



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

Pre-sentencing procedure

200 Remand for inquiry into physical or mental condition.

- (1) Without prejudice to any powers exercisable by a court under section 201 of this Act, where—
- (a) the court finds that an accused has committed an offence punishable with imprisonment; and
 - (b) it appears to the court that before the method of dealing with him is determined an inquiry ought to be made into his physical or mental condition,
- subsection (2) below shall apply.
- (2) Where this subsection applies the court shall—
- (a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;
 - (b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—
 - (i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and
 - [^{F1}(ii) that the accused could be admitted to a hospital that is suitable for his detention,]make an order committing him to that hospital,
- for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.

Status: Point in time view as at 16/08/2013.

Changes to legislation: *Criminal Procedure (Scotland) Act 1995, Cross Heading: Pre-sentencing procedure is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (2) above, the court may—
- (a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and [F²he could be admitted to a hospital that is suitable] for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and
 - (b) in any other case, remand the person in custody or on bail in accordance with subsection (2) above.
- (4) An order under subsection (3)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.
- (5) Where, before the expiry of the period specified in an order for committal to hospital under subsection (2)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (2)(a) above or any other provision of this Part of this Act, as the court considers appropriate.
- (6) Where an accused is remanded on bail under this section, it shall be a condition of the order granting bail that he shall—
- (a) undergo a medical examination by a duly qualified registered medical practitioner or, where the inquiry is into his mental condition, and the order granting bail so specifies, two such practitioners; and
 - (b) for the purpose of such examination, attend at an institution or place, or on any such practitioner specified in the order granting bail and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified,
- and, if arrangements have been made for his reception, it may be a condition of the order granting bail that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.
- (7) On exercising the powers conferred by this section to remand in custody or on bail the court shall—
- (a) where the person is remanded in custody, send to the institution or place in which he is detained; and
 - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,
- a statement of the reasons for which it appears to the court that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.
- (8) On making an order of committal to hospital under subsection (2)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.

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- (9) A person remanded under this section may [^{F3} before the expiry of the period of 24 hours beginning with his remand,] appeal [^{F4} to the High Court by note of appeal] against the refusal of bail or against the conditions imposed and a person committed to hospital under this section may [^{F5} at any time during the period when the order for his committal, or, as the case may be, renewal of such order, is in force,] appeal [^{F4} to the High Court by note of appeal] against the order of committal ^{F6} . . . ^{F7} . . . , and the High Court, either in court or in chambers, may after hearing parties—
- (a) review the order and grant bail on such conditions as it thinks fit; or
 - (b) confirm the order; or
 - (c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.

[^{F8}(9A) A note of appeal under subsection (9) above is to be—

- (a) lodged with the clerk of the court from which the appeal is to be taken; and
- (b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.]

(10) The court may, on cause shown, vary an order for committal to hospital under subsection (2)(b) above by substituting another hospital for the hospital specified in the order.

(11) Subsection (2)(b) above shall apply to the variation of an order under subsection (10) above as it applies to the making of an order for committal to hospital.

Textual Amendments

- F1** S. 200(2)(b)(ii) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(2)-(4), [Sch. 4 para. 8\(13\)\(a\)](#); S.S.I. 2005/161, [art. 3](#)
- F2** Words in s. 200(3)(a) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(2)-(4), [Sch. 4 para. 8\(13\)\(b\)](#); S.S.I. 2005/161, [art. 3](#)
- F3** Words in s. 200(9) inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 132\(a\)](#), 333(2)-(4); S.S.I. 2005/161, [art. 3](#)
- F4** Words in s. 200(9) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 6\(4\)\(a\)\(i\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), [Sch.](#) (as amended by S.S.I. 2007/527)
- F5** Words in s. 200(9) inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 132\(b\)](#), 333(2)-(4); S.S.I. 2005/161, [art. 3](#)
- F6** Words in s. 200(9) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 132(c), 331(2), 333(2)-(4), [Sch. 5](#); S.S.I. 2005/161, [art. 3](#)
- F7** Words in s. 200(9) repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 6\(4\)\(a\)\(ii\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), [Sch.](#) (as amended by S.S.I. 2007/527)
- F8** S. 200(9A) added (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 6\(4\)\(b\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), [Sch.](#) (as amended by S.S.I. 2007/527)

201 Power of court to adjourn case before sentence.

- (1) Where an accused has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, subject to subsection (3) below, the court may adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

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- (2) Where the court adjourns a case solely for the purpose mentioned in subsection (1) above, it shall remand the accused in custody or on bail or ordain him to appear at the adjourned diet.
- (3) [^{F9}Subject to section 21(9) of the Criminal Justice (Scotland) Act 2003 (asp 7),] a court shall not adjourn the hearing of a case as mentioned in subsection (1) above for any single period [^{F10}exceeding four weeks or, on cause shown, eight weeks.]
- (4) An accused who is remanded under this section may appeal [^{F11}to the High Court] against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal ^{F12}. . . , and the High Court, either in court or in chambers, may ^{F13}. . . —
- (a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet; or
 - (b) confirm the order.
- [^{F14}(5) A note of appeal under subsection (4) above is to be—
- (a) lodged with the clerk of the court from which the appeal is to be taken; and
 - (b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.]

