



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XI

#### SENTENCING

##### *Imprisonment, etc.*

#### **204 Restrictions on passing sentence of imprisonment or detention.**

- (1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom [<sup>F1</sup>or in another member State of the European Union], unless the accused either—
    - (a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or
    - (b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.
  - (2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom [<sup>F1</sup>or in another member State of the European Union] unless the court considers that no other method of dealing with him is appropriate; <sup>F2</sup> . . .
- [<sup>F3</sup>(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court [<sup>F4</sup>, unless it has made a risk assessment order in respect of the person,] 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;

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- (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.]
- (3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.
- [<sup>F5</sup>(3A) A court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.
- (3B) Where a court passes such a sentence, the court must—
- (a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and
  - (b) have those reasons entered in the record of the proceedings.
- (3C) The Scottish Ministers may by order made by statutory instrument substitute for the number of months for the time being specified in subsection (3A) another number of months.
- (3D) An order under subsection (3C) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.]
- (4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—
- (a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the <sup>M1</sup>Powers of Criminal Courts Act 1973 or under section 19 of the <sup>M2</sup>Treatment of Offenders Act (Northern Ireland) 1968;
  - (b) construe detention as meaning —
    - (i) in relation to Scotland, detention in a young offenders institution or detention centre;
    - (ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and
    - (iii) in relation to Northern Ireland, detention in a young offenders centre.
- [<sup>F6</sup>(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—
- (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
  - (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
- (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.]
- (5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.

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(6) In this section—

“legal aid” means legal aid for the purposes of any part of the proceedings before the court;

“legally represented” means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

#### Textual Amendments

- F1** Words in s. 204(1)(2) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 71(1), 206(1), [Sch. 4 para. 5\(a\)](#); S.S.I. 2010/413, [art. 2](#), Sch.
- F2** Words in s. 204(2) repealed (1.8.1997) by 1997 c. 48, s. 62(2), [Sch. 3](#); S.I. 1997/1712, art. 3, [Sch.](#) (subject to [arts. 4, 5](#)) and expressed to be repealed (1.1.1998) by 1997 c. 48, s. 6(3)(a); S.I. 1997/2323, [art. 4](#), [Sch. 2](#) (subject to [art. 7](#))
- F3** S. 204(2A) inserted (1.1.1998) by 1997 c. 48, s. 6(3)(b); S.I. 1997/2323, art. 4, [Sch. 2](#) (subject to [art. 7](#))
- F4** Words in s. 204(2A) inserted (19.6.2006 for certain purposes and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 1(2), 89, [Sch. 1 para. 2\(6\)](#); S.S.I. 2006/332, [art. 2](#)
- F5** S. 204(3A)-(3D) inserted (1.2.2011 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 17, 206(1); S.S.I. 2010/413, [art. 2](#), Sch.
- F6** S. 204(4A)(4B) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 71(1), 206(1), [Sch. 4 para. 5\(b\)](#); S.S.I. 2010/413, [art. 2](#), Sch.

#### Marginal Citations

- M1** 1973 c.62.  
**M2** 1968 c.29. (N.I.)

### [<sup>F7</sup>204A Restriction on consecutive sentences for released prisoners.

A court sentencing a person to imprisonment or other detention shall not order or direct that the term of imprisonment or detention shall commence on the expiration of any other such sentence from which he has been released at any time under the existing or new provisions within the meaning of Schedule 6 to the <sup>M3</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993.]

#### Textual Amendments

- F7** S. 204A inserted (30.9.1998) by 1998 c. 37, s. 112; S.I. 1998/2327, [art. 2\(1\)\(x\)](#)

#### Marginal Citations

- M3** 1993 c.9.

### [<sup>F8</sup>204B Consecutive sentences: life prisoners etc.

(1) This section applies in respect of sentencing for offences committed after the coming into force of this section.

