



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART I

#### SENTENCING

##### *Automatic sentences*

PROSPECTIVE

<sup>F1</sup> **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**F1** S. 1 repealed (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss.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—

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*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

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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 <sup>M1</sup>Misuse of Drugs Act 1971;
  - “drug trafficking offence” means a drug trafficking offence within the meaning of—
    - (i) the <sup>M2</sup>Drug Trafficking Act 1994;
    - (ii) the <sup>M3</sup>Proceeds of Crime (Scotland) Act 1995; or
    - (iii) the <sup>M4</sup>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 <sup>M5</sup>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 <sup>M6</sup>Army Act 1955;
  - (b) section 70 of the <sup>M7</sup>Air Force Act 1955; or
  - (c) section 42 of the <sup>M8</sup>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

- II 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.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

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#### Textual Amendments

**F2** S. 4 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 140, **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

### *Restriction of liberty orders*

## 5 **Restriction of liberty orders.**

After section 245 of the 1995 Act there shall be inserted the following sections—

### *“ Restriction of liberty orders*

#### **245A Restriction of liberty orders.**

- (1) Without prejudice to section 245D of this Act, where a person of 16 years of age or more is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion that it is the most appropriate method of disposal, may make an order under this section (in this Act referred to as a “restriction of liberty order”) in respect of him; and in this section and sections 245B to 245I of this Act any reference to an “offender” is a reference to a person in respect of whom an order has been made under this subsection.
- (2) A restriction of liberty order may restrict the offender’s movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—
  - (a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;
  - (b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,

but the court may not, under paragraph (a) above, require the offender to be in any place or places for a period or periods totalling more than 12 hours in any one day.
- (3) A restriction of liberty order may be made for any period up to 12 months.
- (4) Before making a restriction of liberty order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order, including any requirements which are to be included in the order under section 245C of this Act;
  - (b) the consequences which may follow any failure by the offender to comply with the requirements of any order; and
  - (c) that the court has power under section 245E of this Act to review the order on the application either of the offender or of any person responsible for monitoring the order,

and the court shall not make the order unless the offender agrees to comply with its requirements.

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- (5) The clerk of the court by which a restriction of liberty order is made shall—
- (a) cause a copy of the order to be sent to any person who is to be responsible for monitoring the offender's compliance with the order; and
  - (b) cause a copy of the order to be given to the offender or sent to him by registered post or by the recorded delivery service; and an acknowledgment or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgment or certificate.
- (6) Before making a restriction of liberty order which will require the offender to remain in a specified place or places the court shall obtain and consider information about that place or those places, including information as to the attitude of persons likely to be affected by the enforced presence there of the offender.
- (7) A restriction of liberty order shall be taken to be a sentence for the purposes of this Act and of any appeal.
- (8) The Secretary of State may by regulations prescribe—
- (a) which courts, or class or classes of courts, may make restriction of liberty orders;
  - (b) what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and
  - (c) the class or classes of offenders in respect of which restriction of liberty orders may be made,
- and different provision may be made in relation to the matters mentioned in paragraphs (b) and (c) above in relation to different courts or classes of court.
- (9) Without prejudice to the generality of subsection (8) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.
- (10) Regulations under subsection (8) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any restriction of liberty order in force when new regulations are made, as the Secretary of State considers appropriate.
- (11) A court shall not make a restriction of liberty order which requires an offender to be in or, as the case may be, not to be in, a particular place or places unless it is satisfied that his compliance with that requirement can be monitored by the means of monitoring which it intends to specify in the order.
- (12) The Secretary of State may by regulations substitute for the period of—
- (a) hours for the time being mentioned in subsection (2) above; or
  - (b) months for the time being mentioned in subsection (3) above,
- such period of hours or, as the case may be, months as may be prescribed in the regulations.
- (13) Regulations under this section shall be made by statutory instrument.

