



# Criminal Justice Act 2003

## 2003 CHAPTER 44

### PART 12

#### SENTENCING

### CHAPTER 1

#### GENERAL PROVISIONS ABOUT SENTENCING

#### *Matters to be taken into account in sentencing*

#### **142 Purposes of sentencing**

- (1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing—
  - (a) the punishment of offenders,
  - (b) the reduction of crime (including its reduction by deterrence),
  - (c) the reform and rehabilitation of offenders,
  - (d) the protection of the public, and
  - (e) the making of reparation by offenders to persons affected by their offences.
- (2) Subsection (1) does not apply—
  - (a) in relation to an offender who is aged under 18 at the time of conviction,
  - (b) to an offence the sentence for which is fixed by law,
  - (c) to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (minimum sentence for certain firearms offences), under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences) or under any of sections 225 to 228 of this Act (dangerous offenders), or

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- (d) in relation to the making under Part 3 of the Mental Health Act 1983 (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.
- (3) In this Chapter “sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and “sentencing” is to be construed accordingly.

#### **143 Determining the seriousness of an offence**

- (1) In considering the seriousness of any offence, the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.
- (2) In considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—
  - (a) the nature of the offence to which the conviction relates and its relevance to the current offence, and
  - (b) the time that has elapsed since the conviction.
- (3) In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.
- (4) Any reference in subsection (2) to a previous conviction is to be read as a reference to—
  - (a) a previous conviction by a court in the United Kingdom, or
  - (b) a previous finding of guilt in service disciplinary proceedings.
- (5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside the United Kingdom as an aggravating factor in any case where the court considers it appropriate to do so.

#### **144 Reduction in sentences for guilty pleas**

- (1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court must take into account—
  - (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
  - (b) the circumstances in which this indication was given.
- (2) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 of the Sentencing Act, nothing in that subsection prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

#### **145 Increase in sentences for racial or religious aggravation**

- (1) This section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37)

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(racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).

- (2) If the offence was racially or religiously aggravated, the court—
  - (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence was so aggravated.
- (3) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

#### **146 Increase in sentences for aggravation related to disability or sexual orientation**

- (1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).
- (2) Those circumstances are—
  - (a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
    - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
    - (ii) a disability (or presumed disability) of the victim, or
  - (b) that the offence is motivated (wholly or partly)—
    - (i) by hostility towards persons who are of a particular sexual orientation, or
    - (ii) by hostility towards persons who have a disability or a particular disability.
- (3) The court—
  - (a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and
  - (b) must state in open court that the offence was committed in such circumstances.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender’s hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
- (5) In this section “disability” means any physical or mental impairment.

#### *General restrictions on community sentences*

#### **147 Meaning of “community sentence” etc.**

- (1) In this Part “community sentence” means a sentence which consists of or includes—
  - (a) a community order (as defined by section 177), or
  - (b) one or more youth community orders.
- (2) In this Chapter “youth community order” means—
  - (a) a curfew order as defined by section 163 of the Sentencing Act,
  - (b) an exclusion order under section 40A(1) of that Act,
  - (c) an attendance centre order as defined by section 163 of that Act,

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- (d) a supervision order under section 63(1) of that Act, or
- (e) an action plan order under section 69(1) of that Act.

#### **148 Restrictions on imposing community sentences**

- (1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) Where a court passes a community sentence which consists of or includes a community order—
  - (a) the particular requirement or requirements forming part of the community order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and
  - (b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- (3) Where a court passes a community sentence which consists of or includes one or more youth community orders—
  - (a) the particular order or orders forming part of the sentence must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and
  - (b) the restrictions on liberty imposed by the order or orders must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- (4) Subsections (1) and (2)(b) have effect subject to section 151(2).

#### **149 Passing of community sentence on offender remanded in custody**

- (1) In determining the restrictions on liberty to be imposed by a community order or youth community order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.
- (2) In subsection (1) “remanded in custody” has the meaning given by section 242(2).

#### **150 Community sentence not available where sentence fixed by law etc.**

The power to make a community order or youth community order is not exercisable in respect of an offence for which the sentence—

- (a) is fixed by law,
- (b) falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (required custodial sentence for certain firearms offences),
- (c) falls to be imposed under section 110(2) or 111(2) of the Sentencing Act (requirement to impose custodial sentences for certain repeated offences committed by offenders aged 18 or over), or
- (d) falls to be imposed under any of sections 225 to 228 of this Act (requirement to impose custodial sentences for certain offences committed by offenders posing risk to public).

## **151 Community order for persistent offender previously fined**

- (1) Subsection (2) applies where—
  - (a) a person aged 16 or over is convicted of an offence (“the current offence”),
  - (b) on three or more previous occasions he has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine, and
  - (c) despite the effect of section 143(2), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a community sentence.
- (2) The court may make a community order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to make such an order.
- (3) The matters referred to in subsection (2) are—
  - (a) the nature of the offences to which the previous convictions mentioned in subsection (1)(b) relate and their relevance to the current offence, and
  - (b) the time that has elapsed since the offender’s conviction of each of those offences.
- (4) In subsection (1)(b), the reference to conviction by a court in the United Kingdom includes a reference to the finding of guilt in service disciplinary proceedings; and, in relation to any such finding of guilt, the reference to the sentence passed is a reference to the punishment awarded.
- (5) For the purposes of subsection (1)(b), a compensation order does not form part of an offender’s sentence.
- (6) For the purposes of subsection (1)(b), it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine.
- (7) This section does not limit the extent to which a court may, in accordance with section 143(2), treat any previous convictions of the offender as increasing the seriousness of an offence.

### *General restrictions on discretionary custodial sentences*

## **152 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 51A(2) of the Firearms Act 1968 (c. 27), under 110(2) or 111(2) of the Sentencing Act or under any of sections 225 to 228 of this Act.
- (2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.

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- (3) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if—
- (a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness, or
  - (b) he fails to comply with an order under section 161(2) (pre-sentence drug testing).

### **153 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 225 or 226.
- (2) Subject to section 51A(2) of the Firearms Act 1968 (c. 27), sections 110(2) and 111(2) of the Sentencing Act and sections 227(2) and 228(2) of this Act, the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that 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.

*General limit on magistrates' court's power to impose imprisonment*

### **154 General limit on magistrates' court's power to impose imprisonment**

- (1) A magistrates' court does not have power to impose imprisonment for more than 12 months in respect of any one offence.
- (2) Unless expressly excluded, subsection (1) applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment for more than 12 months.
- (3) Subsection (1) is without prejudice to section 133 of the Magistrates' Courts Act 1980 (c. 43) (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, is not limited by virtue of subsection (1).
- (5) In subsection (4) “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 provisions about the minimum term of imprisonment which may be imposed by a magistrates' court.

### **155 Consecutive terms of imprisonment**

- (1) Section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment) is amended as follows.

- (2) In subsection (1), for “6 months” there is substituted “65 weeks”.
- (3) Subsection (2) is omitted.
- (4) In subsection (3) for “the preceding subsections” there is substituted “subsection (1) above”.

*Procedural requirements for imposing community sentences and discretionary custodial sentences*

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

- (1) In forming any such opinion as is mentioned in section 148(1), (2)(b) or (3)(b), section 152(2) or section 153(2), a court must 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.
- (2) In forming any such opinion as is mentioned in section 148(2)(a) or (3)(a), the court may take into account any information about the offender which is before it.
- (3) Subject to subsection (4), a court must obtain and consider a pre-sentence report before—
  - (a) in the case of a custodial sentence, forming any such opinion as is mentioned in section 152(2), section 153(2), section 225(1)(b), section 226(1)(b), section 227(1)(b) or section 228(1)(b)(i), or
  - (b) in the case of a community sentence, forming any such opinion as is mentioned in section 148(1), (2)(b) or (3)(b) or any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order.
- (4) Subsection (3) 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.
- (5) In a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (4) 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.
- (6) No custodial sentence or community sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (3), but any court on an appeal against such a sentence—
  - (a) must, subject to subsection (7), obtain a pre-sentence report if none was obtained by the court below, and
  - (b) must consider any such report obtained by it or by that court.
- (7) Subsection (6)(a) 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

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- (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.
- (8) In a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (7) 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.

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

- (1) Subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.
- (2) Subsection (1) 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 on an offender who is or appears to be mentally disordered, a court must 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) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
  - (a) must obtain a medical report if none was obtained by the court below, and
  - (b) must 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 Act 1983 (c. 20).
- (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 is to be taken to limit the generality of section 156.

### **158 Meaning of “pre-sentence report”**

- (1) In this Part “pre-sentence report” means a report which—
  - (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by an appropriate officer, and
  - (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.
- (2) In subsection (1) “an appropriate officer” means—
  - (a) where the offender is aged 18 or over, an officer of a local probation board, and



- (b) where the offender is aged under 18, an officer of a local probation board, a social worker of a local authority social services department or a member of a youth offending team.

*Disclosure of pre-sentence reports etc*

**159 Disclosure of pre-sentence reports**

- (1) This section applies where the court obtains a pre-sentence report, other than a report given orally in open court.
- (2) Subject to subsections (3) and (4), the court must give a copy of the report—
  - (a) to the offender or his counsel or solicitor,
  - (b) if the offender is aged under 18, to any parent or guardian of his who is present in court, and
  - (c) to the prosecutor, that is to say, the person having the conduct of the proceedings in respect of the offence.
- (3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.
- (4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for him to be given it.
- (5) No information obtained by virtue of subsection (2)(c) may be used or disclosed otherwise than for the purpose of—
  - (a) determining whether representations as to matters contained in the report need to be made to the court, or
  - (b) making such representations to the court.
- (6) In relation to an offender aged under 18 for whom a local authority have parental responsibility and who—
  - (a) is in their care, or
  - (b) is provided with accommodation by them in the exercise of any social services functions,references in this section to his parent or guardian are to be read as references to that authority.
- (7) In this section and section 160—
  - “harm” has the same meaning as in section 31 of the Children Act 1989 (c. 41);
  - “local authority” and “parental responsibility” have the same meanings as in that Act;
  - “social services functions”, in relation to a local authority, has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42).

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## **160 Other reports of local probation boards and members of youth offending teams**

- (1) This section applies where—
  - (a) a report by an officer of a local probation board or a member of a youth offending team is made to any court (other than a youth court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, and
  - (b) the report is not a pre-sentence report.
- (2) Subject to subsection (3), the court must give a copy of the report—
  - (a) to the offender or his counsel or solicitor, and
  - (b) if the offender is aged under 18, to any parent or guardian of his who is present in court.
- (3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender, or as the case may be, to that parent or guardian.
- (4) In relation to an offender aged under 18 for whom a local authority have parental responsibility and who—
  - (a) is in their care, or
  - (b) is provided with accommodation by them in the exercise of any social services functions,references in this section to his parent or guardian are to be read as references to that authority.

### *Pre-sentence drug testing*

## **161 Pre-sentence drug testing**

- (1) Where a person aged 14 or over is convicted of an offence and the court is considering passing a community sentence or a suspended sentence, it may make an order under subsection (2) for the purpose of ascertaining whether the offender has any specified Class A drug in his body.
- (2) The order requires the offender to provide, in accordance with the order, samples of any description specified in the order.
- (3) Where the offender has not attained the age of 17, the order must provide for the samples to be provided in the presence of an appropriate adult.
- (4) If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with the order it may impose on him a fine of an amount not exceeding level 4.
- (5) In subsection (4) “level 4” means the amount which, in relation to a fine for a summary offence, is level 4 on the standard scale.
- (6) The court may not make an order under subsection (2) unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn.

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- (7) The Secretary of State may by order amend subsection (1) by substituting for the age for the time being specified there a different age specified in the order.
- (8) In this section—
- “appropriate adult”, in relation to a person under the age of 17, means—
    - (a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
    - (b) a social worker of a local authority social services department, or
    - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;
  - “specified Class A drug” has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000 (c. 43).

### *Fines*

#### **162 Powers to order statement as to offender’s financial circumstances**

- (1) Where an individual has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.
- (2) Where a magistrates' court has been notified in accordance with section 12(4) of the Magistrates' Courts Act 1980 (c. 43) that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.
- (3) In this section “a financial circumstances order” means, in relation to any individual, an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.
- (4) An individual who without reasonable excuse fails to comply with a financial circumstances order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If an individual, in furnishing any statement in pursuance of a financial circumstances order—
  - (a) makes a statement which he knows to be false in a material particular,
  - (b) recklessly furnishes a statement which is false in a material particular, or
  - (c) knowingly fails to disclose any material fact,he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) Proceedings in respect of an offence under subsection (5) may, notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.

#### **163 General power of Crown Court to fine offender convicted on indictment**

Where a person is convicted on indictment of any offence, other than an offence for which the sentence is fixed by law or falls to be imposed under section 110(2) or 111(2)

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of the Sentencing Act or under any of sections 225 to 228 of this Act, the court, if not precluded from sentencing an offender by its exercise of some other power, may impose a fine instead of or in addition to dealing with him in any other way in which the court has power to deal with him, subject however to any enactment requiring the offender to be dealt with in a particular way.

#### **164 Fixing of fines**

- (1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his financial circumstances.
- (2) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.
- (3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.
- (4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.
- (5) Where—
  - (a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates' Courts Act 1980 (c. 43) (non-appearance of accused), or
  - (b) an offender—
    - (i) has failed to furnish a statement of his financial circumstances in response to a request which is an official request for the purposes of section 20A of the Criminal Justice Act 1991 (c. 53) (offence of making false statement as to financial circumstances),
    - (ii) has failed to comply with an order under section 162(1), or
    - (iii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

#### **165 Remission of fines**

- (1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 164(5).
- (2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—
  - (a) have fixed a smaller amount, or
  - (b) not have fined him,it may remit the whole or part of the fine.
- (3) Where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 139 of the Sentencing Act (powers of Crown Court in relation to fines) or section 82(5) of the Magistrates' Courts

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Act 1980 (magistrates' powers in relation to default) it must reduce the term by the corresponding proportion.

- (4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.

*Savings for power to mitigate etc*

**166 Savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders**

- (1) Nothing in—
- (a) section 148 (imposing community sentences),
  - (b) section 152, 153 or 157 (imposing custodial sentences),
  - (c) section 156 (pre-sentence reports and other requirements),
  - (d) section 164 (fixing of fines),
- prevents a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.
- (2) Section 152(2) does not prevent a court, after taking into account such matters, from passing a community sentence even though it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that a community sentence could not normally be justified for the offence.
- (3) Nothing in the sections mentioned in subsection (1)(a) to (d) prevents a court—
- (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence, and
  - (b) in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- (4) Subsections (2) and (3) are without prejudice to the generality of subsection (1).
- (5) Nothing in the sections mentioned in subsection (1)(a) to (d) is to be taken—
- (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender, or
  - (b) as restricting any power (whether under the Mental Health Act 1983 (c. 20) or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.
- (6) In subsection (5) "mentally disordered", in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983.

*Sentencing and allocation guidelines*

**167 The Sentencing Guidelines Council**

- (1) There shall be a Sentencing Guidelines Council (in this Chapter referred to as the Council) consisting of—
- (a) the Lord Chief Justice, who is to be chairman of the Council,

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- (b) seven members (in this section and section 168 referred to as “judicial members”) appointed by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice, and
  - (c) four members (in this section and section 168 referred to as “non-judicial members”) appointed by the Secretary of State after consultation with the Lord Chancellor and the Lord Chief Justice.
- (2) A person is eligible to be appointed as a judicial member if he is—
- (a) a Lord Justice of Appeal,
  - (b) a judge of the High Court,
  - (c) a Circuit judge,
  - (d) a District Judge (Magistrates' Courts), or
  - (e) a lay justice.
- (3) The judicial members must include a Circuit judge, a District Judge (Magistrates' Courts) and a lay justice.
- (4) A person is eligible for appointment as a non-judicial member if he appears to the Secretary of State to have experience in one or more of the following areas—
- (a) policing,
  - (b) criminal prosecution,
  - (c) criminal defence, and
  - (d) the promotion of the welfare of victims of crime.
- (5) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.
- (6) The non-judicial members must include at least one person appearing to the Secretary of State to have experience in each area.
- (7) The Lord Chief Justice must appoint one of the judicial members or non-judicial members to be deputy chairman of the Council.
- (8) In relation to any meeting of the Council from which the Lord Chief Justice is to be absent, he may nominate any person eligible for appointment as a judicial member to act as a member on his behalf at the meeting.
- (9) The Secretary of State may appoint a person appearing to him to have experience of sentencing policy and the administration of sentences to attend and speak at any meeting of the Council.
- (10) In this section and section 168 “lay justice” means a justice of the peace who is not a District Judge (Magistrates' Courts).

