



# Powers of Criminal Courts (Sentencing) Act 2000

## 2000 CHAPTER 6

### PART V

#### CUSTODIAL SENTENCES ETC.

### CHAPTER I

#### GENERAL PROVISIONS

#### *Meaning of “custodial sentence”*

#### **76 Meaning of “custodial sentence”**

- (1) In this Act “custodial sentence” means—
- (a) a sentence of imprisonment (as to which, see section 89(1)(a) below);
  - (b) a sentence of detention under section 90 or 91 below;
  - (c) a sentence of custody for life under section 93 or 94 below;
  - (d) a sentence of detention in a young offender institution (under section 96 below or otherwise); or
  - (e) a detention and training order (under section 100 below).
- (2) In subsection (1) above “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

*Liability to imprisonment on conviction on indictment***77 Liability to imprisonment on conviction on indictment**

Where a person is convicted on indictment of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted shall be liable to imprisonment for not more than two years.

*General limit on magistrates' courts' powers***78 General limit on magistrates' court's power to impose imprisonment or detention in a young offender institution**

- (1) A magistrates' court shall not have power to impose imprisonment, or detention in a young offender institution, for more than six months in respect of any one offence.
- (2) Unless expressly excluded, subsection (1) above shall apply even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than six months.
- (3) Subsection (1) above is without prejudice to section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment).
- (4) Any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine, shall not be limited by virtue of subsection (1) above.
- (5) In subsection (4) above "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.
- (6) In this section "impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.
- (7) Section 132 of the Magistrates' Courts Act 1980 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court.

*General restrictions on discretionary custodial sentences***79 General restrictions on imposing discretionary custodial sentences**

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one—
  - (a) fixed by law; or
  - (b) falling to be imposed under section 109(2), 110(2) or 111(2) below.
- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—

- (a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or
  - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.
- (3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he fails to express his willingness to comply with—
- (a) a requirement which is proposed by the court to be included in a probation order or supervision order and which requires an expression of such willingness; or
  - (b) a requirement which is proposed by the court to be included in a drug treatment and testing order or an order under section 52(4) above (order to provide samples).
- (4) Where a court passes a custodial sentence, it shall—
- (a) in a case not falling within subsection (3) above, state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
  - (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

## **80 Length of discretionary custodial sentences: general provision**

- (1) This section applies where a court passes a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subject to sections 110(2) and 111(2) below, the custodial sentence shall be—
- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it; or
  - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it, the court shall—
- (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and
  - (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.
- (5) Subsection (3) above shall not apply in any case where the court passes a custodial sentence falling to be imposed under subsection (2) of section 110 or 111 below which is for the minimum term specified in that subsection.

*Procedural requirements for imposing discretionary custodial sentences*

**81 Pre-sentence reports and other requirements**

- (1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 79 or 80 above.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.
- (3) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (2) above unless—
  - (a) there exists a previous pre-sentence report obtained in respect of the offender; and
  - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (4) In forming any such opinion as is mentioned in subsection (2) of section 79 or 80 above, a court—
  - (a) shall take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors; and
  - (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.
- (5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (1) above, but any court on an appeal against such a sentence—
  - (a) shall, subject to subsection (6) below, obtain a pre-sentence report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (6) Subsection (5)(a) above does not apply if the court is of the opinion—
  - (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or
  - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.
- (7) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (6) above unless—
  - (a) there exists a previous pre-sentence report obtained in respect of the offender; and
  - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

- (8) Section 156 below (disclosure of pre-sentence report to offender etc.) applies to any pre-sentence report obtained in pursuance of this section.

## **82 Additional requirements in case of mentally disordered offender**

- (1) Subject to subsection (2) below, in any case where the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence, other than one fixed by law or falling to be imposed under section 109(2) below, on an offender who is or appears to be mentally disordered, a court shall consider—
- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
  - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
- (a) shall obtain a medical report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (5) In this section, “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health 83.
- (6) In this section, “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.
- (7) Nothing in this section shall be taken as prejudicing the generality of section 81 above.

### *Other restrictions*

## **83 Restriction on imposing custodial sentences on persons not legally represented**

- (1) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who—
- (a) is not legally represented in that court, and
  - (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom,
- unless he is a person to whom subsection (3) below applies.
- (2) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not—
- (a) pass a sentence of detention under section 90 or 91 below,

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- (b) pass a sentence of custody for life under section 93 or 94 below,
  - (c) pass a sentence of detention in a young offender institution, or
  - (d) make a detention and training order,
- on or in respect of a person who is not legally represented in that court unless he is a person to whom subsection (3) below applies.
- (3) This subsection applies to a person if either—
- (a) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service but the right was withdrawn because of his conduct; or
  - (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply.
- (4) For the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- (5) For the purposes of subsection (1)(b) above a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 below or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded.
- (6) In this section “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

#### **84 Restriction on consecutive sentences for released prisoners**

- (1) A court sentencing a person to a term of imprisonment shall not order or direct that the term shall commence on the expiry of any other sentence of imprisonment from which he has been released under Part II of the Criminal Justice Act 1991 (early release of prisoners).
- (2) Expressions used in this section shall be construed as if they were contained in that Part.
- (3) Without prejudice to the generality of subsection (2) above, any reference in this section to imprisonment shall be construed in accordance with section 43 (young offenders) and section 45 (fine defaulters and contemnors) of that Act.

*Sexual and violent offences: licences etc.*

#### **85 Sexual or violent offences: extension of certain custodial sentences for licence purposes**

- (1) This section applies where a court—
  - (a) proposes to impose a custodial sentence for a sexual or violent offence committed on or after 30th September 1998; 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 preventing the commission by him of further offences and securing his rehabilitation.

- (2) Subject to subsections (3) to (5) below, the court may pass on the offender an extended sentence, that is to say, a custodial sentence the term of which is equal to the aggregate of—
- (a) the term of the custodial sentence that the court would have imposed if it had passed a custodial sentence otherwise than under this section (“the custodial term”); and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose mentioned in subsection (1) above.
- (3) Where the offence is a violent offence, the court shall not pass an extended sentence the custodial term of which is less than four years.
- (4) The extension period shall not exceed—
- (a) ten years in the case of a sexual offence; and
  - (b) five years in the case of a violent offence.
- (5) The term of an extended sentence passed in respect of an offence shall not exceed the maximum term permitted for that offence.
- (6) Subsection (2) of section 80 above (length of discretionary custodial sentences) shall apply as if the term of an extended sentence did not include the extension period.
- (7) The Secretary of State may by order amend paragraph (b) of subsection (4) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph.
- (8) In this section “licence” means a licence under Part II of the Criminal Justice Act 1991 (early release of prisoners).