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- (14) A statutory instrument containing regulations made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) No regulations shall be made under subsection (12) above unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

#### **245B Monitoring of restriction of liberty orders.**

- (1) Where the Secretary of State, in regulations made under section 245A(8) of this Act, empowers a court or a class of court to make restriction of liberty orders he shall notify the court or each of the courts concerned of the person or class or description of persons who may be designated by that court for the purpose of monitoring an offender's compliance with any such order.
- (2) A court which makes a restriction of liberty order in respect of an offender shall include provision in the order for making a person notified by the Secretary of State under subsection (1) above, or a class or description of persons so notified, responsible for the monitoring of the offender's compliance with it.
- (3) Where the Secretary of State changes the person or class or description of persons notified by him under subsection (1) above, any court which has made a restriction of liberty order shall, if necessary, vary the order accordingly and shall notify the variation to the offender.

#### **245C Remote monitoring.**

- (1) The Secretary of State may make such arrangements, including contractual arrangements, as he considers appropriate with such persons, whether legal or natural, as he thinks fit for the remote monitoring of the compliance of offenders with restriction of liberty orders, and different arrangements may be made in relation to different areas or different forms of remote monitoring.
- (2) A court making a restriction of liberty order which is to be monitored remotely may include in the order a requirement that the offender shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the order to be carried out.
- (3) The Secretary of State shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of an offender with the requirements of a restriction of liberty order.
- (4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### **245D Concurrent probation and restriction of liberty orders.**

- (1) Notwithstanding sections 228(1) and 245A(1) of this Act, where the court—
  - (a) intends to make a restriction of liberty order under section 245A(1); and
  - (b) considers it expedient—

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- (i) having regard to the circumstances, including the nature of the offence and the character of the offender; and
  - (ii) having obtained a report as to the circumstances and character of the offender,

that the offender should also be subject to a probation order made under section 228(1) of this Act,

it may make both such orders in respect of the offender.
- (2) Where the court makes both a restriction of liberty order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each order to both—
  - (a) any person responsible for monitoring the offender’s compliance with the restriction of liberty order; and
  - (b) the officer of the local authority who is to supervise the probationer.
- (3) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—
  - (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 245F(2)(b) of this Act in relation to the restriction of liberty order; and
  - (b) if the failure relates to a requirement contained in a restriction of liberty order and is dealt with under section 245F(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) in relation to the probation order.
- (4) Where the offender by an act or omission fails to comply with both a requirement contained in a probation order and a requirement contained in a restriction of liberty order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (3) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 245F(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.

#### **245E Variation of restriction of liberty order.**

- (1) Where a restriction of liberty order is in force either the offender or any person responsible for monitoring his compliance with the order may apply to the court which made the order for a review of it.
- (2) On an application made under subsection (1) above, and after hearing both the offender and any person responsible for monitoring his compliance with the order, the court may by order, if it appears to it to be in the interests of justice to do so—
  - (a) vary the order by—
    - (i) amending or deleting any of its requirements;
    - (ii) inserting further requirements; or
    - (iii) subject to subsection (3) of section 245A of this Act, increasing the period for which the order has to run; or
  - (b) revoke the order.

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- (3) Where the court, on the application of a person other than the offender, proposes to—
- (a) exercise the power conferred by paragraph (a) of subsection (2) above to vary (otherwise than by deleting a requirement) a restriction of liberty order, it shall issue a citation requiring the offender to appear before the court and section 245A(4) shall apply to the variation of such an order as it applies to the making of an order; and
  - (b) exercise the power conferred by subsection (2)(b) above to revoke such an order and deal with the offender under section 245G of this Act, it shall issue a citation requiring him to appear before the court.
- (4) If an offender fails to appear before the court after having been cited in accordance with subsection (3) above, the court may issue a warrant for his arrest.

#### **245F Breach of restriction of liberty order.**

- (1) If at any time when a restriction of liberty order is in force it appears to the court which made the order that the offender has failed to comply with any of the requirements of the order the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.
- (2) If it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with any of the requirements of the order the court may by order—
  - (a) without prejudice to the continuance in force of the order, impose a fine not exceeding level 3 on the standard scale;
  - (b) vary the restriction of liberty order; or
  - (c) revoke that order.
- (3) A fine imposed under this section in respect of a failure to comply with the requirements of a restriction of liberty order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (4) Where the court varies a restriction of liberty order under subsection (2) above it may do so in any of the ways mentioned in paragraph (a) of section 245E(2) of this Act.

