



# Criminal Justice (Scotland) Act 1995

## 1995 CHAPTER 20

### PART I

#### THE COURSE OF JUSTICE

##### *Conviction and sentence*

#### **33 Sentence following guilty plea**

After each of sections 217 and 430 of the 1975 Act there shall be inserted the following section as, respectively, section 217A and section 430A—

**“ Sentence following guilty plea**

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.”

#### **34 Sentencing guidelines**

(1) After section 254 of the 1975 Act there shall be inserted the following section—

**“254A Sentencing guidelines**

- (1) In disposing of an appeal under section 228(1)(b), (bb), (bc), (bd) or (c) or 228A of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

(2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.”

(2) After section 455 of the 1975 Act there shall be inserted the following section—

**“455A Sentencing guidelines**

(1) In disposing of an appeal under section 442(1)(a)(ii), (ia) or (iii), (b)(ii) or (c) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

(2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.”

**35 Supervised attendance orders**

(1) Section 62 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (supervised attendance orders) shall be amended in accordance with subsections (2) to (7) below.

(2) In subsection (1), at the end there shall be inserted the words “and shall, subject to paragraph 1 of Schedule 6 to this Act, make such an order where subsection (3A) below applies”.

(3) In subsection (2)—

- (a) for the words “with the consent” there shall be substituted “in respect”;
- (b) in paragraph (a), for the words “time, being 10, 20, 30, 40, 50 or 60 hours” there shall be substituted “period, being a period of not less than 10 hours and not more than—
  - (i) where the amount of the fine, part or instalment which the offender has failed to pay does not exceed level 1 on the standard scale, 50 hours; and
  - (ii) in any other case, 100 hours”; and
- (c) in paragraph (b), for the word “time” there shall be substituted “period”.

(4) In subsection (3)(a), for the word “16” there shall be substituted “18”.

(5) After subsection (3) there shall be inserted the following subsections—

“(3A) This subsection applies where—

- (a) the court is a court prescribed for the purposes of this subsection by order made by the Secretary of State;
- (b) the offender is of or over 18 years of age and is not serving a sentence of imprisonment;
- (c) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would have imposed on him a period of imprisonment under section 407(1)(b) of the Criminal Procedure (Scotland) Act 1975 (power of court to impose imprisonment for non-payment of fine); and
- (d) the fine, or as the case may be, the part or instalment, is of an amount not exceeding level 2 on the standard scale.

- (3B) An order under subsection (3A)(a) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (6) After subsection (4) there shall be inserted the following subsection—
- “(4A) The coming into force of a supervised attendance order shall have the effect of discharging the fine referred to in subsection (3)(b) or (3A)(c) above or, as the case may be, section 412A(3)(a) or 412B(1) of the Criminal Procedure (Scotland) Act 1975.”.
- (7) In subsection (6), the following definition shall be inserted in the appropriate place in alphabetical order—
- ““imprisonment” includes detention;”.
- (8) In Schedule 6 to that Act of 1990 (further provisions with respect to supervised attendance orders)—
- (a) in paragraph 1(1)(a), after the word “persons” there shall be inserted “of a class which includes the offender”;
- (b) in paragraph 4(2)(a), for the words from “as” to “made” in the second place where it occurs there shall be substituted—
- “not exceeding—
- (i) in the case of a sheriff court, three months; and
- (ii) in the case of a district court, 60 days,
- as the court considers appropriate;”;
- (c) in paragraph 5(1)(d), for the words from “as” to “made” in the second place where it occurs there shall be substituted—
- “not exceeding—
- (i) in the case of a sheriff court, three months; and
- (ii) in the case of a district court, 60 days,
- as the court considers appropriate;”.
- (9) In section 194(2) of the 1975 Act, after the entry in respect of section 411 there shall be inserted—
- “section 412A (supervised attendance orders in place of fines for 16 and 17 year olds);
- section 412B (supervised attendance orders where court allows further time to pay;”.
- (10) In section 407(1)(b) of that Act (imprisonment for non-payment of fine), after the word “may” there shall be inserted “, subject to section 62(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,”.
- (11) After section 412 of that Act there shall be inserted the following sections—

*“Supervised attendance orders*

**412A Supervised attendance orders in place of fines for 16 and 17 year olds**

- (1) This section applies where a person of 16 or 17 years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.
- (2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.
- (3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—
  - (a) impose the fine; and
  - (b) subject to paragraph 1 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), make a supervised attendance order in default of payment of the fine within 28 days.
- (4) A supervised attendance order made under subsection (3)(b) above—
  - (a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;
  - (b) shall, for the purposes of Schedule 6 to the 1990 Act, be deemed to be made on the date when it comes into force.
- (5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall, subject to paragraph 1 of Schedule 6 to the 1990 Act, make a supervised attendance order in respect of that person.
- (7) Sections 395A to 398, 400 to 404 and 407 of this Act shall not apply in respect of a person to whom this section applies.
- (8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.
- (9) In this section “supervised attendance order” means an order made in accordance with section 62(2), (5) and (6) of the 1990 Act.

**412B Supervised attendance orders where court allows further time to pay fine**

- (1) Where a court, on an application to it under section 397(1) of this Act, allows a person further time for payment of a fine or instalments thereof it

may, in addition, subject to paragraph 1 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.