## **168 Sentencing Guidelines Council: supplementary provisions**

- (1) In relation to the Council, the Lord Chancellor may by order make provision—
- (a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members,
  - (b) enabling the appropriate Minister to remove a judicial member or non-judicial member from office on grounds of incapacity or misbehaviour, and
  - (c) as to the proceedings of the Council.
- (2) In subsection (1)(b) “the appropriate Minister” means—

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- (a) in relation to a judicial member, the Lord Chancellor, and
  - (b) in relation to a non-judicial member, the Secretary of State.
- (3) The validity of anything done by the Council is not affected by any vacancy among its members, by any defect in the appointment of a member or by any failure to comply with section 167(3), (6) or (7).
- (4) The Lord Chancellor may pay—
  - (a) to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as he may determine, and
  - (b) to any other judicial member or the Lord Chief Justice, such expenses as he may determine.
- (5) The Secretary of State may pay to any non-judicial member such remuneration or expenses as he may determine.

### **169 The Sentencing Advisory Panel**

- (1) There shall continue to be a Sentencing Advisory Panel (in this Chapter referred to as “the Panel”) constituted by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice.
- (2) The Lord Chancellor must, after consultation with the Secretary of State and the Lord Chief Justice, appoint one of the members of the Panel to be its chairman.
- (3) The Lord Chancellor may pay to any member of the Panel such remuneration or expenses as he may determine.

### **170 Guidelines relating to sentencing and allocation**

- (1) In this Chapter—
  - (a) “sentencing guidelines” means guidelines relating to the sentencing of offenders, which may be general in nature or limited to a particular category of offence or offender, and
  - (b) “allocation guidelines” means guidelines relating to decisions by a magistrates' court under section 19 of the Magistrates' Courts Act 1980 (c. 43) as to whether an offence is more suitable for summary trial or trial on indictment.
- (2) The Secretary of State may at any time propose to the Council—
  - (a) that sentencing guidelines be framed or revised by the Council—
    - (i) in respect of offences or offenders of a particular category, or
    - (ii) in respect of a particular matter affecting sentencing, or
  - (b) that allocation guidelines be framed or revised by the Council.
- (3) The Council may from time to time consider whether to frame sentencing guidelines or allocation guidelines and, if it receives—
  - (a) a proposal under section 171(2) from the Panel, or
  - (b) a proposal under subsection (2) from the Secretary of State,must consider whether to do so.
- (4) Where sentencing guidelines or allocation guidelines have been issued by the Council as definitive guidelines, the Council must from time to time (and, in particular, if it

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receives a proposal under section 171(2) from the Panel or under subsection (2) from the Secretary of State) consider whether to revise them.

- (5) Where the Council decides to frame or revise sentencing guidelines, the matters to which the Council must have regard include—
  - (a) the need to promote consistency in sentencing,
  - (b) the sentences imposed by courts in England and Wales for offences to which the guidelines relate,
  - (c) the cost of different sentences and their relative effectiveness in preventing re-offending,
  - (d) the need to promote public confidence in the criminal justice system, and
  - (e) the views communicated to the Council, in accordance with section 171(3)(b), by the Panel.
- (6) Where the Council decides to frame or revise allocation guidelines, the matters to which the Council must have regard include—
  - (a) the need to promote consistency in decisions under section 19 of the Magistrates' Courts Act 1980 (c. 43), and
  - (b) the views communicated to the Council, in accordance with section 171(3)(b), by the Panel.
- (7) Sentencing guidelines in respect of an offence or category of offences must include criteria for determining the seriousness of the offence or offences, including (where appropriate) criteria for determining the weight to be given to any previous convictions of offenders.
- (8) Where the Council has prepared or revised any sentencing guidelines or allocation guidelines, it must—
  - (a) publish them as draft guidelines, and
  - (b) consult about the draft guidelines—
    - (i) the Secretary of State,
    - (ii) such persons as the Lord Chancellor, after consultation with the Secretary of State, may direct, and
    - (iii) such other persons as the Council considers appropriate.
- (9) The Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines.

## **171 Functions of Sentencing Advisory Panel in relation to guidelines**

- (1) Where the Council decides to frame or revise any sentencing guidelines or allocation guidelines, otherwise than in response to a proposal from the Panel under subsection (2), the Council must notify the Panel.
- (2) The Panel may at any time propose to the Council—
  - (a) that sentencing guidelines be framed or revised by the Council—
    - (i) in respect of offences or offenders of a particular category, or
    - (ii) in respect of a particular matter affecting sentencing, or
  - (b) that allocation guidelines be framed or revised by the Council.
- (3) Where the Panel receives a notification under subsection (1) or makes a proposal under subsection (2), the Panel must—



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- (a) obtain and consider the views on the matters in issue of such persons or bodies as may be determined, after consultation with the Secretary of State and the Lord Chancellor, by the Council, and
  - (b) formulate its own views on those matters and communicate them to the Council.
- (4) Paragraph (a) of subsection (3) does not apply where the Council notifies the Panel of the Council's view that the urgency of the case makes it impracticable for the Panel to comply with that paragraph.

### **172 Duty of court to have regard to sentencing guidelines**

- (1) Every court must—
- (a) in sentencing an offender, have regard to any guidelines which are relevant to the offender's case, and
  - (b) in exercising any other function relating to the sentencing of offenders, have regard to any guidelines which are relevant to the exercise of the function.
- (2) In subsection (1) "guidelines" means sentencing guidelines issued by the Council under section 170(9) as definitive guidelines, as revised by subsequent guidelines so issued.

### **173 Annual report by Council**

- (1) The Council must as soon as practicable after the end of each financial year make to the Ministers a report on the exercise of the Council's functions during the year.
- (2) If section 167 comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which that section comes into force and ending with the end of the next financial year.
- (3) The Ministers must lay a copy of the report before each House of Parliament.
- (4) The Council must publish the report once the copy has been so laid.
- (5) In this section—
- "financial year" means a period of 12 months ending with 31st March;
  - "the Ministers" means the Secretary of State and the Lord Chancellor.

#### *Duty of court to explain sentence*

### **174 Duty to give reasons for, and explain effect of, sentence**

- (1) Subject to subsections (3) and (4), any court passing sentence on an offender—
- (a) must state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed, and
  - (b) must explain to the offender in ordinary language—
    - (i) the effect of the sentence,
    - (ii) where the offender is required to comply with any order of the court forming part of the sentence, the effects of non-compliance with the order,

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- (iii) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence, and
  - (iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.
- (2) In complying with subsection (1)(a), the court must—
- (a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind, or is outside that range, state the court’s reasons for deciding on a sentence of a different kind or outside that range,
  - (b) where the sentence is a custodial sentence and the duty in subsection (2) of section 152 is not excluded by subsection (1)(a) or (b) or (3) of that section, state that it is of the opinion referred to in section 152(2) and why it is of that opinion,
  - (c) where the sentence is a community sentence and the case does not fall within section 151(2), state that it is of the opinion that section 148(1) applies and why it is of that opinion,
  - (d) where as a result of taking into account any matter referred to in section 144(1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact, and
  - (e) in any case, mention any aggravating or mitigating factors which the court has regarded as being of particular importance.
- (3) Subsection (1)(a) does not apply—
- (a) to an offence the sentence for which is fixed by law (provision relating to sentencing for such an offence being made by section 270), or
  - (b) to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) or under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences).
- (4) The Secretary of State may by order—
- (a) prescribe cases in which subsection (1)(a) or (b) does not apply, and
  - (b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.
- (5) Where a magistrates' court passes a custodial sentence, it must cause any reason stated by virtue of subsection (2)(b) to be specified in the warrant of commitment and entered on the register.
- (6) In this section—
- “guidelines” has the same meaning as in section 172;
  - “the register” has the meaning given by section 163 of the Sentencing Act.

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### *Publication of information by Secretary of State*

#### **175 Duty to publish information about sentencing**

In section 95 of the Criminal Justice Act 1991 (c. 53) (information for financial and other purposes) in subsection (1) before the “or” at the end of paragraph (a) there is inserted—

- “(aa) enabling such persons to become aware of the relative effectiveness of different sentences—
- (i) in preventing re-offending, and
  - (ii) in promoting public confidence in the criminal justice system;”.

### *Interpretation of Chapter*

#### **176 Interpretation of Chapter 1**

In this Chapter—

- “allocation guidelines” has the meaning given by section 170(1)(b);
- “the Council” means the Sentencing Guidelines Council;
- “the Panel” means the Sentencing Advisory Panel;
- “sentence” and “sentencing” are to be read in accordance with section 142(3);
- “sentencing guidelines” has the meaning given by section 170(1)(a);
- “youth community order” has the meaning given by section 147(2).

## **CHAPTER 2**

### **COMMUNITY ORDERS: OFFENDERS AGED 16 OR OVER**

#### **177 Community orders**

- (1) Where a person aged 16 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a “community order”) imposing on him any one or more of the following requirements—
- (a) an unpaid work requirement (as defined by section 199),
  - (b) an activity requirement (as defined by section 201),
  - (c) a programme requirement (as defined by section 202),
  - (d) a prohibited activity requirement (as defined by section 203),
  - (e) a curfew requirement (as defined by section 204),
  - (f) an exclusion requirement (as defined by section 205),
  - (g) a residence requirement (as defined by section 206),
  - (h) a mental health treatment requirement (as defined by section 207),
  - (i) a drug rehabilitation requirement (as defined by section 209),
  - (j) an alcohol treatment requirement (as defined by section 212),
  - (k) a supervision requirement (as defined by section 213), and

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- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- (2) Subsection (1) has effect subject to sections 150 and 218 and to the following provisions of Chapter 4 relating to particular requirements—
  - (a) section 199(3) (unpaid work requirement),
  - (b) section 201(3) and (4) (activity requirement),
  - (c) section 202(4) and (5) (programme requirement),
  - (d) section 203(2) (prohibited activity requirement),
  - (e) section 207(3) (mental health treatment requirement),
  - (f) section 209(2) (drug rehabilitation requirement), and
  - (g) section 212(2) and (3) (alcohol treatment requirement).
- (3) Where the court makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement (as defined by section 215) unless—
  - (a) it is prevented from doing so by section 215(2) or 218(4), or
  - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a community order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented from doing so by section 215(2) or 218(4).
- (5) A community order must specify a date, not more than three years after the date of the order, by which all the requirements in it must have been complied with; and a community order which imposes two or more different requirements falling within subsection (1) may also specify an earlier date or dates in relation to compliance with any one or more of them.
- (6) Before making a community order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

## **178 Power to provide for court review of community orders**

- (1) The Secretary of State may by order—
  - (a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,
  - (b) enable a court to amend a community order so as to include or remove a provision for review by a court, and
  - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- (2) An order under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 191 and 192 in relation to suspended sentence orders.
- (3) An order under this section may repeal or amend any provision of this Part.

**179 Breach, revocation or amendment of community order**

Schedule 8 (which relates to failures to comply with the requirements of community orders and to the revocation or amendment of such orders) shall have effect.

**180 Transfer of community orders to Scotland or Northern Ireland**

Schedule 9 (transfer of community orders to Scotland or Northern Ireland) shall have effect.

**CHAPTER 3**

PRISON SENTENCES OF LESS THAN 12 MONTHS

*Prison sentences of less than twelve months*

**181 Prison sentences of less than 12 months**

- (1) Any power of a court to impose a sentence of imprisonment for a term of less than 12 months on an offender may be exercised only in accordance with the following provisions of this section unless the court makes an intermittent custody order (as defined by section 183).
- (2) The term of the sentence—
  - (a) must be expressed in weeks,
  - (b) must be at least 28 weeks,
  - (c) must not be more than 51 weeks in respect of any one offence, and
  - (d) must not exceed the maximum term permitted for the offence.
- (3) The court, when passing sentence, must—
  - (a) specify a period (in this Chapter referred to as “the custodial period”) at the end of which the offender is to be released on a licence, and
  - (b) by order require the licence to be granted subject to conditions requiring the offender’s compliance during the remainder of the term (in this Chapter referred to as “the licence period”) or any part of it with one or more requirements falling within section 182(1) and specified in the order.
- (4) In this Part “custody plus order” means an order under subsection (3)(b).
- (5) The custodial period—
  - (a) must be at least 2 weeks, and
  - (b) in respect of any one offence, must not be more than 13 weeks.
- (6) In determining the term of the sentence and the length of the custodial period, the court must ensure that the licence period is at least 26 weeks in length.
- (7) Where a court imposes two or more terms of imprisonment in accordance with this section to be served consecutively—
  - (a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and
  - (b) the aggregate length of the custodial periods must not be more than 26 weeks.

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- (8) A custody plus order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such part of the licence period as is specified in the order.
- (9) Subsection (3)(b) does not apply where the sentence is a suspended sentence.

## **182 Licence conditions**

- (1) The requirements falling within this subsection are—
  - (a) an unpaid work requirement (as defined by section 199),
  - (b) an activity requirement (as defined by section 201),
  - (c) a programme requirement (as defined by section 202),
  - (d) a prohibited activity requirement (as defined by section 203),
  - (e) a curfew requirement (as defined by section 204),
  - (f) an exclusion requirement (as defined by section 205),
  - (g) a supervision requirement (as defined by section 213), and
  - (h) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- (2) The power under section 181(3)(b) to determine the conditions of the licence has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—
  - (a) section 199(3) (unpaid work requirement),
  - (b) section 201(3) and (4) (activity requirement),
  - (c) section 202(4) and (5) (programme requirement), and
  - (d) section 203(2) (prohibited activity requirement).
- (3) Where the court makes a custody plus order requiring a licence to contain a curfew requirement or an exclusion requirement, the court must also require the licence to contain an electronic monitoring requirement (as defined by section 215) unless—
  - (a) the court is prevented from doing so by section 215(2) or 218(4), or
  - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a custody plus order requiring a licence to contain an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a supervision requirement or an attendance centre requirement, the court may also require the licence to contain an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).
- (5) Before making a custody plus order requiring a licence to contain two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

### *Intermittent custody*

## **183 Intermittent custody**

- (1) A court may, when passing a sentence of imprisonment for a term complying with subsection (4)—

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- (a) specify the number of days that the offender must serve in prison under the sentence before being released on licence for the remainder of the term, and
  - (b) by order—
    - (i) specify periods during which the offender is to be released temporarily on licence before he has served that number of days in prison, and
    - (ii) require any licence to be granted subject to conditions requiring the offender’s compliance during the licence periods with one or more requirements falling within section 182(1) and specified in the order.
- (2) In this Part “intermittent custody order” means an order under subsection (1)(b).
- (3) In this Chapter—  
“licence period”, in relation to a term of imprisonment to which an intermittent custody order relates, means any period during which the offender is released on licence by virtue of subsection (1)(a) or (b)(i);  
“the number of custodial days”, in relation to a term of imprisonment to which an intermittent custody order relates, means the number of days specified under subsection (1)(a).
- (4) The term of the sentence—
  - (a) must be expressed in weeks,
  - (b) must be at least 28 weeks,
  - (c) must not be more than 51 weeks in respect of any one offence, and
  - (d) must not exceed the maximum term permitted for the offence.
- (5) The number of custodial days—
  - (a) must be at least 14, and
  - (b) in respect of any one offence, must not be more than 90.
- (6) A court may not exercise its powers under subsection (1) unless the offender has expressed his willingness to serve the custodial part of the proposed sentence intermittently, during the parts of the sentence that are not to be licence periods.
- (7) Where a court exercises its powers under subsection (1) in respect of two or more terms of imprisonment that are to be served consecutively—
  - (a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and
  - (b) the aggregate of the numbers of custodial days must not be more than 180.
- (8) The Secretary of State may by order require a court, in specifying licence periods under subsection (1)(b)(i), to specify only—
  - (a) periods of a prescribed duration,
  - (b) periods beginning or ending at prescribed times, or
  - (c) periods including, or not including, specified parts of the week.
- (9) An intermittent custody order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such licence period or periods, or part of a licence period, as is specified in the order.

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#### **184 Restrictions on power to make intermittent custody order**

- (1) A court may not make an intermittent custody order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the intermittent custody order and the notice has not been withdrawn.
- (2) The court may not make an intermittent custody order in respect of any offender unless—
  - (a) it has consulted an officer of a local probation board,
  - (b) it has received from the Secretary of State notification that suitable prison accommodation is available for the offender during the custodial periods, and
  - (c) it appears to the court that the offender will have suitable accommodation available to him during the licence periods.
- (3) In this section “custodial period”, in relation to a sentence to which an intermittent custody order relates, means any part of the sentence that is not a licence period.

#### **185 Intermittent custody: licence conditions**

- (1) Section 183(1)(b) has effect subject to section 218 and to the following provisions of Chapter 4 limiting the power to require the licence to contain particular requirements—
  - (a) section 199(3) (unpaid work requirement),
  - (b) section 201(3) and (4) (activity requirement),
  - (c) section 202(4) and (5) (programme requirement), and
  - (d) section 203(2) (prohibited activity requirement).
- (2) Subsections (3) to (5) of section 182 have effect in relation to an intermittent custody order as they have effect in relation to a custody plus order.