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- (2) Where, in solemn proceedings, the court sentences a person to imprisonment or other detention, the court may—
- (a) if the person is serving or is liable to serve the punishment part of a previous sentence, frame the sentence to take effect on the day after that part of that sentence is or would be due to expire; or
  - (b) if the person is serving or is liable to serve the punishment parts of two or more previous sentences, frame the sentence to take effect on the day after the later or (as the case may be) latest expiring of those parts is or would be due to expire.
- (3) Where, in such proceedings, it falls to the court to sentence a person who is subject to a previous sentence in respect of which a punishment part requires to be (but has not been) specified, the court shall not sentence the person until such time as the part is either specified or no longer requires to be specified.
- (4) Where the court sentences a person to a sentence of imprisonment or other detention for life, for an indeterminate period or without limit of time, the court may, if the person is serving or is liable to serve for any offence—
- (a) a previous sentence of imprisonment or other detention the term of which is not treated as part of a single term under section 27(5) of the 1993 Act; or
  - (b) two or more previous sentences of imprisonment or other detention the terms of which are treated as a single term under that section of that Act,
- frame the sentence to take effect on the day after the person would (but for the sentence so framed and disregarding any subsequent sentence) be entitled to be released under the provisions referred to in section 204A of this Act as respects the sentence or sentences.
- (5) Subsection (4)(a) above shall not apply where the sentence is a sentence from which he has been released at any time under the provisions referred to in section 204A of this Act.
- (6) In this section, any reference to a punishment part of a sentence shall be construed by reference to—
- (a) the punishment part of the sentence as is specified in an order mentioned in section 2(2) of the 1993 Act; or
  - (b) any part of the sentence which has effect, by virtue of section 10 of the 1993 Act or the schedule to the Convention Rights (Compliance)(Scotland) Act 2001 (asp 7), as if it were the punishment part so specified,
- and “ the 1993 Act ” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).
- (7) This section is without prejudice to any other power under any enactment or rule of law as respects sentencing.]

#### Textual Amendments

**F8** S. 204B inserted (1.12.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 26(1)**, 89; [S.S.I. 2003/475](#), **art. 2**, Sch.

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## 205 Punishment for murder.

- (1) Subject to subsections (2) and (3) [<sup>F9</sup>and section 205D]below, a person convicted of murder shall be sentenced to imprisonment for life.
- (2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.
- (3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.

<sup>F10</sup>(4) .....

<sup>F10</sup>(5) .....

<sup>F10</sup>(6) .....

### Textual Amendments

**F9** Words in s. 205(1) inserted (17.12.2001) by 2001 asp 7, s. 2(1)(a); S.S.I. 2001/456, art. 2

**F10** S. 205(4)-(6) repealed (17.12.2001) by 2001 asp 7, s. 2(1)(b); S.S.I. 2001/456 art. 2

## [<sup>F11</sup>205B Minimum sentence for third conviction of certain offences relating to drug trafficking.

- (1) This section applies where—
  - (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 [<sup>F12</sup>two previous convictions for relevant 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.

[ In subsection (1), “ relevant offence ” means—

- <sup>F13</sup>(1A)
- (a) in relation to a conviction by a court in any part of the United Kingdom, a class A drug trafficking offence;
  - (b) in relation to a conviction by a court in a member State of the European Union other than the United Kingdom, an offence that is equivalent to a class A drug trafficking offence.

(1B) Any issue of equivalence arising in pursuance of subsection (1A)(b) is for the court to determine.]

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- (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>M4</sup> Misuse of Drugs Act 1971;
- [<sup>F14</sup> “ drug trafficking offence ” means an offence specified in paragraph 2 or (so far as it relates to that paragraph) paragraph 10 of Schedule 4 to the Proceeds of Crime Act 2002; ]

#### Textual Amendments

- F11** S. 205B inserted (20.10.1997) by 1997 c. 48, s. 2(1); S.I. 1997/2323, art. 3, Sch. 1
- F12** Words in s. 205B(1)(b) substituted (13.12.2010 for all purposes in respect of offences committed on or after this date) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 71(1), 206(1), Sch. 4 para. 6(a); S.S.I. 2010/413, art. 2, Sch.
- F13** S. 205B(1A)(1B) inserted (13.12.2010 for all purposes in respect of offences committed on or after this date) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 71(1), 206(1), Sch. 4 para. 6(b); S.S.I. 2010/413, art. 2, Sch.
- F14** In s. 205B(5) definition of "drug trafficking offence" substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 456, 458, Sch. 11 para. 29(3); S.S.I. 2003/210, art. 2, Sch. (subject to arts. 3-7)

#### Marginal Citations

- M4** 1971 c.38.

