

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 2 - Confinement and Release of Prisoners Chapter 2

Confinement, Review and Release of Prisoners

Custody and community prisoners

Section 6 - Setting of custody part

30. This section describes the arrangements for setting the custody part of a custody and community sentence. This is a sentence for a term of 15 days or more. Subsection (2) provides that, for custody and community sentences, the court must make an order specifying the custody part. Subsection (3) defines the custody part as being the part of the sentence which satisfies the requirements for retribution (or punishment) and deterrence ignoring any period of confinement which may be necessary for the protection of the public since that is already a matter for the court to consider when setting the overall sentence. The decision on whether the prisoner should be released at the expiry of the custody part will depend on the assessment of the risk of serious harm posed and, if necessary, a final decision will be taken by the Parole Board for Scotland.
31. Subsection (4) provides that the custody part will be a minimum of one half of the overall sentence. However, subsection (5) enables the court to specify a greater proportion of the sentence as the custody part taking into account the matters mentioned in subsection (6), namely:
- the seriousness of the offence or of the offence combined with other offences of which the person is being convicted of on the same indictment or complaint,
 - the fact that the offence was committed while still serving a sentence of imprisonment for a previous offence; and
 - any previous convictions.

Subsection (7) prevents the court from setting a custody part in excess of three-quarters of the sentence. Subsection (8) requires the court to specify the custody part as a period of time e.g. 2 years and 6 months. Subsection (9) requires that where a custody part would be expressed as a period including a fraction of a day, that it be rounded up to a whole day (with the community part of the sentence reducing respectively). Subsection (10) provides that when setting a custody part in excess of 50%, the court must explain its reasons for doing so in open court. Subsection (11) provides that the custody part forms part of the sentence for appeal purposes.