## **86 Sexual offences committed before 30th September 1998**

- (1) Where, in the case of a long-term or short-term prisoner—
- (a) the whole or any part of his sentence was imposed for a sexual offence committed before 30th September 1998, and
  - (b) the court by which he was sentenced for that offence, having had regard to the matters mentioned in section 32(6)(a) and (b) of the Criminal Justice Act 1991, ordered that this section should apply,
- sections 33(3) and 37(1) of that Act shall each have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.
- (2) Expressions used in this section shall be construed as if they were contained in Part II of the Criminal Justice Act 1991.
- (3) The reference in subsection (1) above to section 33(3) of the Criminal Justice Act 1991 is to section 33(3) as it has effect without the amendment made by section 104(1) of the Crime and Disorder Act 1998 (which substituted the words “on licence” for the word “unconditionally” and does not apply in relation to a prisoner whose sentence or any part of whose sentence was imposed for an offence committed before 30th September 1998).

*Crediting of periods of remand in custody***87 Crediting of periods of remand in custody: terms of imprisonment and detention**

- (1) This section applies where—
  - (a) a court sentences an offender to imprisonment for a term in respect of an offence committed after the commencement of this section; and
  - (b) the offender has been remanded in custody (within the meaning given by section 88 below) in connection with the offence or a related offence, that is to say, any other offence the charge for which was founded on the same facts or evidence.
- (2) It is immaterial for that purpose whether the offender—
  - (a) has also been remanded in custody in connection with other offences; or
  - (b) has also been detained in connection with other matters.
- (3) Subject to subsection (4) below, the court shall direct that the number of days for which the offender was remanded in custody in connection with the offence or a related offence shall count as time served by him as part of the sentence.
- (4) Subsection (3) above shall not apply if and to the extent that—
  - (a) rules made by the Secretary of State so provide in the case of—
    - (i) a remand in custody which is wholly or partly concurrent with a sentence of imprisonment; or
    - (ii) sentences of imprisonment for consecutive terms or for terms which are wholly or partly concurrent; or
  - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (5) Where the court gives a direction under subsection (3) above, it shall state in open court—
  - (a) the number of days for which the offender was remanded in custody; and
  - (b) the number of days in relation to which the direction is given.
- (6) Where the court does not give a direction under subsection (3) above, or gives such a direction in relation to a number of days less than that for which the offender was remanded in custody, it shall state in open court—
  - (a) that its decision is in accordance with rules made under paragraph (a) of subsection (4) above; or
  - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.
- (7) Rules under subsection (4)(a) above may make such incidental, supplemental and consequential provisions as may appear to the Secretary of State to be necessary or expedient.
- (8) For the purposes of this section a suspended sentence—
  - (a) shall be treated as a sentence of imprisonment when it takes effect under section 119 below; and
  - (b) shall be treated as being imposed by the order under which it takes effect.



- (9) For the purposes of this section, the definition of “sentence of imprisonment” in section 163 below shall apply as if for the words from the beginning of the definition to the end of paragraph (a) there were substituted—

““sentence of imprisonment” does not include a committal—

- (a) in default of payment of any sum of money, other than one adjudged to be paid by a conviction;”;

and references in this section to sentencing an offender to imprisonment, and to an offender’s sentence, shall be construed accordingly.

- (10) For the purposes of the reference in subsection (3) above to the term of imprisonment to which a person has been sentenced (that is to say, the reference to his “sentence”), consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term if—
- (a) the sentences were passed on the same occasion; or
- (b) where they were passed on different occasions, the person has not been released under Part II of the Criminal Justice Act 1991 (early release of prisoners) at any time during the period beginning with the first and ending with the last of those occasions.
- (11) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsection (1) above to have been committed on the last of those days.
- (12) This section applies to—
- (a) a determinate sentence of detention under section 91 below, and
- (b) a sentence of detention in a young offender institution,
- as it applies to an equivalent sentence of imprisonment.

## **88 Meaning of “remand in custody”**

- (1) References in section 87 above to an offender’s being remanded in custody are references to his being—
- (a) held in police detention;
- (b) remanded in or committed to custody by an order of a court;
- (c) remanded or committed to local authority accommodation under section 23 of the Children and Young Persons Act 1969 and placed and kept in secure accommodation; or
- (d) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.
- (2) A person is in police detention for the purposes of subsection (1) above—
- (a) at any time when he is in police detention for the purposes of the Police and Criminal Evidence Act 1984; and
- (b) at any time when he is detained under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989.
- (3) In subsection (1) above, “secure accommodation” has the same meaning as in section 23 of the Children and Young Persons Act 1969.

**CHAPTER II****DETENTION AND CUSTODY OF YOUNG OFFENDERS***Restriction on imposing imprisonment on persons under 21***89 Restriction on imposing imprisonment on persons under 21**

- (1) Subject to subsection (2) below, no court shall—
- (a) pass a sentence of imprisonment on a person for an offence if he is aged under 21 when convicted of the offence; or
  - (b) commit a person aged under 21 to prison for any reason.
- (2) Nothing in subsection (1) above shall prevent the committal to prison of a person aged under 21 who is—
- (a) remanded in custody;
  - (b) committed in custody for trial or sentence; or
  - (c) sent in custody for trial under section 51 of the Crime and Disorder Act 1998.

*Detention at Her Majesty's pleasure or for specified period***90 Offenders who commit murder when under 18: duty to detain at Her Majesty's pleasure**

Where a person convicted of murder appears to the court to have been aged under 18 at the time the offence was committed, the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure.