#### **186 Further provisions relating to intermittent custody**

- (1) Section 21 of the 1952 Act (expenses of conveyance to prison) does not apply in relation to the conveyance to prison at the end of any licence period of an offender to whom an intermittent custody order relates.
- (2) The Secretary of State may pay to any offender to whom an intermittent custody order relates the whole or part of any expenses incurred by the offender in travelling to and from prison during licence periods.
- (3) In section 49 of the 1952 Act (persons unlawfully at large) after subsection (4) there is inserted—

“(4A) For the purposes of this section a person shall also be deemed to be unlawfully at large if, having been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003, he remains at large at a time when, by reason of the expiry of the period for which he was temporarily released, he is liable to be detained in pursuance of his sentence.”
- (4) In section 23 of the Criminal Justice Act 1961 (c. 39) (prison rules), in subsection (3) for “The days” there is substituted “Subject to subsection (3A), the days” and after subsection (3) there is inserted—



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“(3A) In relation to a prisoner to whom an intermittent custody order under section 183 of the Criminal Justice Act 2003 relates, the only days to which subsection (3) applies are Christmas Day, Good Friday and any day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales.”

(5) In section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16) (remaining at large after temporary release) after subsection (1) there is inserted—

“(1A) A person who has been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003 is guilty of an offence if, without reasonable excuse, he remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released.”

(6) In this section “the 1952 Act” means the Prison Act 1952 (c. 52).

*Further provision about custody plus orders and intermittent custody orders*

**187 Revocation or amendment of order**

Schedule 10 (which contains provisions relating to the revocation or amendment of custody plus orders and the amendment of intermittent custody orders) shall have effect.

**188 Transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland**

Schedule 11 (transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland) shall have effect.

*Suspended sentences*

**189 Suspended sentences of imprisonment**

(1) A court which passes a sentence of imprisonment for a term of at least 28 weeks but not more than 51 weeks in accordance with section 181 may—

- (a) order the offender to comply during a period specified for the purposes of this paragraph in the order (in this Chapter referred to as “the supervision period”) with one or more requirements falling within section 190(1) and specified in the order, and
- (b) order that the sentence of imprisonment is not to take effect unless either—
  - (i) during the supervision period the offender fails to comply with a requirement imposed under paragraph (a), or
  - (ii) during a period specified in the order for the purposes of this subparagraph (in this Chapter referred to as “the operational period”) the offender commits in the United Kingdom another offence (whether or not punishable with imprisonment),

and (in either case) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.

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- (2) Where two or more sentences imposed on the same occasion are to be served consecutively, the power conferred by subsection (1) is not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 65 weeks.
- (3) The supervision period and the operational period must each be a period of not less than six months and not more than two years beginning with the date of the order.
- (4) The supervision period must not end later than the operational period.
- (5) A court which passes a suspended sentence on any person for an offence may 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.
- (6) Subject to any provision to the contrary contained in the Criminal Justice Act 1967 (c. 80), the Sentencing Act or any other enactment passed or instrument made under any enactment after 31st December 1967, a suspended sentence which has not taken effect under paragraph 8 of Schedule 12 is to be treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments.
- (7) In this Part—
  - (a) “suspended sentence order” means an order under subsection (1),
  - (b) “suspended sentence” means a sentence to which a suspended sentence order relates, and
  - (c) “community requirement”, in relation to a suspended sentence order, means a requirement imposed under subsection (1)(a).

## **190 Imposition of requirements by suspended sentence order**

- (1) The requirements falling within this subsection are—
  - (a) an unpaid work requirement (as defined by section 199),
  - (b) an activity requirement (as defined by section 201),
  - (c) a programme requirement (as defined by section 202),
  - (d) a prohibited activity requirement (as defined by section 203),
  - (e) a curfew requirement (as defined by section 204),
  - (f) an exclusion requirement (as defined by section 205),
  - (g) a residence requirement (as defined by section 206),
  - (h) a mental health treatment requirement (as defined by section 207),
  - (i) a drug rehabilitation requirement (as defined by section 209),
  - (j) an alcohol treatment requirement (as defined by section 212),
  - (k) a supervision requirement (as defined by section 213), and
  - (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- (2) Section 189(1)(a) has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—
  - (a) section 199(3) (unpaid work requirement),
  - (b) section 201(3) and (4) (activity requirement),
  - (c) section 202(4) and (5) (programme requirement),
  - (d) section 203(2) (prohibited activity requirement),

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- (e) section 207(3) (mental health treatment requirement),
  - (f) section 209(2) (drug rehabilitation requirement), and
  - (g) section 212(2) and (3) (alcohol treatment requirement).
- (3) Where the court makes a suspended sentence order imposing a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined by section 215) unless—
- (a) the court is prevented from doing so by section 215(2) or 218(4), or
  - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a suspended sentence order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).
- (5) Before making a suspended sentence order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

## **191 Power to provide for review of suspended sentence order**

- (1) A suspended sentence order may—
- (a) provide for the order to be reviewed periodically at specified intervals,
  - (b) provide for each review to be made, subject to section 192(4), at a hearing held for the purpose by the court responsible for the order (a “review hearing”),
  - (c) require the offender to attend each review hearing, and
  - (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report on the offender’s progress in complying with the community requirements of the order.
- (2) Subsection (1) does not apply in the case of an order imposing a drug rehabilitation requirement (provision for such a requirement to be subject to review being made by section 210).
- (3) In this section references to the court responsible for a suspended sentence order are references—
- (a) where a court is specified in the order in accordance with subsection (4), to that court;
  - (b) in any other case, to the court by which the order is made.
- (4) Where the area specified in a suspended sentence order made by a magistrates' court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purpose of subsection (3) a magistrates' court which acts for the area specified in the order.
- (5) Where a suspended sentence order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken for the purposes of subsection (3)(b) to have been made by the Crown Court.

## **192 Periodic reviews of suspended sentence order**

- (1) At a review hearing (within the meaning of subsection (1) of section 191) the court may, after considering the responsible officer's report referred to in that subsection, amend the community requirements of the suspended sentence order, or any provision of the order which relates to those requirements.
- (2) The court—
  - (a) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses his willingness to comply with that requirement,
  - (b) may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended,
  - (c) may amend the supervision period only if the period as amended complies with section 189(3) and (4),
  - (d) may not amend the operational period of the suspended sentence, and
  - (e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.
- (3) For the purposes of subsection (2)(a)—
  - (a) a community requirement falling within any paragraph of section 190(1) is of the same kind as any other community requirement falling within that paragraph, and
  - (b) an electronic monitoring requirement is a community requirement of the same kind as any requirement falling within section 190(1) to which it relates.
- (4) If before a review hearing is held at any review the court, after considering the responsible officer's report, is of the opinion that the offender's progress in complying with the community requirements of the order is satisfactory, it may order that no review hearing is to be held at that review; and if before a review hearing is held at any review, or at a review hearing, the court, after considering that report, is of that opinion, it may amend the suspended sentence order so as to provide for each subsequent review to be held without a hearing.
- (5) If at a review held without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.
- (6) If at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the community requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 8 of Schedule 12.
- (7) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 191(1).
- (8) In this section any reference to the court, in relation to a review without a hearing, is to be read—
  - (a) in the case of the Crown Court, as a reference to a judge of the court, and
  - (b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

**193 Breach, revocation or amendment of suspended sentence order, and effect of further conviction**

Schedule 12 (which relates to the breach, revocation or amendment of the community requirements of suspended sentence orders, and to the effect of any further conviction) shall have effect.

**194 Transfer of suspended sentence orders to Scotland or Northern Ireland**

Schedule 13 (transfer of suspended sentence orders to Scotland or Northern Ireland) shall have effect.

*Interpretation of Chapter*

**195 Interpretation of Chapter 3**

In this Chapter—

“custodial period”, in relation to a term of imprisonment imposed in accordance with section 181, has the meaning given by subsection (3)(a) of that section;

“licence period”—

(a) in relation to a term of imprisonment imposed in accordance with section 181, has the meaning given by subsection (3)(b) of that section, and

(b) in relation to a term of imprisonment to which an intermittent custody order relates, has the meaning given by section 183(3);

“the number of custodial days”, in relation to a term of imprisonment to which an intermittent custody order relates, has the meaning given by section 183(3);

“operational period” and “supervision period”, in relation to a suspended sentence, are to be read in accordance with section 189(1);

“sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

**CHAPTER 4**

FURTHER PROVISIONS ABOUT ORDERS UNDER CHAPTERS 2 AND 3

*Introductory*

**196 Meaning of “relevant order”**

(1) In this Chapter “relevant order” means—

- (a) a community order,
- (b) a custody plus order,
- (c) a suspended sentence order, or
- (d) an intermittent custody order.

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- (2) In this Chapter any reference to a requirement being imposed by, or included in, a relevant order is, in relation to a custody plus order or an intermittent custody order, a reference to compliance with the requirement being required by the order to be a condition of a licence.

### **197 Meaning of “the responsible officer”**

- (1) For the purposes of this Part, “the responsible officer”, in relation to an offender to whom a relevant order relates, means—
- (a) in a case where the order—
    - (i) imposes a curfew requirement or an exclusion requirement but no other requirement mentioned in section 177(1) or, as the case requires, section 182(1) or 190(1), and
    - (ii) imposes an electronic monitoring requirement,
 

the person who under section 215(3) is responsible for the electronic monitoring required by the order;
  - (b) in a case where the offender is aged 18 or over and the only requirement imposed by the order is an attendance centre requirement, the officer in charge of the attendance centre in question;
  - (c) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Part on the responsible officer.
- (2) The following are qualifying officers for the purposes of subsection (1)(c) —
- (a) in a case where the offender is aged under 18 at the time when the relevant order is made, an officer of a local probation board appointed for or assigned to the petty sessions area for the time being specified in the order or a member of a youth offending team established by a local authority for the time being specified in the order;
  - (b) in any other case, an officer of a local probation board appointed for or assigned to the petty sessions area for the time being specified in the order.
- (3) The Secretary of State may by order—
- (a) amend subsections (1) and (2), and
  - (b) make any other amendments of this Part that appear to him to be necessary or expedient in consequence of any amendment made by virtue of paragraph (a).
- (4) An order under subsection (3) may, in particular, provide for the court to determine which of two or more descriptions of “responsible officer” is to apply in relation to any relevant order.

### **198 Duties of responsible officer**

- (1) Where a relevant order has effect, it is the duty of the responsible officer—
- (a) to make any arrangements that are necessary in connection with the requirements imposed by the order,
  - (b) to promote the offender’s compliance with those requirements, and
  - (c) where appropriate, to take steps to enforce those requirements.
- (2) In this section “responsible officer” does not include a person falling within section 197(1)(a).

*Requirements available in case of all offenders*

**199 Unpaid work requirement**

- (1) In this Part “unpaid work requirement”, in relation to a relevant order, means a requirement that the offender must perform unpaid work in accordance with section 200.
- (2) The number of hours which a person may be required to work under an unpaid work requirement must be specified in the relevant order and must be in the aggregate—
  - (a) not less than 40, and
  - (b) not more than 300.
- (3) A court may not impose an unpaid work requirement in respect of an offender unless after hearing (if the courts thinks necessary) an appropriate officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement.
- (4) In subsection (3) “an appropriate officer” means—
  - (a) in the case of an offender aged 18 or over, an officer of a local probation board, and
  - (b) in the case of an offender aged under 18, an officer of a local probation board, a social worker of a local authority social services department or a member of a youth offending team.
- (5) Where the court makes relevant orders in respect of two or more offences of which the offender has been convicted on the same occasion and includes unpaid work requirements in each of them, the court may direct that the hours of work specified in any of those requirements is to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent does not exceed the maximum specified in subsection (2)(b).

**200 Obligations of person subject to unpaid work requirement**

- (1) An offender in respect of whom an unpaid work requirement of a relevant order is in force must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer.
- (2) Subject to paragraph 20 of Schedule 8 and paragraph 18 of Schedule 12 (power to extend order), the work required to be performed under an unpaid work requirement of a community order or a suspended sentence order must be performed during a period of twelve months.
- (3) Unless revoked, a community order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.
- (4) Where an unpaid work requirement is imposed by a suspended sentence order, the supervision period as defined by section 189(1)(a) continues until the offender has worked under the order for the number of hours specified in the order, but does not continue beyond the end of the operational period as defined by section 189(1)(b)(ii).

**201 Activity requirement**

- (1) In this Part “activity requirement”, in relation to a relevant order, means a requirement that the offender must do either or both of the following—

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- (a) present himself to a person or persons specified in the relevant order at a place or places so specified on such number of days as may be so specified;
  - (b) participate in activities specified in the order on such number of days as may be so specified.
- (2) The specified activities may consist of or include activities whose purpose is that of reparation, such as activities involving contact between offenders and persons affected by their offences.
- (3) A court may not include an activity requirement in a relevant order unless—
  - (a) it has consulted—
    - (i) in the case of an offender aged 18 or over, an officer of a local probation board,
    - (ii) in the case of an offender aged under 18, either an officer of a local probation board or a member of a youth offending team, and
  - (b) it is satisfied that it is feasible to secure compliance with the requirement.
- (4) A court may not include an activity requirement in a relevant order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender’s responsible officer, unless that other person consents to its inclusion.
- (5) The aggregate of the number of days specified under subsection (1)(a) and (b) must not exceed 60.
- (6) A requirement such as is mentioned in subsection (1)(a) operates to require the offender—
  - (a) in accordance with instructions given by his responsible officer, to present himself at a place or places on the number of days specified in the order, and
  - (b) while at any place, to comply with instructions given by, or under the authority of, the person in charge of that place.
- (7) A place specified under subsection (1)(a) must be—
  - (a) a community rehabilitation centre, or
  - (b) a place that has been approved by the local probation board for the area in which the premises are situated as providing facilities suitable for persons subject to activity requirements.
- (8) Where the place specified under subsection (1)(a) is a community rehabilitation centre, the reference in subsection (6)(a) to the offender presenting himself at the specified place includes a reference to him presenting himself elsewhere than at the centre for the purpose of participating in activities in accordance with instructions given by, or under the authority of, the person in charge of the centre.
- (9) A requirement to participate in activities operates to require the offender—
  - (a) in accordance with instructions given by his responsible officer, to participate in activities on the number of days specified in the order, and
  - (b) while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities.
- (10) In this section “community rehabilitation centre” means premises—
  - (a) at which non-residential facilities are provided for use in connection with the rehabilitation of offenders, and



- (b) which are for the time being approved by the Secretary of State as providing facilities suitable for persons subject to relevant orders.

## **202 Programme requirement**

- (1) In this Part “programme requirement”, in relation to a relevant order, means a requirement that the offender must participate in an accredited programme specified in the order at a place so specified on such number of days as may be so specified.
- (2) In this Part “accredited programme” means a programme that is for the time being accredited by the accreditation body.
- (3) In this section—
  - (a) “programme” means a systematic set of activities, and
  - (b) “the accreditation body” means such body as the Secretary of State may designate for the purposes of this section by order.
- (4) A court may not include a programme requirement in a relevant order unless—
  - (a) the accredited programme which the court proposes to specify in the order has been recommended to the court as being suitable for the offender—
    - (i) in the case of an offender aged 18 or over, by an officer of a local probation board, or
    - (ii) in the case of an offender aged under 18, either by an officer of a local probation board or by a member of a youth offending team, and
  - (b) the court is satisfied that the programme is (or, where the relevant order is a custody plus order or an intermittent custody order, will be) available at the place proposed to be specified.
- (5) A court may not include a programme requirement in a relevant order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender’s responsible officer, unless that other person consents to its inclusion.
- (6) A requirement to attend an accredited programme operates to require the offender—
  - (a) in accordance with instructions given by the responsible officer, to participate in the accredited programme at the place specified in the order on the number of days specified in the order, and
  - (b) while at that place, to comply with instructions given by, or under the authority of, the person in charge of the programme.
- (7) A place specified in an order must be a place that has been approved by the local probation board for the area in which the premises are situated as providing facilities suitable for persons subject to programme requirements.

## **203 Prohibited activity requirement**

- (1) In this Part “prohibited activity requirement”, in relation to a relevant order, means a requirement that the offender must refrain from participating in activities specified in the order—
  - (a) on a day or days so specified, or
  - (b) during a period so specified.

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- (2) A court may not include a prohibited activity requirement in a relevant order unless it has consulted—
  - (a) in the case of an offender aged 18 or over, an officer of a local probation board;
  - (b) in the case of an offender aged under 18, either an officer of a local probation board or a member of a youth offending team.
- (3) The requirements that may by virtue of this section be included in a relevant order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27).

