

*Status: This version of this provision is prospective.*

*Changes to legislation: Custodial Sentences and Weapons (Scotland) Act 2007, Section 6 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) View outstanding changes*



# Custodial Sentences and Weapons (Scotland) Act 2007

2007 asp 17

## PART 2

### CONFINEMENT AND RELEASE OF PRISONERS

## CHAPTER 2

### CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

#### *Custody and community prisoners*

PROSPECTIVE

#### **6 Setting of custody part**

- (1) This section applies where the court imposes on a person a custody and community sentence.
- (2) After imposing the sentence, the court must make an order specifying the custody part of the sentence.
- (3) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).
- (4) An order specifying a custody part must specify that the custody part is—
  - (a) one-half of the sentence, or
  - (b) if subsection (5) applies, such greater proportion of the sentence as the court specifies.
- (5) This subsection applies if, taking into account in particular the matters mentioned in subsection (6), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.

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- (6) Those matters are—
- (a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,
  - (b) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and
  - (c) any previous conviction of the person.
- (7) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.
- (8) An order specifying a custody part must specify the custody part by reference to a fixed period of time.
- (9) Where (but for this subsection) a custody part would fall to be specified as a period including a fraction of a day, the custody part must be specified in whole days (any such fraction being rounded up to a whole day).
- (10) Where, by virtue of subsection (4)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.
- (11) An order specifying a custody part constitutes part of a person's sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

**Modifications etc. (not altering text)**

- C1 Pt. 2 power to modify conferred (24.9.2012) by [Criminal Cases \(Punishment and Review\) \(Scotland\) Act 2012 \(asp 7\)](#), **ss. 2(2)**, 5(2); S.S.I. 2012/249, art. 2

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 29A inserted by [2010 asp 13 s. 18\(6\)](#)
- s. 42A inserted by [2010 asp 13 Sch. 3 para. 6](#)
- s. 45(1)(za)(zb) inserted by [2010 asp 13 Sch. 3 para. 7\(2\)](#)
- s. 46A inserted by [2010 asp 13 s. 18\(7\)](#)
- s. 47(3A) inserted by [2010 asp 13 s. 18\(8\)\(c\)](#)
- s. 47(8)(a)(b) substituted for words by [2010 asp 13 s. 18\(8\)\(e\)](#)
- s. 51(1A) inserted by [2010 asp 13 Sch. 3 para. 9\(3\)](#)
- Sch. 2 para. 1(4) added by [2010 asp 13 Sch. 3 para. 13\(3\)\(c\)](#)
- Sch. 2 para. 7(1A) inserted by [2010 asp 13 Sch. 3 para. 13\(8\)](#)
- Sch. 3 para. 2A inserted by [2010 asp 13 Sch. 3 para. 14\(3\)](#)
- Sch. 3 para. 3(3) inserted by [2010 asp 13 Sch. 3 para. 14\(4\)\(b\)](#)
- Sch. 3 para. 3A inserted by [2010 asp 13 Sch. 3 para. 14\(5\)](#)
- Sch. 3 para. 5(4A) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(d\)](#)
- Sch. 3 para. 5(6) inserted by [2010 asp 13 Sch. 3 para. 14\(6\)\(e\)](#)