



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

CONVICTION AND SENTENCE

Imprisonment, etc.

[^{F1}205 **Punishment for murder.**

- (1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.
- (2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.
- (3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.]

Textual Amendments

F1 S. 205, 205A substituted for s. 205 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 43

205A Recommendation as to minimum period of detention for person convicted of murder.

- (1) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section [^{F2}1(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993], the Secretary of State releases that person on licence.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 29 May 2023. 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

- (2) When making a recommendation under subsection (1) above, the judge shall state his reasons for so recommending.
- (3) Notwithstanding the proviso to subsection (1) of section 228 of this Act it shall be competent to appeal under paragraph (b) or (c) of that subsection against a recommendation made under subsection (1) above; and for the purposes of such appeal (including the High Court’s power of disposal under section 254(3)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

Textual Amendments

F2 Words in s. 205A(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(8)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

[^{F3}206 Detention of children convicted on indictment.

- (1) Subject to section 205 of this Act, where a child is convicted and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct .
- (2) ^{F4}]

Textual Amendments

F3 S. 206 substituted for s. 206(1) by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(1), **Sch. 2 para. 12**

F4 S. 206(2)–(7) repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

206A ^{F5}

Textual Amendments

F5 S. 206A which was inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. **45(1)** is now repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

[^{F6}207 Detention of young offenders.

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (2) Subject to section 205(2) and (3) of this Act and to subsections (3) and (4) below a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and the period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 29 May 2023. 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

(3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.

(4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.

[A sentence of detention imposed under this section shall be a sentence of detention ^{F7}(5) in a young offenders institution.]

^{F8}(11)]

Textual Amendments

F6 S. 207 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 45(1), **Sch. 6 para. 5** and S.I. 1983/1580 art. 3

F7 S. 207(5) substituted for s. 207(5)–(10) by Criminal Justice Act 1988 (c. 33, SIF 39:1), **s. 124(1)**

F8 S. 207(11) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt. I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

Modifications etc. (not altering text)

C1 S. 207 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

~~208–~~ ^{F9}
211

Textual Amendments

F9 Ss. 204, 208–211 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 6 para. 5, Sch. 8** and S.I. 1983/1580, **art. 3**

^{F10}212

Textual Amendments

F10 S. 212 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

[^{F11}212A Supervised release orders.

(1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (2) below.

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 29 May 2023. 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*

[A court shall, before making an order under subsection (1) above, consider a report ^{F12}(1A) by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.]

(2) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—

(a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993);

[comply with—
^{F13}(b) (i) such requirements as may be imposed by the court in the order;] and
(ii) such requirements as that officer may reasonably specify, [^{F14}; and
(c) comply with the standard requirements imposed by virtue of subsection (3) (a)(i) below]

for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced).

(3) A supervised release order—

[shall—
^{F15}(a) (i) without prejudice to subsection (2)(b) above, contain such requirements (in this section referred to as the “standard requirements”); and
(ii) be as nearly as possible in such form, as may be prescribed by Act of Adjournal;]
(b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
(c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.

(4) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.

(5) The clerk of the court by which a supervised release order is made in respect of a person shall—

(a) forthwith send a copy of the order to the person and to the Secretary of State; and
(b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.

(6) In this section—

“relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

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

(a) not exceeding twelve months after the date of the person’s release; and

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 29 May 2023. 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

(b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

“supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (2)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.]

[^{F16}(7) The foregoing provisions of this section apply to a person sentenced under section 207 or 415 of this Act as the provisions apply to a person sentenced to a period of imprisonment.]

Textual Amendments

- F11** S. 212A inserted (1.10.1993) by 1993 c. 9, **ss. 5, 6, 10, 14(1)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**, **Sch. 6** paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**
- F12** S. 212A(1A) inserted (S.) (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **s. 36**; S.I. 1996/517, **arts. 3(2), 4-6, Sch. 2**
- F13** S. 212A(2)(b)(i) substituted (S.) (3.2.1995) for s. 212A(b)(i) and the word “and” immediately preceding it by 1994 c. 33, **s. 132(a)(i)**; S.I. 1995/127, **art. 2(1), Sch. 1** (subject to transitional provisions in **art. 2(2)(3)**)
- F14** S. 212A(2)(c) and the word “and” immediately preceding it added (S.) (3.2.1995) by 1994 c. 33, **s. 132(a)(ii)**; S.I. 1995/127, **art. 2(1), Sch. 1** (subject to transitional provisions in **art. 2(2)(3)**)
- F15** S. 212A(3)(a) substituted (S.) (3.2.1995) by 1994 c. 33, **s. 132(b)**; S.I. 1995/127, **art. 2(1), Sch. 1** (subject to transitional provisions in **art. 2(2)(3)**)
- F16** S. 212A(7) added (27.7.1993) by 1993 c. 36, **s. 69**

Modifications etc. (not altering text)

- C2** S. 212A excluded (1.10.1993) by 1993 c. 9, **ss. 5, 6, 10, 14(2)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**, **Sch. 6** paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**
S. 212A modified (1.10.1993) by 1993 c. 9, **s. 14(3)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**, **Sch. 6** paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

213 ^{F17}

Textual Amendments

- F17** S. 213 repealed by **Prisons (Scotland) Act 1989** (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

^{F18}**214**

Textual Amendments

- F18** S. 214 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), **Sch. 6** paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 29 May 2023. 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*

[^{F19}**215** **Legal custody.**

Any person required or authorised by or under this Act or [^{F20}any other enactment or any subordinate instrument] to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.]

Textual Amendments

F19 S. 215 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 39**

F20 Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 12**

Changes to legislation:

Criminal Procedure (Scotland) Act 1975, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 29 May 2023. 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.

[View outstanding changes](#)

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

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

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

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)