



# Powers of Criminal Courts (Sentencing) Act 2000

## 2000 CHAPTER 6

### PART VIII

#### MISCELLANEOUS AND SUPPLEMENTARY

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

#### **151 Effect of previous convictions and of offending while on bail**

- (1) In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences.
- (2) In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.
- (3) A probation order or conditional discharge order made before 1st October 1992 (which by virtue of section 2 or 7 of the Powers of Criminal Courts Act 1973 would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (4) A conditional discharge order made after 30th September 1992 (which by virtue of section 1A of the Powers of Criminal Courts Act 1973 or section 12 above would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (5) A conviction in respect of which a probation order was made before 1st October 1992 (which by virtue of section 13 of the Powers of Criminal Courts Act 1973 would otherwise not be a conviction for the purposes of this section) is to be treated as a conviction for those purposes.

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- (6) A conviction in respect of which an order discharging the offender absolutely or conditionally was made at any date (which by virtue of section 14 above would otherwise not be a conviction for the purposes of this section) is to be treated as a conviction for those purposes.

### **152 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 shall 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) If, as a result of taking into account any matter referred to in subsection (1) above, the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, it shall state in open court that it has done so.
- (3) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 above, nothing in that subsection shall prevent the court, after taking into account any matter referred to in subsection (1) above, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

### **153 Increase in sentences for racial 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 (racially-aggravated assaults, racially-aggravated criminal damage, racially-aggravated public order offences and racially-aggravated harassment etc.).
- (2) If the offence was racially aggravated, the court—
- (a) shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and
  - (b) shall state in open court that the offence was so aggravated.
- (3) Section 28 of the Crime and Disorder Act 1998 (meaning of “racially aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

#### *Commencement and alteration of Crown Court sentence*

### **154 Commencement of Crown Court sentence**

- (1) A sentence imposed, or other order made, by the Crown Court when dealing with an offender shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs.
- (2) The power to give a direction under subsection (1) above has effect subject to section 84 above (restriction on consecutive sentences for released prisoners).
- (3) In this section “sentence” and “order” shall be construed in accordance with section 155(8) below.

## **155 Alteration of Crown Court sentence**

- (1) Subject to the following provisions of this section, a sentence imposed, or other order made, by the Crown Court when dealing with an offender may be varied or rescinded by the Crown Court within the period of 28 days beginning with the day on which the sentence or other order was imposed or made or, where subsection (2) below applies, within the time allowed by that subsection.
- (2) Where two or more persons are jointly tried on an indictment, then, subject to the following provisions of this section, a sentence imposed, or other order made, by the Crown Court on conviction of any of those persons on the indictment may be varied or rescinded by the Crown Court not later than the expiry of whichever is the shorter of the following periods, that is—
  - (a) the period of 28 days beginning with the date of conclusion of the joint trial;
  - (b) the period of 56 days beginning with the day on which the sentence or other order was imposed or made.
- (3) For the purposes of subsection (2) above, the joint trial is concluded on the latest of the following dates, that is any date on which any of the persons jointly tried is sentenced or is acquitted or on which a special verdict is brought in.
- (4) A sentence or other order shall not be varied or rescinded under this section except by the court constituted as it was when the sentence or other order was imposed or made, or, where that court comprised one or more justices of the peace, a court so constituted except for the omission of any one or more of those justices.
- (5) Subject to subsection (6) below, where a sentence or other order is varied under this section the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.
- (6) For the purposes of—
  - (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or of application for leave to appeal), and
  - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act),the sentence or other order shall be regarded as imposed or made on the day on which it is varied under this section.
- (7) Crown Court Rules—
  - (a) may, as respects cases where two or more persons are tried separately on the same or related facts alleged in one or more indictments, provide for extending the period fixed by subsection (1) above;
  - (b) may, subject to the preceding provisions of this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Crown Court may be varied or rescinded by that court.
- (8) In this section—
  - “sentence” includes a recommendation for deportation made when dealing with an offender;
  - “order” does not include an order under section 17(2) of the Access to Justice Act 1999.

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*Disclosure of pre-sentence reports etc.*

**156 Disclosure of pre-sentence reports**

- (1) This section applies where a court obtains a pre-sentence report.
- (2) Subject to subsections (3) and (4) below, the court shall give a copy of the report—
  - (a) to the offender or his counsel or solicitor; and
  - (b) 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 17 and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.
- (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)(b) above shall 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.

**157 Other reports of probation officers and members of youth offending teams**

- (1) This section applies where—
  - (a) a report by a probation officer 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 (as defined by section 162 below).
- (2) Subject to subsection (3) below, the court shall give a copy of the report to the offender or his counsel or solicitor.
- (3) If the offender is aged under 17 and is not represented by counsel or a solicitor, a copy of the report need not be given to him but shall be given to his parent or guardian if present in court.

