Criminal Justice Act 2003

2003 CHAPTER 44

PART 12

SENTENCING

CHAPTER 1

GENERAL PROVISIONS ABOUT SENTENCING

Matters to be taken into account in sentencing

142 Purposes of sentencing

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing—

(a) the punishment of offenders,

(b) the reduction of crime (including its reduction by deterrence),

(c) the reform and rehabilitation of offenders,

(d) the protection of the public, and

(e) the making of reparation by offenders to persons affected by their offences.

(2) Subsection (1) does not apply—

(a) in relation to an offender who is aged under 18 at the time of conviction,

(b) to an offence the sentence for which is fixed by law,

(c) to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (minimum sentence for certain firearms offences), under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences) or under any of sections 225 to 228 of this Act (dangerous offenders), or

(d) in relation to the making under Part 3 of the Mental Health Act 1983 (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

(3) In this Chapter "sentence", in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and "sentencing" is to be construed accordingly.

143 Determining the seriousness of an offence

(1) In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might forseeably have caused.

(2) In considering the seriousness of an offence ("the current offence") committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—

(a) the nature of the offence to which the conviction relates and its relevance to the current offence, and

(b) the time that has elapsed since the conviction.

(3) In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

(4) Any reference in subsection (2) to a previous conviction is to be read as a reference to—

(a) a previous conviction by a court in the United Kingdom, or

(b) a previous finding of guilt in service disciplinary proceedings.

(5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside the United Kingdom as an aggravating factor in any case where the court considers it appropriate to do so.

144 Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court must take into account—

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which this indication was given.

(2) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 of the Sentencing Act, nothing in that subsection prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

145 Increase in sentences for racial or religious aggravation

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

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

(2) If the offence was racially or religiously aggravated, the court—
- (a) must treat that fact as an aggravating factor, and
- (b) must state in open court that the offence was so aggravated.

(3) Section 28 of the Crime and Disorder Act 1998 (meaning of "racially or religiously aggravated") applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

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

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—
- (a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
  - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
  - (ii) a disability (or presumed disability) of the victim, or
- (b) that the offence is motivated (wholly or partly)—
  - (i) by hostility towards persons who are of a particular sexual orientation, or
  - (ii) by hostility towards persons who have a disability or a particular disability.

(3) The court—
- (a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and
- (b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section "disability" means any physical or mental impairment.

General restrictions on community sentences

147 Meaning of "community sentence" etc.

(1) In this Part "community sentence" means a sentence which consists of or includes—
- (a) a community order (as defined by section 177), or
- (b) one or more youth community orders.

(2) In this Chapter "youth community order" means—
- (a) a curfew order as defined by section 163 of the Sentencing Act,
- (b) an exclusion order under section 40A(1) of that Act,
- (c) an attendance centre order as defined by section 163 of that Act,

(d) a supervision order under section 63(1) of that Act, or

(e) an action plan order under section 69(1) of that Act.

148 Restrictions on imposing community sentences

(1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) Where a court passes a community sentence which consists of or includes a community order—

(a) the particular requirement or requirements forming part of the community order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and

(b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) Where a court passes a community sentence which consists of or includes one or more youth community orders—

(a) the particular order or orders forming part of the sentence must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and

(b) the restrictions on liberty imposed by the order or orders must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(4) Subsections (1) and (2)(b) have effect subject to section 151(2).

149 Passing of community sentence on offender remanded in custody

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

(2) In subsection (1) “remanded in custody” has the meaning given by section 242(2).

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

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

(a) is fixed by law,

(b) falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (required custodial sentence for certain firearms offences),

(c) falls to be imposed under section 110(2) or 111(2) of the Sentencing Act (requirement to impose custodial sentences for certain repeated offences committed by offenders aged 18 or over), or

(d) falls to be imposed under any of sections 225 to 228 of this Act (requirement to impose custodial sentences for certain offences committed by offenders posing risk to public).