**91 Offenders under 18 convicted of certain serious offences: power to detain for specified period**

- (1) Subsection (3) below applies where a person aged under 18 is convicted on indictment of—
- (a) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; or
  - (b) an offence under section 14 of the Sexual Offences Act 1956 (indecent assault on a woman); or
  - (c) an offence under section 15 of that Act (indecent assault on a man) committed after 30th September 1997.
- (2) Subsection (3) below also applies where a person aged at least 14 but under 18 is convicted of an offence under—
- (a) section 1 of the Road Traffic Act 1988 (causing death by dangerous driving); or
  - (b) section 3A of that Act (causing death by careless driving while under influence of drink or drugs).
- (3) If the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the

offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

(4) Subsection (3) above is subject to (in particular) sections 79 and 80 above.

## **92 Detention under sections 90 and 91: place of detention etc**

(1) A person sentenced to be detained under section 90 or 91 above shall be liable to be detained in such place and under such conditions—

- (a) as the Secretary of State may direct; or
- (b) as the Secretary of State may arrange with any person.

(2) A person detained pursuant to the directions or arrangements made by the Secretary of State under this section shall be deemed to be in legal custody.

(3) A direction of the Secretary of State under this section may be signified only—

- (a) under the hand of the Secretary of State or an Under-Secretary of State or an Assistant Under-Secretary; or
- (b) under the hand of an authorised officer;

and arrangements of the Secretary of State under this section may be signified only as mentioned in paragraph (a) above.

### *Custody for life*

## **93 Duty to impose custody for life in certain cases where offender under 21**

Where a person aged under 21 is convicted of murder or any other offence the sentence for which is fixed by law as imprisonment for life, the court shall sentence him to custody for life unless he is liable to be detained under section 90 above.

## **94 Power to impose custody for life in certain other cases where offender at least 18 but under 21**

(1) Where a person aged at least 18 but under 21 is convicted of an offence—

- (a) for which the sentence is not fixed by law, but
- (b) for which a person aged 21 or over would be liable to imprisonment for life, the court shall, if it considers that a sentence for life would be appropriate, sentence him to custody for life.

(2) Subsection (1) above is subject to (in particular) sections 79 and 80 above, but this subsection does not apply in relation to a sentence which falls to be imposed under section 109(2) below.

## **95 Custody for life: place of detention**

(1) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to custody for life shall be detained in a young offender institution unless a direction under subsection (2) below is in force in relation to him.

(2) The Secretary of State may from time to time direct that an offender sentenced to custody for life shall be detained in a prison or remand centre instead of a young offender institution.

*Detention in a young offender institution***96 Detention in a young offender institution for other cases where offender at least 18 but under 21**

Subject to sections 90, 93 and 94 above, where—

- (a) a person aged at least 18 but under 21 is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
- (b) the court is of the opinion that either or both of paragraphs (a) and (b) of section 79(2) above apply or the case falls within section 79(3),

the sentence that the court is to pass is a sentence of detention in a young offender institution.

**97 Term of detention in a young offender institution, and consecutive sentences**

- (1) The maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence.
- (2) Subject to subsection (3) below, a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days.
- (3) A court may pass a sentence of detention in a young offender institution for less than 21 days for an offence under section 65(6) of the Criminal Justice Act 1991 (breach of requirement imposed on young offender on his release from detention).
- (4) Where—
  - (a) an offender is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution, or
  - (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,

the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

- (5) Subject to section 84 above (restriction on consecutive sentences for released prisoners), where an offender who—
  - (a) is serving a sentence of detention in a young offender institution, and
  - (b) is aged 21 or over,

is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

**98 Detention in a young offender institution: place of detention**

- (1) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.

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- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution.

*Conversion of sentence of detention or custody to sentence of imprisonment*

**99 Conversion of sentence of detention or custody to sentence of imprisonment**

- (1) Subject to the following provisions of this section, where an offender has been sentenced to a term of detention in a young offender institution and either—
- (a) he has attained the age of 21, or
  - (b) he has attained the age of 18 and has been reported to the Secretary of State by the board of visitors of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates,
- the Secretary of State may direct that he shall be treated as if he had been sentenced to imprisonment for the same term.
- (2) An offender who by virtue of this section falls to be treated as if he had been sentenced to imprisonment instead of detention in a young offender institution shall not be so treated for the purposes of section 65 of the Criminal Justice Act 1991 (supervision of young offenders after release).
- (3) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender, the portion of the term of detention in a young offender institution imposed by the sentence of detention in a young offender institution which he has already served shall be deemed to have been a portion of a term of imprisonment.
- (4) Rules under section 47 of the Prison Act 1952 may provide that any award for an offence against discipline made in respect of an offender serving a sentence of detention in a young offender institution shall continue to have effect after a direction under subsection (1) above has been given in relation to him.
- (5) This section applies to a person—
- (a) who is detained under section 90 or 91 above, or
  - (b) who is serving a sentence of custody for life,
- as it applies to a person serving a sentence of detention in a young offender institution.

*Detention and training orders*

**100 Offenders under 18: detention and training orders**

- (1) Subject to sections 90, 91 and 93 above and subsection (2) below, where—
- (a) a child or young person (that is to say, any person aged under 18) is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
  - (b) the court is of the opinion that either or both of paragraphs (a) and (b) of section 79(2) above apply or the case falls within section 79(3),
- the sentence that the court is to pass is a detention and training order.
- (2) A court shall not make a detention and training order—

- (a) in the case of an offender under the age of 15 at the time of the conviction, unless it is of the opinion that he is a persistent offender;
  - (b) in the case of an offender under the age of 12 at that time, unless—
    - (i) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
    - (ii) the offence was committed on or after such date as the Secretary of State may by order appoint.
- (3) A detention and training order is an order that the offender in respect of whom it is made shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.
- (4) On making a detention and training order in a case where subsection (2) above applies, it shall be the duty of the court (in addition to the duty imposed by section 79(4) above) to state in open court that it is of the opinion mentioned in paragraph (a) or, as the case may be, paragraphs (a) and (b)(i) of that subsection.