#### **204 Curfew requirement**

- (1) In this Part “curfew requirement”, in relation to a relevant order, means a requirement that the offender must remain, for periods specified in the relevant order, at a place so specified.
- (2) A relevant order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than twelve hours in any day.
- (3) A community order or suspended sentence order which imposes a curfew requirement may not specify periods which fall outside the period of six months beginning with the day on which it is made.
- (4) A custody plus order which imposes a curfew requirement may not specify a period which falls outside the period of six months beginning with the first day of the licence period as defined by section 181(3)(b).
- (5) An intermittent custody order which imposes a curfew requirement must not specify a period if to do so would cause the aggregate number of days on which the offender is subject to the requirement for any part of the day to exceed 182.
- (6) Before making a relevant order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

#### **205 Exclusion requirement**

- (1) In this Part “exclusion requirement”, in relation to a relevant order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified.
- (2) Where the relevant order is a community order, the period specified must not be more than two years.
- (3) An exclusion requirement—
  - (a) may provide for the prohibition to operate only during the periods specified in the order, and
  - (b) may specify different places for different periods or days.
- (4) In this section “place” includes an area.

## **206 Residence requirement**

- (1) In this Part, “residence requirement”, in relation to a community order or a suspended sentence order, means a requirement that, during a period specified in the relevant order, the offender must reside at a place specified in the order.
- (2) If the order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.
- (3) Before making a community order or suspended sentence order containing a residence requirement, the court must consider the home surroundings of the offender.
- (4) A court may not specify a hostel or other institution as the place where an offender must reside, except on the recommendation of an officer of a local probation board.

## **207 Mental health treatment requirement**

- (1) In this Part, “mental health treatment requirement”, in relation to a community order or suspended sentence order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition.
- (2) The treatment required must be such one of the following kinds of treatment as may be specified in the relevant order—
  - (a) treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 (c. 14) or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;
  - (b) treatment as a non-resident patient at such institution or place as may be specified in the order;
  - (c) treatment by or under the direction of such registered medical practitioner or chartered psychologist (or both) as may be so specified;but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a), (b) or (c).
- (3) A court may not by virtue of this section include a mental health treatment requirement in a relevant order unless—
  - (a) the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983, that the mental condition of the offender—
    - (i) is such as requires and may be susceptible to treatment, but
    - (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of that Act;
  - (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient); and
  - (c) the offender has expressed his willingness to comply with such a requirement.

- (4) While the offender is under treatment as a resident patient in pursuance of a mental health requirement of a relevant order, his responsible officer shall carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.
- (5) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 (c. 20) have effect with respect to proof for the purposes of subsection (3)(a) of an offender's mental condition as they have effect with respect to proof of an offender's mental condition for the purposes of section 37(2)(a) of that Act.
- (6) In this section and section 208, "chartered psychologist" means a person for the time being listed in the British Psychological Society's Register of Chartered Psychologists.

## **208 Mental health treatment at place other than that specified in order**

- (1) Where the medical practitioner or chartered psychologist by whom or under whose direction an offender is being treated for his mental condition in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—
  - (a) is not specified in the relevant order, and
  - (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or chartered psychologist,
 he may, with the consent of the offender, make arrangements for him to be treated accordingly.
- (2) Such arrangements as are mentioned in subsection (1) may provide for the offender to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the relevant order.
- (3) Where any such arrangements as are mentioned in subsection (1) are made for the treatment of an offender—
  - (a) the medical practitioner or chartered psychologist by whom the arrangements are made shall give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out; and
  - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the relevant order.

## **209 Drug rehabilitation requirement**

- (1) In this Part "drug rehabilitation requirement", in relation to a community order or suspended sentence order, means a requirement that during a period specified in the order ("the treatment and testing period") the offender—
  - (a) must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs, and
  - (b) for the purpose of ascertaining whether he has any drug in his body during that period, must provide samples of such description as may be so determined, at such times or in such circumstances as may (subject to the provisions of the

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order) be determined by the responsible officer or by the person specified as the person by or under whose direction the treatment is to be provided.

- (2) A court may not impose a drug rehabilitation requirement unless—
- (a) it is satisfied—
    - (i) that the offender is dependent on, or has a propensity to misuse, drugs, and
    - (ii) that his dependency or propensity is such as requires and may be susceptible to treatment,
  - (b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident),
  - (c) the requirement has been recommended to the court as being suitable for the offender—
    - (i) in the case of an offender aged 18 or over, by an officer of a local probation board, or
    - (ii) in the case of an offender aged under 18, either by an officer of a local probation board or by a member of a youth offending team, and
  - (d) the offender expresses his willingness to comply with the requirement.
- (3) The treatment and testing period must be at least six months.
- (4) The required treatment for any particular period must be—
- (a) treatment as a resident in such institution or place as may be specified in the order, or
  - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;
- but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a) or (b) above.
- (5) The function of making a determination as to the provision of samples under provision included in the community order or suspended sentence order by virtue of subsection (1)(b) is to be exercised in accordance with guidance given from time to time by the Secretary of State.
- (6) A community order or suspended sentence order imposing a drug rehabilitation requirement must provide that the results of tests carried out on any samples provided by the offender in pursuance of the requirement to a person other than the responsible officer are to be communicated to the responsible officer.
- (7) In this section “drug” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

## **210 Drug rehabilitation requirement: provision for review by court**

- (1) A community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months) —
- (a) provide for the requirement to be reviewed periodically at intervals of not less than one month,

- (b) provide for each review of the requirement to be made, subject to section 211(6), at a hearing held for the purpose by the court responsible for the order (a “review hearing”),
  - (c) require the offender to attend each review hearing,
  - (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender’s progress under the requirement, and
  - (e) provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender.
- (2) In this section references to the court responsible for a community order or suspended sentence order imposing a drug rehabilitation requirement are references—
- (a) where a court is specified in the order in accordance with subsection (3), to that court;
  - (b) in any other case, to the court by which the order is made.
- (3) Where the area specified in a community order or suspended sentence order which is made by a magistrates' court and imposes a drug rehabilitation requirement is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purposes of subsection (2) a magistrates' court which acts for the area specified in the order.
- (4) Where a community order or suspended sentence order imposing a drug rehabilitation requirement has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, for the purposes of subsection (2)(b) it shall be taken to have been made by the Crown Court.

## **211 Periodic review of drug rehabilitation requirement**

- (1) At a review hearing (within the meaning given by subsection (1) of section 210) the court may, after considering the responsible officer’s report referred to in that subsection, amend the community order or suspended sentence order, so far as it relates to the drug rehabilitation requirement.
- (2) The court—
- (a) may not amend the drug rehabilitation requirement unless the offender expresses his willingness to comply with the requirement as amended,
  - (b) may not amend any provision of the order so as to reduce the period for which the drug rehabilitation requirement has effect below the minimum specified in section 209(3), and
  - (c) except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending.
- (3) If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may—
- (a) revoke the community order, or the suspended sentence order and the suspended sentence to which it relates, and
  - (b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- (4) In dealing with the offender under subsection (3)(b), the court—

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- (a) shall take into account the extent to which the offender has complied with the requirements of the order, and
  - (b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).
- (5) Where the order is a community order made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under subsection (3)(b) in respect of the offender after he attains the age of 18 are powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
  - (b) to deal with the offender for that offence in any way in which the court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding twelve months.
- (6) If at a review hearing (as defined by section 210(1)(b)) the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.
- (7) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.
- (8) At that hearing the court, after considering that report, may—
- (a) exercise the powers conferred by this section as if the hearing were a review hearing, and
  - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.
- (9) In this section any reference to the court, in relation to a review without a hearing, is to be read—
- (a) in the case of the Crown Court, as a reference to a judge of the court;
  - (b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

## **212 Alcohol treatment requirement**

- (1) In this Part “alcohol treatment requirement”, in relation to a community order or suspended sentence order, means a requirement that the offender must submit during a period specified in the order to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol.
- (2) A court may not impose an alcohol treatment requirement in respect of an offender unless it is satisfied—
- (a) that he is dependent on alcohol,
  - (b) that his dependency is such as requires and may be susceptible to treatment, and

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- (c) that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).
- (3) A court may not impose an alcohol treatment requirement unless the offender expresses his willingness to comply with its requirements.
  - (4) The period for which the alcohol treatment requirement has effect must be not less than six months.
  - (5) The treatment required by an alcohol treatment requirement for any particular period must be—
    - (a) treatment as a resident in such institution or place as may be specified in the order,
    - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified, or
    - (c) treatment by or under the direction of such person having the necessary qualification or experience as may be so specified;
 but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c) above.

### **213 Supervision requirement**

- (1) In this Part “supervision requirement”, in relation to a relevant order, means a requirement that, during the relevant period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the officer.
- (2) The purpose for which a supervision requirement may be imposed is that of promoting the offender’s rehabilitation.
- (3) In subsection (1) “the relevant period” means—
  - (a) in relation to a community order, the period for which the community order remains in force,
  - (b) in relation to a custody plus order, the licence period as defined by section 181(3)(b),
  - (c) in relation to an intermittent custody order, the licence periods as defined by section 183(3), and
  - (d) in relation to a suspended sentence order, the supervision period as defined by section 189(1)(a).

*Requirements available only in case of offenders aged under 25*

### **214 Attendance centre requirement**

- (1) In this Part “attendance centre requirement”, in relation to a relevant order, means a requirement that the offender must attend at an attendance centre specified in the relevant order for such number of hours as may be so specified.
- (2) The aggregate number of hours for which the offender may be required to attend at an attendance centre must not be less than 12 or more than 36.



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- (3) The court may not impose an attendance centre requirement unless the court is satisfied that the attendance centre to be specified in it is reasonably accessible to the offender concerned, having regard to the means of access available to him and any other circumstances.
- (4) The first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.
- (5) The subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances.
- (6) An offender may not be required under this section to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.

### *Electronic monitoring*

## **215 Electronic monitoring requirement**

- (1) In this Part “electronic monitoring requirement”, in relation to a relevant order, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period specified in the order, or determined by the responsible officer in accordance with the relevant order.
- (2) Where—
  - (a) it is proposed to include in a relevant order a requirement for securing electronic monitoring in accordance with this section, but
  - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,the requirement may not be included in the order without that person's consent.
- (3) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State.
- (4) Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify—
  - (a) the offender,
  - (b) the person responsible for the monitoring, and
  - (c) any person falling within subsection (2)(b),of the time when the period is to begin.

### *Provisions applying to relevant orders generally*

## **216 Petty sessions area to be specified in relevant order**

- (1) A community order or suspended sentence order must specify the petty sessions area in which the offender resides or will reside.
- (2) A custody plus order or an intermittent custody order must specify the petty sessions area in which the offender will reside—

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- (a) in the case of a custody plus order, during the licence period as defined by section 181(3)(b), or
- (b) in the case of an intermittent custody order, during the licence periods as defined by section 183(3).

### **217 Requirement to avoid conflict with religious beliefs, etc**

- (1) The court must ensure, as far as practicable, that any requirement imposed by a relevant order is such as to avoid—
  - (a) any conflict with the offender’s religious beliefs or with the requirements of any other relevant order to which he may be subject; and
  - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.
- (2) The responsible officer in relation to an offender to whom a relevant order relates must ensure, as far as practicable, that any instruction given or requirement imposed by him in pursuance of the order is such as to avoid the conflict or interference mentioned in subsection (1).
- (3) The Secretary of State may by order provide that subsection (1) or (2) is to have effect with such additional restrictions as may be specified in the order.

### **218 Availability of arrangements in local area**

- (1) A court may not include an unpaid work requirement in a relevant order unless the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the petty sessions area in which he resides or will reside.
- (2) A court may not include an activity requirement in a relevant order unless the court is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the petty sessions area in which he resides or will reside.
- (3) A court may not include an attendance centre requirement in a relevant order in respect of an offender unless the court has been notified by the Secretary of State that an attendance centre is available for persons of his description.
- (4) A court may not include an electronic monitoring requirement in a relevant order in respect of an offender unless the court—
  - (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant areas mentioned in subsections (5) to (7), and
  - (b) is satisfied that the necessary provision can be made under those arrangements.
- (5) In the case of a relevant order containing a curfew requirement or an exclusion requirement, the relevant area for the purposes of subsection (4) is the area in which the place proposed to be specified in the order is situated.
- (6) In the case of a relevant order containing an attendance centre requirement, the relevant area for the purposes of subsection (4) is the area in which the attendance centre proposed to be specified in the order is situated.

- (7) In the case of any other relevant order, the relevant area for the purposes of subsection (4) is the petty sessions area proposed to be specified in the order.
- (8) In subsection (5) “place”, in relation to an exclusion requirement, has the same meaning as in section 205.

## **219 Provision of copies of relevant orders**

- (1) The court by which any relevant order is made must forthwith provide copies of the order—
  - (a) to the offender,
  - (b) if the offender is aged 18 or over, to an officer of a local probation board assigned to the court,
  - (c) if the offender is aged 16 or 17, to an officer of a local probation board assigned to the court or to a member of a youth offending team assigned to the court, and
  - (d) where the order specifies a petty sessions area for which the court making the order does not act, to the local probation board acting for that area.
- (2) Where a relevant order imposes any requirement specified in the first column of Schedule 14, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Schedule with a copy of so much of the order as relates to that requirement.
- (3) Where a relevant order specifies a petty sessions area for which the court making the order does not act, the court making the order must provide to the magistrates’ court acting 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.

## **220 Duty of offender to keep in touch with responsible officer**

- (1) An offender in respect of whom a community order or a suspended sentence order is in force—
  - (a) must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and
  - (b) must notify him of any change of address.
- (2) The obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the order.

### *Powers of Secretary of State*

## **221 Provision of attendance centres**

- (1) The Secretary of State may continue to provide attendance centres.
- (2) In this Part “attendance centre” means a place at which offenders aged under 25 may be required to attend and be given under supervision appropriate occupation or instruction in pursuance of—

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- (a) attendance centre requirements of relevant orders, or
  - (b) attendance centre orders under section 60 of the Sentencing Act.
- (3) For the purpose of providing attendance centres, the Secretary of State may make arrangements with any local authority or police authority for the use of premises of that authority.

## **222 Rules**

- (1) The Secretary of State may make rules for regulating—
- (a) the supervision of persons who are subject to relevant orders,
  - (b) without prejudice to the generality of paragraph (a), the functions of responsible officers in relation to offenders subject to relevant orders,
  - (c) the arrangements to be made by local probation boards for persons subject to unpaid work requirements to perform work and the performance of such work,
  - (d) the provision and carrying on of attendance centres and community rehabilitation centres,
  - (e) the attendance of persons subject to activity requirements or attendance centre requirements at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records,
  - (f) electronic monitoring in pursuance of an electronic monitoring requirement, and
  - (g) without prejudice to the generality of paragraph (f), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.
- (2) Rules under subsection (1)(c) may, in particular, make provision—
- (a) limiting the number of hours of work to be done by a person on any one day,
  - (b) as to the reckoning of hours worked and the keeping of work records, and
  - (c) for the payment of travelling and other expenses in connection with the performance of work.

## **223 Power to amend limits**

- (1) The Secretary of State may by order amend—
- (a) subsection (2) of section 199 (unpaid work requirement), or
  - (b) subsection (2) of section 204 (curfew requirement),
- by substituting, for the maximum number of hours for the time being specified in that subsection, such other number of hours as may be specified in the order.
- (2) The Secretary of State may by order amend any of the provisions mentioned in subsection (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.
- (3) Those provisions are—
- (a) section 204(3) (curfew requirement);
  - (b) section 205(2) (exclusion requirement);
  - (c) section 209(3) (drug rehabilitation requirement);
  - (d) section 212(4) (alcohol treatment requirement).

## CHAPTER 5

### DANGEROUS OFFENDERS

#### **224 Meaning of “specified offence” etc.**

- (1) An offence is a “specified offence” for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.
- (2) An offence is a “serious offence” for the purposes of this Chapter if and only if—
  - (a) it is a specified offence, and
  - (b) it is, apart from section 225, punishable in the case of a person aged 18 or over by—
    - (i) imprisonment for life, or
    - (ii) imprisonment for a determinate period of ten years or more.
- (3) In this Chapter—
  - “relevant offence” has the meaning given by section 229(4);
  - “serious harm” means death or serious personal injury, whether physical or psychological;
  - “specified violent offence” means an offence specified in Part 1 of Schedule 15;
  - “specified sexual offence” means an offence specified in Part 2 of that Schedule.

