



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 [^{F1}or [^{F2}or, where the court passing sentence considers appropriate, by a court in any] member State of the European Union], 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 [^{F1}or [^{F3}or, where the court passing sentence considers appropriate, by a court in any] member State of the European Union] unless the court considers that no other method of dealing with him is appropriate; ^{F4} . . .
- [^{F5}(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court [^{F6}, unless it has made a risk assessment order in respect of the person,] shall take into account—
- (a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;
 - (b) any information before it concerning his character and mental and physical condition;

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- (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.]
- (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.
- [^{F7}(3A) A court must not pass a sentence of imprisonment for a term of [^{F8}12] months or less on a person unless the court considers that no other method of dealing with the person is appropriate.
- (3B) Where a court passes such a sentence, the court must—
 - (a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and
 - (b) have those reasons entered in the record of the proceedings.
- (3C) The Scottish Ministers may by order made by statutory instrument substitute for the number of months for the time being specified in subsection (3A) another number of months.
- (3D) An order under subsection (3C) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.]
- [^{F9}(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.]
- (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 ^{M1}Powers of Criminal Courts Act 1973 or under section 19 of the ^{M2}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.
- [^{F10}(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union ^{F11}...—
 - (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
 - (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
- (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.]

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(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.

Textual Amendments

- F1** Words in s. 204(1)(2) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 71(1), 206(1), **Sch. 4 para. 5(a)**; S.S.I. 2010/413, **art. 2**, Sch.
- F2** Words in s. 204(1) substituted (31.12.2020) by virtue of [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), regs. 1(3), **13(11)(a)** (with reg. 16)
- F3** Words in s. 204(2) substituted (31.12.2020) by virtue of [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), regs. 1(3), **13(11)(a)** (with reg. 16)
- F4** Words in s. 204(2) repealed (1.8.1997) by 1997 c. 48, s. 62(2), **Sch. 3**; S.I. 1997/1712, art. 3, **Sch.** (subject to [arts. 4, 5](#)) and expressed to be repealed (1.1.1998) by 1997 c. 48, s. **6(3)(a)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to [art. 7](#))
- F5** S. 204(2A) inserted (1.1.1998) by 1997 c. 48, s. **6(3)(b)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to [art. 7](#))
- F6** Words in s. 204(2A) inserted (19.6.2006 for certain purposes and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 1(2), 89, **Sch. 1 para. 2(6)**; S.S.I. 2006/332, **art. 2**
- F7** S. 204(3A)-(3D) inserted (1.2.2011 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 17**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F8** Word in s. 204(3A) substituted (4.7.2019) by [The Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019 \(S.S.I. 2019/236\)](#), arts. 1(3), **2**
- F9** S. 204(3E) inserted (3.7.2019) by [The Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019 \(S.S.I. 2019/236\)](#), arts. 1(2), **3**
- F10** S. 204(4A)(4B) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 71(1), 206(1), **Sch. 4 para. 5(b)**; S.S.I. 2010/413, **art. 2**, Sch.
- F11** Words in s. 204(4A) omitted (31.12.2020) by virtue of [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), regs. 1(3), **13(11)(b)** (with reg. 16)

Marginal Citations

- M1** 1973 c.62.
- M2** 1968 c.29. (N.I.)

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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. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)