#### [<sup>F15</sup>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—

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- (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.]

**Textual Amendments**

**F15** S. 205C inserted (20.10.1997 for specified purposes and otherwise prosp.) by 1997 c. 48, ss. 3, 65(2); S.I. 1997/2323, art. 3, Sch. 1

**Marginal Citations**

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

**[<sup>F16</sup>205D Only one sentence of imprisonment for life to be imposed in any proceedings**

Where a person is convicted on the same indictment of more than one offence for which the court must impose or would, apart from this section, have imposed a sentence of imprisonment for life, only one such sentence shall be imposed in respect of those offences.]

**Textual Amendments**

**F16** S. 205D inserted (8.10.2001) by 2001 asp 7, s. 2(2); S.S.I. 2001/274, art. 3(3)

**206 Minimum periods of imprisonment.**

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than [<sup>F17</sup>15] days.
- (2) <sup>F18</sup> .....
  - (3) <sup>F18</sup> .....
  - (4) <sup>F18</sup> .....
  - (5) <sup>F18</sup> .....
  - (6) <sup>F18</sup> .....

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### Textual Amendments

- F17** Word in s. 206(1) substituted (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 16(3)(a)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F18** S. 206(2)-(6) repealed (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 16(3)(b)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

## 207 Detention of young offenders.

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
  - (2) Subject to [<sup>F19</sup>sections 205(2) and (3), 205A(2)(b) and 205B(2)(b)] of this Act and to subsections (3) and (4) below, a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and a period of detention imposed under this section on any person shall not [<sup>F20</sup>be less than the minimum nor more than]the maximum period of imprisonment which might otherwise have been imposed.
  - (3) The court shall not under subsection (2) above impose detention on an offender unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.
- [<sup>F21</sup>(3A) Subsections (2) and (3) above are subject to—
- (a) section 51A(2) of the Firearms Act 1968 (minimum sentences for certain firearms offences); and
  - (b) section 29(8) of the Violent Crime Reduction Act 2006 (minimum sentence of detention for certain offences relating to dangerous weapons).]
    - (4) To enable the court to form an opinion under subsection (3) above, it shall obtain from an officer of a local authority or otherwise such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.

[<sup>F22</sup>(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.]

[<sup>F23</sup>(4B) Subsections (4) and (4A) above apply to the forming of an opinion under the enactments mentioned in subsection (3A) above as they apply to the forming of an opinion under subsection (3) above.]

    - (5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.

### Textual Amendments

- F19** Words in s. 207(2) substituted (20.10.1997 for specified purposes and otherwise prosp.) by [1997 c. 48](#), **ss. 62(1), 65(2)**, **Sch. 1 para. 21(25)(a)**; S.I. 1997/2323, **art. 3**, **Sch. 1**
- F20** Words in s. 207(2) substituted (20.10.1997 for specified purposes and otherwise prosp.) by [1997 c. 48](#), **ss. 62(1), 65(2)**, **Sch. 1 para. 21(25)(b)**; S.I. 1997/2323, **art. 3**, **Sch. 1**



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- F21** S. 207(3A) inserted (6.4.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), ss. 49, 66(2), [Sch. 1 para. 4\(3\)\(a\)](#); S.I. 2007/858, [art. 2\(g\)](#)
- F22** S. 207(4A) inserted (1.1.1998) by [1997 c. 48, s. 6\(4\)](#); S.I. 1997/2323, [art. 4](#), [Sch. 2](#) (subject to [art. 7](#))
- F23** S. 207(4B) inserted (6.4.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), ss. 49, 66(2), [Sch. 1 para. 4\(3\)\(b\)](#); S.I. 2007/858, [art. 2\(g\)](#)

## 208 Detention of children convicted on indictment.

[<sup>F24</sup>(1)] Subject to section 205 of this Act [<sup>F25</sup>and subsection (3) below] , where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

[<sup>F26</sup>(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.]