#### **101 Term of order, consecutive terms and taking account of remands**

- (1) Subject to subsection (2) below, the term of a detention and training order made in respect of an offence (whether by a magistrates' court or otherwise) shall be 4, 6, 8, 10, 12, 18 or 24 months.
- (2) The term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21 or over) impose for the offence.
- (3) Subject to subsections (4) and (6) below, a court making a detention and training order may order that its term shall commence on the expiry of the term of any other detention and training order made by that or any other court.
- (4) A court shall not make in respect of an offender a detention and training order the effect of which would be that he would be subject to detention and training orders for a term which exceeds 24 months.
- (5) Where the term of the detention and training orders to which an offender would otherwise be subject exceeds 24 months, the excess shall be treated as remitted.
- (6) A court making a detention and training order shall not order that its term shall commence on the expiry of the term of a detention and training order under which the period of supervision has already begun (under section 103(1) below).
- (7) Where a detention and training order (“the new order”) is made in respect of an offender who is subject to a detention and training order under which the period of supervision has begun (“the old order”), the old order shall be disregarded in determining—
- (a) for the purposes of subsection (4) above whether the effect of the new order would be that the offender would be subject to detention and training orders for a term which exceeds 24 months; and
  - (b) for the purposes of subsection (5) above whether the term of the detention and training orders to which the offender would (apart from that subsection) be subject exceeds 24 months.
- (8) In determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded in custody in

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connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.

- (9) Where a court proposes to make detention and training orders in respect of an offender for two or more offences—
- (a) subsection (8) above shall not apply; but
  - (b) in determining the total term of the detention and training orders it proposes to make in respect of the offender, the court shall take account of the total period (if any) for which he has been remanded in custody in connection with any of those offences, or any other offence the charge for which was founded on the same facts or evidence.
- (10) Once a period of remand has, under subsection (8) or (9) above, been taken account of in relation to a detention and training order made in respect of an offender for any offence or offences, it shall not subsequently be taken account of (under either of those subsections) in relation to such an order made in respect of the offender for any other offence or offences.
- (11) Any reference in subsection (8) or (9) above to an offender's being remanded in custody is a reference to his being—
- (a) held in police detention;
  - (b) remanded in or committed to custody by an order of a court;
  - (c) remanded or committed to local authority accommodation under section 23 of the Children and Young Persons Act 1969 and placed and kept in secure accommodation; or
  - (d) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.
- (12) A person is in police detention for the purposes of subsection (11) above—
- (a) at any time when he is in police detention for the purposes of the Police and Criminal Evidence Act 1984; and
  - (b) at any time when he is detained under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989;
- and in that subsection "secure accommodation" has the same meaning as in section 23 of the Children and Young Persons Act 1969.
- (13) For the purpose of any reference in sections 102 to 105 below to the term of a detention and training order, consecutive terms of such orders and terms of such orders which are wholly or partly concurrent shall be treated as a single term if—
- (a) the orders were made on the same occasion; or
  - (b) where they were made on different occasions, the offender has not been released (by virtue of subsection (2), (3), (4) or (5) of section 102 below) at any time during the period beginning with the first and ending with the last of those occasions.

## **102 The period of detention and training**

- (1) An offender shall serve the period of detention and training under a detention and training order in such secure accommodation as may be determined by the Secretary of State or by such other person as may be authorised by him for that purpose.
- (2) Subject to subsections (3) to (5) below, the period of detention and training under a detention and training order shall be one-half of the term of the order.

- (3) The Secretary of State may at any time release the offender if he is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds.
- (4) The Secretary of State may release the offender—
  - (a) in the case of an order for a term of 8 months or more but less than 18 months, one month before the half-way point of the term of the order; and
  - (b) in the case of an order for a term of 18 months or more, one month or two months before that point.
- (5) If a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State shall release the offender—
  - (a) in the case of an order for a term of 8 months or more but less than 18 months, one month after the half-way point of the term of the order; and
  - (b) in the case of an order for a term of 18 months or more, one month or two months after that point.
- (6) An offender detained in pursuance of a detention and training order shall be deemed to be in legal custody.

### **103 The period of supervision**

- (1) The period of supervision of an offender who is subject to a detention and training order—
  - (a) shall begin with the offender's release, whether at the half-way point of the term of the order or otherwise; and
  - (b) subject to subsection (2) below, shall end when the term of the order ends.
- (2) The Secretary of State may by order provide that the period of supervision shall end at such point during the term of a detention and training order as may be specified in the order under this subsection.
- (3) During the period of supervision, the offender shall be under the supervision of—
  - (a) a probation officer;
  - (b) a social worker of a local authority social services department; or
  - (c) a member of a youth offending team;and the category of person to supervise the offender shall be determined from time to time by the Secretary of State.
- (4) Where the supervision is to be provided by a probation officer, the probation officer shall be an officer appointed for or assigned to the petty sessions area within which the offender resides for the time being.
- (5) Where the supervision is to be provided by—
  - (a) a social worker of a local authority social services department, or
  - (b) a member of a youth offending team,the social worker or member shall be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.
- (6) The offender shall be given a notice from the Secretary of State specifying—
  - (a) the category of person for the time being responsible for his supervision; and



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- (b) any requirements with which he must for the time being comply.
- (7) A notice under subsection (6) above shall be given to the offender—
- (a) before the commencement of the period of supervision; and
  - (b) before any alteration in the matters specified in subsection (6)(a) or (b) above comes into effect.

#### **104 Breach of supervision requirements**

- (1) Where a detention and training order is in force in respect of an offender and it appears on information to a justice of the peace acting for a relevant petty sessions area that the offender has failed to comply with requirements under section 103(6)(b) above, the justice—
- (a) may issue a summons requiring the offender to appear at the place and time specified in the summons before a youth court acting for the area; or
  - (b) if the information is in writing and on oath, may issue a warrant for the offender's arrest requiring him to be brought before such a court.
- (2) For the purposes of this section a petty sessions area is a relevant petty sessions area in relation to a detention and training order if—
- (a) the order was made by a youth court acting for it; or
  - (b) the offender resides in it for the time being.
- (3) If it is proved to the satisfaction of the youth court before which an offender appears or is brought under this section that he has failed to comply with requirements under section 103(6)(b) above, that court may—
- (a) order the offender to be detained, in such secure accommodation as the Secretary of State may determine, for such period, not exceeding the shorter of three months or the remainder of the term of the detention and training order, as the court may specify; or
  - (b) impose on the offender a fine not exceeding level 3 on the standard scale.
- (4) An offender detained in pursuance of an order under subsection (3)(a) above shall be deemed to be in legal custody.
- (5) A fine imposed under subsection (3)(b) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- (6) An offender may appeal to the Crown Court against any order made under subsection (3)(a) or (b) above.