151 Community order for persistent offender previously fined

(1) Subsection (2) applies where—

(a) a person aged 16 or over is convicted of an offence ("the current offence"),

(b) on three or more previous occasions he has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine, and

(c) despite the effect of section 143(2), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a community sentence.

(2) The court may make a community order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to make such an order.

(3) The matters referred to in subsection (2) are—

(a) the nature of the offences to which the previous convictions mentioned in subsection (1)(b) relate and their relevance to the current offence, and

(b) the time that has elapsed since the offender's conviction of each of those offences.

(4) In subsection (1)(b), the reference to conviction by a court in the United Kingdom includes a reference to the finding of guilt in service disciplinary proceedings; and, in relation to any such finding of guilt, the reference to the sentence passed is a reference to the punishment awarded.

(5) For the purposes of subsection (1)(b), a compensation order does not form part of an offender's sentence.

(6) For the purposes of subsection (1)(b), it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine.

(7) This section does not limit the extent to which a court may, in accordance with section 143(2), treat any previous convictions of the offender as increasing the seriousness of an offence.

General restrictions on discretionary custodial sentences

152 General restrictions on imposing discretionary custodial sentences

(1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one—

(a) fixed by law, or

(b) falling to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27), under 110(2) or 111(2) of the Sentencing Act or under any of sections 225 to 228 of this Act.

(2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.

(3) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if—

(a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness, or

(b) he fails to comply with an order under section 161(2) (pre-sentence drug testing).

153 Length of discretionary custodial sentences: general provision

(1) This section applies where a court passes a custodial sentence other than one fixed by law or falling to be imposed under section 225 or 226.

(2) Subject to section 51A(2) of the Firearms Act 1968 (c. 27), sections 110(2) and 111(2) of the Sentencing Act and sections 227(2) and 228(2) of this Act, the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

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

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

(1) A magistrates' court does not have power to impose imprisonment for more than 12 months in respect of any one offence.

(2) Unless expressly excluded, subsection (1) applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment for more than 12 months.

(3) Subsection (1) is without prejudice to section 133 of the Magistrates' Courts Act 1980 (c. 43) (consecutive terms of imprisonment).

(4) Any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine, is not limited by virtue of subsection (1).

(5) In subsection (4) "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

(6) In this section "impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.

(7) Section 132 of the Magistrates' Courts Act 1980 contains provisions about the minimum term of imprisonment which may be imposed by a magistrates' court.

155 Consecutive terms of imprisonment

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

(2) In subsection (1), for "6 months" there is substituted "65 weeks".

(3) Subsection (2) is omitted.

(4) In subsection (3) for "the preceding subsections" there is substituted "subsection (1) above".

Procedural requirements for imposing community sentences and discretionary custodial sentences

156 Pre-sentence reports and other requirements

(1) In forming any such opinion as is mentioned in section 148(1), (2)(b) or (3)(b), section 152(2) or section 153(2), a court must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.

(2) In forming any such opinion as is mentioned in section 148(2)(a) or (3)(a), the court may take into account any information about the offender which is before it.

(3) Subject to subsection (4), a court must obtain and consider a pre-sentence report before—

(a) in the case of a custodial sentence, forming any such opinion as is mentioned in section 152(2), section 153(2), section 225(1)(b), section 226(1)(b), section 227(1)(b) or section 228(1)(b)(i), or

(b) in the case of a community sentence, forming any such opinion as is mentioned in section 148(1), (2)(b) or (3)(b) or any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order.

(4) Subsection (3) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(5) In a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (4) unless—

(a) there exists a previous pre-sentence report obtained in respect of the offender, and

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(6) No custodial sentence or community sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (3), but any court on an appeal against such a sentence—

(a) must, subject to subsection (7), obtain a pre-sentence report if none was obtained by the court below, and

(b) must consider any such report obtained by it or by that court.

