



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 1

### SENTENCING

#### *Other sentencing measures*

#### **20 Reports about supervised persons**

- (1) Section 203 of the 1995 Act (reports) is amended as follows.
- (2) In subsection (3), for the words from “the offender” to the end substitute—
  - “(a) the offender,
  - (b) the offender’s solicitor (if any), and
  - (c) the prosecutor.”.

#### **21 Detention of children convicted on indictment**

- (1) Section 208 of the 1995 Act (detention of children convicted on indictment) is amended as follows.
- (2) After subsection (1), insert—
  - “(1A) Where the court imposes a sentence of detention on a child, the court must—
    - (a) state its reasons for the opinion that no other method of dealing with the child is appropriate, and
    - (b) have those reasons entered in the record of the proceedings.”.
- (3) In subsection (2), for “Subsection (1) above is” substitute “Subsections (1) and (1A) above are”.

#### **22 Pre-sentencing reports about organisations**

After section 203 of the 1995 Act (reports), insert—

**“203A Reports about organisations**

- (1) This section applies where an organisation is convicted of an offence.
- (2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation’s financial affairs and structural arrangements.
- (3) The report is to be prepared by a person appointed by the court.
- (4) The person appointed to prepare the report is referred to in this section as the “reporter”.
- (5) The court may issue directions to the reporter about—
  - (a) the information to be contained in the report,
  - (b) the particular matters to be covered by the report,
  - (c) the time by which the report is to be submitted to the court.
- (6) The court may order the organisation to give the reporter and any person acting on the reporter’s behalf—
  - (a) access at all reasonable times to the organisation’s books, documents and other records,
  - (b) such information or explanation as the reporter thinks necessary.
- (7) The reporter’s costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.
- (8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.
- (9) On submission of the report to the court, the clerk of court must provide a copy of the report to—
  - (a) the organisation,
  - (b) the organisation’s solicitor (if any), and
  - (c) the prosecutor.
- (10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.
- (11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—
  - (a) the report, and
  - (b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.
- (12) Where the court—
  - (a) makes an order under subsection (7), and
  - (b) imposes a fine on the organisation,any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).

- (13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).”.

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

In section 210A of the 1995 Act (extended sentences for sex and violent offenders)—

- (a) in subsection (10), at the end of the definition of “sexual offence” add—
- “(xxviii) an offence (other than one mentioned in the preceding paragraphs) where the court determines for the purposes of this paragraph that there was a significant sexual aspect to the offender’s behaviour in committing the offence;”, and
- (b) after subsection (11) add—
- “(12) An extended sentence may be passed by reference to paragraph (xxviii) only if the offender is or is to become, by virtue of Schedule 3 to the Sexual Offences Act 2003 (c.42), subject to the notification requirements of Part 2 of that Act.”.

## **24 Effect of probation and absolute discharge**

- (1) In section 1(4) of the Rehabilitation of Offenders Act 1974 (c.53) (construction of references in Act to “conviction”), for “section 9 of the Criminal Justice (Scotland) Act 1949” substitute “section 247 of the Criminal Procedure (Scotland) Act 1995 (c.46)”.
- (2) In section 49(6) of the 1982 Act (offences relating to dangerous and annoying creatures: power to order disposal of creature), the words “or makes a probation order in relation to him” are repealed.
- (3) In section 58(3) of the 1982 Act (convicted thief in possession: power to order forfeiture of tools etc.)—
- (a) the words “or makes a probation order in relation to him” are repealed, and
- (b) for the words from “discharged absolutely” to the end substitute “, as the case may be, discharged absolutely.”.
- (4) In section 96 of the 2005 Act (exclusion orders: supplementary provision), after subsection (2) insert—
- “(2A) For the purposes of section 94, section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a violent offence within the meaning of section 94.”.
- (5) In section 129 of the 2005 Act (relevant and foreign offences), after subsection (4) add—
- “(5) For the purposes of the provisions of this Act specified in subsection (6), section 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not to be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a relevant offence.
- (6) Those provisions are—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) section 21(4),
- (b) section 23(6),
- (c) section 24,
- (d) section 33(6),
- (e) sections 41 to 44,
- (f) section 73(3),
- (g) section 75,
- (h) sections 80 to 83,
- (i) section 89(4) and (5),
- (j) subsection (3) of this section, and
- (k) section 130.”.

## 25 Offences aggravated by racial or religious prejudice

- (1) In section 96 of the Crime and Disorder Act 1998 (c.37) (racially aggravated offences), for subsection (5) substitute—

“(5) The court must—

- (a) state on conviction that the offence was racially aggravated,
- (b) record the conviction in a way that shows that the offence was so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
  - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
  - (ii) otherwise, the reasons for there being no such difference.”.

- (2) In section 74 of the Criminal Justice (Scotland) Act 2003 (asp 7) (offences aggravated by religious prejudice)—

- (a) after subsection (2) insert—

“(2A) It is immaterial whether or not the offender’s malice and ill-will is also based (to any extent) on any other factor.”,

- (b) subsections (3) and (4) are repealed, and  
 (c) after subsection (4) insert—

“(4A) The court must—

- (a) state on conviction that the offence was aggravated by religious prejudice,
- (b) record the conviction in a way that shows that the offence was so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
  - (i) where the sentence in respect of the offence is different from that which the court would have

imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or  
(ii) otherwise, the reasons for there being no such difference.”.

**26 Voluntary intoxication by alcohol: effect in sentencing**

- (1) Subsection (2) applies in relation to an offender who was, at the time of the offence, under the influence of alcohol as a result of having voluntarily consumed alcohol.
- (2) A court, in sentencing the offender in respect of the offence, must not take that fact into account by way of mitigation.

**27 Mutual recognition of judgments and probation decisions**

- (1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
- (2) The provision may, in particular, confer functions—
  - (a) on the Scottish Ministers,
  - (b) on other persons.
- (3) An order under subsection (1) may modify any enactment.
- (4) In this section, the “Framework Decision” means Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.