#### **245G Disposal on revocation of restriction of liberty order.**

- (1) Where the court revokes a restriction of liberty order under section 245E(2)(b) or 245F(2) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made, but in so doing the court shall have regard to the time for which the order has been in operation.
- (2) Where the court revokes a restriction of liberty order as mentioned in subsection (1) above, and the offender is, by virtue of section 245D(1) of this Act, subject to a probation order, it shall, before disposing of the offender under subsection (1) above, discharge the probation order.



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### **245H Documentary evidence in proceedings under section 245F.**

- (1) Evidence of the presence or absence of the offender at a particular place at a particular time may, subject to the provisions of this section, be given by the production of a document or documents bearing to be—
  - (a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender’s whereabouts were remotely monitored; and
  - (b) a certificate signed by a person nominated for the purpose of this paragraph by the Secretary of State that the statement relates to the whereabouts of the person subject to the order at the dates and times shown in the statement.
- (2) The statement and certificate mentioned in subsection (1) above shall, when produced at a hearing, be sufficient evidence of the facts set out in them.
- (3) Neither the statement nor the certificate mentioned in subsection (1) above shall be admissible in evidence unless a copy of both has been served on the offender prior to the hearing and, without prejudice to the foregoing, where it appears to the court that the offender has had insufficient notice of the statement or certificate, it may adjourn a hearing or make any order which it thinks appropriate in the circumstances.

### **245I Procedure on variation or revocation of restriction of liberty order.**

Where a court exercises any power conferred by sections 232(3A), 245E(2) or 245F(2)(b) or (c) of this Act, the clerk of the court shall forthwith give copies of the order varying or revoking the restriction of liberty order to any person responsible for monitoring the offender’s compliance with that order and that person shall give a copy of the order to the offender.”.

#### **Commencement Information**

- I2** S. 5 wholly in force at 1.7.1998; s. 5 not in force at Royal Assent see s. 65(2); s. 5 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, Sch. 1; s. 5 in force insofar as not already in force at 1.7.1998 by S.I. 1997/2323, art. 5(1)

### *Mentally disordered offenders*

## **6 Disposal in cases of mentally disordered offenders.**

- (1) After section 59 of the 1995 Act (restriction orders), there shall be inserted the following section—

### **“59A Hospital directions.**

- (1) Subject to subsection (2) and (3) below, where a person is convicted on indictment in the High Court or in the sheriff court of an offence punishable by imprisonment, the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, by a direction under this

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subsection (in this Act referred to as a “hospital direction”) authorise his admission to and detention in such hospital as may be specified in the direction.

- (2) Subsection (1) above shall not apply where the person convicted is a child.
  - (3) A hospital direction shall not be made unless—
    - (a) the court is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the <sup>M9</sup>Mental Health (Scotland) Act 1984 apply in relation to the offender;
    - (b) the medical practitioners mentioned in paragraph (a) above each describe the person as suffering from the same form of mental disorder, being mental illness or mental handicap, whether or not he is also described by either of them as suffering from the other form; and
    - (c) the court is satisfied that the hospital to be specified in the direction can admit the person in respect of whom it is to be made within 7 days of the direction being made.
  - (4) A State hospital shall not be specified in a hospital direction in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraphs (a) and (b) of subsection (3) above, that the person—
    - (a) on account of his dangerous violent or criminal propensities requires treatment under conditions of special security; and
    - (b) cannot suitably be cared for in a hospital other than a State hospital.
  - (5) A hospital direction shall specify the form of mental disorder from which, upon the evidence taken into account under paragraphs (a) and (b) of subsection (3) above, the person in respect of whom it is made is found to be suffering.
  - (6) The court by which a hospital direction is made may give such additional directions as it thinks fit for the conveyance of the person in respect of whom it is made to a place of safety and for his detention in that place pending his admission to hospital within the period mentioned in paragraph (c) of subsection (3) above.
  - (7) The court shall not make an additional direction under subsection (6) above directing the conveyance of the person concerned to a place of safety which is a residential establishment unless it is satisfied that the managers of that establishment are willing to receive him in the establishment.”.
- (2) In section 60 of the 1995 Act (appeals against disposal related to mental disorder)—
    - (a) for the words “or a restriction order” there shall be substituted the words “ , a restriction order or a hospital direction ”; and
    - (b) for the words “order in” there shall be substituted the words “ order or, as the case may be, direction in ”.
  - (3) In section 204 of the 1995 Act (restrictions on the passing of sentence of imprisonment)—
    - (a) in subsection (2), the words from “and”, where it first occurs, to the end shall cease to have effect; and
    - (b) after subsection (2), there shall be inserted the following subsection—