(7) Subsection (6)(a) does not apply if the court is of the opinion—

(a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or

(b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

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

(a) there exists a previous pre-sentence report obtained in respect of the offender, and

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

157 Additional requirements in case of mentally disordered offender

(1) Subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court must consider—

(a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise), and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

(a) must obtain a medical report if none was obtained by the court below, and

(b) must consider any such report obtained by it or by that court.

(5) In this section "mentally disordered", in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983 (c. 20).

(6) In this section "medical report" means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.

(7) Nothing in this section is to be taken to limit the generality of section 156.

158 Meaning of "pre-sentence report"

(1) In this Part "pre-sentence report" means a report which—

(a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by an appropriate officer, and

(b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

(2) In subsection (1) "an appropriate officer" means—

(a) where the offender is aged 18 or over, an officer of a local probation board, and

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

Disclosure of pre-sentence reports etc

159 Disclosure of pre-sentence reports

(1) This section applies where the court obtains a pre-sentence report, other than a report given orally in open court.

(2) Subject to subsections (3) and (4), the court must give a copy of the report—
(a) to the offender or his counsel or solicitor,
(b) if the offender is aged under 18, to any parent or guardian of his who is present in court, and
(c) to the prosecutor, that is to say, the person having the conduct of the proceedings in respect of the offence.

(3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

(4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for him to be given it.

(5) No information obtained by virtue of subsection (2)(c) may be used or disclosed otherwise than for the purpose of—
(a) determining whether representations as to matters contained in the report need to be made to the court, or
(b) making such representations to the court.

(6) In relation to an offender aged under 18 for whom a local authority have parental responsibility and who—
(a) is in their care, or
(b) is provided with accommodation by them in the exercise of any social services functions,

references in this section to his parent or guardian are to be read as references to that authority.

(7) In this section and section 160—

"harm" has the same meaning as in section 31 of the Children Act 1989 (c. 41);

"local authority" and "parental responsibility" have the same meanings as in that Act;

"social services functions", in relation to a local authority, has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42).

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

(1) This section applies where—

(a) a report by an officer of a local probation board or a member of a youth offending team is made to any court (other than a youth court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, and

(b) the report is not a pre-sentence report.

(2) Subject to subsection (3), the court must give a copy of the report—

(a) to the offender or his counsel or solicitor, and

(b) if the offender is aged under 18, to any parent or guardian of his who is present in court.

(3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender, or as the case may be, to that parent or guardian.

(4) In relation to an offender aged under 18 for whom a local authority have parental responsibility and who—

(a) is in their care, or

(b) is provided with accommodation by them in the exercise of any social services functions,

references in this section to his parent or guardian are to be read as references to that authority.

Pre-sentence drug testing

161 Pre-sentence drug testing

(1) Where a person aged 14 or over is convicted of an offence and the court is considering passing a community sentence or a suspended sentence, it may make an order under subsection (2) for the purpose of ascertaining whether the offender has any specified Class A drug in his body.

(2) The order requires the offender to provide, in accordance with the order, samples of any description specified in the order.

(3) Where the offender has not attained the age of 17, the order must provide for the samples to be provided in the presence of an appropriate adult.

(4) If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with the order it may impose on him a fine of an amount not exceeding level 4.

(5) In subsection (4) "level 4" means the amount which, in relation to a fine for a summary offence, is level 4 on the standard scale.

(6) The court may not make an order under subsection (2) unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn.

(7) The Secretary of State may by order amend subsection (1) by substituting for the age for the time being specified there a different age specified in the order.

(8) In this section—

"appropriate adult", in relation to a person under the age of 17, means—

(a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,

(b) a social worker of a local authority social services department, or

(c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

"specified Class A drug" has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000 (c. 43).

Fines

162 Powers to order statement as to offender's financial circumstances

(1) Where an individual has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.

(2) Where a magistrates' court has been notified in accordance with section 12(4) of the Magistrates' Courts Act 1980 (c. 43) that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.

(3) In this section "a financial circumstances order" means, in relation to any individual, an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.