- (2) A supervised attendance order made under subsection (1) above —
  - (a) shall, if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and
  - (b) shall, for the purposes of Schedule 6 to the 1990 Act, be deemed to be made on the date when it comes into force.
- (3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (4) In this section “supervised attendance order” means an order made in accordance with section 62(2), (5) and (6) of the 1990 Act.”.

### **36 Supervised release orders: requirement for local authority report**

After subsection (1) of section 212A of the 1975 Act (supervised release orders) there shall be inserted the following subsection—

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

### **37 Offences committed by persons under supervision etc.: provision of local authority report**

(1) After section 179 of the 1975 Act there shall be inserted the following section—

#### **“179A Offence committed by person under supervision etc.: provision of local authority report**

Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

- (a) the circumstances of the offence; and
- (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.”.

(2) After section 380 of that Act there shall be inserted the following section—

**“380A Offence committed by person under supervision etc.: provision of local authority report**

- (1) Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—
- (a) the circumstances of the offence; and
  - (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.
- (2) In subsection (1) above, “the court” does not include a district court.”.

**38 Probation orders to be made only after conviction**

- (1) In section 183(5A) of the 1975 Act (probation order)—
- (a) after the word “where” there shall be inserted “an offender has been convicted of an offence punishable by imprisonment and”; and
  - (b) in paragraph (a), the words “has committed an offence punishable by imprisonment and” shall cease to have effect.
- (2) For paragraph (b) of subsection (2) of each of sections 186 and 387 of that Act (failure to comply with requirement of probation orders) there shall be substituted the following paragraph—
- “(b) sentence the offender for the offence for which the order was made;”.
- (3) In section 384 of that Act (probation)—
- (a) in subsection (1)—
    - (i) for the words “charged before a court of summary jurisdiction with” there shall be substituted “convicted of”;
    - (ii) the words from “and”, where it first occurs, to “offence”, in the third place where it occurs, shall cease to have effect; and
    - (iii) for the words from “, without” to “applies),” there shall be substituted “instead of sentencing him”;
  - (b) in subsection (5A)—
    - (i) after the word “where” there shall be inserted “an offender has been convicted of an offence punishable by imprisonment and”; and
    - (ii) in paragraph (a), the words “has committed an offence punishable by imprisonment and” shall cease to have effect; and
  - (c) in subsection (6), the words “convicted of and” shall cease to have effect.

**39 Probation orders requiring treatment for mental condition**

- (1) In each of sections 184 and 385 of the 1975 Act (probation orders requiring treatment for mental condition)—
- (a) in subsection (1), after the word “practitioner”, in the second place where it occurs, there shall be inserted “or chartered psychologist”; and
  - (b) in each of subsections (2)(c), (5) and (5B)(b), after the word “practitioner” there shall be inserted “or chartered psychologist”.

- (2) In section 462(1) of that Act (interpretation), at the appropriate place, there shall be inserted the following definition—

““chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists;”.

**40 Sentence for offence committed while subject to requirement to perform unpaid work**

- (1) After subsection (2) of section 187 of the 1975 Act (commission of further offence while on probation) there shall be inserted the following subsections—

“(3) Where—

- (a) a court has, under section 183(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

- (4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and
- (b) in any place where the unpaid work was being or had previously been performed.

- (5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.”.

- (2) After subsection (2) of section 388 of that Act (commission of further offence while on probation) there shall be inserted the following subsections—

“(3) Where—

- (a) a court has, under section 384(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

- (4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and

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

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- (b) in any place where the unpaid work was being or had previously been performed.
- (5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.”.
- (3) After section 5 of the Community Service by Offenders (Scotland) Act 1978 there shall be inserted the following section—

**“5A Commission of offence while community service order in force**

- (1) Where—
  - (a) a court has made a community service order under section 1(1) of this Act in respect of an offender; and
  - (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,
 the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.
- (2) The circumstances referred to in subsection (1) above are that the offence was committed—
  - (a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and
  - (b) in any place where unpaid work under the order was being or had previously been performed.
- (3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.”.

**41 Amendment of records of conviction and sentence in summary proceedings**

After section 439 of the 1975 Act there shall be inserted the following section—

**“439A Amendment of records of conviction and sentence in summary proceedings**

- (1) Without prejudice to section 439 of this Act, where, on an application in accordance with subsection (2) below, the High Court is satisfied that a record of conviction or sentence in summary proceedings inaccurately records the identity of any person, it may authorise the clerk of the court which convicted or, as the case may be, sentenced the person to correct the record.
- (2) An application under subsection (1) above shall be made after the determination of the summary prosecution and may be made by any party to the summary proceedings or any other person having an interest in the correction of the alleged inaccuracy.

- (3) The High Court shall order intimation of an application under subsection (1) above to such persons as it considers appropriate and shall not determine the application without affording to the parties to the summary proceedings and to any other person having an interest in the correction of the alleged inaccuracy an opportunity to be heard.
- (4) The power of the High Court under this section may be exercised by a single judge of the High Court in the same manner as it may be exercised by the High Court, and subject to the same provisions.”.