#### **105 Offences during currency of order**

- (1) This section applies to a person subject to a detention and training order if—
- (a) after his release and before the date on which the term of the order ends, he commits an offence punishable with imprisonment in the case of a person aged 21 or over ("the new offence"); and
  - (b) whether before or after that date, he is convicted of the new offence.
- (2) Subject to section 8(6) above (duty of adult magistrates' court to remit young offenders to youth court for sentence), the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence

on him, order him to be detained in such secure accommodation as the Secretary of State may determine for the whole or any part of the period which—

- (a) begins with the date of the court's order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.
- (3) The period for which a person to whom this section applies is ordered under subsection (2) above to be detained in secure accommodation—
- (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
  - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (4) Where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- (5) A person detained in pursuance of an order under subsection (2) above shall be deemed to be in legal custody.

#### **106 Interaction with sentences of detention in a young offender institution**

- (1) Where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows—
- (a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which it is passed;
  - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.
- (2) Where a court makes a detention and training order in the case of an offender who is subject to a sentence of detention in a young offender institution, the order shall take effect as follows—
- (a) if the offender has been released under Part II of the Criminal Justice Act 1991 (early release of prisoners), at the beginning of the day on which it is made;
  - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released under that Part.
- (3) Subsection (1)(a) above has effect subject to section 105(3)(a) above and subsection (2)(a) above has effect subject to section 116(6)(b) below.
- (4) Subject to subsection (5) below, where at any time an offender is subject concurrently—
- (a) to a detention and training order, and
  - (b) to a sentence of detention in a young offender institution,
- he shall be treated for the purposes of sections 102 to 105 above and of section 98 above (place of detention), Chapter IV of this Part (return to detention) and Part II of the Criminal Justice Act 1991 (early release) as if he were subject only to the one of them that was imposed on the later occasion.

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- (5) Nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.
- (6) Where, by virtue of any enactment giving a court power to deal with a person in a way in which a court on a previous occasion could have dealt with him, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person shall be treated as if he had been sentenced to detention in a young offender institution for the same term.

### **107 Meaning of “secure accommodation” and references to terms**

- (1) In sections 102, 104 and 105 above “secure accommodation” means—
  - (a) a secure training centre;
  - (b) a young offender institution;
  - (c) accommodation provided by a local authority for the purpose of restricting the liberty of children and young persons;
  - (d) accommodation provided for that purpose under subsection (5) of section 82 of the Children Act 1989 (financial support by the Secretary of State); or
  - (e) such other accommodation provided for the purpose of restricting liberty as the Secretary of State may direct.
- (2) In sections 102 to 105 above references to the term of a detention and training order shall be construed in accordance with section 101(13) above.

*Detention of persons aged at least 18 but under 21 for default or contempt*

### **108 Detention of persons aged at least 18 but under 21 for default or contempt**

- (1) In any case where, but for section 89(1) above, a court would have power—
  - (a) to commit a person aged at least 18 but under 21 to prison for default in payment of a fine or any other sum of money, or
  - (b) to make an order fixing a term of imprisonment in the event of such a default by such a person, or
  - (c) to commit such a person to prison for contempt of court or any kindred offence,the court shall have power, subject to subsection (3) below, to commit him to be detained under this section or, as the case may be, to make an order fixing a term of detention under this section in the event of default, for a term not exceeding the term of imprisonment.
- (2) For the purposes of subsection (1) above, the power of a court to order a person to be imprisoned under section 23 of the Attachment of Earnings Act 1971 shall be taken to be a power to commit him to prison.
- (3) No court shall commit a person to be detained under this section unless it is of the opinion that no other method of dealing with him is appropriate; and in forming any such opinion, the court—
  - (a) shall take into account all such information about the circumstances of the default or contempt (including any aggravating or mitigating factors) as is available to it; and

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- (b) may take into account any information about that person which is before it.
- (4) Where a magistrates' court commits a person to be detained under this section, it shall—
  - (a) state in open court the reason for its opinion that no other method of dealing with him is appropriate; and
  - (b) cause that reason to be specified in the warrant of commitment and to be entered in the register.
- (5) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), a person in respect of whom an order has been made under this section is to be detained—
  - (a) in a remand centre,
  - (b) in a young offender institution, or
  - (c) in any place in which a person aged 21 or over could be imprisoned or detained for default in payment of a fine or any other sum of money,
 as the Secretary of State may from time to time direct.

### CHAPTER III

#### REQUIRED CUSTODIAL SENTENCES FOR CERTAIN OFFENCES

#### **109 Life sentence for second serious offence**

- (1) This section applies where—
  - (a) a person is convicted of a serious offence committed after 30th September 1997; and
  - (b) at the time when that offence was committed, he was 18 or over and had been convicted in any part of the United Kingdom of another serious offence.
- (2) The court shall impose a life sentence, that is to say—
  - (a) where the offender is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment for life,
  - (b) where he is under 21 at that time, a sentence of custody for life under section 94 above,
 unless the court is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.
- (3) Where the court does not impose a life sentence, it shall state in open court that it is of that opinion and what the exceptional circumstances are.
- (4) An offence the sentence for which is imposed under subsection (2) above shall not be regarded as an offence the sentence for which is fixed by law.
- (5) An offence committed in England and Wales is a serious offence for the purposes of this section if it is any of the following, namely—
  - (a) an attempt to commit murder, a conspiracy to commit murder or an incitement to murder;
  - (b) an offence under section 4 of the Offences Against the Person Act 1861 (soliciting murder);
  - (c) manslaughter;

