



Crime and Disorder Act 1998

1998 CHAPTER 37

PART IV

DEALING WITH OFFENDERS

CHAPTER II

SCOTLAND

Sexual or violent offenders

86 Extended sentences for sex and violent offenders

(1) After section 210 of the 1995 Act there shall be inserted the following section—

“210A Extended sentences for sex and violent offenders

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

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- (a) the term of imprisonment (“the custodial term”) which the court would have passed on the offender otherwise than by virtue of this section; and
 - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.
- (3) The extension period shall not exceed, in the case of—
 - (a) a sexual offence, ten years; and
 - (b) a violent offence, five years.
- (4) A court shall, before passing an extended sentence, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.
- (5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.
- (6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding three years.
- (7) The Secretary of State may by order—
 - (a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and
 - (b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.
- (8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.
- (10) For the purposes of this section—
 - “licence” and “relevant officer” have the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;
 - “sexual offence” means—
 - (i) rape;
 - (ii) clandestine injury to women;
 - (iii) abduction of a woman or girl with intent to rape or ravish;
 - (iv) assault with intent to rape or ravish;
 - (v) indecent assault;
 - (vi) lewd, indecent or libidinous behaviour or practices;
 - (vii) shameless indecency;
 - (viii) sodomy;

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- (ix) an offence under section 170 of the Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;
 - (x) an offence under section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
 - (xi) an offence under section 52A of that Act (possession of indecent images of children);
 - (xii) an offence under section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
 - (xiii) an offence under section 2 of that Act (intercourse with a stepchild);
 - (xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);
 - (xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);
 - (xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);
 - (xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);
 - (xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and
 - (xix) an offence under subsection (5) of section 13 of that Act (homosexual offences);
 - “imprisonment” includes—
 - (i) detention under section 207 of this Act; and
 - (ii) detention under section 208 of this Act; and
 - “violent offence” means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.
- (11) Any reference in subsection (10) above to a sexual offence includes—
- (a) a reference to any attempt, conspiracy or incitement to commit that offence; and
 - (b) except in the case of an offence in paragraphs (i) to (viii) of the definition of “sexual offence” in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence.”
- (2) In section 209 of the 1995 Act (supervised release orders), in subsection (1)—
- (a) after the word “convicted” there shall be inserted the words “on indictment”;
 - (b) after the words “an offence” there shall be inserted the words “, other than a sexual offence within the meaning of section 210A of this Act,”; and
 - (c) the words “not less than twelve months but” shall cease to have effect.

87 Further provision as to extended sentences

After section 26 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) there shall be inserted the following section—

*“Extended sentences***26A Extended sentences**

- (1) This section applies to a prisoner who, on or after the date on which section 87 of the Crime and Disorder Act 1998 comes into force, has been made subject to an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences).
- (2) Subject to the provisions of this section, this Part of this Act, except section 1A, shall apply in relation to extended sentences as if any reference to a sentence or term of imprisonment was a reference to the custodial term of an extended sentence.
- (3) Where a prisoner subject to an extended sentence is released on licence under this Part the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.
- (4) Where, apart from this subsection, a prisoner subject to an extended sentence would be released unconditionally—
 - (a) he shall be released on licence; and
 - (b) the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.
- (5) The extension period shall be taken to begin as follows—
 - (a) for the purposes of subsection (3) above, on the day following the date on which, had there been no extension period, the prisoner would have ceased to be on licence in respect of the custodial term;
 - (b) for the purposes of subsection (4) above, on the date on which, apart from that subsection, he would have been released unconditionally.
- (6) Subject to section 1A(c) of this Act and section 210A(3) of the 1995 Act and to any direction by the court which imposes an extended sentence, where a prisoner is subject to two or more extended sentences, the extension period which is taken to begin in accordance with subsection (5) above shall be the aggregate of the extension period of each of those sentences.
- (7) For the purposes of sections 12(3) and 17(1) of this Act, and subject to subsection (8) below, the question whether a prisoner is a long-term or short-term prisoner shall be determined by reference to the extended sentence.
- (8) Where a short-term prisoner serving an extended sentence in respect of a sexual offence is released on licence under subsection (4)(a) above, the provisions of section 17 of this Act shall apply to him as if he was a long-term prisoner.
- (9) In relation to a prisoner subject to an extended sentence, the reference in section 17(5) of this Act to his sentence shall be construed as a reference to the extended sentence.

