



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART I

#### SENTENCING

##### *Automatic sentences*

### **1 Imprisonment for life on further conviction for certain offences**

(1) After section 205 of the 1995 Act there shall be inserted the following section—

#### **“205A Imprisonment for life on further conviction for certain offences**

- (1) This section applies where a person—
- (a) is convicted on indictment in the High Court of a qualifying offence committed after the relevant date; and
  - (b) at the time when the offence mentioned in paragraph (a) above was committed, he had attained the age of at least 18 years and had a conviction for a qualifying offence which was obtained on indictment in the High Court or for any relevant offence, irrespective of—
    - (i) whether that offence was committed before or after the relevant date; and
    - (ii) his age at the time of the commission of that offence.
- (2) Subject to subsection (3) below, where this section applies the High Court shall sentence the person—
- (a) where he has attained the age of 21 years, to imprisonment for life;
  - (b) where he has attained the age of 18 years but is under the age of 21 years, to be detained for life, and a person so sentenced shall be liable to be detained in a young offenders institution.

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*Status: This is the original version (as it was originally enacted).*

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(3) Notwithstanding subsection (2) above, if the High Court is of the opinion that it would be in the interests of justice for it to pass a sentence other than the sentence which that subsection would require it to pass, it may decline to pass that sentence and may instead pass any sentence which it otherwise has power to pass in respect of a conviction for that offence.

(4) For the purposes of section 106(2) of this Act a sentence passed under subsection (2) above in respect of a conviction for a qualifying offence shall not be regarded as a sentence fixed by law for that offence.

(5) In this section—

“qualifying offence” means any offence mentioned in Part I of Schedule 5A to this Act;

“the relevant date” means the date on which section 1 of the Crime and Punishment (Scotland) Act 1997 comes into force; and

“relevant offence” means any offence mentioned in Part II of Schedule 5A to this Act.”.

(2) After Schedule 5 to the 1995 Act, there shall be inserted the following Schedule—

“SCHEDULE 5A

OFFENCES FOR THE PURPOSES OF SECTION 205A OF THIS ACT

**PART I**

QUALIFYING OFFENCES

- 1 Culpable homicide.
- 2 Attempted murder, incitement to commit murder or conspiracy to commit murder.
- 3 Rape or attempted rape.
- 4 Clandestine injury to women or an attempt to cause such injury.
- 5 Sodomy or attempted sodomy where, in either case, the complainer, that is to say the person against whom the offence was committed, did not consent.
- 6 Assault, where the assault—
  - (a) is aggravated because it was carried out to—
    - (i) the victim’s severe injury; or
    - (ii) the danger of the victim’s life; or
  - (b) was carried out with an intention to rape or to ravish the victim.
- 7 Robbery, where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm.
- 8 Any offence committed by contravention of—
  - (a) section 16 (possession of a firearm with intent to endanger life or cause serious injury);
  - (b) section 17 (use of firearm to resist arrest); or

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

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- (c) section 18 (having a firearm for purpose of committing an offence listed in Schedule 2), of the Firearms Act 1968.
- 9 Lewd, indecent or libidinous behaviour or practices.
- 10 Any offence committed by contravention of section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (unlawful intercourse with a girl under the age of thirteen years).

## PART II

### RELEVANT OFFENCES

- 11 Any of the following offences committed in England and Wales, namely—
- (a) an attempt to commit murder, a conspiracy to commit murder or an incitement to murder;
  - (b) an offence under section 4 of the Offences Against the Person Act 1861 (soliciting murder);
  - (c) manslaughter;
  - (d) an offence under section 18 of the Offences Against the Person Act 1861 (wounding, or causing grievous bodily harm, with intent);
  - (e) rape or an attempt to commit rape;
  - (f) an offence under section 5 of the Sexual Offences Act 1956 (intercourse with a girl under 13);
  - (g) any offence committed by contravention of—
    - (i) section 16 (possession of a firearm with intent to endanger life or cause serious injury);
    - (ii) section 17 (use of firearm to resist arrest); or
    - (iii) section 18 (carrying a firearm with criminal intent)of the Firearms Act 1968;
  - (h) robbery, where, at some time during the commission of the offence the offender had in his possession a firearm or imitation firearm.
- 12 Any of the following offences committed in Northern Ireland, namely—
- (a) an offence mentioned in sub-paragraphs (a) to (e) of paragraph 11 above;
  - (b) an offence under section 4 of the Criminal Law Amendment Act 1885 (intercourse with a girl under 14);
  - (c) an offence under Article 17 (possession of a firearm with intent to injure), Article 18(1) (use of a firearm to resist arrest) or Article 19 (carrying a firearm with criminal intent) of the Firearms (Northern Ireland) Order 1981; and
  - (d) robbery, where, at some time during the commission of the offence, the offender had in his possession a firearm or imitation firearm within the meaning of that Order.

**PART III**

## INTERPRETATION

- 13 In paragraphs 7 and 11(h) above “firearm” and “imitation firearm” have the meanings respectively given to them by section 57 of the Firearms Act 1968.”.

