



Powers of Criminal Courts (Sentencing) Act 2000

2000 CHAPTER 6

PART V

CUSTODIAL SENTENCES ETC.

CHAPTER I

GENERAL PROVISIONS

Meaning of “custodial sentence”

76 Meaning of “custodial sentence”.

- (1) In this Act “custodial sentence” means—
- (a) a sentence of imprisonment (as to which, see section 89(1)(a) below);
 - (b) a sentence of detention under section 90 or 91 below;
 - [^{F1}(bb) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003;
 - (bc) a sentence of detention under section 228 of that Act;]
 - (c) a sentence of custody for life under section 93 or 94 below;
 - (d) a sentence of detention in a young offender institution (under section 96 below or otherwise); or
 - (e) a detention and training order (under section 100 below).
- (2) In subsection (1) above “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

Status: Point in time view as at 28/03/2009. This version of this chapter contains provisions that are prospective.
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Textual Amendments

- F1** S. 76(1)(bb)(bc) inserted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 32 para. 108](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 42\(34\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1 paras. 48\(s\)](#), [50\(2\)\(d\)](#); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))

Liability to imprisonment on conviction on indictment

77 Liability to imprisonment on conviction on indictment.

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

General limit on magistrates' courts' powers

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

- [^{F2}(1) A magistrates' court shall not have power to impose imprisonment, or detention in a young offender institution, for more than six months in respect of any one offence.
- (2) Unless expressly excluded, subsection (1) above shall apply even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than six months.
- (3) Subsection (1) above is without prejudice to section 133 of the ^{M1}Magistrates' Courts Act 1980 (consecutive terms of imprisonment).
- (4) Any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine, shall not be limited by virtue of subsection (1) above.
- (5) In subsection (4) above "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.
- (6) In this section "impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.
- (7) Section 132 of the ^{M2}Magistrates' Courts Act 1980 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court.]

Textual Amendments

- F2** Ss. 78-82 repealed (4.4.2005 for the purpose of the repeals of ss. 79-82) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 37 Pt. 7](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 44\(4\)\(r\)](#) (with [Sch.](#)

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2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))

Marginal Citations

- M1** 1980 c. 43.
M2 1980 c. 43.

General restrictions on discretionary custodial sentences

F279 **General restrictions on imposing discretionary custodial sentences.**

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Textual Amendments

- F2** Ss. 78-82 repealed (4.4.2005 for the purpose of the repeals of ss. 79-82) by **Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 37 Pt. 7; S.I. 2005/950, art. 2(1), Sch. 1 para. 44(4)(r)** (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))

F280 **Length of discretionary custodial sentences: general provision.**

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Textual Amendments

- F2** Ss. 78-82 repealed (4.4.2005 for the purpose of the repeals of ss. 79-82) by **Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 37 Pt. 7; S.I. 2005/950, art. 2(1), Sch. 1 para. 44(4)(r)** (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))

Procedural requirements for imposing discretionary custodial sentences

F281 **Pre-sentence reports and other requirements.**

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Textual Amendments

- F2** Ss. 78-82 repealed (4.4.2005 for the purpose of the repeals of ss. 79-82) by **Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 37 Pt. 7; S.I. 2005/950, art. 2(1), Sch. 1 para. 44(4)(r)** (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I.

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2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17;
 S.I. 2012/2906, art. 2(l))

F²82 Additional requirements in case of mentally disordered offender.

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Textual Amendments

F2 Ss. 78-82 repealed (4.4.2005 for the purpose of the repeals of ss. 79-82) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 37 Pt. 7](#); S.I. 2005/950, art. 2(1), [Sch. 1 para. 44\(4\)\(r\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); S.I. 2008/1586, [Sch. 1 paras. 48\(s\), 50\(2\)\(d\)](#); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); S.I. 2012/2906, art. 2(l))

[^{F3} Life sentences]

Textual Amendments

F3 S. 82A and cross-heading inserted (30.11.2000) by [2000 c. 43](#), [ss. 60\(1\), 80\(3\)](#)

F⁴[82A Determination of tariffs.