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- “(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court shall take into account—
- (a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;
  - (b) any information before it concerning his character and mental and physical condition;
  - (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.”.
- (4) In section 207 of the 1995 Act (detention of young offenders), after subsection (4) there shall be inserted the following subsection—
- “(4A) In forming an opinion under subsection (3) above the court shall take into account its power to make a hospital direction in addition to imposing a period of detention.”.
- (5) In section 307 of the 1995 Act (interpretation), after the definition of “hospital” there shall be inserted the following definition—
- ““hospital direction” has the meaning assigned to it by section 59A(1) of this Act;”.

**Marginal Citations**

**M9** 1984 c.36.

**F37 Effect of hospital direction.**

**Textual Amendments**

**F3** S. 7 repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

**F48 Remand of persons suffering from mental disorder to private hospital.**

**Textual Amendments**

**F4** S. 8 repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

**F59 Power to specify hospital unit.**

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

### Textual Amendments

- F5** S. 9 repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **49(a)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 24)

## 10 Medical evidence in relation to mentally disordered offenders.

- (1) In section 53 of the 1995 Act (interim hospital orders)—
- (a) in subsection (1), the words “subsection (2) below and” shall cease to have effect; and
  - (b) subsection (2) shall cease to have effect.
- (2) In section 61 of the 1995 Act (requirements as to medical evidence)—
- (a) in subsection (1), for the words from “under” to “this Act” there shall be substituted the words “ in making a finding under section 54(1)(a) of this Act or under any of the relevant provisions ”;
  - (b) after subsection (1) there shall be inserted the following subsection—
 

“(1A) Of the medical practitioners whose evidence is taken into account under section 53(1), 54(1)(c), 58(1)(a)(i) or 59A(3)(a) and (b) of this Act, at least one shall be employed at the hospital which is to be specified in the order or, as the case may be, direction.”;
  - (c) in subsection (2), for the words “the said section 58(1)(a)” there shall be substituted the words “ any of the relevant provisions ”;
  - (d) in subsection (3), for the words “the said sections 54(1) and 58(1)(a)” there shall be substituted the words “ making a finding under section 54(1)(a) of this Act or of any of the relevant provisions ”; and
  - (e) after subsection (5) there shall be added the following subsection—
 

“(6) In this section the “relevant provisions” means sections 53(1), 54(1)(c), 58(1)(a) and 59A(3)(a) and (b) of this Act.”.

## 11 Increase in maximum period of interim hospital orders.

In section 53 of the 1995 Act (interim hospital orders), in subsection (6), for the words “six months” there shall be substituted the words “ twelve months ”.

## 12 Sentence calculation where remand spent in hospital.

In section 210 of the 1995 Act (consideration of time spent in custody), in subsection (1)—

- (a) at the end of paragraph (a) there shall be inserted the words “ , or spent in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act ”; and
- (b) in paragraph (c), after subparagraph (ii) there shall be inserted the following words—

“; or

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(iii) has spent a period of time in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act.”.

*Increases in sentencing powers and penalties*

**13 Increase in sentences available to sheriff and district courts.**

- (1) In section 3 of the 1995 Act (jurisdiction and powers of solemn courts)—
- (a) in subsection (3), for the words “three years” there shall be substituted the words “ five years ”;
  - (b) in subsection (4), for the words “three years” there shall be substituted “ five years ”;
  - (c) after subsection (4) there shall be inserted the following subsection—

“(4A) Subject to subsection (5) below, where under any enactment passed or made after 1st January 1988 but before the commencement of section 13 of the Crime and Punishment (Scotland) Act 1997 (increase in sentencing powers of sheriff courts) an offence is punishable on conviction on indictment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding three but not exceeding five years.”; and
  - (d) in subsection (5), for the words “subsection (4)” there shall substituted the words “ subsections (4) and (4A) ”.

<sup>F6</sup>(2) .....