- (10) For the purposes of this section “custodial term”, “extension period” and “imprisonment” shall have the same meaning as in section 210A of the 1995 Act.
- (11) In section 1A(c) and section 16(1)(a) of this Act, the reference to the date on which a prisoner would have served his sentence in full shall mean, in relation to a prisoner subject to an extended sentence, the date on which the extended sentence, as originally imposed by the court, would expire.”

88 Re-release of prisoners serving extended sentences

After section 3 of the 1993 Act there shall be inserted the following section—

“3A Re-release of prisoners serving extended sentences

- (1) This section applies to a prisoner serving an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences) who has been recalled to prison under section 17(1) of this Act.
- (2) Subject to subsection (3) below, a prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board—
- (a) where his case has previously been referred to the Parole Board under this section or section 17(3) of this Act, not less than one year following the disposal of that referral;
 - (b) in any other case, at any time.
- (3) Where a prisoner to whom this section applies is subject to another sentence which is not treated as a single sentence with the extended sentence, the Secretary of State shall not be required to refer his case to the Parole Board before he has served one half of that other sentence.
- (4) Where the case of a prisoner to whom this section applies is referred to the Parole Board under this section or section 17(3) of this Act, the Board shall, if it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined (but not otherwise), direct that he should be released.
- (5) If the Parole Board gives a direction under subsection (4) above, the Secretary of State shall release the prisoner on licence.”

Offenders dependent etc. on drugs

89 Drug treatment and testing orders

After section 234A of the 1995 Act there shall be inserted the following section—

“234B Drug treatment and testing order

- (1) This section applies where a person of 16 years of age or more is convicted of an offence, other than one for which the sentence is fixed by law, committed on or after the date on which section 89 of the Crime and Disorder Act 1998 comes into force.

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- (2) Subject to the provisions of this section, the court by or before which the offender is convicted may, if it is of the opinion that it is expedient to do so instead of sentencing him, make an order (a “drug treatment and testing order”) which shall—
- (a) have effect for a period specified in the order of not less than six months nor more than three years (“the treatment and testing period”); and
 - (b) include the requirements and provisions mentioned in section 234C of this Act.
- (3) A court shall not make a drug treatment and testing order unless it—
- (a) has been notified by the Secretary of State that arrangements for implementing such orders are available in the area of the local authority proposed to be specified in the order under section 234C(6) of this Act and the notice has not been withdrawn;
 - (b) has obtained a report by, and if necessary heard evidence from, an officer of the local authority in whose area the offender is resident about the offender and his circumstances; and
 - (c) is satisfied that—
 - (i) the offender is dependent on, or has a propensity to misuse, drugs;
 - (ii) his dependency or propensity is such as requires and is susceptible to treatment; and
 - (iii) he is a suitable person to be subject to such an order.
- (4) For the purpose of determining for the purposes of subsection (3)(c) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify.
- (5) A drug treatment and testing order or an order under subsection (4) above shall not be made unless the offender expresses his willingness to comply with its requirements.
- (6) The Secretary of State may by order—
- (a) amend paragraph (a) of subsection (2) above by substituting a different period for the minimum or the maximum period for the time being specified in that paragraph; and
 - (b) make such transitional provisions as appear to him necessary or expedient in connection with any such amendment.
- (7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (8) A drug treatment and testing order shall be as nearly as may be in the form prescribed by Act of Adjournal.”

90 Requirements and provisions to be included in drug treatment and testing orders

After section 234B of the 1995 Act there shall be inserted the following section—

“234C Requirements and provisions of drug treatment and testing orders

- (1) A drug treatment and testing order shall include a requirement (“the treatment requirement”) that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience (“the treatment provider”) with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs.
- (2) The required treatment for any particular period shall 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 shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- (3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is required to submit to treatment as a resident).
- (4) A drug treatment and testing order shall include a requirement (“the testing requirement”) that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times and in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.
- (5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.
- (6) A drug treatment and testing order shall specify the local authority in whose area the offender will reside when the order is in force and require that authority to appoint or assign an officer (a “supervising officer”) for the purposes of subsections (7) and (8) below.
- (7) A drug treatment and testing order shall—
 - (a) provide that, for the treatment and testing period, the offender shall be under the supervision of a supervising officer;
 - (b) require the offender to keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and
 - (c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the supervising officer.
- (8) Supervision by the supervising officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—
 - (a) to report on the offender’s progress to the appropriate court;
 - (b) to report to that court any failure by the offender to comply with the requirements of the order; and

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- (c) to determine whether the circumstances are such that he should apply to that court for the variation or revocation of the order.”

