



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART I

SENTENCING

Automatic sentences

PROSPECTIVE

^{F1} **1 Imprisonment for life on further conviction for certain offences.**

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Textual Amendments

F1 S. 1 repealed (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. **19(3)**, 89(2); S.S.I. 2003/288, art. 2, Sch.

2 Minimum sentence for third conviction of certain offences relating to drug trafficking.

(1) After section 205 of the 1995 Act there shall be inserted the following section—

“205B Minimum sentence for third conviction of certain offences relating to drug trafficking.

(1) This section applies where—

Status: Point in time view as at 20/10/1997. This version of this cross heading contains provisions that are prospective.

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- (a) a person is convicted on indictment in the High Court of a class A drug trafficking offence committed after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;
 - (b) at the time when that offence was committed, he had attained the age of at least 18 years and had been convicted in any part of the United Kingdom of two other class A drug trafficking offences, irrespective of—
 - (i) whether either of those offences was committed before or after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;
 - (ii) the court in which any such conviction was obtained; and
 - (iii) his age at the time of the commission of either of those offences; and
 - (c) one of the offences mentioned in paragraph (b) above was committed after he had been convicted of the other.
- (2) Subject to subsection (3) below, where this section applies the court shall sentence the person—
- (a) where he has attained the age of 21 years, to a term of imprisonment of at least seven years; and
 - (b) where he has attained the age of 18 years but is under the age of 21 years, to detention in a young offenders institution for a period of at least seven years.
- (3) The court shall not impose the sentence otherwise required by subsection (2) above where it is of the opinion that there are specific circumstances which—
- (a) relate to any of the offences or to the offender; and
 - (b) would make that sentence unjust.
- (4) For the purposes of section 106(2) of this Act a sentence passed under subsection (2) above in respect of a conviction for a class A drug trafficking offence shall not be regarded as a sentence fixed by law for that offence.
- (5) In this section “class A drug trafficking offence” means a drug trafficking offence committed in respect of a class A drug; and for this purpose—
- “class A drug” has the same meaning as in the ^{M1}Misuse of Drugs Act 1971;
 - “drug trafficking offence” means a drug trafficking offence within the meaning of—
 - (i) the ^{M2}Drug Trafficking Act 1994;
 - (ii) the ^{M3}Proceeds of Crime (Scotland) Act 1995; or
 - (iii) the ^{M4}Proceeds of Crime (Northern Ireland) Order 1996.”.
- (2) In section 196 of the 1995 Act (sentence following guilty plea)—
- (a) the existing words shall become subsection (1); and
 - (b) at the end there shall be added the following subsection—
 - “(2) Where the court is passing sentence on an offender under section 205B(2) of this Act and that offender has pled guilty to the offence for which he is being so sentenced, the court may, after taking into account the matters mentioned in paragraphs (a) and (b) of subsection (1) above, pass a sentence of less than seven years

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imprisonment or, as the case may be, detention but any such sentence shall not be of a term of imprisonment or period of detention of less than five years, two hundred and nineteen days.”.

Marginal Citations

- M1** 1971 c.38.
M2 1994 c.37.
M3 1995 c.43
M4 S.I. 1996/1299 (N.I. 9).

3 Meaning of “conviction”.

After section 205 of the 1995 Act there shall be inserted the following section—

“205C Meaning of “conviction” for purposes of sections 205A and 205B.

- (1) For the purposes of paragraph (b) of subsection (1) of each of sections 205A and 205B of this Act “conviction” includes—
- (a) a finding of guilt in respect of which the offender was admonished under section 181 of the ^{M5}Criminal Procedure (Scotland) Act 1975 (admonition); and
 - (b) a conviction for which an order is made placing the offender on probation,
- and related expressions shall be construed accordingly.
- (2) This subsection applies where a person has at any time been convicted of an offence under—
- (a) section 70 of the ^{M6}Army Act 1955;
 - (b) section 70 of the ^{M7}Air Force Act 1955; or
 - (c) section 42 of the ^{M8}Naval Discipline Act 1957.
- (3) Where subsection (2) above applies and the corresponding civil offence (within the meaning of the Act under which the offence was committed) was—
- (a) a relevant offence within the meaning of section 205A of this Act; or
 - (b) a Class A drug trafficking offence within the meaning of section 205B of this Act,
- that section shall have effect as if he had been convicted in England and Wales of the corresponding civil offence.”.

Commencement Information

- I1** S. 3 partly in force; s. 3 not in force at Royal Assent see s. 65(2); s. 3 in force for certain purposes at 20.10.1997 by S.I. 19972323, art. 3, Sch. 1

Marginal Citations

- M5** 1975 c. 21.
M6 1955 c.18.
M7 1955 c.19.
M8 1957 c. 53.

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4 Imposition of supervised release orders on conviction of qualifying offence.

(1) Section 209 of the 1995 Act (supervised release orders) shall be amended in accordance with this section.

(2) For subsection (1) there shall be substituted the following subsections—

“(1) Where a person is convicted of an offence and is sentenced to imprisonment for a determinate term, the court on passing sentence—

(a) subject to subsection (1A) below, where the conviction is in proceedings on indictment for an offence which is a qualifying offence within the meaning of section 205A of this Act, shall; and

(b) in any other case, if it considers that it is necessary to do so to protect the public from serious harm from the offender, may,

make such an order as is mentioned in subsection (3) below.

(1A) Notwithstanding paragraph (a) of subsection (1) above, if the court is of the opinion that there are exceptional circumstances which justify its not making a supervised release order, the court may decline to make such an order.”.

(3) In subsection (7), for the definition of “relevant period” there shall be substituted the following definition—

““relevant period” means such period as may be specified in the order, being, where a supervised release order is imposed—

(i) in a case such as is referred to in subsection (1)(b) above, or following conviction on indictment for one of the offences mentioned in paragraphs 1, 2, 6(a), 7 or 8 of Schedule 5A to this Act, such period as is mentioned in subsection (9)(a) below;

(ii) following conviction on indictment for one of the offences mentioned in paragraphs 3, 4, 5, 6(b), 9 or 10 of Schedule 5A to this Act, such period as is mentioned in subsection (9)(b) below;”.

(4) In subsection (8) after the words “section 207” there shall be inserted the words “ or 208 ”.

(5) After subsection (8) there shall be inserted the following subsections—

“(9) Subject to subsection (11) below, the periods referred to in the definition of “relevant period” in subsection (7) above are—

(a) a period, beginning on the day on which the person is released—

(i) of not less than three months; and

(ii) not exceeding whichever is the greater of two years or one quarter of the full sentence of imprisonment from which the person is being released; and

(b) a period, beginning on the day on which the person is released—

(i) of not less than three months; and

(ii) not exceeding ten years.

(10) For the purposes of this section “court” does not include a district court except where constituted by a stipendiary magistrate.

(11) No court may impose a supervised release order for a period longer than the maximum period of imprisonment which that court may impose for a common law offence.”.

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