(4) An individual who without reasonable excuse fails to comply with a financial circumstances order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If an individual, in furnishing any statement in pursuance of a financial circumstances order—

(a) makes a statement which he knows to be false in a material particular,

(b) recklessly furnishes a statement which is false in a material particular, or

(c) knowingly fails to disclose any material fact,

he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Proceedings in respect of an offence under subsection (5) may, notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.

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

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

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

164 Fixing of fines

(1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his financial circumstances.

(2) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.

(3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.

(5) Where—

(a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates' Courts Act 1980 (c. 43) (non-appearance of accused), or

(b) an offender—

(i) has failed to furnish a statement of his financial circumstances in response to a request which is an official request for the purposes of section 20A of the Criminal Justice Act 1991 (c. 53) (offence of making false statement as to financial circumstances),

(ii) has failed to comply with an order under section 162(1), or

(iii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

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

165 Remission of fines

(1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 164(5).

(2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—

(a) have fixed a smaller amount, or

(b) not have fined him,

it may remit the whole or part of the fine.

(3) Where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 139 of the Sentencing Act (powers of Crown Court in relation to fines) or section 82(5) of the Magistrates' Courts

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

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

Savings for power to mitigate etc

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

(1) Nothing in—
- (a) section 148 (imposing community sentences),
- (b) section 152, 153 or 157 (imposing custodial sentences),
- (c) section 156 (pre-sentence reports and other requirements),
- (d) section 164 (fixing of fines),

prevents a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) Section 152(2) does not prevent a court, after taking into account such matters, from passing a community sentence even though it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that a community sentence could not normally be justified for the offence.

(3) Nothing in the sections mentioned in subsection (1)(a) to (d) prevents a court—
- (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence, and
- (b) in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.

(4) Subsections (2) and (3) are without prejudice to the generality of subsection (1).

(5) Nothing in the sections mentioned in subsection (1)(a) to (d) is to be taken—
- (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender, or
- (b) as restricting any power (whether under the Mental Health Act 1983 (c. 20) or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

(6) In subsection (5) "mentally disordered", in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983.

Sentencing and allocation guidelines

167 The Sentencing Guidelines Council

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

(b) seven members (in this section and section 168 referred to as "judicial members") appointed by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice, and

(c) four members (in this section and section 168 referred to as "non-judicial members") appointed by the Secretary of State after consultation with the Lord Chancellor and the Lord Chief Justice.

(2) A person is eligible to be appointed as a judicial member if he is—

(a) a Lord Justice of Appeal,

(b) a judge of the High Court,

(c) a Circuit judge,

(d) a District Judge (Magistrates' Courts), or

(e) a lay justice.

(3) The judicial members must include a Circuit judge, a District Judge (Magistrates' Courts) and a lay justice.

(4) A person is eligible for appointment as a non-judicial member if he appears to the Secretary of State to have experience in one or more of the following areas—

(a) policing,

(b) criminal prosecution,

(c) criminal defence, and

(d) the promotion of the welfare of victims of crime.

(5) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.

(6) The non-judicial members must include at least one person appearing to the Secretary of State to have experience in each area.

(7) The Lord Chief Justice must appoint one of the judicial members or non-judicial members to be deputy chairman of the Council.

(8) In relation to any meeting of the Council from which the Lord Chief Justice is to be absent, he may nominate any person eligible for appointment as a judicial member to act as a member on his behalf at the meeting.

(9) The Secretary of State may appoint a person appearing to him to have experience of sentencing policy and the administration of sentences to attend and speak at any meeting of the Council.

(10) In this section and section 168 "lay justice" means a justice of the peace who is not a District Judge (Magistrates' Courts).

168 Sentencing Guidelines Council: supplementary provisions

(1) In relation to the Council, the Lord Chancellor may by order make provision—

(a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members,

(b) enabling the appropriate Minister to remove a judicial member or non-judicial member from office on grounds of incapacity or misbehaviour, and

(c) as to the proceedings of the Council.

