



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

Imprisonment, etc.

[^{F1}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,
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, [^{F2}ten] years.

Status: Point in time view as at 12/12/2014. This version of this provision has been superseded.

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- (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 [^{F3}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 ^{M1}Prisoners and Criminal Proceedings (Scotland) Act 1993;
- “ sexual offence ” means—
- (i) rape [^{F4}at common law];
 - (ii) clandestine injury to women;
 - (iii) abduction of a woman or girl with intent to rape or ravish;
 - (iiia) [^{F5}abduction with intent to commit the statutory offence of rape;]
 - (iv) assault with intent to rape or ravish;
 - (iva) [^{F6}assault with intent to commit the statutory offence of rape;]
 - (v) indecent assault;
 - (vi) lewd, indecent or libidinous behaviour or practices;
 - (vii) ^{F7}.....
 - (viii) sodomy;
 - (ix) an offence under section 170 of the ^{M2}Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the ^{M3}Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;
 - (x) an offence under section 52 of the ^{M4}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 ^{M5}Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
 - (xiii) an offence under section 2 of that Act (intercourse with a stepchild);

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- (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);^{F8} . . .
- (xix) an offence under subsection (5) of section 13 of that Act (homosexual offences);^{F9} ^{F10} . . .
- (xx) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust)^{F11} ^{F12} . . .
- (xxi) an offence under section 311(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13)(non-consensual sexual acts).]
- (xxii) [^{F13}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).]^{F14} 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),
 - (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),

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- (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) [^{F15}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—
- (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.

[^{F16}(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;

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- (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 ^{F17}(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

- F1** 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)
- F2** 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))
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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
- F10** 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)
- F11** 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)
- F12** 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
- F13** 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)
- F14** 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)
- F15** 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.
- F16** 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)
- F17** 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.

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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

- M1** 1993 c.9.
M2 1979 c.2.
M3 1876 c.36.
M4 1982 c.45.
M5 1995 c.39.

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