

*This draft Order supersedes the draft of the same title which was laid before the Scottish Parliament on 16 May 2019 and published on 17 May 2019 (ISBN 978-0-11-104217-5). It is being issued free of charge to all known recipients of that draft Order.*

*Draft Order laid before the Scottish Parliament under section 204(3D) of the Criminal Procedure (Scotland) Act 1995, and section 201(4) of the Criminal Justice and Licensing (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

# **CRIMINAL LAW CRIMINAL PROCEDURE**

## **The Presumption Against Short Periods of Imprisonment (Scotland) Order 2019**

*Made - - - - 2019  
Coming into force in accordance with article 1(2) and  
(3)*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 204(3C) of the Criminal Procedure (Scotland) Act 1995(1), section 204(1) of the Criminal Justice and Licensing (Scotland) Act 2010(2) and all other powers enabling them to do so.

In accordance with section 204(3D) of the Criminal Procedure (Scotland) Act 1995 and section 201(4) of the Criminal Justice and Licensing (Scotland) Act 2010, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

### **Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019.

(2) Subject to paragraph (3), this Order comes into force on the day after the Order is made.

(3) Article 2 of this Order comes into force on the second day after the Order is made.

(4) In this Order, “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995.

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(1) 1995 c.46. Subsections (3A) to (3D) were inserted by section 17 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).  
(2) 2010 asp 13.

**Variation of the presumption against short periods of imprisonment**

2. In section 204(3A) of the 1995 Act, for “3”, substitute “12”.

**Supplementary provision**

3. In section 204 of the 1995 Act, after subsection (3D), insert—  
“(3E) A modification of the number of months specified in subsection (3A), by an order made under subsection (3C), applies only to offences committed on or after the date on which the modification comes into force.”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order substitutes for the period of three months specified in section 204(3A) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), a period of twelve months and makes supplementary provision to clarify how that substitution should take effect.

Previously there was a statutory presumption that a court must not pass a sentence of imprisonment for a term of three months or less, unless the court considered that no other method of dealing with the person was appropriate. Article 2 of this Order changes that statutory presumption, under the power in section 204(3C) of the 1995 Act, so that the court is under an obligation not to pass a sentence of imprisonment for a term of twelve months or less, unless the court considers that no other method of dealing with the person is appropriate.

Article 3 of this Order makes supplementary provision, under section 204(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”), which the Scottish Ministers consider to be appropriate for the purposes of, and for giving full effect to, section 17 of that Act. Section 17 of the 2010 Act is the provision which inserts subsections (3A) to (3D) into section 204 of the 1995 Act creating the presumption against short sentences and the power to amend the presumption.

Section 17 of the 2010 Act, creating the initial presumption against the imposition of prison sentences of 3 months or less, was brought into force for all purposes in respect of offences committed on or after 1 February 2011. Section 201 of the 2010 Act provides that a power to make an order under the Act (including a commencement order under section 206(1) of the Act) includes a power to make supplementary, consequential, transitional, transitory or saving provision and to make different provision for different purposes. Section 201 of the 2010 Act does not apply to an order made under section 204(3C) of the 1995 Act and there is no similar power in the 1995 Act to make transitional provision in an order under section 204(3C).

Supplementary provision is therefore required to clarify how an order made under section 204(3C) should take effect. Article 3 of this Order adds a new subsection to section 204 of the 1995 Act making it clear that a modification of the presumption against short sentences, by an order under section 204(3C), applies only to offences committed on or after the date on which the modification comes into force. The supplementary provision created by article 3 mirrors the transitional arrangements under which section 17 of the 2010 Act, and the initial presumption against sentences of three months or less, came into force.