(2) In subsection (1)(b) "the appropriate Minister" means—

(a) in relation to a judicial member, the Lord Chancellor, and
(b) in relation to a non-judicial member, the Secretary of State.

(3) The validity of anything done by the Council is not affected by any vacancy among its members, by any defect in the appointment of a member or by any failure to comply with section 167(3), (6) or (7).

(4) The Lord Chancellor may pay—
(a) to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as he may determine, and
(b) to any other judicial member or the Lord Chief Justice, such expenses as he may determine.

(5) The Secretary of State may pay to any non-judicial member such remuneration or expenses as he may determine.

169 The Sentencing Advisory Panel

(1) There shall continue to be a Sentencing Advisory Panel (in this Chapter referred to as "the Panel") constituted by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice.

(2) The Lord Chancellor must, after consultation with the Secretary of State and the Lord Chief Justice, appoint one of the members of the Panel to be its chairman.

(3) The Lord Chancellor may pay to any member of the Panel such remuneration or expenses as he may determine.

170 Guidelines relating to sentencing and allocation

(1) In this Chapter—
(a) "sentencing guidelines" means guidelines relating to the sentencing of offenders, which may be general in nature or limited to a particular category of offence or offender, and
(b) "allocation guidelines" means guidelines relating to decisions by a magistrates' court under section 19 of the Magistrates' Courts Act 1980 (c. 43) as to whether an offence is more suitable for summary trial or trial on indictment.

(2) The Secretary of State may at any time propose to the Council—
(a) that sentencing guidelines be framed or revised by the Council—
(i) in respect of offences or offenders of a particular category, or
(ii) in respect of a particular matter affecting sentencing, or
(b) that allocation guidelines be framed or revised by the Council.

(3) The Council may from time to time consider whether to frame sentencing guidelines or allocation guidelines and, if it receives—
(a) a proposal under section 171(2) from the Panel, or
(b) a proposal under subsection (2) from the Secretary of State,
must consider whether to do so.

(4) Where sentencing guidelines or allocation guidelines have been issued by the Council as definitive guidelines, the Council must from time to time (and, in particular, if it

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

(5) Where the Council decides to frame or revise sentencing guidelines, the matters to which the Council must have regard include—
- (a) the need to promote consistency in sentencing,
- (b) the sentences imposed by courts in England and Wales for offences to which the guidelines relate,
- (c) the cost of different sentences and their relative effectiveness in preventing re-offending,
- (d) the need to promote public confidence in the criminal justice system, and
- (e) the views communicated to the Council, in accordance with section 171(3)(b), by the Panel.

(6) Where the Council decides to frame or revise allocation guidelines, the matters to which the Council must have regard include—
- (a) the need to promote consistency in decisions under section 19 of the Magistrates' Courts Act 1980 (c. 43), and
- (b) the views communicated to the Council, in accordance with section 171(3)(b), by the Panel.

(7) Sentencing guidelines in respect of an offence or category of offences must include criteria for determining the seriousness of the offence or offences, including (where appropriate) criteria for determining the weight to be given to any previous convictions of offenders.

(8) Where the Council has prepared or revised any sentencing guidelines or allocation guidelines, it must—
- (a) publish them as draft guidelines, and
- (b) consult about the draft guidelines—
  - (i) the Secretary of State,
  - (ii) such persons as the Lord Chancellor, after consultation with the Secretary of State, may direct, and
  - (iii) such other persons as the Council considers appropriate.

(9) The Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines.

171 Functions of Sentencing Advisory Panel in relation to guidelines

(1) Where the Council decides to frame or revise any sentencing guidelines or allocation guidelines, otherwise than in response to a proposal from the Panel under subsection (2), the Council must notify the Panel.

(2) The Panel may at any time propose to the Council—
- (a) that sentencing guidelines be framed or revised by the Council—
  - (i) in respect of offences or offenders of a particular category, or
  - (ii) in respect of a particular matter affecting sentencing, or
- (b) that allocation guidelines be framed or revised by the Council.

