	6-10
s.65	2-10, 2-11, 2-14, 10-04
(4)	2-11
s.72B(8)	2-11
s.79	2-11, 2-20
s.106	6-02
s.107	6-02
s.118	6-02
(7)	11-03
s.119(7)	11-03
s.124	6-03
s.147(1)	2-03
(3)	2-03
s.175	6-02
s.180	6-02

s.183.....	6-02
s.186.....	6-02
s.187.....	6-02
s.194A(2).....	6-03
ss.194A-194L.....	6-03
s.194DA.....	6-03
s.196.....	2-14, 2-19, 2-20, 2-21, 6-18
s.201.....	2-13
(4).....	2-13
s.203(1).....	2-13
s.204.....	2-19, 6-10
(2).....	2-12
(3).....	2-12
(3A).....	6-10
s.204A.....	6-16, 10-02
s.205.....	2-31, 2-36
s.208(1).....	2-36
s.209.....	6-10
s.210.....	2-14
(4).....	2-25
s.210A.....	2-24, 2-25, 6-10, 7-12, 7-24, 10-03
(1)(b).....	1-19
s.210F.....	8-02
s.214(4).....	2-18
(8).....	2-18
s.216.....	2-18
s.217.....	2-18
(4).....	2-18
s.219.....	2-17
ss.226A-226I.....	2-17
ss.227A-227ZN.....	2-12
ss.227A-227N.....	1-19
ss.227ZE-227ZG.....	1-14, 6-13
s.227I(5).....	2-17
s.227ZJ.....	6-13
s.227M(2).....	2-17
(3).....	2-19
(6).....	2-19
ss.235-237.....	2-19
s.245A.....	6-13
s.307.....	2-36, 7-34
Sch.1.....	7-34
1996 Prisoners' Earnings Act (c.33).....	4-41
1997 Crime (Sentences) Act (c.43).....	
s.32.....	10-07
Sch.1 para.2.....	4-05
para.3.....	4-05
para.6(1).....	4-05
1997 Crime and Punishment (Scotland) Act (c.48).....	2-32
s.16.....	8-08
1998 Crime and Disorder Act (c.37).....	10-13
1998 Human Rights Act (c.42).....	1-11, 1-17, 1-18, 2-06, 2-09, 4-16, 5-17
s.3.....	10-02
(1).....	8-13
s.7(5).....	5-17
1998 Scotland Act (c.46).....	1-08, 1-17, 1-18, 3-01
s.12.....	4-55
s.57.....	8-09
(2).....	1-15, 4-16, 4-28, 5-17, 7-05
s.54(3).....	5-17

s.100	4-16, 5-17
s.101	8-13
s.113	4-55
2000 Representation of the People Act (c.2)	4-54
2003 Extradition Act (c.41)	2-48, 2-49
Pt 1	2-48
ss.1-68	2-48
s.8	2-48
(4)	2-48
s.21	2-48
s.22	2-48
s.23	2-48
s.36	2-48
s.37	2-48
Pt 2	2-48, 2-49
ss.69-141	2-48
s.77	2-49
s.92	2-49
s.94	2-49
s.95	2-49
s.96	2-49
s.103	2-49
s.127	2-49
s.191	2-48
2003 Sexual Offences Act (c.42)	6-10, 6-17
Pt 2	7-36
s.104	2-24
Sch.3	8-02
2003 Criminal Justice Act (c.44)	2-28
Ch.6	
2006 Armed Forces Act (c.52)	2-43
Pt 5	2-43
s.129	2-43
s.133	2-43
ss.140-151	2-43
Pt 8	2-43
ss.173-228	2-43
Pt 9	2-43
ss.237-270	2-43
2012 Legal Aid, Sentencing and Punishment of Offenders Act (c.10)	8-02

TABLE OF ACTS OF THE SCOTTISH PARLIAMENT

2000 Bail, Judicial Appointments etc. (Scotland) Act (asp 9)	2-06
2001 Convention Rights (Compliance) (Scotland) Act (asp 7)	
1-17, 2-33, 7-03, 7-05, 7-08, 7-19, 8-04, 8-09, 8-12, 8-13, 8-14, 9-01, 9-23, 10-06	
s.1(1)	6-08
s.11(3)(a)	6-08
Sch.1	2-33, 8-10
para.3	8-11
para.7	8-11
2003 Criminal Justice (Scotland) Act (asp 7)	7-16, 11-02
s.17	9-10
s.66	6-02
2003 Mental Health (Care and Treatment) (Scotland) Act (asp 13)	9-02, 9-12
s.21	9-09
s.136(2)	6-10