- (3) In section 195(2) of the 1995 Act (remit to High Court for sentence where sheriff’s power limited by statute) for the words “three years”, in both places where they occur, there shall be substituted the words “ five years ”.
- (4) In paragraph 12 of Schedule 3 to the <sup>M10</sup>Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (construction of references to penal servitude and hard labour), in sub-paragraph (3), for the words “two years” there shall be substituted the words “ five years ”.

**Textual Amendments**

**F6** S. 13(2) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [Sch. 7 para. 67](#); S.S.I. 2011/178, art. 2, Sch.

**Commencement Information**

**I3** S. 13(1)(3)(4) in force at 1.5.2004 by [S.S.I. 2004/176](#), [art. 2](#) (with [art. 3](#))

**Marginal Citations**

**M10** 1995 c.40.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

## 14 Increase in maximum penalty for certain sexual offences.

- (1) In section 5 of the <sup>M11</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (unlawful intercourse with girls under the age of 16 years)—
- (a) in subsection (2), for the words “two years” there shall be substituted the words “ten years”; and
  - (b) in subsection (3), for the words “two years” there shall be substituted the words “ten years”.
- (2) In section 6 of that Act (indecent behaviour towards a girl aged between 12 and 16 years), for the words “two years” there shall be substituted the words “ten years”.

### Marginal Citations

M11 1995 c.39.

### *Powers of court to disqualify from driving*

## 15 Driving disqualifications.

- (1) After section 248 of the 1995 Act there shall be inserted the following sections—

### **“248A General power to disqualify offenders.**

- (1) Subject to subsection (2) below, the court by or before which a person is convicted of an offence may, in addition to or instead of dealing with him in any other way, order him to be disqualified from holding or obtaining a licence to drive a motor vehicle granted under Part III of the <sup>M12</sup>Road Traffic Act 1988 for such period as it thinks fit.
- (2) Where the person is convicted of an offence for which the sentence is fixed by law, subsection (1) above shall have effect as if the words “or instead of” were omitted.
- (3) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

### **248B Power to disqualify fine defaulters.**

- (1) This section applies where the court has power to impose a period of imprisonment in default of payment of a fine, or any part or instalment of a fine.
- (2) Where this section applies, the court may, instead of imposing such a period of imprisonment as is mentioned in subsection (1) above, order that where the offender is in default he shall be disqualified from holding a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988 for such period not exceeding twelve months as the court thinks fit.
- (3) Where an order has been made under subsection (2) above in default of payment of any fine, or any part or instalment of a fine—

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*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

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- (a) on payment of the fine to any person authorised to receive it, the order shall cease to have effect; and
  - (b) on payment of any part of that fine to any such person, the period of disqualification to which the order relates shall be reduced (or, as the case may be, further reduced) by a number of days bearing as nearly as possible the same proportion to such period as the sum so paid bears to the amount of the fine outstanding at the commencement of that period.
- (4) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) Section 19 of the <sup>M13</sup>Road Traffic Offenders Act 1988 (proof of disqualification in Scottish proceedings) shall apply to an order under subsection (2) above as it applies to a conviction or extract conviction.
- (6) The Secretary of State may by order made by statutory instrument vary the period specified in subsection (2) above; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

#### **248C Application of sections 248A and 248B.**

- (1) The Secretary of State may by order prescribe which courts, or class or classes of courts, may make orders under section 248A or 248B of this Act and, without prejudice to that generality, in relation to district courts an order under this subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.
- (2) An order made under subsection (1) above shall be made by statutory instrument and any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where an order has been made under subsection (1) above, section 248(1) of this Act shall not apply as respects any court, or class or classes of court prescribed by the order.”
- (2) In section 252(2) of the 1995 Act (application of fines provisions to compensation orders)—
- (a) the word “and” in the third place where it occurs shall cease to have effect; and
  - (b) after the word “specified” there shall be inserted the words “; and section 248B (driving disqualification for fine defaulters) so far as it relates to the power conferred by section 219(1)(b).”.

F7(3) .....