[<sup>F27</sup>(2) [<sup>F28</sup>Subsections (1) and (1A) above are] subject to—

- (a) section 51A(2) of the Firearms Act 1968 (minimum sentences for certain firearms offences); and
- (b) section 29(9) of the Violent Crime Reduction Act 2006 (minimum sentence of detention for certain offences relating to dangerous weapons).]

[<sup>F29</sup>(3) If the child is under the age of 16 years, the power conferred by subsection (1) above shall not be exercisable in respect of a conviction for an offence under section 9(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) or that section as applied by section 234AA(11) of this Act.]

### Textual Amendments

- F24** S. 208 renumbered (22.1.2004) as s. 208(1) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 290\(3\)](#), 336; S.I. 2004/81, [art. 3](#)
- F25** Words in s. 208 inserted (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 10\(3\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), [Sch. 1](#)
- F26** S. 208(1A) inserted (1.2.2011 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 21\(2\)](#), 206(1); S.S.I. 2010/413, [art. 2](#), [Sch.](#)
- F27** S. 208(2) substituted (6.4.2007) by [Violent Crime Reduction Act 2006 \(c. 38\)](#), ss. 49, 66(2), [Sch. 1 para. 4\(4\)](#); S.I. 2007/858, [art. 2\(g\)](#)
- F28** Words in s. 208(2) substituted (1.2.2011 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 21\(3\)](#), 206(1); S.S.I. 2010/413, [art. 2](#), [Sch.](#)
- F29** S. 208(3) added (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [ss. 10\(4\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), [Sch. 1](#)

## 209 Supervised release orders.

(1) Where a person is convicted [<sup>F30</sup>on indictment]of an offence [<sup>F30</sup>, other than a sexual offence within the meaning of section 210A of this Act,]and is sentenced to

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- imprisonment for a term of <sup>F31</sup>. . . less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (3) below.
- (2) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.
- (3) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
- (a) be under the supervision <sup>F32</sup>. . . of a relevant officer of a local authority or of [<sup>F33</sup>an officer of a local probation board] appointed for or assigned to a petty sessions area [<sup>F34</sup>or (as the case may be) an officer of a provider of probation services acting in a local justice area](such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the <sup>M9</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993);
  - (b) comply with;
    - (i) such requirements as may be imposed by the court in the order; and
    - (ii) such requirements as that officer may reasonably specify,
 for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced); and
  - (c) comply with the standard requirements imposed by virtue of subsection (4) (a)(i) below.
- (4) A supervised release order—
- (a) shall—
    - (i) without prejudice to subsection (3)(b) above, contain such requirements (in this section referred to as the “standard requirements”); and
    - (ii) be as nearly as possible in such form,
 as may be prescribed by Act of Adjournal;
  - (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
  - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (5) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.
- (6) The clerk of the court by which a supervised release order is made in respect of a person shall—
- (a) forthwith send a copy of the order to the person and to the Secretary of State; and
  - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.
- (7) In this section—

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“relevant officer” has the same meaning as in Part I of the <sup>M10</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;

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

- (a) not exceeding twelve months after the date of the person’s release; and
- (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and

“supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (3)(a) above for the purposes of the order, any relevant officer or, as the case may be, [<sup>F35</sup>officer of a local probation board][<sup>F36</sup>or officer of a provider of probation services] who is for the time being supervising for those purposes the person released.

[<sup>F37</sup>(7A) Where a person—

- (a) is serving a sentence of imprisonment and on his release from that sentence will be subject to a supervised release order; and
- (b) is sentenced to a further term of imprisonment, whether that term is to run consecutively or concurrently with the sentence mentioned in paragraph (a) above,

the relevant period for any supervised release order made in relation to him shall begin on the date when he is released from those terms of imprisonment; and where there is more than one such order he shall on his release be subject to whichever of them is for the longer or, as the case may be, the longest period.]

- (8) This section applies to a person sentenced under section 207 of this Act as it applies to a person sentenced to a period of imprisonment.

