



Criminal Justice Act 2003

2003 CHAPTER 44

PART 12

SENTENCING

CHAPTER 3

PRISON SENTENCES OF LESS THAN 12 MONTHS

Prison sentences of less than twelve months

181 Prison sentences of less than 12 months

- (1) Any power of a court to impose a sentence of imprisonment for a term of less than 12 months on an offender may be exercised only in accordance with the following provisions of this section unless the court makes an intermittent custody order (as defined by section 183).
- (2) The term of the sentence—
 - (a) must be expressed in weeks,
 - (b) must be at least 28 weeks,
 - (c) must not be more than 51 weeks in respect of any one offence, and
 - (d) must not exceed the maximum term permitted for the offence.
- (3) The court, when passing sentence, must—
 - (a) specify a period (in this Chapter referred to as “the custodial period”) at the end of which the offender is to be released on a licence, and
 - (b) by order require the licence to be granted subject to conditions requiring the offender’s compliance during the remainder of the term (in this Chapter referred to as “the licence period”) or any part of it with one or more requirements falling within section 182(1) and specified in the order.
- (4) In this Part “custody plus order” means an order under subsection (3)(b).

Status: This is the original version (as it was originally enacted).

- (5) The custodial period—
 - (a) must be at least 2 weeks, and
 - (b) in respect of any one offence, must not be more than 13 weeks.
- (6) In determining the term of the sentence and the length of the custodial period, the court must ensure that the licence period is at least 26 weeks in length.
- (7) Where a court imposes two or more terms of imprisonment in accordance with this section to be served consecutively—
 - (a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and
 - (b) the aggregate length of the custodial periods must not be more than 26 weeks.
- (8) A custody plus order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such part of the licence period as is specified in the order.
- (9) Subsection (3)(b) does not apply where the sentence is a suspended sentence.

182 Licence conditions

- (1) The requirements falling within this subsection are—
 - (a) an unpaid work requirement (as defined by section 199),
 - (b) an activity requirement (as defined by section 201),
 - (c) a programme requirement (as defined by section 202),
 - (d) a prohibited activity requirement (as defined by section 203),
 - (e) a curfew requirement (as defined by section 204),
 - (f) an exclusion requirement (as defined by section 205),
 - (g) a supervision requirement (as defined by section 213), and
 - (h) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- (2) The power under section 181(3)(b) to determine the conditions of the licence has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—
 - (a) section 199(3) (unpaid work requirement),
 - (b) section 201(3) and (4) (activity requirement),
 - (c) section 202(4) and (5) (programme requirement), and
 - (d) section 203(2) (prohibited activity requirement).
- (3) Where the court makes a custody plus order requiring a licence to contain a curfew requirement or an exclusion requirement, the court must also require the licence to contain an electronic monitoring requirement (as defined by section 215) unless—
 - (a) the court is prevented from doing so by section 215(2) or 218(4), or
 - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a custody plus order requiring a licence to contain an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a supervision requirement or an attendance centre requirement,

Status: This is the original version (as it was originally enacted).

the court may also require the licence to contain an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).

- (5) Before making a custody plus order requiring a licence to contain two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

Intermittent custody

183 Intermittent custody

- (1) A court may, when passing a sentence of imprisonment for a term complying with subsection (4)—
- (a) specify the number of days that the offender must serve in prison under the sentence before being released on licence for the remainder of the term, and
 - (b) by order—
 - (i) specify periods during which the offender is to be released temporarily on licence before he has served that number of days in prison, and
 - (ii) require any licence to be granted subject to conditions requiring the offender’s compliance during the licence periods with one or more requirements falling within section 182(1) and specified in the order.
- (2) In this Part “intermittent custody order” means an order under subsection (1)(b).
- (3) In this Chapter—
- “licence period”, in relation to a term of imprisonment to which an intermittent custody order relates, means any period during which the offender is released on licence by virtue of subsection (1)(a) or (b)(i);
 - “the number of custodial days”, in relation to a term of imprisonment to which an intermittent custody order relates, means the number of days specified under subsection (1)(a).
- (4) The term of the sentence—
- (a) must be expressed in weeks,
 - (b) must be at least 28 weeks,
 - (c) must not be more than 51 weeks in respect of any one offence, and
 - (d) must not exceed the maximum term permitted for the offence.
- (5) The number of custodial days—
- (a) must be at least 14, and
 - (b) in respect of any one offence, must not be more than 90.
- (6) A court may not exercise its powers under subsection (1) unless the offender has expressed his willingness to serve the custodial part of the proposed sentence intermittently, during the parts of the sentence that are not to be licence periods.
- (7) Where a court exercises its powers under subsection (1) in respect of two or more terms of imprisonment that are to be served consecutively—
- (a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and
 - (b) the aggregate of the numbers of custodial days must not be more than 180.

Status: This is the original version (as it was originally enacted).