#### **Textual Amendments**

- F7 S. 15(3) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), s. 458(1), Sch. 11 para. 33(a), [Sch. 12](#); S.S.I. 2003/210, art. 2(1)(b)(2), Sch. (with art. 7)

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

#### Commencement Information

- I4** S. 15 wholly in force at 1.1.1998; s. 15 not in force at Royal Assent see s. 65(2); s. 15 in force for certain purposes at 20.10.1997 by [S.I. 1997/2323](#), [art. 3](#), [Sch. 1](#); s. 15 in force insofar as not already in force at 1.1.1998 by [S.I. 1997/2323](#), [art. 4](#), [Sch. 2](#) (with [art. 7](#))

#### Marginal Citations

**M12** [1988 c.52](#).

**M13** [1988 c.53](#).

### Miscellaneous

#### 16 Designated life prisoners.

- (1) In section 2 of the 1993 Act (duty to release discretionary life prisoners)—
- (a) for subsection (1) there shall be substituted the following subsection—
- “(1) In this Part of this Act “designated life prisoner”, subject to subsection (9)(a) below and except where the context otherwise requires, means a person—
- (a) sentenced to life imprisonment for an offence for which, subject to paragraph (b) below, such a sentence is not the sentence fixed by law;
- (b) whose sentence was imposed under section 205A(2) of the 1995 Act (imprisonment for life on further conviction for certain offences); or
- (c) whose sentence was imposed in respect of a murder committed by him before he attained the age of 18 years, and in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below.”; and
- (b) in subsection (2)—
- (i) the word “and” shall cease to have effect; and
- (ii) after paragraph (b), there shall be inserted the words—
- “; and
- (c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.”.
- (2) [<sup>F8</sup>Except in a case to which subsection (3A) or (3B) below applies,]this subsection applies where, in the case of a person sentenced, prior to the coming into force of this section, in respect of a murder committed by him before he attained the age of 18 years, the Lord Justice General, whom failing the Lord Justice Clerk, after consultation with the trial judge, if available, certifies his opinion that, if section 2 of the 1993 Act, as amended by this Act, had been in force at the time when the prisoner was sentenced, the court by which he was sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.
- (3) In a case to which subsection (2) above applies, Part I of the 1993 Act, except [<sup>F9</sup>section 2(9)], shall apply as if—



*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I. (See end of Document for details)*

- (a) the life prisoner concerned were a <sup>F10</sup> . . . life prisoner within the meaning of section 2 of that Act; and
- (b) the [<sup>F11</sup>punishment] part of his sentence within the meaning of that section were the part specified in the certificate.

[<sup>F12</sup>(3A) This subsection applies in a case where a person—

- (a) was sentenced, prior to 20 October 1997, in respect of a murder committed by him before he attained the age of 18 years; and
- (b) has been released on licence, other than under section 3 of the 1993 Act, whether before or on that date.

<sup>F12</sup>(3B) This subsection applies in a case where a person—

- (a) was sentenced, prior to 20 October 1997, in respect of a murder committed by him before he attained the age of 18 years; and
- (b) has been released on licence, other than under section 3 of the 1993 Act, after that date without his case having been considered under subsection (2) above.

<sup>F12</sup>(3C) In a case to which subsection (3A) or (3B) applies, Part I of the 1993 Act shall apply as if the person were a designated life prisoner, within the meaning of section 2 of that Act, whose licence had been granted under subsection (4) of that section on his having served the designated part of his sentence.]

<sup>F13</sup>(4) . . . . .

**Textual Amendments**

- F8** Words in s. 16(2) inserted (*retrospective* to 20.10.1997) by 1998 c. 37, s. 109(1)(2)
- F9** Words in s. 16(3) substituted (8.10.2001) by 2001 asp 7, s. 1(8)(a)(i); S.S.I. 2001/274, art. 3(3)
- F10** Words in s. 16(3)(a)(4)(a) repealed (8.10.2001) by 2001 asp 7, s. 1(8)(a)(ii)(b)(i); S.S.I. 2001/274, art. 3(3)
- F11** Words in s. 16(3)(b)(4)(b) substituted (8.10.2001) by 2001 asp 7, s. 1(8)(a)(iii)(b)(ii); S.S.I. 2001/274, art. 3(3)
- F12** S. 16(3A)-(3C) inserted (*retrospective* to 20.10.1997) by 1998 c. 37, s. 109(1)(3)
- F13** S. 16(4) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), s. 89(2), Sch. 5; S.S.I. 2003/288, art. 2, Sch.

**Commencement Information**

- I5** S. 16 partly in force; s. 16 not in force at Royal Assent see s. 65(2); s. 16 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, Sch. 1

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Part I.