*Supplementary*

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

- (1) Nothing in—
  - (a) sections 35 and 36 above (imposing community sentences),
  - (b) sections 79 to 82 above (imposing custodial sentences), or
  - (c) section 128 above (fixing of fines),
 shall prevent 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) Without prejudice to the generality of subsection (1) above, nothing in those sections shall prevent a court—
- (a) from mitigating any penalty included in an offender’s sentence by taking into account any other penalty included in that sentence; or
  - (b) in a 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.
- (3) Nothing in those sections shall 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 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.
- (4) In subsection (3) above, “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983.

#### **159 Execution of process between England and Wales and Scotland**

Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English and Welsh courts in Scotland) shall apply to any process issued under—

- section 2(4), 13(1), 104(1), 121(1) or 123(1) above,
- paragraph 3(2) of Schedule 1 to this Act,
- paragraph 3(1), 10(7) or 24(1) of Schedule 3 to this Act,
- paragraph 6(6) of Schedule 4 to this Act,
- paragraph 1(1) of Schedule 5 to this Act,
- paragraph 7(2) of Schedule 7 to this Act, or
- paragraph 6(2) of Schedule 8 to this Act,

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

#### **160 Rules and orders**

- (1) Any power of the Secretary of State to make rules or orders under this Act shall be exercisable by statutory instrument.
- (2) A statutory instrument containing—
- (a) rules made by the Secretary of State under section 40(1) or 162 or paragraph 3 of Schedule 2, or
  - (b) any order made by the Secretary of State under section 40(2), 68, 122(7) or 156(4),
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The Secretary of State shall not make—
- (a) any order under section 15(1), 45, 50, 58, 85(7), 100(2)(b)(ii) or 103(2), or
  - (b) rules under section 87(4),
- unless a draft of the order or rules has been laid before, and approved by a resolution of, each House of Parliament.

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- (4) A draft of any statutory instrument containing rules under section 62 shall be laid before Parliament.
- (5) Any order made by the Secretary of State under section 37(6) or 40(2), and any rules under section 40(1) or 162, may make different provision for different cases or classes of case.
- (6) Any order made by the Secretary of State under this Act may make such transitional provision as appears to him necessary or expedient in connection with any provision made by the order.

### *Interpretation*

## **161 Meaning of “associated offence”, “sexual offence”, “violent offence” and “protecting the public from serious harm”**

- (1) For the purposes of this Act, an offence is associated with another if—
  - (a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or
  - (b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.
- (2) In this Act, “sexual offence” means any of the following—
  - (a) an offence under the Sexual Offences Act 1956, other than an offence under section 30, 31 or 33 to 36 of that Act;
  - (b) an offence under section 128 of the Mental Health Act 1959;
  - (c) an offence under the Indecency with Children Act 1960;
  - (d) an offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape;
  - (e) an offence under section 54 of the Criminal Law Act 1977;
  - (f) an offence under the Protection of Children Act 1978;
  - (g) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to (f) above;
  - (h) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of those offences;
  - (i) an offence of inciting another to commit any of those offences.
- (3) In this Act, “violent offence” means an offence which leads, or is intended or likely 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 within this definition).
- (4) In this Act any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.

## 162 Meaning of “pre-sentence report”

- (1) In this Act “pre-sentence report” means a report in writing 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) above “an appropriate officer” means—
- (a) where the offender is aged 18 or over, a probation officer or a social worker of a local authority social services department;
  - (b) where the offender is aged under 18, a probation officer, a social worker of a local authority social services department or a member of a youth offending team.

## 163 General definitions

In this Act, except where the contrary intention appears—

“action plan order” means an order under section 69(1) above;

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

“associated”, in relation to offences, shall be construed in accordance with section 161(1) above;

“attendance centre” has the meaning given by section 62(2) above;

“attendance centre order” means an order under section 60(1) above (and, except where the contrary intention is shown by paragraph 8 of Schedule 3 or paragraph 4 of Schedule 7 or 8 to this Act, includes orders made under section 60(1) by virtue of paragraph 4(1)(c) or 5(1)(c) of Schedule 3 or paragraph 2(2)(a) of Schedule 7 or 8);

“child” means a person under the age of 14;

“combination order” means an order under section 51(1) above;

“community order” has the meaning given by section 33(1) above;

“community sentence” has the meaning given by section 33(2) above;

“community service order” means an order under section 46(1) above (and, except where the contrary intention is shown by section 59 above or paragraph 7 of Schedule 3 to this Act or section 35 of the Crime (Sentences) Act 1997, includes orders made under section 46(1) by virtue of section 59 or paragraph 4(1)(b) or 5(1)(b) of Schedule 3 or the said section 35);

“compensation order” has the meaning given by section 130(1) above;

“court” does not include a court-martial;

“curfew order” means an order under section 37(1) above (and, except where the contrary intention is shown by section 59 above or paragraph 3 of Schedule 7 or 8 to this Act or section 35 of the Crime (Sentences) Act 1997, includes orders made under section 37(1) by virtue of section 59 or paragraph 2(2)(a) of Schedule 7 or 8 or the said section 35);

“custodial sentence” has the meaning given by section 76 above;

“detention and training order” has the meaning given by section 100(3) above;

“drug treatment and testing order” means an order under section 52(1) above;

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“falling to be imposed under section 109(2), 110(2) or 111(2)” shall be construed in accordance with section 164(3) below;