(3) Where the Panel receives a notification under subsection (1) or makes a proposal under subsection (2), the Panel must—

(a) obtain and consider the views on the matters in issue of such persons or bodies as may be determined, after consultation with the Secretary of State and the Lord Chancellor, by the Council, and

(b) formulate its own views on those matters and communicate them to the Council.

(4) Paragraph (a) of subsection (3) does not apply where the Council notifies the Panel of the Council's view that the urgency of the case makes it impracticable for the Panel to comply with that paragraph.

172 Duty of court to have regard to sentencing guidelines

(1) Every court must—

(a) in sentencing an offender, have regard to any guidelines which are relevant to the offender's case, and

(b) in exercising any other function relating to the sentencing of offenders, have regard to any guidelines which are relevant to the exercise of the function.

(2) In subsection (1) "guidelines" means sentencing guidelines issued by the Council under section 170(9) as definitive guidelines, as revised by subsequent guidelines so issued.

173 Annual report by Council

(1) The Council must as soon as practicable after the end of each financial year make to the Ministers a report on the exercise of the Council's functions during the year.

(2) If section 167 comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which that section comes into force and ending with the end of the next financial year.

(3) The Ministers must lay a copy of the report before each House of Parliament.

(4) The Council must publish the report once the copy has been so laid.

(5) In this section—

"financial year" means a period of 12 months ending with 31st March;

"the Ministers" means the Secretary of State and the Lord Chancellor.

Duty of court to explain sentence

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

(1) Subject to subsections (3) and (4), any court passing sentence on an offender—

(a) must state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed, and

(b) must explain to the offender in ordinary language—

(i) the effect of the sentence,

(ii) where the offender is required to comply with any order of the court forming part of the sentence, the effects of non-compliance with the order,

(iii) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence, and

(iv) where the sentence consists of or includes a fine, the effects of failure to pay the fine.

(2) In complying with subsection (1)(a), the court must—

(a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind, or is outside that range, state the court's reasons for deciding on a sentence of a different kind or outside that range,

(b) where the sentence is a custodial sentence and the duty in subsection (2) of section 152 is not excluded by subsection (1)(a) or (b) or (3) of that section, state that it is of the opinion referred to in section 152(2) and why it is of that opinion,

(c) where the sentence is a community sentence and the case does not fall within section 151(2), state that it is of the opinion that section 148(1) applies and why it is of that opinion,

(d) where as a result of taking into account any matter referred to in section 144(1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact, and

(e) in any case, mention any aggravating or mitigating factors which the court has regarded as being of particular importance.

(3) Subsection (1)(a) does not apply—

(a) to an offence the sentence for which is fixed by law (provision relating to sentencing for such an offence being made by section 270), or

(b) to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) or under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences).

(4) The Secretary of State may by order—

(a) prescribe cases in which subsection (1)(a) or (b) does not apply, and

(b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.

(5) Where a magistrates' court passes a custodial sentence, it must cause any reason stated by virtue of subsection (2)(b) to be specified in the warrant of commitment and entered on the register.

(6) In this section—

"guidelines" has the same meaning as in section 172;

"the register" has the meaning given by section 163 of the Sentencing Act.

Publication of information by Secretary of State

175 Duty to publish information about sentencing

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

"(aa) enabling such persons to become aware of the relative effectiveness of different sentences—

(i) in preventing re-offending, and

(ii) in promoting public confidence in the criminal justice system;".

Interpretation of Chapter

176 Interpretation of Chapter 1

In this Chapter—

"allocation guidelines" has the meaning given by section 170(1)(b);

"the Council" means the Sentencing Guidelines Council;

"the Panel" means the Sentencing Advisory Panel;

"sentence" and "sentencing" are to be read in accordance with section 142(3);

"sentencing guidelines" has the meaning given by section 170(1)(a);

"youth community order" has the meaning given by section 147(2).