

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 - Sentencing**

##### ***Section 23 - Extended sentences for certain sexual offences***

109. Under the provisions of section 210A of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 86(1) of the Crime and Disorder Act 1998), the court is able to impose an “extended sentence” on an offender who is convicted of a relevant sexual or violent offence and receives a determinate sentence of imprisonment of any length in respect of a sexual offence or a sentence of 4 years or more in respect of a violent offence.
110. Imposition of an extended sentence provides for an additional period of supervision on licence in the community over and above that which would normally have been the case. An extended sentence may only be passed in indictment cases and if the court is of the opinion that the period of supervision on licence, which the offender would otherwise be subject to, would not be adequate for the protection of the public from serious harm from the offender.
111. An extended sentence is defined, by subsection (2) of section 210A, as being the aggregate of the term of imprisonment which the court would otherwise have passed (“the custodial term”) and a further period, known as the “extension period”, for which the offender is to be on licence (and which is in addition to any licence period attributable to the “custodial term”). The extension period shall not exceed 10 years (though subsection (5) provides that the total length of an extended sentence shall not exceed any statutory maximum for a particular offence).
112. The following example demonstrates how the extended sentence arrangements currently work in practice: A sex offender sentenced to 3 years custodial term and 3 years extension period would be released after serving 18 months in prison but will be on licence for the balance of the custodial period i.e. 18 months plus a further 3 years = 4 years and six months in total on licence.
113. Subsection (10) of section 210A provides a definition of “sexual offence”, which takes the form of listed offences, either under statute or at common law. It also defines “violent offence”.
114. The new provision will allow courts in appropriate circumstances, to impose an extended sentence where a person is convicted of an offence which discloses, in the court’s opinion, a significant sexual aspect to the offender’s behaviour but which is not otherwise covered by the current definitions of “sexual offence” and “violent offence”.
115. Schedule 3 to the Sexual Offences Act 2003, lists at paragraphs 36-59 the sexual offences in Scotland in relation to which the sex offender notification requirements

*These notes relate to the Criminal Justice and Licensing (Scotland)  
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

under that Act apply. Paragraph 60 includes “an offence in Scotland other than those mentioned in paragraphs 36 to 59 if the Court, in imposing sentence or otherwise disposing of the case, determines for the purposes of this paragraph that there was a significant sexual aspect to the offender’s behaviour in committing the offence”.

116. The new provision will remedy the current absence of a power for the courts to impose an extended sentence in such cases by adding a further “catch all” category to the list of offences in subsection (10) of section 210A, but this will be dependent on the offender being subject, by virtue of Schedule 3 to the Sexual Offences Act 2003, to the notification requirements of Part 2 of that Act.