Textual Amendments

- F9** Words in s. 201(3) inserted (10.6.2004) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 21(10), 89; S.S.I. 2004/240, art. 2
- F10** Words in s. 201(3) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 67, 89; S.S.I. 2003/288, art. 2, Sch.
- F11** Words in s. 201(4) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 6(5)(a)(i), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)
- F12** Words in s. 201(4) repealed (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 6(5)(a)(ii), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)
- F13** Words in s. 201(4) repealed (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, Sch. para. 18(4); S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)
- F14** S. 201(5) added (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 6(5)(b), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)

Modifications etc. (not altering text)

- C1** S. 201(3) modified (10.6.2004) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 21(9), 89; S.S.I. 2004/240, art. 2

202 Deferred sentence.

- (1) It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.
- (2) If it appears to the court which deferred sentence on an accused under subsection (1) above that he has been convicted during the period of deferment, by a court in any part of [^{F15}the United Kingdom or in another member State of the European Union] of an offence committed during that period and has been dealt with for that offence, the court which deferred sentence may—
 - (a) issue a warrant for the arrest of the accused; or

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- (b) instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation, and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.
- (3) Where a court which has deferred sentence on an accused under subsection (1) above convicts him of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.

Textual Amendments

F15 Words in s. 202(2) substituted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 71(1), 206(1), [Sch. 4 para. 4](#); S.S.I. 2010/413, [art. 2](#), Sch.

203 Reports.

- (1) Where a person specified in section 27(1)(b)(i) to (vi) of the ^{M1}Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—
 - (a) the circumstances of the offence; and
 - (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.

[^{F16}(1A) However, if there is available to the court a report from a local authority—

- (a) of the kind described in subsection (1)(b) above; and
- (b) which was prepared in relation to the person not more than 3 months before the person was convicted of the offence,

the court need not obtain another report of that kind before disposing of the case unless it considers, following representations made by or on behalf of the person as to the person's circumstances, that it is appropriate to obtain another report.

- (1B) Nothing in subsection (1) or (1A) above requires the court to obtain a report if the court is satisfied, having regard to its likely method of dealing with the case before it for disposal, that the report would not be of any material assistance.]

- (2) In subsection (1) above, “the court” does not include a [^{F17}JP court] .

- (3) Where, in any case, a report by an officer of a local authority is made to the court with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to

- [^{F18}(a) the offender,
- (b) the offender's solicitor (if any), and
- (c) the prosecutor.]

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Textual Amendments

- F16** S. 203(1A)(1B) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 24, 84](#); [S.S.I. 2007/479](#), [art. 3\(1\)](#), Sch. (as amended by [S.S.I. 2007/527](#))
- F17** Words in s. 203(2) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 80, 84](#), [Sch. para. 26\(i\)](#); [S.S.I. 2008/42](#), [art. 3](#), Sch.; [S.S.I. 2008/192](#), [art. 3](#), Sch.; [S.S.I. 2008/329](#), [art. 3](#), Sch.; [S.S.I. 2008/362](#), [art. 3](#), Sch.; [S.S.I. 2009/432](#), [art. 3](#), Schs. 1, 2
- F18** Words in s. 203(3) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 20\(2\)](#), 206(1); [S.S.I. 2010/413](#), [art. 2](#), Sch. (with art. 3)

Marginal Citations

- M1** 1968 c.49.

[^{F19}203A] Reports about organisations

- (1) This section applies where an organisation is convicted of an offence.
- (2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation's financial affairs and structural arrangements.
- (3) The report is to be prepared by a person appointed by the court.
- (4) The person appointed to prepare the report is referred to in this section as the “reporter”.
- (5) The court may issue directions to the reporter about—
 - (a) the information to be contained in the report,
 - (b) the particular matters to be covered by the report,
 - (c) the time by which the report is to be submitted to the court.
- (6) The court may order the organisation to give the reporter and any person acting on the reporter's behalf—
 - (a) access at all reasonable times to the organisation's books, documents and other records,
 - (b) such information or explanation as the reporter thinks necessary.
- (7) The reporter's costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.
- (8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.
- (9) On submission of the report to the court, the clerk of court must provide a copy of the report to—
 - (a) the organisation,
 - (b) the organisation's solicitor (if any), and
 - (c) the prosecutor.
- (10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.
- (11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—

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- (a) the report, and
 - (b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.
- (12) Where the court—
- (a) makes an order under subsection (7), and
 - (b) imposes a fine on the organisation,
- any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).
- (13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).]

Textual Amendments

F19 S. 203A inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 22, 206(1); S.S.I. 2011/178, art. 2, sch.

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