- (1) This section applies if a court passes a life sentence in circumstances [^{F5}where the sentence is not fixed by law].
- (2) The court shall, unless it makes an order under subsection (4) below, order that the provisions of section 28(5) to (8) of the ^{M3}Crime (Sentences) Act 1997 (referred to in this section as the “early release provisions”) shall 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 shall be such as the court considers appropriate taking into account—
 - (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
 - (b) the effect of any direction which it would have given under [^{F6}section 240 of the Criminal Justice Act 2003][^{F7}below (crediting periods of remand in custody)][^{F7}(crediting periods of remand in custody) or under section 246 of the Armed Forces Act 2006 (equivalent provision for service courts)][^{F8}or under section 240A of that Act of 2003 (crediting periods of remand on bail subject to certain types of condition)] if it had sentenced him to a term of imprisonment; and
 - (c) the early release provisions as compared with [^{F9}section 244(1) of the Criminal Justice Act 2003].
- (4) If [^{F10}the offender was aged 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

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under subsection (2) above, the court shall order that, ^{F11}..., the early release provisions shall not apply to the offender.

[No order under subsection (4) above may be made where the life sentence is—
^{F12}(4A) (a) a sentence of imprisonment for public protection under section 225 of the Criminal Justice Act 2003, or
(b) a sentence of detention for public protection under section 226 of that Act.]

^{F13}(5)

^{F13}(6)

(7) In this section—

“court” includes ^{F14}a court-martial][^{F14}the Court Martial];

“life sentence” has the same meaning as in Chapter II of Part II of the ^{M4}Crime (Sentences) Act 1997.

(8) So far as this section relates to sentences passed by [^{F15}a court-martial][^{F15}the Court Martial], section 167(1) below does not apply.]

Textual Amendments

- F4** S. 82A and cross-heading inserted (30.11.2000) by 2000 c. 43, ss. 60(1), 80(3)
- F5** Words in s. 82A(1) substituted (18.12.2003) by Criminal Justice Act 2003 (c. 44), s. 336(2), Sch. 32 para. 109(2)
- F6** Words in s. 82A(3)(b) substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 32 para. 109(3)(a); S.I. 2005/950, art. 2(1), Sch. 1 para. 42(34) (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(1))
- F7** Words in s. 82A(3)(b) substituted (28.3.2009 for specified purposes) by Armed Forces Act 2006 (c. 52), s. 383(2), Sch. 16 para. 163(2); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- F8** Words in s. 82A(3)(b) inserted (3.11.2008) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 22(5), 153(7); S.I. 2008/2712, art. 2, Sch. para. 2
- F9** Words in s. 82A(3)(c) substituted (18.12.2003) by Criminal Justice Act 2003 (c. 44), s. 336(2), Sch. 32 para. 109(3)(b)
- F10** Words in s. 82A(4) inserted (18.12.2003) by Criminal Justice Act 2003 (c. 44), s. 336(2), Sch. 32 para. 109(4)(a)
- F11** Words in s. 82A(4) repealed (18.12.2003) by Criminal Justice Act 2003 (c. 44), s. 336(2), Sch. 32 para. 109(4)(b), Sch. 37 Pt. 8
- F12** S. 82A(4A) inserted (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 18 para. 4; S.I. 2005/950, art. 2(1), Sch. 1 para. 40 (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(1))
- F13** S. 82A(5)(6) repealed (18.12.2003) by Criminal Justice Act 2003 (c. 44), s. 336(2), Sch. 32 para. 109(5), Sch. 37 Pt. 8
- F14** Words in s. 82A(7) substituted (28.3.2009 for specified purposes) by Armed Forces Act 2006 (c. 52), s. 383(2), Sch. 16 para. 163(3); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- F15** Words in s. 82A(8) substituted (28.3.2009 for specified purposes) by Armed Forces Act 2006 (c. 52), s. 383(2), Sch. 16 para. 163(3); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)

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Modifications etc. (not altering text)

C1 S. 82A modified (30.11.2000) by 2000 c. 43, ss. 60(4), 80(3)

Marginal Citations

M3 1997 c. 43.

M4 1997 c. 43.