#### Extent Information

**E1** S. 209(3)and(7) extend to G.B., see s. 309(4)

#### Textual Amendments

- F30** Words in s. 209(1) inserted (30.9.1998) by 1998 c. 37, s. 86(2)(a)(b); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)
- F31** Words in s. 209(1) repealed (30.9.1998) by 1998 c. 37, ss. 86(2)(c), 120(2), Sch. 10; S.I. 1998/2327, art. 2(1)(s)(aa)(3)(w) (subject to arts. 5-8)
- F32** Word in s. 209(3)(a) omitted (1.4.2008) by virtue of The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), art. 3, Sch. 1 para. 11(2)(a)
- F33** Words in s. 209(3)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 para. 4(1)(a)(2); S.I. 2001/919, art. 2(f)(ii)
- F34** Words in s. 209(3)(a) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), art. 3, Sch. 1 para. 11(2)(a)
- F35** Words in s. 209(7) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 para. 121; S.I. 2001/919, art. 2(f)(ii)
- F36** Words in s. 209(7) inserted (1.4.2008) by The Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912), art. 3, Sch. 1 para. 11(2)(b)
- F37** S. 209(7A) inserted (1.4.1999) by 1997 c. 48, s. 62(1), Sch. 1 para. 21(26)S.I. 1999/652, art. 2, Sch. (subject to savings and transitional provisions in art. 3)

#### Marginal Citations

**M9** 1993 c.9.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M10 1993 c.9.

## 210 Consideration of time spent in custody.

(1) A court, in passing a sentence of imprisonment or detention on a person for an offence, shall—

- (a) in determining the period of imprisonment or detention, have regard to any period of time spent in custody by the person on remand awaiting trial or sentence, or spent in custody awaiting extradition to the United Kingdom [F38 otherwise than from a category 1 territory] [F39], or spent in hospital awaiting trial or sentence by virtue [F40 of an assessment order, a treatment order or an interim compulsion order or by virtue] of an order made under section F41 . . . 200 of this Act];
- (b) specify the date of commencement of the sentence; and
- (c) if the person—
  - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
  - (ii) is an extradited prisoner [F42 who was extradited to the United Kingdom otherwise than from a category 1 territory], [F43]; or
  - (iii) has spent a period of time in hospital awaiting trial or sentence by virtue [F44 of an assessment order, a treatment order or an interim compulsion order or by virtue] of an order made under section F41 . . . 200 of this Act,]

and the date specified under paragraph (b) above is not earlier than the date on which sentence was passed, state its reasons for not specifying an earlier date [F45 so however that a period of time spent both in custody on remand and, by virtue of section 47(1) of the Crime (International Co-operation) Act 2003 [F46 or regulation 20 or 54 of the Criminal Justice (European Investigation Order) Regulations 2017], abroad is not for any reason to be discounted in a determination under paragraph (a) above or specification under paragraph (b) above].

[F47(1A) Subsection (1B) applies where—

- (a) a court is passing a sentence of imprisonment or detention on a person for an offence, and
- (b) the person is an extradited prisoner who was extradited to the United Kingdom from a category 1 territory.

(1B) The court shall specify—

- (a) the period of time spent in custody awaiting extradition, and
- (b) the date of commencement of the sentence in accordance with subsection (1C).

(1C) The date of commencement of the sentence is to be a date the relevant number of days earlier than the date the sentence would have commenced had the person not spent time in custody awaiting extradition.

(1D) In subsection (1C), “the relevant number of days” means the number of days in the period specified under subsection (1B)(a).]

(2) A prisoner is an extradited prisoner for the purposes of this section if—

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- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
  - (i) after having been extradited to the United Kingdom; and
  - (ii) without having first been restored to the state from which he was extradited or having had an opportunity of leaving the United Kingdom; and
- (b) he was for any period in custody while awaiting such extradition.

[<sup>F48</sup>(2A) In this section, “category 1 territory” means a territory designated under the Extradition Act 2003 for the purposes of Part 1 of that Act.]

<sup>F49</sup>(3) . . . . .