91 Procedural matters relating to drug treatment and testing orders

After section 234C of the 1995 Act there shall be inserted the following section—

“234D Procedural matters relating to drug treatment and testing orders

- (1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—
 - (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow under section 234G of this Act if he fails to comply with any of those requirements;
 - (c) that the court has power under section 234E of this Act to vary or revoke the order on the application of either the offender or the supervising officer; and
 - (d) that the order will be periodically reviewed at intervals provided for in the order.
- (2) Upon making a drug treatment and testing order the court shall—
 - (a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
 - (b) send a copy of the order to the treatment provider;
 - (c) send a copy of the order to the chief social work officer of the local authority specified in the order in accordance with section 234C(6) of this Act; and
 - (d) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.
- (3) Where a copy of a drug treatment and testing order has under subsection (2)
 - (a) been sent by registered post or by the recorded delivery service, an acknowledgment or certificate of delivery of a letter containing a copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.”

92 Amendment and periodic review of drug treatment and testing orders

After section 234D of the 1995 Act there shall be inserted the following sections—

“234E Amendment of drug treatment and testing order

- (1) Where a drug treatment and testing order is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order.
- (2) Where an application is made under subsection (1) above by the supervising officer, the court shall issue a citation requiring the offender to appear before the court.

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- (3) On an application made under subsection (1) above and after hearing both the offender and the supervising officer, the court may by order, if it appears to it in the interests of justice to do so—
 - (a) vary the order by—
 - (i) amending or deleting any of its requirements or provisions;
 - (ii) inserting further requirements or provisions; or
 - (iii) subject to subsection (4) below, increasing or decreasing the treatment and testing period; or
 - (b) revoke the order.
- (4) The power conferred by subsection (3)(a)(iii) above shall not be exercised so as to increase the treatment and testing period above the maximum for the time being specified in section 234B(2)(a) of this Act, or to decrease it below the minimum so specified.
- (5) Where the court, on the application of the supervising officer, proposes to vary (otherwise than by deleting a requirement or provision) a drug treatment and testing order, sections 234B(5) and 234D(1) of this Act shall apply to the variation of such an order as they apply to the making of such an order.
- (6) If an offender fails to appear before the court after having been cited in accordance with subsection (2) above, the court may issue a warrant for his arrest.

234F Periodic review of drug treatment and testing order

- (1) A drug treatment and testing order shall—
 - (a) provide for the order to be reviewed periodically at intervals of not less than one month;
 - (b) provide for each review of the order to be made, subject to subsection (5) below, at a hearing held for the purpose by the appropriate court (a “review hearing”);
 - (c) require the offender to attend each review hearing;
 - (d) provide for the supervising officer to make to the court, before each review, a report in writing on the offender’s progress under the order; and
 - (e) provide for each such report to include the test results communicated to the supervising officer under section 234C(7)(c) of this Act and the views of the treatment provider as to the treatment and testing of the offender.
- (2) At a review hearing the court, after considering the supervising officer’s report, may amend any requirement or provision of the order.
- (3) The court—
 - (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;
 - (b) shall not amend any provision of the order so as reduce the treatment and testing period below the minimum specified in section 234B(2)(a) of this Act or to increase it above the maximum so specified; and

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- (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.
- (4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may revoke the order.
- (5) If at a review hearing the court, after considering the supervising officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made without a hearing.
- (6) A review without a hearing shall take place in chambers without the parties being present.
- (7) If at a review without a hearing the court, after considering the supervising officer's report, is of the opinion that the offender's progress is no longer satisfactory, the court may issue a warrant for the arrest of the offender or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a citation requiring the offender to appear before that court as such time as may be specified in the citation.
- (8) Where an offender fails to attend—
 - (a) a review hearing in accordance with a requirement contained in a drug treatment and testing order; or
 - (b) a court at the time specified in a citation under subsection (7) above, the court may issue a warrant for his arrest.
- (9) Where an offender attends the court at a time specified by a citation issued under subsection (7) above—
 - (a) the court may exercise the powers conferred by this section as if the court were conducting a review hearing; and
 - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.”