Other restrictions

83 Restriction on imposing custodial sentences on persons not legally represented.

- (1) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who—
 - (a) is not legally represented in that court, and
 - (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom,
 unless he is a person to whom subsection (3) below applies.
- (2) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not—
 - (a) pass a sentence of detention under section 90 or 91 below,
 - (b) pass a sentence of custody for life under section 93 or 94 below,
 - (c) pass a sentence of detention in a young offender institution, or
 - (d) make a detention and training order,
 on or in respect of a person who is not legally represented in that court unless he is a person to whom subsection (3) below applies.
- (3) This subsection applies to a person if either—
 - (a) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service but the right was withdrawn because of his conduct [^{F16}or because it appeared that his financial resources were such that he was not eligible to be granted such a right];
 - [^{F17}(aa) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible to be granted a right to it; or]
 - (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply.
- (4) For the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- (5) For the purposes of subsection (1)(b) above a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 below or under section 19 of the ^{M5}Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded.
- (6) In this section “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

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Textual Amendments

- F16** Words in s. 83(3) inserted (2.10.2006) by [Criminal Defence Service Act 2006 \(c. 9\)](#), s. 4(2)(c), (3)(a), 5(2); S.I. 2006/2491, art. 2
- F17** S. 83(3)(aa) substituted for preceding word (2.10.2006) by [Criminal Defence Service Act 2006 \(c. 9\)](#), s. 4(2)(c), (3)(b), 5(2); S.I. 2006/2491, art. 2

Marginal Citations

- M5** 1968 c. 29 (N.I.)

F18 84 Restriction on consecutive sentences for released prisoners.

Textual Amendments

- F18** S. 84 repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 37 Pt. 7](#); S.I. 2005/950, art. 2(1), [Sch. 1 para. 44\(4\)\(r\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; S.I. 2012/2906, art. 2(1))

Sexual and violent offences: licences etc.

F19 85 Sexual or violent offences: extension of certain custodial sentences for licence purposes.

Textual Amendments

- F19** S. 85 repealed (4.4.2005 except in relation to a case in which the sentence of imprisonment is imposed in respect of an offence committed before 4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 303(d)(ii), 336(3)(4), [Sch. 37 Pt. 7](#); S.I. 2005/950, art. 2(1), [Sch. 1 para. 22](#) (with [Sch. 2](#)) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; S.I. 2012/2906, art. 2(1))

86 Sexual offences committed before 30th September 1998.

- (1) Where, in the case of a long-term or short-term prisoner—
- the whole or any part of his sentence was imposed for a sexual offence committed before 30th September 1998, and
 - the court by which he was sentenced for that offence, having had regard to the matters mentioned in section 32(6)(a) and (b) of the ^{M6}Criminal Justice Act 1991, ordered that this section should apply,

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sections 33(3) and 37(1) of that Act shall each have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.

- (2) Expressions used in this section shall be construed as if they were contained in Part II of the ^{M7}Criminal Justice Act 1991.
- (3) The reference in subsection (1) above to section 33(3) of the ^{M8}Criminal Justice Act 1991 is to section 33(3) as it has effect without the amendment made by section 104(1) of the ^{M9}Crime and Disorder Act 1998 (which substituted the words “ on licence ” for the word “unconditionally” and does not apply in relation to a prisoner whose sentence or any part of whose sentence was imposed for an offence committed before 30th September 1998).

Marginal Citations

M6 1991 c. 53.
M7 1991 c. 53.
M8 1991 c. 53.
M9 1998 c. 37.

PROSPECTIVE

Crediting of periods of remand in custody

F20 87 Crediting of periods of remand in custody: terms of imprisonment and detention.

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Textual Amendments

F20 S. 87 repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 303(d)(iii), 336(3)(4), [Sch. 37 Pt. 7](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 22](#) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1 paras. 48\(s\)](#), [50\(2\)\(d\)](#); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), [Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))

F21 88 Meaning of “remand in custody”.

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Textual Amendments

F21 S. 88 repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 303(d)(iii), 336(3)(4), [Sch. 37 Pt. 7](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 22](#) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), [Sch. 26 para. 78](#), [Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), [Sch. 1](#)

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paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))

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