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- (d) an offence under section 18 of the Offences Against the Person Act 1861 (wounding, or causing grievous bodily harm, with intent);
  - (e) rape or an attempt to commit rape;
  - (f) an offence under section 5 of the Sexual Offences Act 1956 (intercourse with a girl under 13);
  - (g) an offence under section 16 (possession of a firearm with intent to injure), section 17 (use of a firearm to resist arrest) or section 18 (carrying a firearm with criminal intent) of the Firearms Act 1968; and
  - (h) robbery where, at some time during the commission of the offence, the offender had in his possession a firearm or imitation firearm within the meaning of that Act.
- (6) An offence committed in Scotland is a serious offence for the purposes of this section if the conviction for it was obtained on indictment in the High Court of Justiciary and it is any of the following, namely—
- (a) culpable homicide;
  - (b) attempted murder, incitement to commit murder or conspiracy to commit murder;
  - (c) rape or attempted rape;
  - (d) clandestine injury to women or an attempt to cause such injury;
  - (e) sodomy, or an attempt to commit sodomy, where the complainant, that is to say, the person against whom the offence was committed, did not consent;
  - (f) assault where the assault—
    - (i) is aggravated because it was carried out to the victim's severe injury or the danger of the victim's life; or
    - (ii) was carried out with an intention to rape or to ravish the victim;
  - (g) robbery where, at some time during the commission of the offence, the offender had in his possession a firearm or imitation firearm within the meaning of the Firearms Act 1968;
  - (h) an offence under section 16 (possession of a firearm with intent to injure), section 17 (use of a firearm to resist arrest) or section 18 (carrying a firearm with criminal intent) of that Act;
  - (i) lewd, libidinous or indecent behaviour or practices; and
  - (j) an offence under section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (unlawful intercourse with a girl under 13).
- (7) An offence committed in Northern Ireland is a serious offence for the purposes of this section if it is any of the following, namely—
- (a) an offence falling within any of paragraphs (a) to (e) of subsection (5) above;
  - (b) an offence under section 4 of the Criminal Law Amendment Act 1885 (intercourse with a girl under 14);
  - (c) an offence under Article 17 (possession of a firearm with intent to injure), Article 18(1) (use of a firearm to resist arrest) or Article 19 (carrying a firearm with criminal intent) of the Firearms (Northern Ireland) Order 1981; and
  - (d) robbery where, at some time during the commission of the offence, the offender had in his possession a firearm or imitation firearm within the meaning of that Order.

### **110 Minimum of seven years for third class A drug trafficking offence**

- (1) This section applies where—
- (a) a person is convicted of a class A drug trafficking offence committed after 30th September 1997;
  - (b) at the time when that offence was committed, he was 18 or over and had been convicted in any part of the United Kingdom of two other class A drug trafficking offences; and
  - (c) one of those other offences was committed after he had been convicted of the other.
- (2) The court shall impose an appropriate custodial sentence for a term of at least seven years except where the court is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.
- (3) Where the court does not impose such a sentence, it shall state in open court that it is of that opinion and what the particular circumstances are.
- (4) Where—
- (a) a person is charged with a class A drug trafficking offence (which, apart from this subsection, would be triable either way), and
  - (b) the circumstances are such that, if he were convicted of the offence, he could be sentenced for it under subsection (2) above,
- the offence shall be triable only on indictment.
- (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 Misuse of Drugs Act 1971;
- “drug trafficking offence” means a drug trafficking offence within the meaning of the Drug Trafficking Act 1994, the Proceeds of Crime (Scotland) Act 1995 or the Proceeds of Crime (Northern Ireland) Order 1996.
- (6) In this section “an appropriate custodial sentence” means—
- (a) in relation to a person who is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment;
  - (b) in relation to a person who is under 21 at that time, a sentence of detention in a young offender institution.

### **111 Minimum of three years for third domestic burglary**

- (1) This section applies where—
- (a) a person is convicted of a domestic burglary committed after 30th November 1999;
  - (b) at the time when that burglary was committed, he was 18 or over and had been convicted in England and Wales of two other domestic burglaries; and
  - (c) one of those other burglaries was committed after he had been convicted of the other, and both of them were committed after 30th November 1999.

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- (2) The court shall impose an appropriate custodial sentence for a term of at least three years except where the court is of the opinion that there are particular circumstances which—
  - (a) relate to any of the offences or to the offender; and
  - (b) would make it unjust to do so in all the circumstances.
- (3) Where the court does not impose such a sentence, it shall state in open court that it is of that opinion and what the particular circumstances are.
- (4) Where—
  - (a) a person is charged with a domestic burglary which, apart from this subsection, would be triable either way, and
  - (b) the circumstances are such that, if he were convicted of the burglary, he could be sentenced for it under subsection (2) above,the burglary shall be triable only on indictment.
- (5) In this section “domestic burglary” means a burglary committed in respect of a building or part of a building which is a dwelling.
- (6) In this section “an appropriate custodial sentence” means—
  - (a) in relation to a person who is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment;
  - (b) in relation to a person who is under 21 at that time, a sentence of detention in a young offender institution.

## **112 Appeals where previous convictions set aside**

- (1) This section applies where—
  - (a) a sentence has been imposed on any person under subsection (2) of section 109, 110 or 111 above; and
  - (b) any previous conviction of his without which that section would not have applied has been subsequently set aside on appeal.
- (2) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.

## **113 Certificates of convictions for purposes of Chapter III**

- (1) Where—
  - (a) on any date after 30th September 1997 a person is convicted in England and Wales of a serious offence or a class A drug trafficking offence, or on any date after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
  - (b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and
  - (c) that court subsequently certifies that fact,the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that he was convicted of such an offence on that date.
- (2) Where—

- (a) after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence or after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
  - (b) the court by or before which he is so convicted states in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
  - (c) that court subsequently certifies that fact,
- the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

(3) In this section—

“serious offence”, “class A drug trafficking offence” and “domestic burglary” have the same meanings as in sections 109, 110 and 111 respectively; and

“the relevant section of this Chapter”, in relation to any such offence, shall be construed accordingly.

#### **114 Offences under service law**

(1) Where—

- (a) a person has at any time been convicted of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, and
- (b) the corresponding civil offence (within the meaning of that Act) was a serious offence, a class A drug trafficking offence or a domestic burglary,

the relevant section of this Chapter shall have effect as if he had at that time been convicted in England and Wales of the corresponding civil offence.

(2) Subsection (3) of section 113 above applies for the purposes of this section as it applies for the purposes of that section.

#### **115 Determination of day when offence committed**

Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of sections 109, 110 and 111 above to have been committed on the last of those days.