#### Textual Amendments

- F38** Words in s. 210(1)(a) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 172\(2\)\(a\), 185\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(q)
- F39** Words in s. 210(1) inserted (1.8.1997) by [1997 c. 48, s. 12\(a\)](#); S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F40** Words in s. 210(1)(a) inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\), ss. 331\(1\), 333\(2\)-\(4\), {Sch. 4 para. 8\(14\)\(a\)}](#); S.S.I. 2005/161, **art. 3**
- F41** Words in s. 210(1)(a)(c)(iii) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\), ss. 331\(2\)\(3\), 333\(2\)-\(4\), Sch. 5 Pt. 1](#); S.S.I. 2005/161, **art. 3**
- F42** Words in s. 210(1)(c)(ii) substituted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 172\(2\)\(b\), 185\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(q)
- F43** S. 210(1)(c)(iii) and the preceding word “or” inserted (1.8.1997) by [1997 c. 48, s. 12\(b\)](#); S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F44** Words in s. 210(1)(c)(iii) inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\), ss. 331\(1\), 333\(2\)-\(4\), Sch. 4 para. 8\(14\)\(b\)](#); S.S.I. 2005/161, **art. 3**
- F45** Words in s. 210(1)(c) inserted (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 91, 94, Sch. 5 para. 65](#); S.I. 2004/786, **art. 3**
- F46** Words in s. 210(1)(c) inserted (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\), reg. 1\(1\), Sch. 3 para. 3\(2\)](#) (with reg. 3)
- F47** S. 210(1A)-(1D) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 172\(3\), 185\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(q)
- F48** S. 210(2A) inserted (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 172\(4\), 185\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(q)
- F49** S. 210(3) repealed (21.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), ss. 172\(5\), 185\(1\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 2(q)

[<sup>F50</sup>210A Extended sentences for sex and violent offenders.

- (1) Where a person is convicted on indictment of a sexual or violent offence, the court may, if it—
  - (a) intends, in relation to—
    - (i) a sexual offence, to pass a determinate sentence of imprisonment; or
    - (ii) a violent offence, to pass such a sentence for a term of four years or more; and
  - (b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender,

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pass an extended sentence on the offender.

- (2) An extended sentence is a sentence of imprisonment which is the aggregate of—
- (a) the term of imprisonment (“ the custodial term ”) which the court would have passed on the offender otherwise than by virtue of this section; and
  - (b) a further period (“ the extension period ”) for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.
- (3) The extension period shall not exceed, in the case of—
- (a) a sexual offence, ten years; and
  - (b) a violent offence, [<sup>F51</sup>ten] years.
- (4) A court shall, before passing an extended sentence, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.
- (5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.
- (6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding [<sup>F52</sup>five years].
- (7) The Secretary of State may by order—
- (a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and
  - (b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.
- (8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; 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.
- (9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.
- (10) For the purposes of this section—
- “ licence ” and “ relevant officer ” have the same meaning as in Part I of the <sup>M11</sup>Prisoners and Criminal Proceedings (Scotland) Act 1993;
- “ sexual offence ” means—
- (i) rape [<sup>F53</sup>at common law];
  - (ii) clandestine injury to women;
  - (iii) abduction of a woman or girl with intent to rape or ravish;
  - (iii a) [<sup>F54</sup>abduction with intent to commit the statutory offence of rape;]
  - (iv) assault with intent to rape or ravish;
  - (iv a) [<sup>F55</sup>assault with intent to commit the statutory offence of rape;]
  - (v) indecent assault;
  - (vi) lewd, indecent or libidinous behaviour or practices;
  - (vii) <sup>F56</sup>.....