93 Consequences of breach of drug treatment and testing order

After section 234F of the 1995 Act there shall be inserted the following sections—

“234G Breach of drug treatment testing order

- (1) If at any time when a drug treatment and testing order is in force it appears to the appropriate court that the offender has failed to comply with any requirement of the order, the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.
- (2) If it is proved to the satisfaction of the appropriate court that the offender has failed without reasonable excuse to comply with any requirement of the order, the court may by order—
 - (a) without prejudice to the continuation in force of the order, impose a fine not exceeding level 3 on the standard scale;

- (b) vary the order; or
 - (c) revoke the order.
- (3) For the purposes of subsection (2) above, the evidence of one witness shall be sufficient evidence.
- (4) A fine imposed under this section in respect of a failure to comply with the requirements of a drug treatment and testing order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

234H Disposal on revocation of drugs treatment and testing order

- (1) Where the court revokes a drugs treatment and testing order under section 234E(3)(b), 234F(4) or 234G(2)(c) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made.
- (2) In disposing of an offender under subsection (1) above, the court shall have regard to the time for which the order has been in operation.
- (3) Where the court revokes a drug treatment and testing order as mentioned in subsection (1) above and the offender is subject to—
- (a) a probation order, by virtue of section 234J of this Act; or
 - (b) a restriction of liberty order, by virtue of section 245D of this Act; or
 - (c) a restriction of liberty order and a probation order, by virtue of the said section 245D,
- the court shall, before disposing of the offender under subsection (1) above—
- (i) where he is subject to a probation order, discharge that order;
 - (ii) where he is subject to a restriction of liberty order, revoke that order; and
 - (iii) where he is subject to both such orders, discharge the probation order and revoke the restriction of liberty order.”

94 Combination of orders

- (1) After section 234H of the 1995 Act there shall be inserted the following section—

“234J Concurrent drug treatment and testing and probation orders

- (1) Notwithstanding sections 228(1) and 234B(2) of this Act, where the court considers it expedient that the offender should be subject to a drug treatment and testing order and to a probation order, it may make both such orders in respect of the offender.
- (2) In deciding whether it is expedient for it to exercise the power conferred by subsection (1) above, the court shall have regard to the circumstances, including the nature of the offence and the character of the offender and to the report submitted to it under section 234B(3)(b) of this Act.
- (3) Where the court makes both a drug treatment and testing order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each of the orders to the following—

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- (a) the treatment provider within the meaning of section 234C(1);
 - (b) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act; and
 - (c) if he would not otherwise receive a copy of the order, the officer of the local authority who is to supervise the probationer.
- (4) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—
- (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 234G(2)(b) of this Act in relation to the drug treatment and testing order; and
 - (b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) of this Act in relation to the probation order.
- (5) Where an offender by an act or omission fails to comply with both a requirement contained in a drug treatment and testing order and in a probation order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (4) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 234G(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.”
- (2) Schedule 6 to this Act (Part I of which makes further provision in relation to the combination of drug treatment and testing orders with other orders and Part II of which makes provision in relation to appeals) shall have effect.

95 Interpretation provision in relation to drug treatment and testing orders

- (1) After section 234J of the 1995 Act there shall be inserted the following section—

“234K Drug treatment and testing orders: interpretation

In sections 234B to 234J of this Act—

“the appropriate court” means—

- (a) where the drug treatment and testing order has been made by the High Court, that court;
- (b) in any other case, the court having jurisdiction in the area of the local authority for the time being specified in the order under section 234C(6) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or district court, but in a case where an order has been made by a district court and there is no district court in that area, the sheriff court; and

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted.”

- (2) In section 307(1) of the 1995 Act (interpretation), after the definition of “diet” there shall be inserted the following definition—

““drug treatment and testing order” has the meaning assigned to it in section 234B(2) of this Act;”.

Racial aggravation

96 Offences racially aggravated

- (1) The provisions of this section shall apply where it is—
- (a) libelled in an indictment; or
 - (b) specified in a complaint,
- and, in either case, proved that an offence has been racially aggravated.
- (2) An offence is racially aggravated for the purposes of this section if—
- (a) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership) of a racial group; or
 - (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group,
- and evidence from a single source shall be sufficient evidence to establish, for the purposes of this subsection, that an offence is racially aggravated.
- (3) In subsection (2)(a) above—
- “membership”, in relation to a racial group, includes association with members of that group;
 - “presumed” means presumed by the offender.
- (4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender’s malice and ill-will is also based, to any extent, on—
- (a) the fact or presumption that any person or group of persons belongs to any religious group; or
 - (b) any other factor not mentioned in that paragraph.
- (5) Where this section applies, the court shall, on convicting a person, take the aggravation into account in determining the appropriate sentence.
- (6) In this section “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.