- (8) The Secretary of State may by order require a court, in specifying licence periods under subsection (1)(b)(i), to specify only—
- (a) periods of a prescribed duration,
 - (b) periods beginning or ending at prescribed times, or
 - (c) periods including, or not including, specified parts of the week.
- (9) An intermittent custody order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such licence period or periods, or part of a licence period, as is specified in the order.

184 Restrictions on power to make intermittent custody order

- (1) A court may not make an intermittent custody order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the intermittent custody order and the notice has not been withdrawn.
- (2) The court may not make an intermittent custody order in respect of any offender unless—
- (a) it has consulted an officer of a local probation board,
 - (b) it has received from the Secretary of State notification that suitable prison accommodation is available for the offender during the custodial periods, and
 - (c) it appears to the court that the offender will have suitable accommodation available to him during the licence periods.
- (3) In this section “custodial period”, in relation to a sentence to which an intermittent custody order relates, means any part of the sentence that is not a licence period.

185 Intermittent custody: licence conditions

- (1) Section 183(1)(b) has effect subject to section 218 and to the following provisions of Chapter 4 limiting the power to require the licence to contain particular requirements—
- (a) section 199(3) (unpaid work requirement),
 - (b) section 201(3) and (4) (activity requirement),
 - (c) section 202(4) and (5) (programme requirement), and
 - (d) section 203(2) (prohibited activity requirement).
- (2) Subsections (3) to (5) of section 182 have effect in relation to an intermittent custody order as they have effect in relation to a custody plus order.

186 Further provisions relating to intermittent custody

- (1) Section 21 of the 1952 Act (expenses of conveyance to prison) does not apply in relation to the conveyance to prison at the end of any licence period of an offender to whom an intermittent custody order relates.
- (2) The Secretary of State may pay to any offender to whom an intermittent custody order relates the whole or part of any expenses incurred by the offender in travelling to and from prison during licence periods.

Status: This is the original version (as it was originally enacted).

- (3) In section 49 of the 1952 Act (persons unlawfully at large) after subsection (4) there is inserted—

“(4A) For the purposes of this section a person shall also be deemed to be unlawfully at large if, having been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003, he remains at large at a time when, by reason of the expiry of the period for which he was temporarily released, he is liable to be detained in pursuance of his sentence.”

- (4) In section 23 of the Criminal Justice Act 1961 (c. 39) (prison rules), in subsection (3) for “The days” there is substituted “Subject to subsection (3A), the days” and after subsection (3) there is inserted—

“(3A) In relation to a prisoner to whom an intermittent custody order under section 183 of the Criminal Justice Act 2003 relates, the only days to which subsection (3) applies are Christmas Day, Good Friday and any day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales.”

- (5) In section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16) (remaining at large after temporary release) after subsection (1) there is inserted—

“(1A) A person who has been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003 is guilty of an offence if, without reasonable excuse, he remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released.”

- (6) In this section “the 1952 Act” means the Prison Act 1952 (c. 52).

Further provision about custody plus orders and intermittent custody orders

187 Revocation or amendment of order

Schedule 10 (which contains provisions relating to the revocation or amendment of custody plus orders and the amendment of intermittent custody orders) shall have effect.

188 Transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland

Schedule 11 (transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland) shall have effect.

Suspended sentences

189 Suspended sentences of imprisonment

- (1) A court which passes a sentence of imprisonment for a term of at least 28 weeks but not more than 51 weeks in accordance with section 181 may—

Status: This is the original version (as it was originally enacted).

- (a) order the offender to comply during a period specified for the purposes of this paragraph in the order (in this Chapter referred to as “the supervision period”) with one or more requirements falling within section 190(1) and specified in the order, and
- (b) order that the sentence of imprisonment is not to take effect unless either—
 - (i) during the supervision period the offender fails to comply with a requirement imposed under paragraph (a), or
 - (ii) during a period specified in the order for the purposes of this subparagraph (in this Chapter referred to as “the operational period”) the offender commits in the United Kingdom another offence (whether or not punishable with imprisonment),
 and (in either case) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- (2) Where two or more sentences imposed on the same occasion are to be served consecutively, the power conferred by subsection (1) is not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 65 weeks.
- (3) The supervision period and the operational period must each be a period of not less than six months and not more than two years beginning with the date of the order.
- (4) The supervision period must not end later than the operational period.
- (5) A court which passes a suspended sentence on any person for an offence may not impose a community sentence in his case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court.
- (6) Subject to any provision to the contrary contained in the Criminal Justice Act 1967 (c. 80), the Sentencing Act or any other enactment passed or instrument made under any enactment after 31st December 1967, a suspended sentence which has not taken effect under paragraph 8 of Schedule 12 is to be treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments.
- (7) In this Part—
 - (a) “suspended sentence order” means an order under subsection (1),
 - (b) “suspended sentence” means a sentence to which a suspended sentence order relates, and
 - (c) “community requirement”, in relation to a suspended sentence order, means a requirement imposed under subsection (1)(a).