#### **225 Life sentence or imprisonment for public protection for serious offences**

- (1) This section applies where—
  - (a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and
  - (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.
- (2) If—
  - (a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and
  - (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,the court must impose a sentence of imprisonment for life.
- (3) In a case not falling within subsection (2), the court must impose a sentence of imprisonment for public protection.
- (4) A sentence of imprisonment for public protection is a sentence of imprisonment for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.
- (5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

**226 Detention for life or detention for public protection for serious offences committed by those under 18**

- (1) This section applies where—
  - (a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and
  - (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.
- (2) If—
  - (a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under section 91 of the Sentencing Act, and
  - (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,the court must impose a sentence of detention for life under that section.
- (3) If, in a case not falling within subsection (2), the court considers that an extended sentence under section 228 would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court must impose a sentence of detention for public protection.
- (4) A sentence of detention for public protection is a sentence of detention for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.
- (5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

**227 Extended sentence for certain violent or sexual offences: persons 18 or over**

- (1) This section applies where—
  - (a) a person aged 18 or over is convicted of a specified offence, other than a serious offence, committed after the commencement of this section, and
  - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.
- (2) The court must impose on the offender an extended sentence of imprisonment, that is to say, a sentence of imprisonment the term of which is equal to the aggregate of—
  - (a) the appropriate 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 of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.
- (3) In subsection (2) “the appropriate custodial term” means a term of imprisonment (not exceeding the maximum term permitted for the offence) which—
  - (a) is the term that would (apart from this section) be imposed in compliance with section 153(2), or

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- (b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.
- (4) The extension period must not exceed—
  - (a) five years in the case of a specified violent offence, and
  - (b) eight years in the case of a specified sexual offence.
- (5) The term of an extended sentence of imprisonment passed under this section in respect of an offence must not exceed the maximum term permitted for the offence.

## **228 Extended sentence for certain violent or sexual offences: persons under 18**

- (1) This section applies where—
  - (a) a person aged under 18 is convicted of a specified offence committed after the commencement of this section, and
  - (b) the court considers—
    - (i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, and
    - (ii) where the specified offence is a serious offence, that the case is not one in which the court is required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act or by section 226(3) to impose a sentence of detention for public protection.
- (2) The court must impose on the offender an extended sentence of detention, that is to say, a sentence of detention the term of which is equal to the aggregate of—
  - (a) the appropriate 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 of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.
- (3) In subsection (2) “the appropriate custodial term” means such term as the court considers appropriate, which—
  - (a) must be at least 12 months, and
  - (b) must not exceed the maximum term of imprisonment permitted for the offence.
- (4) The extension period must not exceed—
  - (a) five years in the case of a specified violent offence, and
  - (b) eight years in the case of a specified sexual offence.
- (5) The term of an extended sentence of detention passed under this section in respect of an offence must not exceed the maximum term of imprisonment permitted for the offence.
- (6) Any reference in this section to the maximum term of imprisonment permitted for an offence is a reference to the maximum term of imprisonment that is, apart from section 225, permitted for the offence in the case of a person aged 18 or over.

**229 The assessment of dangerousness**

- (1) This section applies where—
- (a) a person has been convicted of a specified offence, and
  - (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.
- (2) If at the time when that offence was committed the offender had not been convicted in any part of the United Kingdom of any relevant offence or was aged under 18, the court in making the assessment referred to in subsection (1)(b)—
- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
  - (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part, and
  - (c) may take into account any information about the offender which is before it.
- (3) If at the time when that offence was committed the offender was aged 18 or over and had been convicted in any part of the United Kingdom of one or more relevant offences, the court must assume that there is such a risk as is mentioned in subsection (1)(b) unless, after taking into account—
- (a) all such information as is available to it about the nature and circumstances of each of the offences,
  - (b) where appropriate, any information which is before it about any pattern of behaviour of which any of the offences forms part, and
  - (c) any information about the offender which is before it,
- the court considers that it would be unreasonable to conclude that there is such a risk.
- (4) In this Chapter “relevant offence” means—
- (a) a specified offence,
  - (b) an offence specified in Schedule 16 (offences under the law of Scotland), or
  - (c) an offence specified in Schedule 17 (offences under the law of Northern Ireland).

**230 Imprisonment or detention for public protection: release on licence**

Schedule 18 (release of prisoners serving sentences of imprisonment or detention for public protection) shall have effect.

**231 Appeals where previous convictions set aside**

- (1) This section applies where—
- (a) a sentence has been imposed on any person under section 225 or 227, and
  - (b) any previous conviction of his without which the court would not have been required to make the assumption mentioned in section 229(3) has been subsequently set aside on appeal.
- (2) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968 (c. 19), 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.



## **232 Certificates of convictions for purposes of section 229**

Where—

- (a) on any date after the commencement of this section a person is convicted in England and Wales of a relevant offence, 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,

that certificate shall be evidence, for the purposes of section 229, that he was convicted of such an offence on that date.

## **233 Offences under service law**

Where—

- (a) a person has at any time been convicted of an offence under section 70 of the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#), section 70 of the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#) or section 42 of the [Naval Discipline Act 1957 \(c. 53\)](#), and
- (b) the corresponding civil offence (within the meaning of that Act) was a relevant offence,

section 229 shall have effect as if he had at that time been convicted in England and Wales of the corresponding civil offence.

## **234 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 section 229 to have been committed on the last of those days.

## **235 Detention under sections 226 and 228**

A person sentenced to be detained under section 226 or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

## **236 Conversion of sentences of detention into sentences of imprisonment**

For section 99 of the Sentencing Act (conversion of sentence of detention and custody into sentence of imprisonment) there is substituted—

*“Conversion of sentence of detention to sentence of imprisonment*

### **99 Conversion of sentence of detention to sentence of imprisonment**

- (1) Subject to the following provisions of this section, where an offender has been sentenced by a relevant sentence of detention to a term of detention 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,

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the Secretary of State may direct that he shall be treated as if he had been sentenced to imprisonment for the same term.

- (2) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender, the portion of the term of detention imposed under the relevant sentence of detention which he has already served shall be deemed to have been a portion of a term of imprisonment.
- (3) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender serving a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 the offender shall be treated as if he had been sentenced under section 225 of that Act; and where the Secretary of State gives such a direction in relation to an offender serving an extended sentence of detention under section 228 of that Act the offender shall be treated as if he had been sentenced under section 227 of that Act.
- (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 relevant sentence of detention shall continue to have effect after a direction under subsection (1) has been given in relation to him.
- (5) In this section “relevant sentence of detention” means—
  - (a) a sentence of detention under section 90 or 91 above,
  - (b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003, or
  - (c) an extended sentence of detention under section 228 of that Act.”

## CHAPTER 6

### RELEASE ON LICENCE

#### *Preliminary*

#### **237 Meaning of “fixed-term prisoner”**

- (1) In this Chapter “fixed-term prisoner” means—
  - (a) a person serving a sentence of imprisonment for a determinate term, or
  - (b) a person serving a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act.
- (2) In this Chapter, unless the context otherwise requires, “prisoner” includes a person serving a sentence falling within subsection (1)(b); and “prison” includes any place where a person serving such a sentence is liable to be detained.

#### *Power of court to recommend licence conditions*

#### **238 Power of court to recommend licence conditions for certain prisoners**

- (1) A court which sentences an offender to a term of imprisonment of twelve months or more in respect of any offence may, when passing sentence, recommend to the

Secretary of State particular conditions which in its view should be included in any licence granted to the offender under this Chapter on his release from prison.

- (2) In exercising his powers under section 250(4)(b) in respect of an offender, the Secretary of State must have regard to any recommendation under subsection (1).
- (3) A recommendation under subsection (1) is not to be treated for any purpose as part of the sentence passed on the offender.
- (4) This section does not apply in relation to a sentence of detention under section 91 of the Sentencing Act or section 228 of this Act.

### **239 The Parole Board**

- (1) The Parole Board is to continue to be, by that name, a body corporate and as such is—
  - (a) to be constituted in accordance with this Chapter, and
  - (b) to have the functions conferred on it by this Chapter in respect of fixed-term prisoners and by Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) (in this Chapter referred to as “the 1997 Act”) in respect of life prisoners within the meaning of that Chapter.
- (2) It is the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners.
- (3) The Board must, in dealing with cases as respects which it makes recommendations under this Chapter or under Chapter 2 of Part 2 of the 1997 Act, consider—
  - (a) any documents given to it by the Secretary of State, and
  - (b) any other oral or written information obtained by it;and if in any particular case the Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may authorise one of its members to interview him and must consider the report of the interview made by that member.
- (4) The Board must deal with cases as respects which it gives directions under this Chapter or under Chapter 2 of Part 2 of the 1997 Act on consideration of all such evidence as may be adduced before it.
- (5) Without prejudice to subsections (3) and (4), the Secretary of State may make rules with respect to the proceedings of the Board, including proceedings authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times.
- (6) The Secretary of State may also give to the Board directions as to the matters to be taken into account by it in discharging any functions under this Chapter or under Chapter 2 of Part 2 of the 1997 Act; and in giving any such directions the Secretary of State must have regard to—
  - (a) the need to protect the public from serious harm from offenders, and
  - (b) the desirability of preventing the commission by them of further offences and of securing their rehabilitation.
- (7) Schedule 19 shall have effect with respect to the Board.

*Effect of remand in custody***240 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 242) 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), the court must direct that the number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by him as part of the sentence.
- (4) Subsection (3) does 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), 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), 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), or
  - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.
- (7) For the purposes of this section a suspended sentence—
  - (a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 8(2)(a) or (b) of Schedule 12, and
  - (b) is to be treated as being imposed by the order under which it takes effect.
- (8) For the purposes of the reference in subsection (3) 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 are to 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 this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- (9) 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) to have been committed on the last of those days.
- (10) This section applies to a determinate sentence of detention under section 91 of the Sentencing Act or section 228 of this Act as it applies to an equivalent sentence of imprisonment.

#### **241 Effect of direction under section 240 on release on licence**

- (1) In determining for the purposes of this Chapter or Chapter 3 (prison sentences of less than twelve months) whether a person to whom a direction under section 240 relates—
  - (a) has served, or would (but for his release) have served, a particular proportion of his sentence, or
  - (b) has served a particular period,the number of days specified in the direction are to be treated as having been served by him as part of that sentence or period.
- (2) In determining for the purposes of section 183 (intermittent custody) whether any part of a sentence to which an intermittent custody order relates is a licence period, the number of custodial days, as defined by subsection (3) of that section, is to be taken to be reduced by the number of days specified in a direction under section 240.

#### **242 Interpretation of sections 240 and 241**

- (1) For the purposes of sections 240 and 241, the definition of “sentence of imprisonment” in section 305 applies 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 on a conviction,”;and references in those sections to sentencing an offender to imprisonment, and to an offender’s sentence, are to be read accordingly.
- (2) References in sections 240 and 241 to an offender’s being remanded in custody are references to his being—
  - (a) remanded in or committed to custody by order of a court,
  - (b) remanded or committed to local authority accommodation under section 23 of the Children and Young Persons Act 1969 (c. 54) and kept in secure accommodation or detained in a secure training centre pursuant to arrangements under subsection (7A) of that section, or
  - (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983 (c. 20).
- (3) In subsection (2), “secure accommodation” has the same meaning as in section 23 of the Children and Young Persons Act 1969.

**243 Persons extradited to the United Kingdom**

- (1) A fixed-term prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence was imposed—
    - (i) after having been extradited to the United Kingdom, and
    - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
  - (b) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in paragraph (a).
- (2) In the case of an extradited prisoner, section 240 has effect as if the days for which he was kept in custody while awaiting extradition were days for which he was remanded in custody in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.
- (3) In this section—
- “extradited to the United Kingdom” means returned to the United Kingdom—
- (a) in pursuance of extradition arrangements,
  - (b) under any law of a designated Commonwealth country corresponding to the Extradition Act 1989 (c. 33),
  - (c) under that Act as extended to a British overseas territory or under any corresponding law of a British overseas territory,
  - (d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45), or
  - (e) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 (c. 52) is in force;
- “extradition arrangements” has the meaning given by section 3 of the Extradition Act 1989;
- “designated Commonwealth country” has the meaning given by section 5(1) of that Act.

*Release on licence***244 Duty to release prisoners**

- (1) As soon as a fixed-term prisoner, other than a prisoner to whom section 247 applies, has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence under this section.
- (2) Subsection (1) is subject to section 245.
- (3) In this section “the requisite custodial period” means—
- (a) in relation to a person serving a sentence of imprisonment for a term of twelve months or more or any determinate sentence of detention under section 91 of the Sentencing Act, one-half of his sentence,
  - (b) in relation to a person serving a sentence of imprisonment for a term of less than twelve months (other than one to which an intermittent custody order relates), the custodial period within the meaning of section 181,

- (c) in relation to a person serving a sentence of imprisonment to which an intermittent custody order relates, any part of the term which is not a licence period as defined by section 183(3), and
- (d) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).

#### **245 Restrictions on operation of section 244(1) in relation to intermittent custody prisoners**

- (1) Where an intermittent custody prisoner returns to custody after being unlawfully at large within the meaning of section 49 of the Prison Act 1952 (c. 52) at any time during the currency of his sentence, section 244(1) does not apply until—
  - (a) the relevant time (as defined in subsection (2)), or
  - (b) if earlier, the date on which he has served in prison the number of custodial days required by the intermittent custody order.
- (2) In subsection (1)(a) “the relevant time” means—
  - (a) in a case where, within the period of 72 hours beginning with the return to custody of the intermittent custody prisoner, the Secretary of State or the responsible officer has applied to the court for the amendment of the intermittent custody order under paragraph 6(1)(b) of Schedule 10, the date on which the application is withdrawn or determined, and
  - (b) in any other case, the end of that 72-hour period.
- (3) Section 244(1) does not apply in relation to an intermittent custody prisoner at any time after he has been recalled under section 254, unless after his recall the Board has directed his further release on licence.

#### **246 Power to release prisoners on licence before required to do so**

- (1) Subject to subsections (2) to (4), the Secretary of State may—
  - (a) release on licence under this section a fixed-term prisoner, other than an intermittent custody prisoner, at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period, and
  - (b) release on licence under this section an intermittent custody prisoner when 135 or less of the required custodial days remain to be served.
- (2) Subsection (1)(a) does not apply in relation to a prisoner unless—
  - (a) the length of the requisite custodial period is at least 6 weeks,
  - (b) he has served—
    - (i) at least 4 weeks of his sentence, and
    - (ii) at least one-half of the requisite custodial period.
- (3) Subsection (1)(b) does not apply in relation to a prisoner unless—
  - (a) the number of required custodial days is at least 42, and
  - (b) the prisoner has served—
    - (i) at least 28 of those days, and
    - (ii) at least one-half of the total number of those days.
- (4) Subsection (1) does not apply where—

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- (a) the sentence is imposed under section 227 or 228,
  - (b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16),
  - (c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983 (c. 20),
  - (d) the sentence was imposed by virtue of paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 in a case where the prisoner has failed to comply with a curfew requirement of a community order,
  - (e) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42),
  - (f) the prisoner is liable to removal from the United Kingdom,
  - (g) the prisoner has been released on licence under this section during the currency of the sentence, and has been recalled to prison under section 255(1)(a),
  - (h) the prisoner has been released on licence under section 248 during the currency of the sentence, and has been recalled to prison under section 254, or
  - (i) in the case of a prisoner to whom a direction under section 240 relates, the interval between the date on which the sentence was passed and the date on which the prisoner will have served the requisite custodial period is less than 14 days or, where the sentence is one of intermittent custody, the number of the required custodial days remaining to be served is less than 14.
- (5) The Secretary of State may by order—
- (a) amend the number of days for the time being specified in subsection (1)(a) or (b), (3) or (4)(i),
  - (b) amend the number of weeks for the time being specified in subsection (2)(a) or (b)(i), and
  - (c) amend the fraction for the time being specified in subsection (2)(b)(ii) or (3)(b)(ii).
- (6) In this section—
- “the required custodial days”, in relation to an intermittent custody prisoner, means—
    - (a) the number of custodial days specified under section 183, or
    - (b) in the case of two or more sentences of intermittent custody, the aggregate of the numbers so specified;
  - “the requisite custodial period” in relation to a person serving any sentence other than a sentence of intermittent custody, has the meaning given by paragraph (a), (b) or (d) of section 244(3);
  - “sentence of intermittent custody” means a sentence to which an intermittent custody order relates.

## **247 Release on licence of prisoner serving extended sentence under section 227 or 228**

- (1) This section applies to a prisoner who is serving an extended sentence imposed under section 227 or 228.
- (2) As soon as—
- (a) a prisoner to whom this section applies has served one-half of the appropriate custodial term, and



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- (b) the Parole Board has directed his release under this section, it is the duty of the Secretary of State to release him on licence.
- (3) The Parole Board may not give a direction under subsection (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- (4) As soon as a prisoner to whom this section applies has served the appropriate custodial term, it is the duty of the Secretary of State to release him on licence unless the prisoner has previously been recalled under section 254.
- (5) Where a prisoner to whom this section applies is released on a licence, the Secretary of State may not by virtue of section 250(4)(b) include, or subsequently insert, a condition in the licence, or vary or cancel a condition in the licence, except after consultation with the Board.
- (6) For the purposes of subsection (5), the Secretary of State is to be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.
- (7) In this section “the appropriate custodial term” means the period determined by the court as the appropriate custodial term under section 227 or 228.

#### **248 Power to release prisoners on compassionate grounds**

- (1) The Secretary of State may at any time release a fixed-term prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner’s release on compassionate grounds.
- (2) Before releasing under this section a prisoner to whom section 247 applies, the Secretary of State must consult the Board, unless the circumstances are such as to render such consultation impracticable.