“guardian” has the same meaning as in the Children and Young Persons Act 1933;

“local authority accommodation” means accommodation provided by or on behalf of a local authority, and “accommodation provided by or on behalf of a local authority” here has the same meaning as it has in the Children Act 1989 by virtue of section 105 of that Act;

“offence punishable with imprisonment” shall be construed in accordance with section 164(2) below;

“operational period”, in relation to a suspended sentence, has the meaning given by section 118(3) above;

“order for conditional discharge” has the meaning given by section 12(3) above;

“period of conditional discharge” has the meaning given by section 12(3) above;

“pre-sentence report” has the meaning given by section 162 above;

“probation order” means an order under section 41(1) above;

“probation period” means the period for which a person subject to a probation or combination order is placed under supervision by the order;

“protecting the public from serious harm” shall be construed in accordance with section 161(4) above;

“referral order” means an order under section 16(2) or (3) above;

“the register” means the register of proceedings before a magistrates' court required by rules under section 144 of the Magistrates' Courts Act 1980 to be kept by the clerk of the court;

“reparation order” means an order under section 73(1) above;

“responsible officer”—

- (a) in relation to a curfew order, has the meaning given by section 37(12) above;
- (b) in relation to a probation order, has the meaning given by section 41(6) above;
- (c) in relation to a community service order, has the meaning given by section 46(13) above;
- (d) in relation to a combination order, has (by virtue of section 51(4) above) the meaning given by section 41(6) or 46(13) above;
- (e) in relation to a drug treatment and testing order, has the meaning given by section 54(3) above;
- (f) in relation to an action plan order, has the meaning given by section 69(4) above; and
- (g) in relation to a reparation order, has the meaning given by section 74(5) above;

except that in section 47 above references to “the responsible officer” shall be construed in accordance with that section;

“review hearing”, in relation to a drug treatment and testing order, has the meaning given by section 54(6) above;

“sentence of imprisonment” does not include a committal—

- (a) in default of payment of any sum of money;



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- (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 shall be construed accordingly;

“sexual offence” has the meaning given by section 161(2) above;

“supervision order” means an order under section 63(1) above;

“supervisor”, in relation to a supervision order, has the meaning given by section 63(3) above;

“suspended sentence” has the meaning given by section 118(3) above;

“suspended sentence supervision order” has the meaning given by section 122(1) above;

“the testing requirement”, in relation to a drug treatment and testing order, has the meaning given by section 53(4) above;

“the treatment provider”, in relation to such an order, has the meaning given by section 53(1) above;

“the treatment requirement”, in relation to such an order, has the meaning given by section 53(1) above;

“the treatment and testing period”, in relation to such an order, has the meaning given by section 52(1) above;

“violent offence” has the meaning given by section 161(3) above;

“young person” means a person aged at least 14 but under 18;

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998.

#### **164 Further interpretive provisions**

- (1) For the purposes of any provision of this Act which requires the determination of the age of a person by the court or the Secretary of State, his age shall be deemed 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.
- (2) Any reference in this Act to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under this or any Act on the imprisonment of young offenders.
- (3) For the purposes of this Act, a sentence falls to be imposed under section 109(2), 110(2) or 111(2) above if it is required by that provision and the court is not of the opinion there mentioned.

#### *Final provisions*

#### **165 Consequential amendments, transitory modifications, transitional provisions and repeals**

- (1) Schedule 9 to this Act (which contains amendments consequential on this Act) shall have effect.
- (2) Schedule 10 to this Act (which contains transitory modifications of this Act) shall have effect.

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- (3) Schedule 11 to this Act (which contains transitional provisions) shall have effect.
- (4) The enactments mentioned in Part I of Schedule 12 to this Act and the instruments mentioned in Part II of that Schedule are hereby repealed or revoked to the extent specified in the third column of those Parts.

#### **166 Short title**

This Act may be cited as the Powers of Criminal Courts (Sentencing) Act 2000.

#### **167 Extent**

- (1) Subject to subsections (2) to (4) below, this Act extends to England and Wales only.
- (2) The following provisions also extend to Scotland, namely—
  - section 14;
  - sections 44, 49 and 51(6);
  - section 121(3);
  - section 159;
  - this section; and
  - Schedule 4.
- (3) The following provisions also extend to Northern Ireland, namely—
  - sections 44, 49 and 51(6);
  - this section; and
  - Schedule 4.
- (4) The extent of any amendment, repeal or revocation made by this Act is the same as that of the enactment amended, repealed or revoked.
- (5) For the purposes of the Scotland Act 1998, any provision of this Act which extends to Scotland is to be taken to be a pre-commencement enactment within the meaning of that Act.

#### **168 Commencement**

- (1) Subject to subsection (2) below and to paragraph 11 of Schedule 11 (special provisions relating to referral orders), this Act shall come into force at the end of the period of three months beginning with the day on which it is passed (and references to the commencement of this Act are to its coming into force then).
- (2) Sections 87 and 88 above shall not come into force until such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (3) Section 160(6) above does not apply to an order under subsection (2) above, but an order under that subsection may make such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with any provision brought into force by the order.