**2 Minimum sentence for third conviction of certain offences relating to drug trafficking**

- (1) After section 205 of the 1995 Act there shall be inserted the following section—

**“205B Minimum sentence for third conviction of certain offences relating to drug trafficking**

- (1) This section applies where—
- (a) a person is convicted on indictment in the High Court of a class A drug trafficking offence committed after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;
  - (b) at the time when that offence was committed, he had attained the age of at least 18 years and had been convicted in any part of the United Kingdom of two other class A drug trafficking offences, irrespective of—
    - (i) whether either of those offences was committed before or after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;
    - (ii) the court in which any such conviction was obtained; and
    - (iii) his age at the time of the commission of either of those offences; and
  - (c) one of the offences mentioned in paragraph (b) above was committed after he had been convicted of the other.
- (2) Subject to subsection (3) below, where this section applies the court shall sentence the person—
- (a) where he has attained the age of 21 years, to a term of imprisonment of at least seven years; and
  - (b) where he has attained the age of 18 years but is under the age of 21 years, to detention in a young offenders institution for a period of at least seven years.
- (3) The court shall not impose the sentence otherwise required by subsection (2) above where it is of the opinion that there are specific circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make that sentence unjust.
- (4) For the purposes of section 106(2) of this Act a sentence passed under subsection (2) above in respect of a conviction for a class A drug trafficking offence shall not be regarded as a sentence fixed by law for that offence.

- (5) In this section “class A drug trafficking offence” means a drug trafficking offence committed in respect of a class A drug; and for this purpose—
- “class A drug” has the same meaning as in the Misuse of Drugs Act 1971;
  - “drug trafficking offence” means a drug trafficking offence within the meaning of—
    - (i) the Drug Trafficking Act 1994;
    - (ii) the Proceeds of Crime (Scotland) Act 1995; or
    - (iii) the Proceeds of Crime (Northern Ireland) Order 1996.”.
- (2) In section 196 of the 1995 Act (sentence following guilty plea)—
- (a) the existing words shall become subsection (1); and
  - (b) at the end there shall be added the following subsection—
    - “(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.”.

### 3 Meaning of “conviction”

After section 205 of the 1995 Act there shall be inserted the following section—

#### **“205C Meaning of “conviction” for purposes of sections 205A and 205B**

- (1) For the purposes of paragraph (b) of subsection (1) of each of sections 205A and 205B of this Act “conviction” includes—
- (a) a finding of guilt in respect of which the offender was admonished under section 181 of the Criminal Procedure (Scotland) Act 1975 (admonition); and
  - (b) a conviction for which an order is made placing the offender on probation,
- and related expressions shall be construed accordingly.
- (2) This subsection applies where a person has at any time been convicted of an offence under—
- (a) section 70 of the Army Act 1955;
  - (b) section 70 of the Air Force Act 1955; or
  - (c) section 42 of the Naval Discipline Act 1957.
- (3) Where subsection (2) above applies and the corresponding civil offence (within the meaning of the Act under which the offence was committed) was—
- (a) a relevant offence within the meaning of section 205A of this Act; or
  - (b) a Class A drug trafficking offence within the meaning of section 205B of this Act,

that section shall have effect as if he had been convicted in England and Wales of the corresponding civil offence.”.

#### **4 Imposition of supervised release orders on conviction of qualifying offence**

(1) Section 209 of the 1995 Act (supervised release orders) shall be amended in accordance with this section.

(2) For subsection (1) there shall be substituted the following subsections—

“(1) Where a person is convicted of an offence and is sentenced to imprisonment for a determinate term, the court on passing sentence—

- (a) subject to subsection (1A) below, where the conviction is in proceedings on indictment for an offence which is a qualifying offence within the meaning of section 205A of this Act, shall; and
- (b) in any other case, if it considers that it is necessary to do so to protect the public from serious harm from the offender, may,

make such an order as is mentioned in subsection (3) below.

(1A) Notwithstanding paragraph (a) of subsection (1) above, if the court is of the opinion that there are exceptional circumstances which justify its not making a supervised release order, the court may decline to make such an order.”.

(3) In subsection (7), for the definition of “relevant period” there shall be substituted the following definition—

““relevant period” means such period as may be specified in the order, being, where a supervised release order is imposed—

- (i) in a case such as is referred to in subsection (1)(b) above, or following conviction on indictment for one of the offences mentioned in paragraphs 1, 2, 6(a), 7 or 8 of Schedule 5A to this Act, such period as is mentioned in subsection (9)(a) below;
- (ii) following conviction on indictment for one of the offences mentioned in paragraphs 3, 4, 5, 6(b), 9 or 10 of Schedule 5A to this Act, such period as is mentioned in subsection (9)(b) below;”.

(4) In subsection (8) after the words “section 207” there shall be inserted the words “or 208”.

(5) After subsection (8) there shall be inserted the following subsections—

“(9) Subject to subsection (11) below, the periods referred to in the definition of “relevant period” in subsection (7) above are—

- (a) a period, beginning on the day on which the person is released—
  - (i) of not less than three months; and
  - (ii) not exceeding whichever is the greater of two years or one quarter of the full sentence of imprisonment from which the person is being released; and
- (b) a period, beginning on the day on which the person is released—
  - (i) of not less than three months; and
  - (ii) not exceeding ten years.

- (10) For the purposes of this section “court” does not include a district court except where constituted by a stipendiary magistrate.
- (11) No court may impose a supervised release order for a period longer than the maximum period of imprisonment which that court may impose for a common law offence.”.