190 Imposition of requirements by suspended sentence order

- (1) The requirements falling within this subsection are—
 - (a) an unpaid work requirement (as defined by section 199),
 - (b) an activity requirement (as defined by section 201),
 - (c) a programme requirement (as defined by section 202),
 - (d) a prohibited activity requirement (as defined by section 203),
 - (e) a curfew requirement (as defined by section 204),
 - (f) an exclusion requirement (as defined by section 205),
 - (g) a residence requirement (as defined by section 206),

Status: This is the original version (as it was originally enacted).

- (h) a mental health treatment requirement (as defined by section 207),
 - (i) a drug rehabilitation requirement (as defined by section 209),
 - (j) an alcohol treatment requirement (as defined by section 212),
 - (k) a supervision requirement (as defined by section 213), and
 - (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- (2) Section 189(1)(a) has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—
- (a) section 199(3) (unpaid work requirement),
 - (b) section 201(3) and (4) (activity requirement),
 - (c) section 202(4) and (5) (programme requirement),
 - (d) section 203(2) (prohibited activity requirement),
 - (e) section 207(3) (mental health treatment requirement),
 - (f) section 209(2) (drug rehabilitation requirement), and
 - (g) section 212(2) and (3) (alcohol treatment requirement).
- (3) Where the court makes a suspended sentence order imposing a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined by section 215) unless—
- (a) the court is prevented from doing so by section 215(2) or 218(4), or
 - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a suspended sentence order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).
- (5) Before making a suspended sentence order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

191 Power to provide for review of suspended sentence order

- (1) A suspended sentence order may—
- (a) provide for the order to be reviewed periodically at specified intervals,
 - (b) provide for each review to be made, subject to section 192(4), at a hearing held for the purpose by the court responsible for the order (a “review hearing”),
 - (c) require the offender to attend each review hearing, and
 - (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report on the offender’s progress in complying with the community requirements of the order.
- (2) Subsection (1) does not apply in the case of an order imposing a drug rehabilitation requirement (provision for such a requirement to be subject to review being made by section 210).

Status: This is the original version (as it was originally enacted).

- (3) In this section references to the court responsible for a suspended sentence order are references—
 - (a) where a court is specified in the order in accordance with subsection (4), to that court;
 - (b) in any other case, to the court by which the order is made.
- (4) Where the area specified in a suspended sentence order made by a magistrates' court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purpose of subsection (3) a magistrates' court which acts for the area specified in the order.
- (5) Where a suspended sentence order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken for the purposes of subsection (3)(b) to have been made by the Crown Court.

192 Periodic reviews of suspended sentence order

- (1) At a review hearing (within the meaning of subsection (1) of section 191) the court may, after considering the responsible officer's report referred to in that subsection, amend the community requirements of the suspended sentence order, or any provision of the order which relates to those requirements.
- (2) The court—
 - (a) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses his willingness to comply with that requirement,
 - (b) may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended,
 - (c) may amend the supervision period only if the period as amended complies with section 189(3) and (4),
 - (d) may not amend the operational period of the suspended sentence, and
 - (e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.
- (3) For the purposes of subsection (2)(a)—
 - (a) a community requirement falling within any paragraph of section 190(1) is of the same kind as any other community requirement falling within that paragraph, and
 - (b) an electronic monitoring requirement is a community requirement of the same kind as any requirement falling within section 190(1) to which it relates.
- (4) If before a review hearing is held at any review the court, after considering the responsible officer's report, is of the opinion that the offender's progress in complying with the community requirements of the order is satisfactory, it may order that no review hearing is to be held at that review; and if before a review hearing is held at any review, or at a review hearing, the court, after considering that report, is of that opinion, it may amend the suspended sentence order so as to provide for each subsequent review to be held without a hearing.
- (5) If at a review held without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no

longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

- (6) If at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the community requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 8 of Schedule 12.
- (7) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 191(1).
- (8) In this section any reference to the court, in relation to a review without a hearing, is to be read—
 - (a) in the case of the Crown Court, as a reference to a judge of the court, and
 - (b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

193 Breach, revocation or amendment of suspended sentence order, and effect of further conviction

Schedule 12 (which relates to the breach, revocation or amendment of the community requirements of suspended sentence orders, and to the effect of any further conviction) shall have effect.

194 Transfer of suspended sentence orders to Scotland or Northern Ireland

Schedule 13 (transfer of suspended sentence orders to Scotland or Northern Ireland) shall have effect.

Interpretation of Chapter

195 Interpretation of Chapter 3

In this Chapter—

“custodial period”, in relation to a term of imprisonment imposed in accordance with section 181, has the meaning given by subsection (3)(a) of that section;

“licence period”—

- (a) in relation to a term of imprisonment imposed in accordance with section 181, has the meaning given by subsection (3)(b) of that section, and
- (b) in relation to a term of imprisonment to which an intermittent custody order relates, has the meaning given by section 183(3);

“the number of custodial days”, in relation to a term of imprisonment to which an intermittent custody order relates, has the meaning given by section 183(3);

“operational period” and “supervision period”, in relation to a suspended sentence, are to be read in accordance with section 189(1);

“sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.