



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

General

195 Remit to High Court for sentence.

- (1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate [^{F1}or it appears to him that the criteria mentioned in section 210E of this Act (that is to say, the risk criteria) may be met] so that [^{F2}, in either case,] the question of sentence is appropriate for the High Court, he shall—
 - (a) endorse upon the record copy of the indictment a certificate of the plea or the verdict, as the case may be;
 - (b) by interlocutor written on the record copy remit the convicted person to the High Court for sentence; and
 - (c) append to the interlocutor a note of his reasons for the remit,and a remit under this section shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the person is sentenced.
- (2) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding [^{F3}five years] but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding [^{F3}five years], it shall be competent for the sheriff to remit the accused to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.
- (3) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent.

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- (4) Subject to subsection (3) above, the note of reasons shall be available only to the High Court and the parties.

Textual Amendments

- F1** Words in s. 195(1) inserted (19.6.2006 for certain purposes and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 1\(2\), 89, Sch. 1 para. 2\(5\)\(a\)](#); S.S.I. 2006/332, [art. 2](#)
- F2** Words in s. 195(1) inserted (19.6.2006 for certain purposes and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 1\(2\), 89, Sch. 1 para. 2\(5\)\(b\)](#); S.S.I. 2006/332, [art. 2](#)
- F3** Words in s. 195(2) substituted (1.5.2004) by 1997 c. 48, ss. 13(3), 65(2); S.S.I. 2004/176, [art. 2](#)

196 Sentence following guilty plea.

[^{F4}(1)] In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court [^{F5}shall] take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.

[^{F6}(1A)] In passing sentence on an offender referred to in subsection (1) above, the court shall—

- (a) state whether, having taken account of the matters mentioned in paragraphs (a) and (b) of that subsection, the sentence imposed in respect of the offence is different from that which the court would otherwise have imposed; and
- (b) if it is not, state reasons why it is not.]

[^{F7}(2)] Where the court is passing sentence on an offender under section 205B(2) of this Act and that offender has pled guilty to the offence for which he is being so sentenced, the court may, after taking into account the matters mentioned in paragraphs (a) and (b) of subsection (1) above, pass a sentence of less than seven years imprisonment or, as the case may be, detention but any such sentence shall not be of a term of imprisonment or period of detention of less than five years, two hundred and nineteen days.]

Textual Amendments

- F4** S. 196 renumbered as s. 196(1) (20.10.1997) by 1997 c. 48, [s. 2\(2\)\(a\)](#); S.I. 1997/2323, [art. 3, Sch. 1](#)
- F5** Word in s. 196(1) substituted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 20\(2\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#) (subject to savings in arts. 3-5)
- F6** S. 196(1A) inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 20\(3\), 27\(1\)](#); S.S.I. 2004/405, [art. 2, Sch. 1](#) (subject to savings in arts. 3-5)
- F7** S. 196(2) inserted (20.10.1997) by 1997 c. 48, [s. 2\(2\)\(b\)](#); S.I. 1997/2323, [art. 3, Sch. 1](#)

197 Sentencing guidelines.

Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under section 118(7) or section 189(7) of this Act.

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198 Form of sentence.

- (1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form prescribed by Act of Adjournal.
- (2) In recording a sentence of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the accused, without specifying the prison in which the sentence is to be carried out; and an entry of sentence, signed by the clerk of court, shall be full warrant and authority for any subsequent execution of the sentence and for the clerk to issue extracts for the purposes of execution or otherwise.
- (3) In extracting a sentence of imprisonment, the extract may be in the form set out in an Act of Adjournal or as nearly as may be in such form.

199 Power to mitigate penalties.

- (1) Subject to subsection (3) below, where a person is convicted of the contravention of an enactment and the penalty which may be imposed involves—
 - (a) imprisonment;
 - (b) the imposition of a fine;
 - (c) the finding of caution for good behaviour or otherwise whether or not imposed in addition to imprisonment or a fine,subsection (2) below shall apply.
- (2) Where this subsection applies, the court, in addition to any other power conferred by statute, shall have power—
 - (a) to reduce the period of imprisonment;
 - (b) to substitute for imprisonment a fine (either with or without the finding of caution for good behaviour);
 - (c) to substitute for imprisonment or a fine the finding of caution;
 - (d) to reduce the amount of the fine;
 - (e) to dispense with the finding of caution.
- (3) Subsection (2) above shall not apply—
 - (a) in relation to an enactment which carries into effect a treaty, convention, or agreement with a foreign state which stipulates for a fine of a minimum amount; or
 - (b) to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces. [^{F8}; or
 - (c) to any proceedings in which the court on conviction is under a duty to impose a sentence under section 205A(2) or 205B(2) of this Act.]
- (4) Where, in summary proceedings, a fine is imposed in substitution for imprisonment, the fine—
 - (a) in the case of an offence which is triable either summarily or on indictment, shall not exceed the prescribed sum; and
 - (b) in the case of an offence triable only summarily, shall not exceed level 4 on the standard scale.
- (5) Where the finding of caution is imposed under this section—

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- (a) in respect of an offence which is triable only summarily, the amount shall not exceed level 4 on the standard scale and the period shall not exceed that which the court may impose under this Act; and
- (b) in any other case, the amount shall not exceed the prescribed sum and the period shall not exceed 12 months.

Textual Amendments

F8 S. 199(3)(c) and the preceding word "; or" inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 62(1), 65(2), **Sch. 1 para. 21(23)**; S.I. 1997/2323, art. 3, **Sch. 1**

Modifications etc. (not altering text)

C1 S. 199(2)(b) excluded (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), **ss. 48(2), 62(2)**; S.S.I. 2010/357, **art. 2**

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