



# Crime and Disorder Act 1998

## 1998 CHAPTER 37

### PART IV

#### DEALING WITH OFFENDERS

### CHAPTER II

#### SCOTLAND

#### *Sexual or violent offenders*

#### **86 Extended sentences for sex and violent offenders.**

(1) After section 210 of the 1995 Act there shall be inserted the following section—

**“210A Extended sentences for sex and violent offenders.**

- (1) Where a person is convicted on indictment of a sexual or violent offence, the court may, if it—
- (a) intends, in relation to—
    - (i) a sexual offence, to pass a determinate sentence of imprisonment; or
    - (ii) a violent offence, to pass such a sentence for a term of four years or more; and
  - (b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender, pass an extended sentence on the offender.
- (2) An extended sentence is a sentence of imprisonment which is the aggregate of—

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- (a) the term of imprisonment (“the custodial term”) which the court would have passed on the offender otherwise than by virtue of this section; and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.
- (3) The extension period shall not exceed, in the case of—
- (a) a sexual offence, ten years; and
  - (b) a violent offence, five years.
- (4) A court shall, before passing an extended sentence, 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.
- (5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.
- (6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding three years.
- (7) The Secretary of State may by order—
- (a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and
  - (b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.
- (8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.
- (10) For the purposes of this section—
- “licence” and “relevant officer” have the same meaning as in Part I of the <sup>M1</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;
- “sexual offence” means—
- (i) rape;
  - (ii) clandestine injury to women;
  - (iii) abduction of a woman or girl with intent to rape or ravish;
  - (iv) assault with intent to rape or ravish;
  - (v) indecent assault;
  - (vi) lewd, indecent or libidinous behaviour or practices;
  - (vii) shameless indecency;
  - (viii) sodomy;

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- (ix) an offence under section 170 of the <sup>M2</sup>Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the <sup>M3</sup>Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;
  - (x) an offence under section 52 of the <sup>M4</sup>Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
  - (xi) an offence under section 52A of that Act (possession of indecent images of children);
  - (xii) an offence under section 1 of the <sup>M5</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
  - (xiii) an offence under section 2 of that Act (intercourse with a stepchild);
  - (xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);
  - (xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);
  - (xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);
  - (xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);
  - (xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and
  - (xix) an offence under subsection (5) of section 13 of that Act (homosexual offences);
    - “imprisonment” includes—
      - (i) detention under section 207 of this Act; and
      - (ii) detention under section 208 of this Act; and
    - “violent offence” means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.
- (11) Any reference in subsection (10) above to a sexual offence includes—
- (a) a reference to any attempt, conspiracy or incitement to commit that offence; and
  - (b) except in the case of an offence in paragraphs (i) to (viii) of the definition of “sexual offence” in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence.”
- (2) In section 209 of the 1995 Act (supervised release orders), in subsection (1)—
- (a) after the word “convicted” there shall be inserted the words “ on indictment ”;
  - (b) after the words “an offence” there shall be inserted the words “ , other than a sexual offence within the meaning of section 210A of this Act, ”; and
  - (c) the words “not less than twelve months but” shall cease to have effect.

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#### Modifications etc. (not altering text)

**C1** S. 86(2)(b)(c) restricted (19.9.1998) by S.I. 1998/2327, **art.8(2)**.

#### Commencement Information

**I1** S. 86 wholly in force; S. 86 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

#### Marginal Citations

**M1** 1993 c.9.  
**M2** 1979 c.2.  
**M3** 1876 c.36.  
**M4** 1982 c.45.  
**M5** 1995 c.39.

## 87 Further provision as to extended sentences.

After section 26 of the <sup>M6</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) there shall be inserted the following section—

*“ Extended sentences*

### 26A Extended sentences.

- (1) This section applies to a prisoner who, on or after the date on which section 87 of the Crime and Disorder Act 1998 comes into force, has been made subject to an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences).
- (2) Subject to the provisions of this section, this Part of this Act, except section 1A, shall apply in relation to extended sentences as if any reference to a sentence or term of imprisonment was a reference to the custodial term of an extended sentence.
- (3) Where a prisoner subject to an extended sentence is released on licence under this Part the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.
- (4) Where, apart from this subsection, a prisoner subject to an extended sentence would be released unconditionally—
  - (a) he shall be released on licence; and
  - (b) the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.
- (5) The extension period shall be taken to begin as follows—
  - (a) for the purposes of subsection (3) above, on the day following the date on which, had there been no extension period, the prisoner would have ceased to be on licence in respect of the custodial term;
  - (b) for the purposes of subsection (4) above, on the date on which, apart from that subsection, he would have been released unconditionally.

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- (6) Subject to section 1A(c) of this Act and section 210A(3) of the 1995 Act and to any direction by the court which imposes an extended sentence, where a prisoner is subject to two or more extended sentences, the extension period which is taken to begin in accordance with subsection (5) above shall be the aggregate of the extension period of each of those sentences.
- (7) For the purposes of sections 12(3) and 17(1) of this Act, and subject to subsection (8) below, the question whether a prisoner is a long-term or short-term prisoner shall be determined by reference to the extended sentence.
- (8) Where a short-term prisoner serving an extended sentence in respect of a sexual offence is released on licence under subsection (4)(a) above, the provisions of section 17 of this Act shall apply to him as if he was a long-term prisoner.
- (9) In relation to a prisoner subject to an extended sentence, the reference in section 17(5) of this Act to his sentence shall be construed as a reference to the extended sentence.
- (10) For the purposes of this section “custodial term”, “extension period” and “imprisonment” shall have the same meaning as in section 210A of the 1995 Act.
- (11) In section 1A(c) and section 16(1)(a) of this Act, the reference to the date on which a prisoner would have served his sentence in full shall mean, in relation to a prisoner subject to an extended sentence, the date on which the extended sentence, as originally imposed by the court, would expire.”

#### Commencement Information

**I2** S. 87 wholly in force; S. 87 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

#### Marginal Citations

**M6** 1993 c.9.

## 88 Re-release of prisoners serving extended sentences.

After section 3 of the 1993 Act there shall be inserted the following section—

### “3A Re-release of prisoners serving extended sentences.

- (1) This section applies to a prisoner serving an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences) who has been recalled to prison under section 17(1) of this Act.
- (2) Subject to subsection (3) below, a prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board—
  - (a) where his case has previously been referred to the Parole Board under this section or section 17(3) of this Act, not less than one year following the disposal of that referral;
  - (b) in any other case, at any time.

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- (3) Where a prisoner to whom this section applies is subject to another sentence which is not treated as a single sentence with the extended sentence, the Secretary of State shall not be required to refer his case to the Parole Board before he has served one half of that other sentence.
- (4) Where the case of a prisoner to whom this section applies is referred to the Parole Board under this section or section 17(3) of this Act, the Board shall, if it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined (but not otherwise), direct that he should be released.
- (5) If the Parole Board gives a direction under subsection (4) above, the Secretary of State shall release the prisoner on licence.”

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**Commencement Information**

**I3** S. 88 wholly in force; S. 88 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

**Status:**

Point in time view as at 28/01/2015.

**Changes to legislation:**

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