



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

Imprisonment, etc.

204 Restrictions on passing sentence of imprisonment or detention.

- (1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom [^{F1}or in another member State of the European Union], unless the accused either—
- (a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or
 - (b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.
- (2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom [^{F1}or in another member State of the European Union] unless the court considers that no other method of dealing with him is appropriate; ^{F2} . . .
- [^{F3}(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court [^{F4}, unless it has made a risk assessment order in respect of the person,] shall take into account—
- (a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;
 - (b) any information before it concerning his character and mental and physical condition;

Status: Point in time view as at 13/12/2010. This version of this provision has been superseded.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 204 is up to date with all changes known to be in force on or before 04 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)

- (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.]
- (3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.
- (4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—
 - (a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the ^{M1}Powers of Criminal Courts Act 1973 or under section 19 of the ^{M2}Treatment of Offenders Act (Northern Ireland) 1968;
 - (b) construe detention as meaning —
 - (i) in relation to Scotland, detention in a young offenders institution or detention centre;
 - (ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and
 - (iii) in relation to Northern Ireland, detention in a young offenders centre.
- [^{F5}(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—
 - (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
 - (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
- (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.]
- (5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.
- (6) In this section—
 - “legal aid” means legal aid for the purposes of any part of the proceedings before the court;
 - “legally represented” means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

Textual Amendments

- F1** Words in s. 204(1)(2) inserted (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. 5\(a\)](#); [S.S.I. 2010/413](#), [art. 2](#), [Sch.](#)
- F2** Words in s. 204(2) repealed (1.8.1997) by [1997 c. 48](#), s. 62(2), [Sch. 3](#); [S.I. 1997/1712](#), art. 3, [Sch.](#) (subject to [arts. 4, 5](#)) and expressed to be repealed (1.1.1998) by [1997 c. 48](#), [s. 6\(3\)\(a\)](#); [S.I. 1997/2323](#), [art. 4](#), [Sch. 2](#) (subject to [art. 7](#))

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- F3** S. 204(2A) inserted (1.1.1998) by 1997 c. 48, s. 6(3)(b); S.I. 1997/2323, art. 4, Sch. 2 (subject to art. 7)
- F4** Words in s. 204(2A) 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(6); S.S.I. 2006/332, art. 2
- F5** S. 204(4A)(4B) inserted (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. 5(b); S.S.I. 2010/413, art. 2, Sch.

Marginal Citations

- M1** 1973 c.62.
- M2** 1968 c.29. (N.I.)

Status:

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