#### **249 Duration of licence**

- (1) Subject to subsections (2) and (3), where a fixed-term prisoner is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force for the remainder of his sentence.
- (2) Where an intermittent custody prisoner is released on licence under section 244, the licence shall, subject to any revocation under section 254, remain in force—
- (a) until the time when he is required to return to prison at the beginning of the next custodial period of the sentence, or
  - (b) where it is granted at the end of the last custodial period, for the remainder of his sentence.
- (3) Subsection (1) has effect subject to sections 263(2) (concurrent terms) and 264(3) and (4) (consecutive terms).
- (4) In subsection (2) “custodial period”, in relation to a sentence to which an intermittent custody order relates, means any period which is not a licence period as defined by 183(3).

**250 Licence conditions**

- (1) In this section—
  - (a) “the standard conditions” means such conditions as may be prescribed for the purposes of this section as standard conditions, and
  - (b) “prescribed” means prescribed by the Secretary of State by order.
- (2) Subject to subsection (6) and section 251, any licence under this Chapter in respect of a prisoner serving one or more sentences of imprisonment of less than twelve months and no sentence of twelve months or more—
  - (a) must include—
    - (i) the conditions required by the relevant court order, and
    - (ii) so far as not inconsistent with them, the standard conditions, and
  - (b) may also include—
    - (i) any condition which is authorised by section 62 of the Criminal Justice and Court Services Act 2000 (c. 43) (electronic monitoring) or section 64 of that Act (drug testing requirements) and which is compatible with the conditions required by the relevant court order, and
    - (ii) such other conditions of a kind prescribed for the purposes of this paragraph as the Secretary of State may for the time being consider to be necessary for the protection of the public and specify in the licence.
- (3) For the purposes of subsection (2)(a)(i), any reference in the relevant court order to the licence period specified in the order is, in relation to a prohibited activity requirement, exclusion requirement, residence requirement or supervision requirement, to be taken to include a reference to any other period during which the prisoner is released on licence under section 246 or 248.
- (4) Any licence under this Chapter in respect of a prisoner serving a sentence of imprisonment for a term of twelve months or more (including such a sentence imposed under section 227) or any sentence of detention under section 91 of the Sentencing Act or section 228 of this Act—
  - (a) must include the standard conditions, and
  - (b) may include—
    - (i) any condition authorised by section 62 or 64 of the Criminal Justice and Court Services Act 2000, and
    - (ii) such other conditions of a kind prescribed by the Secretary of State for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.
- (5) A licence under section 246 must also include a curfew condition complying with section 253.
- (6) Where—
  - (a) a licence under section 246 is granted to a prisoner serving one or more sentences of imprisonment of less than 12 months and no sentence of 12 months or more, and
  - (b) the relevant court order requires the licence to be granted subject to a condition requiring his compliance with a curfew requirement (as defined by section 204),

that condition is not to be included in the licence at any time while a curfew condition required by section 253 is in force.

- (7) The preceding provisions of this section have effect subject to section 263(3) (concurrent terms) and section 264(3) and (4) (consecutive terms).
- (8) In exercising his powers to prescribe standard conditions or the other conditions referred to in subsection (4)(b)(ii), the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence under this Chapter—
  - (a) the protection of the public,
  - (b) the prevention of re-offending, and
  - (c) securing the successful re-integration of the prisoner into the community.

## **251 Licence conditions on re-release of prisoner serving sentence of less than 12 months**

- (1) In relation to any licence under this Chapter which is granted to a prisoner serving one or more sentences of imprisonment of less than twelve months and no sentence of twelve months or more on his release in pursuance of a decision of the Board under section 254 or 256, subsections (2) and (3) apply instead of section 250(2).
- (2) The licence—
  - (a) must include the standard conditions, and
  - (b) may include—
    - (i) any condition authorised by section 62 or 64 of the Criminal Justice and Court Services Act 2000 (c. 43), and
    - (ii) such other conditions of a kind prescribed by the Secretary of State for the purposes of section 250(4)(b)(ii) as the Secretary of State may for the time being specify in the licence.
- (3) In exercising his powers under subsection (2)(b)(ii), the Secretary of State must have regard to the terms of the relevant court order.
- (4) In this section “the standard conditions” has the same meaning as in section 250.

## **252 Duty to comply with licence conditions**

A person subject to a licence under this Chapter must comply with such conditions as may for the time being be specified in the licence.

## **253 Curfew condition to be included in licence under section 246**

- (1) For the purposes of this Chapter, a curfew condition is a condition which—
  - (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified (which may be premises approved by the Secretary of State under section 9 of the Criminal Justice and Court Services Act 2000 (c. 43)), and
  - (b) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified.
- (2) The curfew condition may specify different places or different periods for different days, but may not specify periods which amount to less than 9 hours in any one day

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(excluding for this purpose the first and last days of the period for which the condition is in force).

- (3) The curfew condition is to remain in force until the date when the released person would (but for his release) fall to be released on licence under section 244.
- (4) Subsection (3) does not apply in relation to a released person to whom an intermittent custody order relates; and in relation to such a person the curfew condition is to remain in force until the number of days during which it has been in force is equal to the number of the required custodial days, as defined in section 246(6), that remained to be served at the time when he was released under section 246.
- (5) The curfew condition must include provision for making a person responsible for monitoring the released person's whereabouts during the periods for the time being specified in the condition; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.
- (6) Nothing in this section is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of released persons' whereabouts in any particular part of England and Wales.

#### *Recall after release*

### **254 Recall of prisoners while on licence**

- (1) The Secretary of State may, in the case of any prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.
- (2) A person recalled to prison under subsection (1)—
  - (a) may make representations in writing with respect to his recall, and
  - (b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations.
- (3) The Secretary of State must refer to the Board the case of a person recalled under subsection (1).
- (4) Where on a reference under subsection (3) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.
- (5) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order.
- (6) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.
- (7) Nothing in subsections (2) to (6) applies in relation to a person recalled under section 255.

## **255 Recall of prisoners released early under section 246**

- (1) If it appears to the Secretary of State, as regards a person released on licence under section 246—
  - (a) that he has failed to comply with any condition included in his licence, or
  - (b) that his whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in his licence,the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison under this section.
- (2) A person whose licence under section 246 is revoked under this section—
  - (a) may make representations in writing with respect to the revocation, and
  - (b) on his return to prison, must be informed of the reasons for the revocation and of his right to make representations.
- (3) The Secretary of State, after considering any representations under subsection (2)(b) or any other matters, may cancel a revocation under this section.
- (4) Where the revocation of a person's licence is cancelled under subsection (3), the person is to be treated for the purposes of section 246 as if he had not been recalled to prison under this section.
- (5) On the revocation of a person's licence under section 246, he is liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.

## **256 Further release after recall**

- (1) Where on a reference under section 254(3) in relation to any person, the Board does not recommend his immediate release on licence under this Chapter, the Board must either—
  - (a) fix a date for the person's release on licence, or
  - (b) fix a date as the date for the next review of the person's case by the Board.
- (2) Any date fixed under subsection (1)(a) or (b) must not be later than the first anniversary of the date on which the decision is taken.
- (3) The Board need not fix a date under subsection (1)(a) or (b) if the prisoner will fall to be released unconditionally at any time within the next 12 months.
- (4) Where the Board has fixed a date under subsection (1)(a), it is the duty of the Secretary of State to release him on licence on that date.
- (5) On a review required by subsection (1)(b) in relation to any person, the Board may—
  - (a) recommend his immediate release on licence, or
  - (b) fix a date under subsection (1)(a) or (b).

### *Additional days*

## **257 Additional days for disciplinary offences**

- (1) Prison rules, that is to say, rules made under section 47 of the Prison Act 1952 (c. 52), may include provision for the award of additional days—
  - (a) to fixed-term prisoners, or

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- (b) conditionally on their subsequently becoming such prisoners, to persons on remand,  
who (in either case) are guilty of disciplinary offences.
- (2) Where additional days are awarded to a fixed-term prisoner, or to a person on remand who subsequently becomes such a prisoner, and are not remitted in accordance with prison rules—
- (a) any period which he must serve before becoming entitled to or eligible for release under this Chapter,
  - (b) any period which he must serve before he can be removed from prison under section 260, and
  - (c) any period for which a licence granted to him under this Chapter remains in force,
- is extended by the aggregate of those additional days.

*Fine defaulters and contemnors*

**258 Early release of fine defaulters and contemnors**

- (1) This section applies in relation to a person committed to prison—
  - (a) in default of payment of a sum adjudged to be paid by a conviction, or
  - (b) for contempt of court or any kindred offence.
- (2) As soon as a person to whom this section applies has served one-half of the term for which he was committed, it is the duty of the Secretary of State to release him unconditionally.
- (3) Where a person to whom this section applies is also serving one or more sentences of imprisonment, nothing in this section requires the Secretary of State to release him until he is also required to release him in respect of that sentence or each of those sentences.
- (4) The Secretary of State may at any time release unconditionally a person to whom this section applies if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds.

*Persons liable to removal from the United Kingdom*

**259 Persons liable to removal from the United Kingdom**

For the purposes of this Chapter a person is liable to removal from the United Kingdom if—

- (a) he is liable to deportation under section 3(5) of the Immigration Act 1971 (c. 77) and has been notified of a decision to make a deportation order against him,
- (b) he is liable to deportation under section 3(6) of that Act,
- (c) he has been notified of a decision to refuse him leave to enter the United Kingdom,
- (d) he is an illegal entrant within the meaning of section 33(1) of that Act, or

- (e) he is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c. 33).

## **260 Early removal of prisoners liable to removal from United Kingdom**

- (1) Subject to subsections (2) and (3), where a fixed-term prisoner is liable to removal from the United Kingdom, the Secretary of State may remove him from prison under this section at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.
- (2) Subsection (1) does not apply in relation to a prisoner unless—
  - (a) the length of the requisite custodial period is at least 6 weeks, and
  - (b) he has served—
    - (i) at least 4 weeks of his sentence, and
    - (ii) at least one-half of the requisite custodial period.
- (3) Subsection (1) does not apply where—
  - (a) the sentence is imposed under section 227 or 228,
  - (b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16),
  - (c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983 (c. 20),
  - (d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42), or
  - (e) in the case of a prisoner to whom a direction under section 240 relates, the interval between the date on which the sentence was passed and the date on which the prisoner will have served the requisite custodial period is less than 14 days.
- (4) A prisoner removed from prison under this section—
  - (a) is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by—
    - (i) Schedule 2 or 3 to the Immigration Act 1971, or
    - (ii) section 10 of the Immigration and Asylum Act 1999 (c. 33), and
  - (b) so long as remaining in the United Kingdom, remains liable to be detained in pursuance of his sentence until he has served the requisite custodial period.
- (5) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State under section 244 or 248 is exercisable in relation to him as if he were in prison.
- (6) The Secretary of State may by order—
  - (a) amend the number of days for the time being specified in subsection (1) or (3)(e),
  - (b) amend the number of weeks for the time being specified in subsection (2)(a) or (b)(i), and
  - (c) amend the fraction for the time being specified in subsection (2)(b)(ii).
- (7) In this section “the requisite custodial period” has the meaning given by paragraph (a), (b) or (d) of section 244(3).

**261 Re-entry into United Kingdom of offender removed from prison early**

- (1) This section applies in relation to a person who, after being removed from prison under section 260, has been removed from the United Kingdom before he has served the requisite custodial period.
- (2) If a person to whom this section applies enters the United Kingdom at any time before his sentence expiry date, he is liable to be detained in pursuance of his sentence from the time of his entry into the United Kingdom until whichever is the earlier of the following—
  - (a) the end of a period (“the further custodial period”) beginning with that time and equal in length to the outstanding custodial period, and
  - (b) his sentence expiry date.
- (3) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 49 of the Prison Act 1952 (c. 52) (persons unlawfully at large) to be unlawfully at large.
- (4) Subsection (2) does not prevent the further removal from the United Kingdom of a person falling within that subsection.
- (5) Where, in the case of a person returned to prison by virtue of subsection (2), the further custodial period ends before the sentence expiry date, section 244 has effect in relation to him as if the reference to the requisite custodial period were a reference to the further custodial period.
- (6) In this section—
  - “further custodial period” has the meaning given by subsection (2)(a);
  - “outstanding custodial period”, in relation to a person to whom this section applies, means the period beginning with the date of his removal from the United Kingdom and ending with the date on which he would, but for his removal, have served the requisite custodial period;
  - “requisite custodial period” has the meaning given by paragraph (a), (b) or (d) of section 244(3);
  - “sentence expiry date”, in relation to a person to whom this section applies, means the date on which, but for his removal from the United Kingdom, he would have ceased to be subject to a licence.

**262 Prisoners liable to removal from United Kingdom: modifications of Criminal Justice Act 1991**

Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners) shall (until the coming into force of its repeal by this Act) have effect subject to the modifications set out in Schedule 20 (which relate to persons liable to removal from the United Kingdom).

*Consecutive or concurrent terms***263 Concurrent terms**

- (1) This section applies where—
  - (a) a person (“the offender”) has been sentenced by any court to two or more terms of imprisonment which are wholly or partly concurrent, and



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- (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- (2) Where this section applies—
- (a) nothing in this Chapter requires the Secretary of State to release the offender in respect of any of the terms unless and until he is required to release him in respect of each of the others,
  - (b) section 244 does not authorise the Secretary of State to release him on licence under that section in respect of any of the terms unless and until that section authorises the Secretary of State to do so in respect of each of the others,
  - (c) on and after his release under this Chapter the offender is to be on licence for so long, and subject to such conditions, as is required by this Chapter in respect of any of the sentences.
- (3) Where the sentences include one or more sentences of twelve months or more and one or more sentences of less than twelve months, the terms of the licence may be determined by the Secretary of State in accordance with section 250(4)(b), without regard to the requirements of any custody plus order or intermittent custody order.
- (4) In this section “term of imprisonment” includes a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act.

## **264 Consecutive terms**

- (1) This section applies where—
- (a) a person (“the offender”) has been sentenced to two or more terms of imprisonment which are to be served consecutively on each other, and
  - (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- (2) Nothing in this Chapter requires the Secretary of State to release the offender on licence until he has served a period equal in length to the aggregate of the length of the custodial periods in relation to each of the terms of imprisonment.
- (3) Where any of the terms of imprisonment is a term of twelve months or more, the offender is, on and after his release under this Chapter, to be on licence—
- (a) until he would, but for his release, have served a term equal in length to the aggregate length of the terms of imprisonment, and
  - (b) subject to such conditions as are required by this Chapter in respect of each of those terms of imprisonment.
- (4) Where each of the terms of imprisonment is a term of less than twelve months, the offender is, on and after his release under this Chapter, to be on licence until the relevant time, and subject to such conditions as are required by this Chapter in respect of any of the terms of imprisonment, and none of the terms is to be regarded for any purpose as continuing after the relevant time.
- (5) In subsection (4) “the relevant time” means the time when the offender would, but for his release, have served a term equal in length to the aggregate of—

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- (a) all the custodial periods in relation to the terms of imprisonment, and
  - (b) the longest of the licence periods in relation to those terms.
- (6) In this section—
- (a) “custodial period”—
    - (i) in relation to an extended sentence imposed under section 227 or 228, means the appropriate custodial term determined under that section,
    - (ii) in relation to a term of twelve months or more, means one-half of the term, and
    - (iii) in relation to a term of less than twelve months complying with section 181, means the custodial period as defined by subsection (3) (a) of that section;
  - (b) “licence period”, in relation to a term of less than twelve months complying with section 181, has the meaning given by subsection (3)(b) of that section.
- (7) This section applies to a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act as it applies to a term of imprisonment of 12 months or more.

*Restriction on consecutive sentences for released prisoners*

**265 Restriction on consecutive sentences for released prisoners**

- (1) A court sentencing a person to a term of imprisonment may not order or direct that the term is to commence on the expiry of any other sentence of imprisonment from which he has been released early under this Chapter.
- (2) In this section “sentence of imprisonment” includes a sentence of detention under section 91 of the Sentencing Act or section 228 of this Act, and “term of imprisonment” is to be read accordingly.

*Drug testing requirements*

**266 Release on licence etc: drug testing requirements**

- (1) Section 64 of the Criminal Justice and Court Services Act 2000 (c. 43) (release on licence etc: drug testing requirements) is amended as follows.
- (2) In subsection (1) for paragraph (a) there is substituted—
  - “(a) the Secretary of State releases from prison a person aged 14 or over on whom a sentence of imprisonment has been imposed,
  - (aa) a responsible officer is of the opinion—
    - (i) that the offender has a propensity to misuse specified Class A drugs, and
    - (ii) that the misuse by the offender of any specified Class A drug caused or contributed to any offence of which he has been convicted, or is likely to cause or contribute to the commission of further offences, and”.
- (3) After subsection (4) there is inserted—

“(4A) A person under the age of 17 years may not be required by virtue of this section to provide a sample otherwise than in the presence of an appropriate adult.”

