



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 1

#### PROTECTION OF THE PUBLIC AT LARGE

##### *Risk assessment and order for lifelong restriction*

#### **1 Risk assessment and order for lifelong restriction**

- (1) In Part XI of the 1995 Act (sentencing), after section 210AA (which is inserted into that Act by section 20 of this Act) there is inserted—

##### *“Risk assessment*

#### **210B Risk assessment order**

- (1) This subsection applies where it falls to the High Court to impose sentence on a person convicted of an offence other than murder and that offence—
- (a) is (any or all)—
    - (i) a sexual offence (as defined in section 210A(10) of this Act);
    - (ii) a violent offence (as so defined);
    - (iii) an offence which endangers life; or
  - (b) is an offence the nature of which, or circumstances of the commission of which, are such that it appears to the court that the person has a propensity to commit any such offence as is mentioned in subparagraphs (i) to (iii) of paragraph (a) above.
- (2) Where subsection (1) above applies, the court, at its own instance or (provided that the prosecutor has given the person notice of his intention in that regard) on the motion of the prosecutor, if it considers that the risk criteria may be met, shall make an order under this subsection (a “risk assessment order”) unless—
- (a) the court makes an interim hospital order by virtue of section 210D(1) of this Act in respect of the person; or
  - (b) the person is subject to an order for lifelong restriction previously imposed.

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*Status: This is the original version (as it was originally enacted).*

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- (3) A risk assessment order is an order—
- (a) for the convicted person to be taken to a place specified in the order, so that there may be prepared there—
    - (i) by a person accredited for the purposes of this section by the Risk Management Authority; and
    - (ii) in such manner as may be so accredited,
  - a risk assessment report (that is to say, a report as to what risk his being at liberty presents to the safety of the public at large); and
  - (b) providing for him to be remanded in custody there for so long as is necessary for those purposes and thereafter there or elsewhere until such time as is fixed for sentence.
- (4) On making a risk assessment order, the court shall adjourn the case for a period not exceeding ninety days.
- (5) The court may on one occasion, on cause shown, extend the period mentioned in subsection (4) above by not more than ninety days; and it may exceptionally, where by reason of circumstances outwith the control of the person to whom it falls to prepare the risk assessment report (the “assessor”), or as the case may be of any person instructed under section 210C(5) of this Act to prepare such a report, the report in question has not been completed, grant such further extension as appears to it to be appropriate.
- (6) There shall be no appeal against a risk assessment order or against any refusal to make such an order.

### **210C Risk assessment report**

- (1) The assessor may, in preparing the risk assessment report, take into account not only any previous conviction of the convicted person but also any allegation that the person has engaged in criminal behaviour (whether or not that behaviour resulted in prosecution and acquittal).
- (2) Where the assessor, in preparing the risk assessment report, takes into account any allegation that the person has engaged in criminal behaviour, the report is to—
- (a) list each such allegation;
  - (b) set out any additional evidence which supports the allegation; and
  - (c) explain the extent to which the allegation and evidence has influenced the opinion included in the report under subsection (3) below.
- (3) The assessor shall include in the risk assessment report his opinion as to whether the risk mentioned in section 210B(3)(a) of this Act is, having regard to such standards and guidelines as are issued by the Risk Management Authority in that regard, high, medium or low.
- (4) The assessor shall submit the risk assessment report to the High Court by sending it, together with such documents as are available to the assessor and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of the report and of those documents to the prosecutor and to the convicted person.

