

# CRIMINAL JUSTICE AND COURT SERVICES ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part III: Dealing with Offenders

##### *Chapter II: Miscellaneous*

##### *Section 56: Reprimands and warnings*

129. *Section 56* removes the current requirement that a reprimand or warning may only be given in a police station. This will give the police flexibility to arrange for restorative conferences in more suitable locations such as the offices of the youth offending team responsible for assessing the young offender and providing the intervention programme. This Section also gives the police an explicit power to bail pending delivery of reprimands and final warnings. This will enable the police to deliver reprimands and final warning at restorative conferences involving parents and, where appropriate, victims.

##### *Section 57: Testing persons in police detention*

130. *Section 57* sets out the procedure for taking urine and non-intimate samples (e.g. oral saliva swabs) for the purposes of testing those charged with certain acquisitive and drugs offences for the presence of specified Class A drugs. The procedures are set out through insertions of new Sections in the Police and Criminal Evidence Act 1984. Only those aged over 18 can be tested under these provisions.
131. The procedure for testing states that:
- A test may be taken if a person has been charged with a “trigger offence”; or
  - A person has been charged with an offence and a police officer of at least the rank of Inspector has reasonable grounds to suspect a link between the offence and the misuse of a specified Class A drug, and authorises the taking of the sample.
132. As well as setting out the procedure for testing, the Section provides for requesting a sample for testing, and creates a new offence, with a penalty of up to three months in prison or a fine (not exceeding level 4 on the standard scale – currently £2,500), or both for failing without good cause to give a sample.
133. The Secretary of State may authorise people other than police officers to take samples, but only by *affirmative resolution order*.
134. The Section also provides powers for a custody officer to detain someone for up to six hours, following charge, for the purposes of testing.

***Section 58: Right to bail: relevance of drug misuse***

135. *Section 58* amends Section 4 of the Bail Act 1976 in order to require courts to have regard to any evidence of drugs misuse when considering the granting of bail and/or any conditions of bail.

***Section 59: Remand Centres***

136. *Section 59* repeals the power to set up remand centres. No remand centres have ever been set up under this power. Section 56 of the Act will lead to 18-20 year old offenders being detained together with 17-20 year old remands and this removes the main reason for the existence of the power to establish remand centres.

***Section 60: Life sentences: tariffs***

137. This Section changes the way tariffs are set in cases of detention during Her Majesty's pleasure. It provides for the sentencing court, rather than the Home Secretary, to do so in future and replaces the tariff setting aspects of the Crime (Sentences) Act 1997 with separate provision in the Powers of Criminal Courts (Sentencing) Act 2000. The tariff will continue to represent the minimum period that must be served before a case can be referred to the Parole Board to consider release. The period set by the court will be open to appeal by the offender or referral by the Attorney General if he considers it unduly lenient.
138. The effect of this provision is to bring the law into compliance with the conclusions of the European Court of Human Rights in the cases of *T v. UK* and *V v. UK*. There the Court found, amongst other things, that it was not compatible with Article 6 of the European Convention on Human Rights for the Home Secretary to set tariffs in cases of detention during Her Majesty's pleasure.
139. As a result of the change contained in this Section, the arrangements for setting tariffs in these cases will be the same as those that currently apply to offenders serving discretionary life sentences. The Parole Board is already responsible for determining release, following tariff expiry, in respect of both groups of offender.

***Section 61: Abolition of sentences of detention in a young offender institution and custody for life***

140. *Section 61* abolishes the sentences of detention in a young offender institution and custody for life. Following abolition, all defendants aged 18 or over at the time of sentencing who receive a custodial sentence will be sentenced to imprisonment or life imprisonment. *Subsections (2) and (4)* make provision for the Secretary of State to determine certain arrangements for the detention of those sentenced before this Section comes into effect (i.e. before the abolition of detention in a young offender institution and custody for life). These arrangements will be necessary in order to make the transition from the current system to that created by this Section.

***Sections 62, 63 and 64: Conditions or requirements of release of prisoners – electronic monitoring and drug testing***

141. *Section 62* will provide powers to include, in the licence of any prisoner being released from a custodial sentence, a requirement to submit to electronic monitoring. The Secretary of State currently has the statutory power to attach conditions to a release licence. It is therefore already possible to impose curfew conditions, non-contact or exclusion conditions, and such conditions are used where appropriate. This Section will enable these types of condition to have the additional requirement of electronic monitoring attached to them. At present, the only statutory basis for the use of electronic monitoring of curfew conditions in a release licence is under the Home Detention Curfew scheme, which applies only to prisoners serving sentences of less than 4 years.

