



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

Imprisonment, etc.

204 Restrictions on passing sentence of imprisonment or detention

- (1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom, unless the accused either—
 - (a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or
 - (b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.
- (2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom unless the court considers that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with such a person is appropriate the court 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.
- (3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.

- (4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—
- (a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the Powers of Criminal Courts Act 1973 or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968;
 - (b) construe detention as meaning —
 - (i) in relation to Scotland, detention in a young offenders institution or detention centre;
 - (ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and
 - (iii) in relation to Northern Ireland, detention in a young offenders centre.
- (5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.
- (6) In this section—
- “legal aid” means legal aid for the purposes of any part of the proceedings before the court;
 - “legally represented” means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

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.
- (4) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section 1(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, the Secretary of State releases that person on licence.
- (5) When making a recommendation under subsection (4) above, the judge shall state his reasons for so recommending.
- (6) Notwithstanding subsection (2) of section 106 of this Act it shall be competent to appeal under paragraph (b) or (f) of subsection (1) of that section against a recommendation made under subsection (4) above; and for the purposes of such appeal (including the High Court’s power of disposal under section 118(4)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

206 Minimum periods of imprisonment

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as mentioned in subsection (4) below is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act 1989.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression “police authority” has the same meaning as in the Police (Scotland) Act 1967.

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 a period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.
- (3) The court shall not under subsection (2) above impose detention on an offender 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.
- (5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.

208 Detention of children convicted on indictment

Subject to section 205 of this Act, where a child is convicted on indictment 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.

209 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 (3) below.
- (2) 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.
- (3) 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);
 - (b) comply with;
 - (i) such requirements as may be imposed by the court in the order; and
 - (ii) such requirements as that officer may reasonably specify, 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); and
 - (c) comply with the standard requirements imposed by virtue of subsection (4) (a)(i) below.
- (4) A supervised release order—
 - (a) shall—
 - (i) without prejudice to subsection (3)(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.
- (5) 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.

- (6) 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.
- (7) 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
 - (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 (3)(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.
- (8) This section applies to a person sentenced under section 207 of this Act as it applies to a person sentenced to a period of imprisonment.

210 Consideration of time spent in custody

- (1) A court, in passing a sentence of imprisonment or detention on a person for an offence, shall—
- (a) in determining the period of imprisonment or detention, have regard to any period of time spent in custody by the person on remand awaiting trial or sentence, or spent in custody awaiting extradition to the United Kingdom;
 - (b) specify the date of commencement of the sentence; and
 - (c) if the person—
 - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
 - (ii) is an extradited prisoner for the purposes of this section,and the date specified under paragraph (b) above is not earlier than the date on which sentence was passed, state its reasons for not specifying an earlier date.
- (2) A prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
 - (i) after having been extradited to the United Kingdom; and
 - (ii) without having first been restored to the state from which he was extradited or having had an opportunity of leaving the United Kingdom; and
 - (b) he was for any period in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—

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

- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);
- (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
- (c) under that Act as extended to a colony or under any corresponding law of a colony;
- (d) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force; or
- (e) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.