(4) In subsection (5), after paragraph (e) there is inserted “and  
(f) a sentence of detention under section 226 or 228 of the Criminal Justice Act 2003.”.

(5) After subsection (5) there is inserted—

“(6) In this section—

“appropriate adult”, in relation to a person aged under 17, means—

- (a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
- (b) a social worker of a local authority social services department, or
- (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

“responsible officer” means—

- (a) in relation to an offender aged under 18, an officer of a local probation board or a member of a youth offending team;
- (b) in relation to an offender aged 18 or over, an officer of a local probation board.”

### *Supplemental*

#### **267 Alteration by order of relevant proportion of sentence**

The Secretary of State may by order provide that any reference in section 244(3) (a), section 247(2) or section 264(6)(a)(ii) to a particular proportion of a prisoner’s sentence is to be read as a reference to such other proportion of a prisoner’s sentence as may be specified in the order.

#### **268 Interpretation of Chapter 6**

In this Chapter—

“the 1997 Act” means the Crime (Sentences) Act 1997 (c. 43);

“the Board” means the Parole Board;

“fixed-term prisoner” has the meaning given by section 237(1);

“intermittent custody prisoner” means a prisoner serving a sentence of imprisonment to which an intermittent custody order relates;

“prison” and “prisoner” are to be read in accordance with section 237(2);

“release”, in relation to a prisoner serving a sentence of imprisonment to which an intermittent custody order relates, includes temporary release;

“relevant court order”, in relation to a person serving a sentence of imprisonment to which a custody plus order or intermittent custody order relates, means that order.

## CHAPTER 7

### EFFECT OF LIFE SENTENCE

#### **269 Determination of minimum term in relation to mandatory life sentence**

- (1) This section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.
- (2) The court must, unless it makes an order under subsection (4), order that the provisions of section 28(5) to (8) of the Crime (Sentences) Act 1997 (referred to in this Chapter as “the early release provisions”) are to apply to the offender as soon as he has served the part of his sentence which is specified in the order.
- (3) The part of his sentence is to be such as the court considers appropriate taking into account—
  - (a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
  - (b) the effect of any direction which it would have given under section 240 (crediting periods of remand in custody) if it had sentenced him to a term of imprisonment.
- (4) If the offender was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the offender.
- (5) In considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), the court must have regard to—
  - (a) the general principles set out in Schedule 21, and
  - (b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.
- (6) The Secretary of State may by order amend Schedule 21.
- (7) Before making an order under subsection (6), the Secretary of State shall consult the Sentencing Guidelines Council.

#### **270 Duty to give reasons**

- (1) Any court making an order under subsection (2) or (4) of section 269 must state in open court, in ordinary language, its reasons for deciding on the order made.
- (2) In stating its reasons the court must, in particular—
  - (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
  - (b) state its reasons for any departure from that starting point.

#### **271 Appeals**

- (1) In section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence following conviction on indictment), after subsection (1) there is inserted—

“(1A) In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.”.

(2) In section 8 of the Courts-Martial (Appeals) Act 1968 (c. 20) (right of appeal from court-martial to Courts-Martial Appeal Court) after subsection (1) there is inserted—

“(1ZA) In subsection (1) above, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.”.

## **272 Review of minimum term on a reference by Attorney General**

(1) In section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) after subsection (3) there is inserted—

“(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.”.

(2) Each of the following sections (which relate to the review by the Courts-Martial Appeal Court of sentences passed by courts-martial)—

- (a) section 113C of the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#),
- (b) section 113C of the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#), and
- (c) section 71AC of the [Naval Discipline Act 1957 \(c. 53\)](#),

is amended as follows.

(3) After subsection (3) there is inserted—

“(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Courts-Martial Appeal Court shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.”.

## **273 Life prisoners transferred to England and Wales**

(1) The Secretary of State must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.

(2) In subsection (1) “transferred life prisoner” means a person—

- (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and
- (b) who has been transferred to England and Wales after the commencement of this section in pursuance of—

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- (i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or
- (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),

there to serve his sentence or sentences or the remainder of his sentence or sentences.

- (3) In subsection (1) “a relevant order” means—
- (a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and
  - (b) in any other case, an order under subsection (2) or (4) of section 82A of the Sentencing Act.
- (4) In section 34(1) of the Crime (Sentences) Act 1997 (c. 43) (meaning of “life prisoner” in Chapter 2 of Part 2 of that Act) at the end there is inserted “and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003”.

#### **274 Further provisions about references relating to transferred life prisoners**

- (1) A reference to the High Court under section 273 is to be determined by a single judge of that court without an oral hearing.
- (2) In relation to a reference under that section, any reference to “the court” in subsections (2) to (5) of section 269, in Schedule 21 or in section 82A(2) to (4) of the Sentencing Act is to be read as a reference to the High Court.
- (3) A person in respect of whom a reference has been made under section 273 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the reference.
- (4) Section 1(1) of the Administration of Justice Act 1960 (c. 65) (appeal to House of Lords from decision of High Court in a criminal cause or matter) and section 18(1) (a) of the Supreme Court Act 1981 (c. 54) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which subsection (3) applies.
- (5) The jurisdiction conferred on the Court of Appeal by subsection (3) is to be exercised by the criminal division of that court.
- (6) Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the House of Lords under this section.
- (7) In relation to appeals to the Court of Appeal or the House of Lords under this section, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

#### **275 Duty to release certain life prisoners**

- (1) Section 28 of the Crime (Sentences) Act 1997 (c. 43) (duty to release certain life prisoners) is amended as follows.
- (2) For subsection (1A) there is substituted—

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“(1A) This section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner’s sentence is a reference to the part of the sentence specified in the order.”

- (3) In subsection (1B)(a)—
- (a) for the words from the beginning to “applies” there is substituted “this section does not apply to him”, and
  - (b) for the words from “such an order” to “appropriate stage” there is substituted “a minimum term order has been made in respect of each of those sentences”.

- (4) After subsection (8) there is inserted—

“(8A) In this section “minimum term order” means an order under—

- (a) subsection (2) of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in respect of life sentence that is not fixed by law), or
- (b) subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in respect of mandatory life sentence).”.

## **276 Mandatory life sentences: transitional cases**

Schedule 22 (which relates to the effect in transitional cases of mandatory life sentences) shall have effect.

## **277 Interpretation of Chapter 7**

In this Chapter—

“court” includes a court-martial;

“guidelines” has the same meaning as in section 172(1);

“life sentence” means—

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention during Her Majesty’s pleasure, or
- (c) a sentence of custody for life passed before the commencement of section 61(1) of the Criminal Justice and Court Services Act 2000 (c. 43) (which abolishes that sentence).

## **CHAPTER 8**

### **OTHER PROVISIONS ABOUT SENTENCING**

#### *Deferment of sentence*

## **278 Deferment of sentence**

Schedule 23 (deferment of sentence) shall have effect.

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*Power to include drug treatment and testing requirement  
in certain orders in respect of young offenders*

**279 Drug treatment and testing requirement in action plan order or supervision order**

Schedule 24 (which enables a requirement as to drug treatment and testing to be included in an action plan order or a supervision order) shall have effect.

*Alteration of penalties for offences*

**280 Alteration of penalties for specified summary offences**

- (1) The summary offences listed in Schedule 25 are no longer punishable with imprisonment.
- (2) Schedule 26 (which contains amendments increasing the maximum term of imprisonment for certain summary offences from 4 months or less to 51 weeks) shall have effect.
- (3) This section does not affect the penalty for any offence committed before the commencement of this section.

**281 Alteration of penalties for other summary offences**

- (1) Subsection (2) applies to any summary offence which—
  - (a) is an offence under a relevant enactment,
  - (b) is punishable with a maximum term of imprisonment of five months or less, and
  - (c) is not listed in Schedule 25 or Schedule 26.
- (2) The Secretary of State may by order amend any relevant enactment so as to—
  - (a) provide that any summary offence to which this subsection applies is no longer punishable with imprisonment, or
  - (b) increase to 51 weeks the maximum term of imprisonment to which a person is liable on conviction of the offence.
- (3) An order under subsection (2) may make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient, including provision amending any relevant enactment.
- (4) Subsection (5) applies to any summary offence which—
  - (a) is an offence under a relevant enactment, and
  - (b) is punishable with a maximum term of imprisonment of six months.
- (5) The maximum term of imprisonment to which a person is liable on conviction of an offence to which this subsection applies is, by virtue of this subsection, 51 weeks (and the relevant enactment in question is to be read as if it had been amended accordingly).
- (6) Neither of the following—
  - (a) an order under subsection (2), or
  - (b) subsection (5),



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affects the penalty for any offence committed before the commencement of that order or subsection (as the case may be).

- (7) In this section and section 282 “relevant enactment” means any enactment contained in—
- (a) an Act passed before or in the same Session as this Act, or
  - (b) any subordinate legislation made before the passing of this Act.
- (8) In subsection (7) “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## **282 Increase in maximum term that may be imposed on summary conviction of offence triable either way**

- (1) In section 32 of the Magistrates' Courts Act 1980 (c. 43) (penalties on summary conviction for offences triable either way) in subsection (1) (offences listed in Schedule 1 to that Act) for “not exceeding 6 months” there is substituted “not exceeding 12 months”.
- (2) Subsection (3) applies to any offence triable either way which—
- (a) is an offence under a relevant enactment,
  - (b) is punishable with imprisonment on summary conviction, and
  - (c) is not listed in Schedule 1 to the Magistrates' Courts Act 1980.
- (3) The maximum term of imprisonment to which a person is liable on summary conviction of an offence to which this subsection applies is by virtue of this subsection 12 months (and the relevant enactment in question is to be read as if it had been amended accordingly).
- (4) Nothing in this section affects the penalty for any offence committed before the commencement of this section.

## **283 Enabling powers: power to alter maximum penalties**

- (1) The Secretary of State may by order, in accordance with subsection (2) or (3), amend any relevant enactment which confers a power (however framed or worded) by subordinate legislation to make a person—
- (a) as regards a summary offence, liable on conviction to a term of imprisonment;
  - (b) as regards an offence triable either way, liable on summary conviction to a term of imprisonment.
- (2) An order made by virtue of paragraph (a) of subsection (1) may amend the relevant enactment in question so as to—
- (a) restrict the power so that a person may no longer be made liable on conviction of a summary offence to a term of imprisonment, or
  - (b) increase to 51 weeks the maximum term of imprisonment to which a person may be made liable on conviction of a summary offence under the power.
- (3) An order made by virtue of paragraph (b) of that subsection may amend the relevant enactment in question so as to increase the maximum term of imprisonment to which a person may be made liable on summary conviction of an offence under the power to 12 months.

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- (4) Schedule 27 (which amends the maximum penalties which may be imposed by virtue of certain enabling powers) shall have effect.
- (5) The power conferred by subsection (1) shall not apply to the enactments amended under Schedule 27.
- (6) An order under subsection (1) may make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient, including provision amending any relevant enactment.
- (7) None of the following—
  - (a) an order under subsection (1), or
  - (b) Schedule 27,
 affects the penalty for any offence committed before the commencement of that order or Schedule (as the case may be).
- (8) In subsection (1) “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
- (9) In this section “relevant enactment” means any enactment contained in an Act passed before or in the same Session as this Act.

#### **284 Increase in penalties for drug-related offences**

- (1) Schedule 28 (increase in penalties for certain drug-related offences) shall have effect.
- (2) That Schedule does not affect the penalty for any offence committed before the commencement of that Schedule.

#### **285 Increase in penalties for certain driving-related offences**

- (1) In section 12A of the Theft Act 1968 (c. 60) (aggravated vehicle-taking), in subsection (4), for “five years” there is substituted “fourteen years”.
- (2) Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) (prosecution and punishment of offences) is amended in accordance with subsections (3) and (4).
- (3) In the entry relating to section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving), in column 4, for “10 years” there is substituted “14 years”.
- (4) In the entry relating to section 3A of that Act (causing death by careless driving when under influence of drink or drugs), in column 4, for “10 years” there is substituted “14 years”.
- (5) Part I of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I. 10)) (prosecution and punishment of offences) is amended in accordance with subsections (6) and (7).
- (6) In the entry relating to Article 9 of the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/2994 (N.I. 18)) (causing death or grievous bodily injury by dangerous driving), in column 4, for “10 years” there is substituted “14 years”.
- (7) In the entry relating to Article 14 of that Order (causing death or grievous bodily injury by careless driving when under the influence of drink or drugs), in column 4, for “10 years” there is substituted “14 years”.

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- (8) This section does not affect the penalty for any offence committed before the commencement of this section.

## **286 Increase in penalties for offences under section 174 of Road Traffic Act 1988**

- (1) In Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) (prosecution and punishment of offences), in the entry relating to section 174 of the Road Traffic Act 1988 (c. 52) (false statements and withholding material information), for columns (3) and (4) there is substituted—

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“(a) Summarily	(a) 6 months or the statutory maximum or both
(b) On indictment	(b) 2 years or a fine or both.”

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- (2) Section 282(3) (increase in maximum term that may be imposed on summary conviction of offence triable either way) has effect in relation to the entry amended by subsection (1) as it has effect in relation to any other enactment contained in an Act passed before this Act.
- (3) This section does not apply in relation to any offence committed before the commencement of this section.

### *Firearms offences*

## **287 Minimum sentence for certain firearms offences**

After section 51 of the Firearms Act 1968 (c. 27) there is inserted the following section—

### **“51A Minimum sentence for certain offences under s. 5**

- (1) This section applies where—
- an individual is convicted of—
    - an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) of this Act, or
    - an offence under section 5(1A)(a) of this Act, and
  - the offence was committed after the commencement of this section and at a time when he was aged 16 or over.
- (2) The court shall impose an appropriate custodial sentence (or order for detention) for a term of at least the required minimum term (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
- (3) 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 this section to have been committed on the last of those days.
- (4) In this section “appropriate custodial sentence (or order for detention)” means—
- in relation to England and Wales—

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- (i) in the case of an offender who is aged 18 or over when convicted, a sentence of imprisonment, and
- (ii) in the case of an offender who is aged under 18 at that time, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) in relation to Scotland—
  - (i) in the case of an offender who is aged 21 or over when convicted, a sentence of imprisonment,
  - (ii) in the case of an offender who is aged under 21 at that time (not being an offender mentioned in sub-paragraph (iii)), a sentence of detention under section 207 of the Criminal Procedure (Scotland) Act 1995, and
  - (iii) in the case of an offender who is aged under 18 at that time and is subject to a supervision requirement, an order for detention under section 44, or sentence of detention under section 208, of that Act.

(5) In this section “the required minimum term” means—

- (a) in relation to England and Wales—
  - (i) in the case of an offender who was aged 18 or over when he committed the offence, five years, and
  - (ii) in the case of an offender who was under 18 at that time, three years, and
- (b) in relation to Scotland—
  - (i) in the case of an offender who was aged 21 or over when he committed the offence, five years, and
  - (ii) in the case of an offender who was aged under 21 at that time, three years.”

## 288 Certain firearms offences to be triable only on indictment

In Part 1 of Schedule 6 to the Firearms Act 1968 (c. 27) (prosecution and punishment of offences) for the entries relating to offences under section 5(1) (possessing or distributing prohibited weapons or ammunition) and section 5(1A) (possessing or distributing other prohibited weapons) there is substituted—

“Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c)	Possessing or distributing prohibited weapons or ammunition.	On indictment	10 years or a fine, or both.
Section 5(1)(b)	Possessing or distributing prohibited weapon designed for discharge of noxious liquid etc.	(a) Summary (b) On indictment	6 months or a fine of the statutory maximum, or both. 10 years or a fine or both.
Section 5(1A)(a)	Possessing or distributing firearm	On indictment	10 years or a fine, or both.

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	disguised as other object.		
Section 5(1A)(b), (c), (d), (e), (f) or (g)	Possessing or distributing other prohibited weapons.	(a) Summary	6 months or a fine of the statutory maximum, or both.
		(b) On indictment	10 years or a fine, or both.”

**289 Power to sentence young offender to detention in respect of certain firearms offences: England and Wales**

(1) Section 91 of the Sentencing Act (offenders under 18 convicted of certain serious offences: power to detain for specified period) is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) Subsection (3) below also applies where—

- (a) a person aged under 18 is convicted on indictment of an offence—
  - (i) under subsection (1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) of section 5 of the Firearms Act 1968 (prohibited weapons), or
  - (ii) under subsection (1A)(a) of that section,
- (b) the offence was committed after the commencement of section 51A of that Act and at a time when he was aged 16 or over, and
- (c) the court is of the opinion mentioned in section 51A(2) of that Act (exceptional circumstances which justify its not imposing required custodial sentence).”

(3) After subsection (4) there is inserted—

“(5) Where subsection (2) of section 51A of the Firearms Act 1968 requires the imposition of a sentence of detention under this section for a term of at least the required minimum term (within the meaning of that section), the court shall sentence the offender to be detained for such period, of at least that term but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.”.