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- (viii) sodomy;
- (ix) an offence under section 170 of the <sup>M12</sup>Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the <sup>M13</sup>Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;
- (x) an offence under section 52 of the <sup>M14</sup>Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
- (xi) an offence under section 52A of that Act (possession of indecent images of children);
- (xii) an offence under section 1 of the <sup>M15</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
- (xiii) an offence under section 2 of that Act (intercourse with a stepchild);
- (xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);
- (xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);
- (xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);
- (xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);
- (xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); <sup>F57</sup> . . .
- (xix) an offence under subsection (5) of section 13 of that Act (homosexual offences); <sup>F58</sup> <sup>F59</sup> . . .
- (xx) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust)] <sup>F60</sup> <sup>F61</sup> . . .
- (xxi) an offence under section 311(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13)(non-consensual sexual acts).]
- (xxii) [<sup>F62</sup>an offence under section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (meeting a child following certain preliminary conduct);
- (xxiii) an offence under section 9 of that Act (paying for sexual services of a child);
- (xxiv) an offence under section 10 of that Act (causing or inciting provision by child of sexual services or child pornography);
- (xxv) an offence under section 11 of that Act (controlling a child providing sexual services or involved in pornography);
- (xxvi) an offence under section 12 of that Act (arranging or facilitating provision by child of sexual services or child pornography).]] <sup>F63</sup> and
- (xxvii) an offence which consists of a contravention of any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—
  - (A) section 1 (rape),
  - (B) section 2 (sexual assault by penetration),
  - (C) section 3 (sexual assault),
  - (D) section 4 (sexual coercion),
  - (E) section 5 (coercing a person into being present during a sexual activity),

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**Changes to legislation:** *Criminal Procedure (Scotland) Act 1995, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (F) section 6 (coercing a person into looking at a sexual image),
  - (G) section 7(1) (communicating indecently),
  - (H) section 7(2) (causing a person to see or hear an indecent communication),
  - (I) section 8 (sexual exposure),
  - (J) section 9 (voyeurism),
  - (K) section 11 (administering a substance for sexual purposes),
  - (L) section 18 (rape of a young child),
  - (M) section 19 (sexual assault on a young child by penetration),
  - (N) section 20 (sexual assault on a young child),
  - (O) section 21 (causing a young child to participate in a sexual activity),
  - (P) section 22 (causing a young child to be present during a sexual activity)
  - (Q) section 23 (causing a young child to look at a sexual image),
  - (R) section 24(1) (communicating indecently with a young child),
  - (S) section 24(2) (causing a young child to see or hear an indecent communication),
  - (T) section 25 (sexual exposure to a young child),
  - (U) section 26 (voyeurism towards a young child),
  - (V) section 28 (having intercourse with an older child),
  - (W) section 29 (engaging in penetrative sexual activity with or towards an older child),
  - (X) section 30 (engaging in sexual activity with or towards an older child),
  - (Y) section 31 (causing an older child to participate in a sexual activity),
  - (Z) section 32 (causing an older child to be present during a sexual activity),
  - (ZA) section 33 (causing an older child to look at a sexual image),
  - (ZB) section 34(1) (communicating indecently with an older child),
  - (ZC) section 34(2) (causing an older child to see or hear an indecent communication),
  - (ZD) section 35 (sexual exposure to an older child),
  - (ZE) section 36 (voyeurism towards an older child),
  - (ZF) section 37(1) (engaging while an older child in sexual conduct with or towards another older child),
  - (ZG) section 37(4) (engaging while an older child in consensual sexual conduct with another older child),
  - (ZH) section 42 (sexual abuse of trust),
  - (ZI) section 46 (sexual abuse of trust of a mentally disordered person);
- (xxviii) [F<sup>64</sup>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;]]
- “imprisonment” includes—



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- (i) detention under section 207 of this Act; and
  - (ii) detention under section 208 of this Act; and
- “ violent offence ” means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.

[<sup>F65</sup>(11) In subsection (10)

- (a) any reference to a “ sexual offence ” includes?
  - (i) a reference to any attempt, conspiracy or incitement to commit that offence; and
  - (ii) except in the case of an offence under paragraphs (i) to (viii) of the definition of “sexual offence” in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence;
- (b) the references to “rape” in paragraphs (iii) and (iv) of the definition of “sexual offence” are to the offence of rape at common law; and
- (c) the references to “the statutory offence of rape” in paragraphs (iiia) and (iva) of that definition are (as the case may be) to?
  - (i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or
  - (ii) the offence of rape of a young child under section 18 of that Act.]

[ An extended sentence may be passed by reference to paragraph (xxviii) only if the <sup>F66</sup>(12) 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.]]