142. The new powers provided for in *Subsection (2)(a)* may be used in the following ways:
- where a licence requires the released person to observe a curfew or otherwise remain at a specified place, electronic monitoring could be used to determine whether the curfew is observed;
  - where a licence requires the released person not to enter a specified place or places, electronic monitoring could be used to determine whether that person has entered the restricted area.
143. In addition, *Subsection (2)(b)* of Section 55 introduces new powers enabling the “tracking” of offenders released from prison on licence, by electronically monitoring their whereabouts, on a continuous basis, until the expiry of the licence or the removal of the condition, whichever happens first. Suitable technology to support “tracking” is not currently available, but is under development. These powers will therefore provide the basis for making use of “tracking” technology as and when it becomes available. *Subsection (3)* of Section 55 establishes that these new powers should not be used to achieve the electronic monitoring of curfew conditions imposed on prisoners who are subject to the Home Detention Curfew scheme. Those powers are provided for separately in the Criminal Justice Act 1991, as amended by the Crime and Disorder Act 1998.
144. *Section 63* makes similar provision to those in Section 62 and Section 64 but applies to those released on a Notice of Supervision under Section 65 of the Criminal Justice Act 1991, rather than a licence. This covers some young offenders under 22 years of age who are released from a young offender institution and those released under Section 53 of the Children and Young Persons Act 1933. Section 63 also stipulates that any electronic monitoring or drug testing condition included in a Notice of Supervision must cease at the sentence expiry date - the date on which the person would (but for release) have served the custodial sentence in full.
145. *Section 64* provides powers to impose drug testing conditions on those who are convicted of a trigger offence and are subsequently released from prison on licence, provided they are over 18 at the time of release from custody. It is already a standard condition in release licences that a prisoner should be “of good behaviour” whilst on licence. These new powers will be used to determine compliance with that condition in respect of drug use, and may also be used to determine compliance with other more specific conditions which may be imposed in individual cases.
146. The enforcement mechanism for breaches of electronic monitoring or drug testing conditions or requirements will be the same as that applying in respect of any other type of condition or requirement. The arrangements will be those already in place for, and determined by, the particular type of licence or Notice of Supervision.

***Section 65: Short-term prisoners: release subject to curfew conditions***

147. *Section 65* amends the Criminal Justice Act 1991 to provide that sex offenders subject to the notification requirements of Part I of the Sex Offenders Act 1997 are not eligible for the Home Detention Curfew scheme.

***Section 66: Amendments of the Sex Offenders Act 1997***

148. *Section 66* gives effect to *Schedule 5*. *Schedule 5* contains a number of amendments to Part I of the Sex Offenders Act 1997, which requires offenders convicted of or cautioned for certain serious sex offences to keep the police informed of their whereabouts.

***Section 67: Arrangements for assessing etc risks posed by certain offenders***

149. *Section 67* places a joint duty on the “responsible authority” ie the chief officer of police and the local board for each area to establish and keep under review arrangements

for assessing and managing the risks posed by “*relevant sexual or violent offenders*” (explained in Section 68 – see below) or other offenders who may cause serious harm.

150. The responsible authority is also required to prepare and publish at least every 12 months a report on how they have discharged the duties. As part of the report they must give details of the arrangements which have been made and such information as the Secretary of State has notified to the authorities that he wishes them to include. The intention is that the public should be able to see what arrangements have been made without the details of individual offenders being made public.
151. In addition, Section 67(6) provides that the Secretary of State will have the power to issue guidance to the authorities on how to discharge the functions under this Section.
152. It is envisaged the Secretary of State’s guidance will cover areas such as consultation with other organisations, including social services departments, child protection organisations, prisons etc as appropriate in fulfilling these functions. It will also contain guidance on what the report to be issued should contain.

### ***Section 68: Interpretation of Section 67***

153. *Section 68* defines who is a “*relevant sexual or violent offender*” for the purposes of Section 67. It is those who fall into any of four categories.
154. First, where a person is subject to the notification requirement under Part 1 of the Sex Offenders Act 1997. It includes offences such as rape and unlawful sexual intercourse with a girl under 16.
155. Second, where a person is convicted by a court in England and Wales of a “sexual or violent offence” within the meaning the Powers of the Criminal Courts (Sentencing) Act 2000 (see below) and in respect of such an offence is:

- sentenced to a term of imprisonment or some form of detention for 12 months or more; or
- detained during Her Majesty’s pleasure; or
- subject to a hospital order or guardianship order under the Mental Health Act 1983.