**290 Power to sentence young offender to detention in respect of certain firearms offences: Scotland**

(1) The Criminal Procedure (Scotland) Act 1995 (c. 46) is amended as follows.

(2) In section 49(3) (children’s hearing for purpose of obtaining advice as to treatment of child), at the end there is added “except that where the circumstances are such as are mentioned in paragraphs (a) and (b) of section 51A(1) of the Firearms Act 1968 it shall itself dispose of the case”.

(3) In section 208 (detention of children convicted on indictment), the existing provisions become subsection (1); and after that subsection there is added—

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*Status: This is the original version (as it was originally enacted).*

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“(2) Subsection (1) does not apply where the circumstances are such as are mentioned in paragraphs (a) and (b) of section 51A(1) of the Firearms Act 1968.”.

## **291 Power by order to exclude application of minimum sentence to those under 18**

- (1) The Secretary of State may by order—
- (a) amend section 51A(1)(b) of the Firearms Act 1968 (c. 27) by substituting for the word “16” the word “18”,
  - (b) repeal section 91(1A)(c) and (5) of the Sentencing Act,
  - (c) amend subsection (3) of section 49 of the Criminal Procedure (Scotland) Act 1995 by repealing the exception to that subsection,
  - (d) repeal section 208(2) of that Act, and
  - (e) make such other provision as he considers necessary or expedient in consequence of, or in connection with, the provision made by virtue of paragraphs (a) to (d).
- (2) The provision that may be made by virtue of subsection (1)(e) includes, in particular, provision amending or repealing any provision of an Act (whenever passed), including any provision of this Act.

## **292 Sentencing for firearms offences in Northern Ireland**

Schedule 29 (which contains amendments of the Firearms (Northern Ireland) Order 1981 (S.I. 1981/155 (N.I. 2)) relating to sentencing) shall have effect.

## **293 Increase in penalty for offences relating to importation or exportation of certain firearms**

- (1) The Customs and Excise Management Act 1979 (c. 2) is amended as follows.
- (2) In section 50 (penalty for improper importation of goods), for subsection (5A) there is substituted—
- “(5A) In the case of—
- (a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the importation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,
  - (b) any such offence committed in Northern Ireland in connection with a prohibition or restriction on the importation of any weapon or ammunition that is of a kind mentioned in Article 6(1)(a), (ab), (ac), (ad), (ae) or (c) or (1A)(a) of the Firearms (Northern Ireland) Order 1981, or
  - (c) any such offence committed in connection with the prohibition contained in section 20 of the Forgery and Counterfeiting Act 1981, subsection (4)(b) above shall have effect as if for the words “7 years” there were substituted the words “10 years”.

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*Status: This is the original version (as it was originally enacted).*

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- (3) In section 68 (offences in relation to exportation of prohibited or restricted goods) for subsection (4A) there is substituted—

“(4A) In the case of—

- (a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,
  - (b) any such offence committed in Northern Ireland in connection with a prohibition or restriction on the exportation of any weapon or ammunition that is of a kind mentioned in Article 6(1)(a), (ab), (ac), (ad), (ae) or (c) or (1A)(a) of the Firearms (Northern Ireland) Order 1981, or
  - (c) any such offence committed in connection with the prohibition contained in section 21 of the Forgery and Counterfeiting Act 1981,
- subsection (3)(b) above shall have effect as if for the words “7 years” there were substituted the words “10 years”.

- (4) In section 170 (penalty for fraudulent evasion of duty, etc), for subsection (4A) there is substituted—

“(4A) In the case of—

- (a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,
- (b) any such offence committed in Northern Ireland in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in Article 6(1)(a), (ab), (ac), (ad), (ae) or (c) or (1A)(a) of the Firearms (Northern Ireland) Order 1981, or
- (c) any such offence committed in connection with the prohibitions contained in sections 20 and 21 of the Forgery and Counterfeiting Act 1981,

subsection (3)(b) above shall have effect as if for the words “7 years” there were substituted the words “10 years”.

- (5) This section does not affect the penalty for any offence committed before the commencement of this section.

#### *Offenders transferred to mental hospital*

### **294 Duration of directions under Mental Health Act 1983 in relation to offenders**

- (1) Section 50 of the Mental Health Act 1983 (c. 20) (further provisions as to prisoners under sentence) is amended as follows.
- (2) In subsection (1), for “the expiration of that person’s sentence” there is substituted “his release date”.

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*Status: This is the original version (as it was originally enacted).*

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(3) For subsections (2) and (3) there is substituted—

“(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this section, references to a person’s release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the transfer direction had not been given; and in determining that day there shall be disregarded—

- (a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and
- (b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution.”.

## **295 Access to Parole Board for certain patients serving prison sentences**

In section 74 of the Mental Health Act 1983 (restricted patients subject to restriction directions) after subsection (5) there is inserted—

“(5A) Where the tribunal have made a recommendation under subsection (1)(b) above in the case of a patient who is subject to a restriction direction or a limitation direction—

- (a) the fact that the restriction direction or limitation direction remains in force does not prevent the making of any application or reference to the Parole Board by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to the Parole Board, and
- (b) if the Parole Board make a direction or recommendation by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been removed to hospital, the restriction direction or limitation direction shall cease to have effect at the time when he would become entitled to be so released.”

## **296 Duration of directions under Mental Health (Northern Ireland) Order 1986 in relation to offenders**

(1) Article 56 of the Mental Health (Northern Ireland) Order 1986 ([S.I. 1986/ 595 \(N.I. 4\)](#)) (further provisions as to prisoners under sentence) is amended as follows.

(2) In paragraph (1), for “the expiration of that person’s sentence” there is substituted “his release date”.

(3) For paragraphs (2) and (3) there is substituted—

“(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.



- (3) In this Article, references to a person’s release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice centre in which he might have been detained if the transfer direction had not been given; and in determining that day any powers that would be exercisable by the Sentence Review Commissioners or the Life Sentence Review Commissioners if he were detained in such a prison or juvenile justice centre shall be disregarded.”

**297 Access to Sentence Review Commissioners and Life Sentence Review Commissioners for certain Northern Ireland patients**

In Article 79 of the Mental Health (Northern Ireland) Order 1986 (restricted patients subject to restriction directions) after paragraph (5) there is inserted—

“(5A) Where the tribunal have made a recommendation under paragraph (1)(b) in the case of a patient who is subject to a restriction direction—

(a) the fact that the restriction direction remains in force does not prevent—

(i) the making of any application or reference to the Life Sentence Review Commissioners by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to those Commissioners, or

(ii) the making of any application by him to the Sentence Review Commissioners, and

(b) if—

(i) the Life Sentence Review Commissioners give a direction by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice centre in which he might have been detained if the transfer direction had not been given, or

(ii) the Sentence Review Commissioners grant a declaration by virtue of which he would become so entitled,

the restriction direction shall cease to have effect at the time at which he would become so entitled.”.

*Term of detention and training order*

**298 Term of detention and training order**

(1) Section 101 of the Sentencing Act (which relates to detention and training orders) is amended as follows.

(2) In subsection (1), for “subsection (2)” there is substituted “subsections (2) and (2A)”.

(3) After subsection (2) there is inserted—

“(2A) Where—

(a) the offence is a summary offence,

(b) the maximum term of imprisonment that a court could (in the case of an offender aged 18 or over) impose for the offence is 51 weeks,

the term of a detention and training order may not exceed 6 months.”

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*Status: This is the original version (as it was originally enacted).*

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*Disqualification from working with children*

**299 Disqualification from working with children**

Schedule 30 (which contains amendments of Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43) relating to disqualification orders under that Part) shall have effect.

*Fine defaulters*

**300 Power to impose unpaid work requirement or curfew requirement on fine defaulter**

- (1) Subsection (2) applies in any case where, in respect of a person aged 16 or over, a magistrates' court—
  - (a) has power under Part 3 of the Magistrates' Courts Act 1980 (c. 43) to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction (other than a sum ordered to be paid under section 6 of the Proceeds of Crime Act 2002 (c. 29)), or
  - (b) would, but for section 89 of the Sentencing Act (restrictions on custodial sentences for persons under 18), have power to issue such a warrant for such default.
- (2) The magistrates' court may, instead of issuing a warrant of commitment or, as the case may be, proceeding under section 81 of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offender), order the person in default to comply with—
  - (a) an unpaid work requirement (as defined by section 199), or
  - (b) a curfew requirement (as defined by section 204).
- (3) In this Part “default order” means an order under subsection (2).
- (4) Subsections (3) and (4) of section 177 (which relate to electronic monitoring) have effect in relation to a default order as they have effect in relation to a community order.
- (5) Where a magistrates' court has power to make a default order, it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions (if any) as it thinks just.
- (6) Schedule 8 (breach, revocation or amendment of community order), Schedule 9 (transfer of community orders to Scotland or Northern Ireland) and Chapter 4 (further provisions about orders under Chapters 2 and 3) have effect in relation to default orders as they have effect in relation to community orders, but subject to the modifications contained in Schedule 31.
- (7) Where a default order has been made for default in paying any sum—
  - (a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect, and
  - (b) on payment of a part of the sum to any such person, the total number of hours or days to which the order relates is to be taken to be reduced by a proportion corresponding to that which the part paid bears to the whole sum.
- (8) In calculating any reduction required by subsection (7)(b), any fraction of a day or hour is to be disregarded.

### **301 Fine defaulters: driving disqualification**

- (1) Subsection (2) applies in any case where a magistrates' court—
  - (a) has power under Part 3 of the Magistrates' Courts Act 1980 (c. 43) to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction (other than a sum ordered to be paid under section 6 of the Proceeds of Crime Act 2002 (c. 29)), or
  - (b) would, but for section 89 of the Sentencing Act (restrictions on custodial sentences for persons under 18), have power to issue such a warrant for such default.
- (2) The magistrates' court may, instead of issuing a warrant of commitment or, as the case may be, proceeding under section 81 of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offenders), order the person in default to be disqualified, for such period not exceeding twelve months as it thinks fit, for holding or obtaining a driving licence.
- (3) Where an order has been made under subsection (2) for default in paying any sum—
  - (a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect, and
  - (b) on payment of part of the sum to any such person, the total number of weeks or months to which the order relates is to be taken to be reduced by a proportion corresponding to that which the part paid bears to the whole sum.
- (4) In calculating any reduction required by subsection (3)(b) any fraction of a week or month is to be disregarded.
- (5) The Secretary of State may by order amend subsection (2) by substituting, for the period there specified, such other period as may be specified in the order.
- (6) A court which makes an order under this section disqualifying a person for holding or obtaining a driving licence shall require him to produce—
  - (a) any such licence held by him together with its counterpart; or
  - (b) in the case where he holds a Community licence (within the meaning of Part 3 of the Road Traffic Act 1988 (c. 52)), his Community licence and its counterpart (if any).
- (7) In this section—

“driving licence” means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;

“counterpart”—

  - (a) in relation to a driving licence, has the meaning given in relation to such a licence by section 108(1) of that Act; and
  - (b) in relation to a Community licence, has the meaning given by section 99B of that Act.

**CHAPTER 9**

## SUPPLEMENTARY

**302 Execution of process between England and Wales and Scotland**

Section 4 of the Summary Jurisdiction (Process) Act 1881 (c. 24) (execution of process of English and Welsh courts in Scotland) applies to any process issued by a magistrates' court under—

- paragraph 7(2) or (4), 13(6) or 25(1) of Schedule 8,
- paragraph 12 of Schedule 9,
- paragraph 8(1) of Schedule 10, or
- paragraph 6(2) or (4), 12(1) or 20(1) of Schedule 12,

as it applies to process issued under the Magistrates' Courts Act 1980 by a magistrates' court.

**303 Sentencing: repeals**

The following enactments (which are superseded by the provisions of this Part) shall cease to have effect—

- (a) Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners),
- (b) in the Crime (Sentences) Act 1997 (c. 43)—
  - (i) section 29 (power of Secretary of State to release life prisoners to whom section 28 of that Act does not apply),
  - (ii) section 33 (transferred prisoners), and
  - (iii) sections 35 and 40 (fine defaulters),
- (c) sections 80 and 81 of the Crime and Disorder Act 1998 (c. 37) (sentencing guidelines), and
- (d) in the Sentencing Act—
  - (i) Chapter 3 of Part 4 (community orders available only where offender 16 or over),
  - (ii) section 85 (sexual or violent offences: extension of custodial term for licence purposes),
  - (iii) sections 87 and 88 (remand in custody),
  - (iv) section 109 (life sentence for second serious offence), and
  - (v) Chapter 5 of Part 5 (suspended sentences).

**304 Amendments relating to sentencing**

Schedule 32 (which contains amendments related to the provisions of this Part) shall have effect.

**305 Interpretation of Part 12**

- (1) In this Part, except where the contrary intention appears—
  - “accredited programme” has the meaning given by section 202(2);

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*Status: This is the original version (as it was originally enacted).*

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“activity requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 201;

“alcohol treatment requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 212;

“the appropriate officer of the court” means, in relation to a magistrates' court, the clerk of the court;

“associated”, in relation to offences, is to be read in accordance with section 161(1) of the Sentencing Act;

“attendance centre” has the meaning given by section 221(2);

“attendance centre requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 214;

“community order” has the meaning given by section 177(1);

“community requirement”, in relation to a suspended sentence order, has the meaning given by section 189(7);

“community sentence” has the meaning given by section 147(1);

“court” (without more), except in Chapter 7, does not include a service court;

“curfew requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 204;

“custodial sentence” has the meaning given by section 76 of the Sentencing Act;

“custody plus order” has the meaning given by section 181(4);

“default order” has the meaning given by section 300(3);

“drug rehabilitation requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 209;

“electronic monitoring requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 215;

“exclusion requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 205;

“guardian” has the same meaning as in the Children and Young Persons Act 1933 (c. 12);

“intermittent custody order” has the meaning given by section 183(2);

“licence” means a licence under Chapter 6;

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

“mental health treatment requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 207;

“pre-sentence report” has the meaning given by section 158(1);

“programme requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 202;

“prohibited activity requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 203;

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“residence requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 206;

“responsible officer”, in relation to an offender to whom a community order, a custody plus order, an intermittent custody order or a suspended sentence order relates, has the meaning given by section 197;

“sentence of imprisonment” does not include a committal—

- (a) in default of payment of any sum of money,
- (b) for want of sufficient distress to satisfy any sum of money, or
- (c) for failure to do or abstain from doing anything required to be done or left undone,

and references to sentencing an offender to imprisonment are to be read accordingly;

“the Sentencing Act” means the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

“service court” means—

- (a) a court-martial constituted under the [Army Act 1955 \(3 & 4 Eliz. 2 c. 18\)](#), the [Air Force Act 1955 \(3 & 4 Eliz. 2 c. 19\)](#) or the [Naval Discipline Act 1957 \(c. 53\)](#);
- (b) a summary appeal court constituted under section 83ZA of the [Army Act 1955](#), section 83ZA of the [Air Force Act 1955](#) or section 52FF of the [Naval Discipline Act 1957](#);
- (c) the Courts-Martial Appeal Court; or
- (d) a Standing Civilian Court;

“service disciplinary proceedings” means—

- (a) any proceedings under the [Army Act 1955](#), the [Air Force Act 1955](#) or the [Naval Discipline Act 1957](#) (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence), and
- (b) any proceedings before a Standing Civilian Court;

“supervision requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 213;

“suspended sentence” and “suspended sentence order” have the meaning given by section 189(7);

“unpaid work requirement”, in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 199;

“youth offending team” means a team established under section 39 of the [Crime and Disorder Act 1998 \(c. 37\)](#).

- (2) For the purposes of any provision of this Part which requires the determination of the age of a person by the court or the Secretary of State, his age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State to be after considering any available evidence.
- (3) Any reference in this Part to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders.
- (4) For the purposes of this Part—

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*Status: This is the original version (as it was originally enacted).*

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- (a) a sentence falls to be imposed under subsection (2) of section 51A of the Firearms Act 1968 (c. 27) if it is required by that subsection and the court is not of the opinion there mentioned,
- (b) a sentence falls to be imposed under section 110(2) or 111(2) of the Sentencing Act if it is required by that provision and the court is not of the opinion there mentioned,
- (c) a sentence falls to be imposed under section 225 or 227 if, because the court is of the opinion mentioned in subsection (1)(b) of that section, the court is obliged to pass a sentence complying with that section,
- (d) a sentence falls to be imposed under section 226 if, because the court is of the opinion mentioned in subsection (1)(b) of that section and considers that the case falls within subsection (2) or (3) of that section, the court is obliged to pass a sentence complying with that section, and
- (e) a sentence falls to be imposed under section 228 if, because the court is of the opinion mentioned in subsection (1)(b)(i) and (ii) of that section, the court is obliged to pass a sentence complying with that section.