### Textual Amendments

- F50** S. 210A inserted (30.9.1998) by 1998 c. 37, s. 86(1); S.I. 1998/2327, art. 2(1)(s) (subject to arts. 5-8)
- F51** Word in s. 210A(3)(b) substituted (28.1.2003) by The Extended Sentences for Violent Offenders (Scotland) Order 2003 (S.S.I. 2003/48), art. 2 (with art. 1(2))
- F52** Words in s. 210A(6) substituted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 21, 27(1); S.S.I. 2004/405, art. 2, Sch. 1 (subject to savings in arts. 3-5)
- F53** Words in s. 210A(10) inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), Sch. 5 para. 2(6)(a); S.S.I. 2010/357, art. 2(a)
- F54** S. 210A(10): words in the definition of "sexual offence" inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provisions) Order 2010 (S.S.I. 2010/421), art. 2, Sch. para. 1(3)(a)(i)
- F55** S. 210A(10): words in the definition of "sexual offence" inserted (1.12.2010) by The Sexual Offences (Scotland) Act 2009 (Supplemental and Consequential Provisions) Order 2010 (S.S.I. 2010/421), art. 2, Sch. para. 1(3)(a)(ii)
- F56** Words in s. 210A(10) repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61, 62(2), Sch. 6; S.S.I. 2010/357, art. 2(a)
- F57** S. 210A: word “and” immediately preceding s. 210A(10) para. (xix) omitted (8.1.2001) by virtue of 2000 c. 44, s. 6(2); S.S.I. 2000/452, art. 2(f)
- F58** Word in s. 210A(10) in definition of "sexual offence" omitted (5.10.2005) by virtue of Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 312(a), 333(2)-(4); S.S.I. 2005/161, art. 3
- F59** S. 210A(xx) and the preceding “and” inserted (8.1.2001) by 2000 c. 44, s. 6(2); S.S.I. 2000/452, art. 2(f)
- F60** S. 210A(10): word repealed (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, Sch. para. 19(a); S.S.I. 2007/250, art. 3(i) (subject to art. 4)
- F61** Words in s. 210A(10) in definition of "sexual offence" added (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 312(b), 333(2)-(4); S.S.I. 2005/161, art. 3

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- F62** S. 210A(10): words added (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), ss. 80, 84, **Sch. para. 19(b)**; S.S.I. 2007/250, **art. 3(i)** (subject to art. 4)
- F63** S. 210A(10)(xxvii) and word inserted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009](#) (asp 9), ss. 61, 62(2), **Sch. 5 para. 2(6)(b)**; S.S.I. 2010/357, **art. 2(a)**
- F64** S. 210A(10): words in the definition of "sexual offence" added (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 23(a)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.
- F65** S. 210A(11) substituted (1.12.2010) by [The Sexual Offences \(Scotland\) Act 2009 \(Supplemental and Consequential Provisions\) Order 2010](#) (S.S.I. 2010/421), **art. 2**, **Sch. para. 1(3)(b)**
- F66** S. 210A(12) added (13.12.2010 for all purposes in respect of offences committed on or after this date) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), **ss. 23(b)**, 206(1); S.S.I. 2010/413, **art. 2**, Sch.

#### Modifications etc. (not altering text)

- C1** S. 210A restricted (15.3.2007) by [The Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (Commencement and Savings) Order 2007 (S.S.I. 2007/250), **art. 4**

#### Marginal Citations

- M11** 1993 c.9.  
**M12** 1979 c.2.  
**M13** 1876 c.36.  
**M14** 1982 c.45.  
**M15** 1995 c.39.

### [<sup>F67</sup> 210A] Extended sentences for certain other offenders

Where a person is convicted on indictment of abduction but the offence is other than is mentioned in paragraph (iii) of the definition of “sexual offence” in subsection (10) of section 210A of this Act, that section shall apply in relation to the person as it applies in relation to a person so convicted of a violent offence.]

#### Textual Amendments

- F67** S. 210AA inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), **ss. 20**, 89; S.S.I. 2003/288, **art. 2**, Sch.

**Status:**

Point in time view as at 31/07/2017.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Cross Heading: Imprisonment, etc. is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.