156. A “sexual or violent offence” is defined in Section 161 of the Powers of the Criminal Courts (Sentencing) Act 2000. A “violent offence” is:

““an offence which leads, or is intended to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall into this definition)”

This would therefore include offences such as those in the Offences against the Person Act 1861, including assault occasioning actual bodily harm contrary to Section 47, wounding or inflicting grievous bodily harm contrary to Section 20 and the offences in Section 18 such as wounding or causing grievous bodily harm with intent.

“sexual offence” is defined in Section 161 of the Powers of the Criminal Courts (Sentencing) Act 2000 to include an offence under :

- the Sexual Offences Act 1956, (other than an offence under Section 30,31, or 33 to 36 relating to prostitution and brothels). These include for example the offences of rape, unlawful sexual intercourse with a girl under 16, buggery, indecent assault and indecency between men
- Section 128 of Mental Health Act 1959 - Sexual intercourse with patients
- Indecency with Children Act 1960 - gross indecency with or towards a child, under the age of 16, or someone who incites a child under that age to such an act with him

or another. The indecency with Children Act 1960 has been amended by Section 39 of this Act to increase the age of the child against which this offence can be committed.

- Section 9 of the Theft Act 1968 - burglary with intent to commit rape
  - Section 54 of the Criminal Law Act 1977 - Inciting girl under sixteen to have incestuous sexual intercourse
  - An offence under the Protection of Children Act 1978 - Indecent photographs of children
  - Section 1 of the Criminal Law Act 1977 - conspiracy to commit any of the offences above
  - Section 1 of the Criminal Attempts Act 1981 - attempting to commit any of the offences above
  - inciting another to commit any of those offences
157. Third, where a person is found not guilty by a court in England and Wales of a sexual or violent offence, as defined above, by reason of insanity or to be under a disability and to have done the act charged and an order is made that he is admitted to hospital or a guardianship order within the meaning of the Mental Health Act 1983 is made in respect of him.
158. Fourth where a person is eligible for a disqualification order to be imposed to prevent them from working with children under Sections 28, 29 and 30 of this Act (paragraphs 81-83) of this Explanatory Note above refers).

### ***Section 69: Duties of local probation boards in connection with victims of certain offences***

A.

#### **Duties imposed by Section 69**

159. Where a court imposes a relevant sentence on a sexual or violent offender (see B: Application of Section 69 below), duties are imposed on the local probation board.
160. The first duty (Section 69(2)) for the local probation board in the area in which the offender is sentenced, is to take all reasonable steps to ascertain whether the victim wishes to make representations about any conditions or requirements attached to any licence to which the offender should be subject to when he is released.
161. Where the victim does wish to make representations the local probation board is under a duty to forward those representations to the person responsible for determining the offenders release conditions or requirements – normally the governor at the prison where the offender is detained.
162. There is also a duty (Section 69(2)(b)) on the same board to take all reasonable steps to ascertain if the victim wishes to be informed about any conditions or requirements that apply to the offender's release .
163. If the victim has requested information, the local probation board for the area where the offender is to be supervised or institution from which he is to be released, is under a duty to provide details of whether the offender is to be subject to any conditions/ requirements (Section 69(5)). If so the victim is to be informed of any conditions or requirements which relate to contact with the victim or family and any other information which seems to the local probation board to be appropriate. So, for example, victims will be informed if the licence contains a condition not to go within a certain radius of the victim's home.

164. It will remain open to the probation service, as at present, to provide information to the victim, or victim's family as appropriate, in cases falling outside the scope of Section 69.

B:

Application of [Section 69](#)

165. The new statutory duties on local probation board in Section 69 are in respect of offenders sentenced to a "relevant sentence" for a "sexual or violent offence".

166. A "relevant sentence" is defined in Section 69(7) as including:

- a sentence of imprisonment of 12 months or more;
- a sentence of detention in a young offenders institution for 12 months or more;
- a sentence of detention during Her Majesty's pleasure;
- a sentence of 12 months or more where an offender under 18 has been convicted for certain serious offences; and
- a detention and training order for a term of 12 months or more.

A "sexual or violent offence" has the meaning given to it by Section 69(8). That is

- (i) a "sexual or violent offence" within the meaning the Powers of the Criminal Courts (Sentencing) Act 2000 or
- (ii) an offence where the offender is subject to the notification provisions of the Sex Offenders Act 1997 or
- (iii) an offence against a child with the meaning of Part II of the Act

167. For explanations of a sexual or violent offence under the Powers of the Criminal Courts (Sentencing) Act 2000 and an offence where the offender is subject to the notification provisions of the Sex Offenders Act 1997, see explanation of Section 68 above.

168. For the explanation of an offence against a child with the meaning of Part II of the Act, see paragraphs 79 and 80 of this Explanatory Note above.