

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 3 – Sexual Offences Etc.

Section 21 – Sexual and certain other offences: reports

94. **Section 21** makes various changes to court procedures in relation to sexual offences (as defined in section 210A(10) of the Criminal Procedure (Scotland) Act 1995) and to offences which, in the opinion of the court, disclose a significant sexual aspect to the accused's behaviour. These are based on recommendations from the Expert Panel on Sex Offending chaired by Lady Cosgrove, which produced the report *Reducing the Risk: Improving the response to sex offending* in June 2001. Section 21(1)(a) makes provision for section 21 to apply to cases where an accused is convicted of a sexual offence, as defined in section 210A(10) of the 1995 Act (full definition provided at paragraph 7 of these notes).
95. **Section 21(1)(b)** applies the provisions of section 21 to a case where a person is convicted of an offence the nature and circumstances of which disclose, in the opinion of the court, that there was a significant sexual aspect to the person's behaviour in committing it.
96. **Section 21(2)** makes provision that in a case, which falls within section 21(1) the court must before passing sentence obtain a report from the local authority on the offender's circumstances and character, and also any information concerning the offender's physical and mental condition before passing sentence. Additionally, section 21(2)(b) provides that where the qualifying case concerns a conviction on indictment, the court must obtain an assessment by a suitably qualified psychologist on the offender. Section 21(3) makes provision that, where a case proceeds to trial the trial judge, in a qualifying case under section 21(1), must prepare a report in writing as to the facts established by the evidence heard at the trial. The report must be prepared as soon as is reasonably practicable and the form of such a report will be prescribed by Act of Adjournal.
97. **Section 21(5)** provides that where a plea or partial plea of guilty is tendered and accepted by the prosecutor in a qualifying case under section 21(1), the narration of the facts given to the court by the prosecutor and anything said by or on behalf of the offender, when the plea of guilty is tendered, is to be recorded by shorthand notes or mechanical device.
98. **Section 21(-87)** provides that any report under section 21(2) or any record under section 21(5) is to be sent to a local authority officer and psychologist from whom a report is requested under sections 21(2)(a) and (b) respectively.
99. **Section 21(6)** provides that records under section 21(5) are to be treated in a similar fashion to a record of proceedings in solemn matters under section 93(1) of the 1995 Act and that the provisions of section 93(2) to (4) of the 1995 Act will apply to such records. Section 93(1) of the 1995 Act specifies that solemn proceedings shall be recorded by shorthand notes or mechanical means. Section 93(2) provides that a

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2003 (asp 7) which received Royal Assent on 26 March 2003*

shorthand writer shall retain and sign his or her notes and certify the notes complete and correct. Section 93(3) provides that a person using mechanical means to record proceedings shall certify that the record is true and complete, identify the proceedings and retain the record. Section 93(4) provides for the payment by the Scottish Parliament of making such a record.

100. [Section 21\(7\)](#) provides that the Scottish Ministers may by subordinate legislation amend sections 21(5) and (6) to provide for a record to be made by such other means as they think fit. This would allow for recording in the future by means of new technology.
101. [Section 21\(9\)](#) amends the provisions of section 201(3) of the 1995 Act. Section 201 provides that a court may adjourn a case prior to imposing a sentence for the purpose of enabling enquiries or determining the most suitable method of dealing with a case. The period that the court may adjourn for this purpose is limited by section 201(3) to three weeks where the accused is in custody and four weeks where the accused is at liberty, and eight weeks on cause shown. The amendment made by section 20(9) of the Act extends the first two of these periods from three and four weeks to six weeks in each case. This is to allow reporters more time to prepare the reports that are required under this section.