### **CHAPTER IV**

#### **RETURN TO PRISON ETC. WHERE OFFENCE COMMITTED DURING ORIGINAL SENTENCE**

#### **116 Power to order return to prison etc. where offence committed during original sentence**

(1) This section applies to a person if—

- (a) he has been serving a determinate sentence of imprisonment which he began serving on or after 1st October 1992;
- (b) he is released under Part II of the Criminal Justice Act 1991 (early release of prisoners);



- (c) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment (“the new offence”); and
  - (d) whether before or after that date, he is convicted of the new offence.
- (2) Subject to subsection (3) below, the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be returned to prison for the whole or any part of the period which—
  - (a) begins with the date of the order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1)(c) above.
- (3) A magistrates' court—
  - (a) shall not have power to order a person to whom this section applies to be returned to prison for a period of more than six months; but
  - (b) subject to section 25 of the Criminal Justice and Public Order Act 1994 (restrictions on granting bail), may commit him in custody or on bail to the Crown Court to be dealt with under subsection (4) below.
- (4) Where a person is committed to the Crown Court under subsection (3) above, the Crown Court may order him to be returned to prison for the whole or any part of the period which—
  - (a) begins with the date of the order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1)(c) above.
- (5) Subsection (3)(b) above shall not be taken to confer on the magistrates' court a power to commit the person to the Crown Court for sentence for the new offence, but this is without prejudice to any such power conferred on the magistrates' court by any other provision of this Act.
- (6) The period for which a person to whom this section applies is ordered under subsection (2) or (4) above to be returned to prison—
  - (a) shall be taken to be a sentence of imprisonment for the purposes of Part II of the Criminal Justice Act 1991 and this section;
  - (b) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence; and
  - (c) in either case, shall be disregarded in determining the appropriate length of that sentence.
- (7) As a consequence of subsection (6)(a) above, the court shall not be prevented by section 84 above from making any direction authorised by subsection (6)(b) above.
- (8) Where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- (9) For the purposes of sections 9 and 10 of the Criminal Appeal Act 1968 (rights of appeal), any order made in respect of a person by the Crown Court under subsection (2) or (4) above shall be treated as a sentence passed on him for the offence for which the sentence referred to in subsection (1) above was passed.
- (10) This section and section 117 below apply to persons serving—

- (a) determinate sentences of detention under section 91 above, or
- (b) sentences of detention in a young offender institution,

as they apply to persons serving equivalent sentences of imprisonment; and references in this section and section 117 to imprisonment or prison shall be construed accordingly.

- (11) In this section “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

**117 Treatment for purposes of section 116(1) of person serving two or more sentences or extended sentence**

- (1) For the purposes of any reference in section 116(1) above (however expressed) to the term of imprisonment to which a person has been sentenced, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term if—
- (a) the sentences were passed on the same occasion; or
  - (b) where they were passed on different occasions, the person has not been released under Part II of the Criminal Justice Act 1991 at any time during the period beginning with the first and ending with the last of those occasions;
- but this is subject to subsection (4) below.
- (2) Where a suspended sentence of imprisonment is ordered to take effect, with or without any variation of the original term, the occasion on which that order is made shall be treated for the purposes of subsection (1) above as the occasion on which the sentence is passed.
- (3) Where a person has been sentenced to two or more terms of imprisonment which are wholly or partly concurrent and do not fall to be treated as a single term, the date mentioned in section 116(1)(c) above shall be taken to be that on which he would (but for his release) have served each of the sentences in full.
- (4) Subsections (1) to (3) above apply only where one or more of the sentences concerned were passed on or after 30th September 1998; but where, by virtue of section 51(2) of the Criminal Justice Act 1991 as enacted, the terms of two or more sentences passed before 30th September 1998 have been treated as a single term for the purposes of Part II of that Act, they shall be treated as a single term for the purposes of section 116(1) above.
- (5) Section 116(1) and subsection (3) above shall each have effect as if the term of an extended sentence (within the meaning of section 85 above) included the extension period (within the meaning of that section).

## CHAPTER V

### SUSPENDED SENTENCES OF IMPRISONMENT

#### *Suspended sentences of imprisonment*

#### **118 Suspended sentences of imprisonment**

- (1) A court which passes a sentence of imprisonment for a term of not more than two years for an offence may (subject to subsection (4) below) order that the sentence shall not take effect unless, during a period specified in the order, the offender commits in Great Britain another offence punishable with imprisonment and thereafter a court having power to do so orders under section 119 below that the original sentence shall take effect.
- (2) The period specified in an order under subsection (1) above must be a period of not less than one year nor more than two years beginning with the date of the order.
- (3) In this Act—
  - “suspended sentence” means a sentence to which an order under subsection (1) above relates; and
  - “operational period”, in relation to such a sentence, means the period specified in the order under subsection (1).
- (4) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—
  - (a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
  - (b) that the exercise of that power can be justified by the exceptional circumstances of the case.
- (5) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.
- (6) A court which passes a suspended sentence on any person for an offence shall not impose a community sentence in his case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court.
- (7) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under section 119 below if during the operational period he commits an offence punishable with imprisonment.
- (8) Subject to any provision to the contrary contained in the Criminal Justice Act 1967, this Act or any other enactment passed or instrument made under any enactment after 31st December 1967—
  - (a) a suspended sentence which has not taken effect under section 119 below shall be treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments except any enactment or instrument which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment; and

- (b) where a suspended sentence has taken effect under section 119, the offender shall be treated for the purposes of the enactments and instruments excepted by paragraph (a) above as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under that section expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.

### **119 Power of court on conviction of further offence to deal with suspended sentence**

- (1) Where an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and either he is so convicted by or before a court having power under section 120 below to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such a court, then, unless the sentence has already taken effect, that court shall consider his case and deal with him by one of the following methods—
  - (a) the court may order that the suspended sentence shall take effect with the original term unaltered;
  - (b) the court may order that the sentence shall take effect with the substitution of a lesser term for the original term;
  - (c) the court may by order vary the original order under section 118(1) above by substituting for the period specified in that order a period ending not later than two years from the date of the variation; or
  - (d) the court may make no order with respect to the suspended sentence.
- (2) The court shall make an order under paragraph (a) of subsection (1) above unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the facts of the subsequent offence; and where it is of that opinion the court shall state its reasons.
- (3) Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the court may order that that sentence shall take effect immediately or that the term of that sentence shall commence on the expiry of another term of imprisonment passed on the offender by that or another court.
- (4) The power to make an order under subsection (3) above has effect subject to section 84 above (restriction on consecutive sentences for released prisoners).
- (5) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Crown Court, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the court and not by the verdict of a jury.
- (6) Where a court deals with an offender under this section in respect of a suspended sentence, the appropriate officer of the court shall notify the appropriate officer of the court which passed the sentence of the method adopted.
- (7) Where on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the appropriate officer of the court shall record that fact.
- (8) For the purposes of any enactment conferring rights of appeal in criminal cases, any order made by a court with respect to a suspended sentence shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

## **120 Court by which suspended sentence may be dealt with**

- (1) An offender may be dealt with in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought.
- (2) Where an offender is convicted by a magistrates' court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court—
  - (a) the court may, if it thinks fit, commit him in custody or on bail to the Crown Court; and
  - (b) if it does not, shall give written notice of the conviction to the appropriate officer of the Crown Court.
- (3) For the purposes of this section and of section 121 below, a suspended sentence passed on an offender on appeal shall be treated as having been passed by the court by which he was originally sentenced.

