



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

#### *<sup>F1</sup>Risk assessment*

#### Textual Amendments

**F1** Ss. 210B-210H and cross-headings inserted (19.6.2006 for specified purposes) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\), ss. 1, 89](#) (as amended with regards to ss. 210B, 210D and 210G (27.9.2005) by [S.S.I. 2005/465, art. 2, Sch. 1 para. 34\(2\)](#)); [S.S.I. 2006/332, art. 2](#)

#### **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 sub-paragraphs (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 compulsion order by virtue of section 210D(1) of this Act in respect of the person; or

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- (b) the person is subject to an order for lifelong restriction previously imposed.
- (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 date 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

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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 compulsion 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 compulsion 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.

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VALID FROM 20/06/2006

**Application of certain sections of this Act to proceedings under section 210C(7)**

- (1) Sections 271 to 271M, 274 to 275C and 288C to 288F of this Act (in this section referred to as the “applied sections”) apply in relation to proceedings under section 210C(7) of this Act as they apply in relation to proceedings in or for the purposes of a trial, references in the applied sections to the “trial” and to the “trial diet” being construed accordingly.
- (2) But for the purposes of this section the references—
  - (a) in sections 271(1)(a) and 271B(1)(b) to the date of commencement of the proceedings in which the trial is being held or is to be held; and
  - (b) in section 288E(2)(b) to the date of commencement of the proceedings,
 are to be construed as references to the date of commencement of the proceedings in which the person was convicted of the offence in respect of which sentence falls to be imposed (such proceedings being in this section referred to as the “original proceedings”).
- (3) And for the purposes of this section any reference in the applied sections to—
  - (a) an “accused” (or to a person charged with an offence) is to be construed as a reference to the convicted person except that the reference in section 271(2)(e)(iii) to an accused is to be disregarded;
  - (b) an “alleged” offence is to be construed as a reference to any or all of the following—
    - (i) the offence in respect of which sentence falls to be imposed;
    - (ii) any other offence of which the convicted person has been convicted;
    - (iii) any alleged criminal behaviour of the convicted person; and
  - (c) a “complainer” is to be construed as a reference to any or all of the following—
    - (i) the person who was the complainer in the original proceedings;
    - (ii) in the case of any such offence as is mentioned in paragraph (b)(i) above, the person who was the complainer in the proceedings relating to that offence;
    - (iii) in the case of alleged criminal behaviour if it was alleged behaviour directed against a person, the person in question.
- (4) Where—
  - (a) any person who is giving or is to give evidence at an examination under section 210C(7) of this Act gave evidence at the trial in the original proceedings; and
  - (b) a special measure or combination of special measures was used by virtue of section 271A, 271C or 271D of this Act for the purpose of taking the person's evidence at that trial,

that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section, to be used for the purpose of taking the person's evidence at or for the purposes of the examination.

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(5) Subsection (4) above does not affect the operation, by virtue of subsection (1) above, of section 271D of this Act.]]

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**Textual Amendments**

**F2** S. 210EA inserted (20.6.2006 for specified purposes) by [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), **ss. 19, 24**; [S.S.I. 2006/331](#), **art. 3(1)** (subject to [art. 3\(2\)](#))

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