- (5) The convicted person may, during the period of his detention at the place specified in the risk assessment order, himself instruct the preparation (by a person other than the assessor) of a risk assessment report; and if such a report is so prepared then the person who prepares it shall submit it to the court by sending it, together with such documents as are available to him (after any requirement under subsection (4) above is met) and are referred to in the report, to the Principal Clerk of Justiciary, who shall then send a copy of it and of those documents to the prosecutor.
- (6) When the court receives the risk assessment report submitted by the assessor a diet shall be fixed for the convicted person to be brought before it for sentence.
- (7) If, within such period after receiving a copy of that report as may be prescribed by Act of Adjournal, the convicted person intimates, in such form, or as nearly as may be in such form, as may be so prescribed—
  - (a) that he objects to the content or findings of that report; and
  - (b) what the grounds of his objection are,the prosecutor and he shall be entitled to produce and examine witnesses with regard to—
  - (i) that content or those findings; and
  - (ii) the content or findings of any risk assessment report instructed by the person and duly submitted under subsection (5) above.

#### **210D Interim hospital order and assessment of risk**

- (1) Where subsection (1) of section 210B of this Act applies, the High Court, if—
  - (a) it may make an interim hospital order in respect of the person under section 53 of this Act; and
  - (b) it considers that the risk criteria may be met,shall make such an order unless the person is subject to an order for lifelong restriction previously imposed.
- (2) Where an interim hospital order is made by virtue of subsection (1) above, a report as to the risk the convicted person's being at liberty presents to the safety of the public at large shall be prepared by a person accredited for the purposes of this section by the Risk Management Authority and in such manner as may be so accredited.
- (3) Section 210C(1) to (4) and (7) (except paragraph (ii)) of this Act shall apply in respect of any such report as it does in respect of a risk assessment report.

#### **210E The risk criteria**

For the purposes of sections 195(1), 210B(2), 210D(1) and 210F(1) and (3) of this Act, the risk criteria are that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large.

*Order for lifelong restriction etc.*

**210F Order for lifelong restriction**

- (1) The High Court, at its own instance or on the motion of the prosecutor, if it is satisfied, having regard to—
  - (a) a risk assessment report submitted under section 210C(4) or (5) of this Act;
  - (b) any report submitted by virtue of section 210D of this Act;
  - (c) any evidence given under section 210C(7) of this Act; and
  - (d) any other information before it,that, on a balance of probabilities, the risk criteria are met, shall make an order for lifelong restriction in respect of the convicted person.
- (2) An order for lifelong restriction constitutes a sentence of imprisonment, or as the case may be detention, for an indeterminate period.
- (3) The prosecutor may, on the grounds that on a balance of probabilities the risk criteria are met, appeal against any refusal of the court to make an order for lifelong restriction.

**210G Disposal of case where certain orders not made**

- (1) Where, in respect of a convicted person—
  - (a) a risk assessment order is not made under section 210B(2) of this Act, or (as the case may be) an interim hospital order is not made by virtue of section 210D(1) of this Act, because the court does not consider that the risk criteria may be met; or
  - (b) the court considers that the risk criteria may be met but a risk assessment order, or (as the case may be) an interim hospital order, is not so made because the person is subject to an order for lifelong restriction previously imposed,the court shall dispose of the case as it considers appropriate.
- (2) Where, in respect of a convicted person, an order for lifelong restriction is not made under section 210F of this Act because the court is not satisfied (in accordance with subsection (1) of that section) that the risk criteria are met, the court, in disposing of the case, shall not impose on the person a sentence of imprisonment for life, detention for life or detention without limit of time.

*Report of judge*

**210H Report of judge**

- (1) This subsection applies where a person falls to be sentenced—
  - (a) in the High Court for an offence (other than murder) mentioned in section 210B(1) of this Act; or
  - (b) in the sheriff court for such an offence prosecuted on indictment.

- (2) Where subsection (1) above applies, the court shall, as soon as reasonably practicable, prepare a report in writing, in such form as may be prescribed by Act of Adjournal—
- (a) as to the circumstances of the case; and
  - (b) containing such other information as it considers appropriate,
- but no such report shall be prepared if a report is required to be prepared under section 21(4) of the Criminal Justice (Scotland) Act [2003 \(asp 7\)](#).”.
- (2) Schedule 1, which contains amendments consequential upon the provisions of subsection (1), has effect.