## **121 Procedure where court convicting of further offence does not deal with suspended sentence**

- (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with subsection (2) below, or to a justice of the peace having jurisdiction in accordance with that subsection—
  - (a) that an offender has been convicted in Great Britain of an offence punishable with imprisonment committed during the operational period of a suspended sentence, and
  - (b) that he has not been dealt with in respect of the suspended sentence,that court or justice may, subject to the following provisions of this section, issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his arrest.
- (2) Jurisdiction for the purposes of subsection (1) above may be exercised—
  - (a) if the suspended sentence was passed by the Crown Court, by that court;
  - (b) if it was passed by a magistrates' court, by a justice acting for the area for which that court acted.
- (3) Where—
  - (a) an offender is convicted by a court in Scotland of an offence punishable with imprisonment, and
  - (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales,the court shall give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed.
- (4) Unless he is acting in consequence of a notice under subsection (3) above, a justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- (5) A summons or warrant issued under this section shall direct the offender to appear or to be brought before the court by which the suspended sentence was passed.

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- (6) In relation to a suspended sentence passed on appeal, this section is to be construed in accordance with section 120(3) above.

*Suspended sentence supervision orders*

**122 Suspended sentence supervision orders**

- (1) Where a court passes on an offender a suspended sentence for a term of more than six months for a single offence, the court may make a suspended sentence supervision order, that is to say, an order placing the offender under the supervision of a supervising officer for a period which is specified in the order and does not exceed the operational period of the suspended sentence.
- (2) A suspended sentence supervision order shall specify the petty sessions area in which the offender resides or will reside; and the supervising officer shall be a probation officer appointed for or assigned to the area for the time being specified in the order (whether under this subsection or by virtue of section 124(3) below (power to amend order)).
- (3) An offender in respect of whom a suspended sentence supervision order is in force shall keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.
- (4) On making a suspended sentence supervision order, the court shall explain its effect to the offender in ordinary language.
- (5) The court by which a suspended sentence supervision order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy to the offender and to the supervising officer.
- (6) The court by which such an order is made shall also, except where it itself acts for the petty sessions area specified in the order, send to the justices' chief executive for that area—
  - (a) a copy of the order; and
  - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
- (7) The Secretary of State may by order—
  - (a) direct that subsection (1) above be amended by substituting, for the number of months specified in that subsection as originally enacted or as previously amended under this paragraph, such other number (not more than six) as the order may specify; or
  - (b) make in that subsection the repeals necessary to enable a court to make a suspended sentence supervision order in the case of any suspended sentence, whatever the length of the term.
- (8) Where under section 119 above a court deals with an offender in respect of a suspended sentence by varying the operational period of the sentence or by making no order with respect to the sentence, the court may make a suspended sentence supervision order in respect of the offender—
  - (a) in place of any such order made when the suspended sentence was passed; or

- (b) if the court which passed the sentence could have made such an order but did not do so; or
- (c) if that court could not then have made such an order but would have had power to do so if subsection (1) above had then had effect as it has effect at the time when the offender is dealt with under section 119.

### **123 Breach of requirement of suspended sentence supervision order**

- (1) If, at any time while a suspended sentence supervision order is in force in respect of an offender, it appears on information to a justice of the peace acting for the petty sessions area for the time being specified in the order that the offender has failed to comply with any of the requirements of section 122(3) above, the justice may—
  - (a) issue a summons requiring the offender to appear at the place and time specified in it; or
  - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- (2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before a magistrates' court acting for the petty sessions area for the time being specified in the suspended sentence supervision order.
- (3) If it is proved to the satisfaction of the court before which an offender appears or is brought under this section that he has failed without reasonable cause to comply with any of the requirements of section 122(3) above, the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding £1000.
- (4) A fine imposed under subsection (3) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

### **124 Suspended sentence supervision orders: revocation, amendment and cessation**

- (1) A suspended sentence supervision order may be revoked on the application of the supervising officer or the offender—
  - (a) if it was made by the Crown Court and includes a direction reserving the power of revoking it to that court, by the Crown Court;
  - (b) in any other case, by a magistrates' court acting for the petty sessions area for the time being specified in the order.
- (2) Where a suspended sentence supervision order has been made on appeal, for the purposes of subsection (1) above it shall be deemed—
  - (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
  - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.
- (3) If a magistrates' court acting for the petty sessions area for the time being specified in a suspended sentence supervision order is satisfied that the offender proposes to change, or has changed, his residence from that petty sessions area to another petty sessions area, the court may, and on the application of the supervising officer shall, amend the order by substituting the other petty sessions area for the area specified in the order.
- (4) Where a suspended sentence supervision order is amended by a court under subsection (3) above, the court shall send to the justices' chief executive for the new area specified in the order a copy of the order, together with such documents and

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information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

- (5) A suspended sentence supervision order shall cease to have effect if before the end of the period specified in it—
- (a) a court orders under section 119 above that a suspended sentence passed in the proceedings in which the order was made shall have effect; or
  - (b) the order is revoked under subsection (1) above or replaced under section 122(8) above.

*Suspended sentences: supplementary*

**125 Suspended sentences: supplementary**

- (1) For the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which a person has been sentenced, consecutive terms and terms which are wholly or partly concurrent shall, unless the context otherwise requires, be treated as a single term.
- (2) Any reference in this Chapter, however expressed, to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in Great Britain and to a previous sentence passed by any such court.
- (3) For the purposes of this Chapter a certificate purporting to be signed by or on behalf of the Lord Advocate that an offence is punishable in Scotland with imprisonment shall be evidence of the matter so certified.