



**Law
Commission**
Reforming the law

Sentencing law in England and Wales Legislation currently in force

9 October 2015

The Law Commission

Sentencing law in England and Wales

Legislation currently in force



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The Law Commission – How We Consult

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Bean, *Chairman*, Professor Nicholas Hopkins, Stephen Lewis, Professor David Ormerod QC and Nicholas Paines QC. The Chief Executive is Elaine Lorimer.

Topic of this consultation: Sentencing law. This is a collection of the current legislation, and we ask consultees:

- have we missed any of the current legislation; and
- is the scope of our exercise correctly defined?

Geographical scope: This consultation paper applies to the law of England and Wales.

Availability of materials: The consultation paper is available on our website at <http://www.lawcom.gov.uk/project/sentencing-procedure/>.

Duration of the consultation: We invite responses from 9 October 2015 to 9 April 2016.

Comments may be sent:

By email to sentencing@lawcommission.gsi.gov.uk

OR

By post to Paul Humpherson, Law Commission of England & Wales,
Post Point 1.54, 52 Queen Anne's Gate, London, SW1H 9AG.

Tel: 020 3334 5713 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically (for example, on CD or by email to the above address, in any commonly used format).

After the consultation: In the light of the responses we receive, we will decide on our final recommendations and present them to Government.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

Information provided to the Law Commission: We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission. The Law Commission will process your personal data in accordance with the Data Protection Act 1998.

Introduction

This is the second of a number of publications seeking consultees' views on aspects of the Law Commission's project to create a New Sentencing Code for England and Wales. The first consultation document explained our provisional proposals relating to transition to the New Sentencing Code, and was published on 1st Jul 2015 (<http://www.lawcom.gov.uk/project/sentencing-procedure/>).

We received a healthy crop of responses to that first consultation, which we are in the process of analysing. The general tenor of these responses is extremely supportive. We will summarise those responses alongside the publication of our next issues paper which we aim to publish in the spring of 2016. That paper will address a number of discrete policy issues which we believe may require resolution as part of our task to consolidate and rationalise the law of sentencing.

Unlike the first issues paper in July, or the upcoming issues paper in spring 2016, this document does not directly address questions of policy to inform our recommendations (and shape the draft bill). Rather, this document is intended to be a complete statement of the current primary legislation governing sentencing, with short extracts from some common law and other guidance (guidelines, practice directions etc.) where these are central to the law in a particular area.

Those with knowledge of the current law of sentencing will be unsurprised to learn that the document runs to in excess of a thousand pages. The material is presented thematically rather than in chronological statute order.

The purpose of the publication of this document at this stage, in addition to illustrating the problematic volume of the current law on this topic, is to receive consultees' views on three key questions:

- (1) Is the document comprehensive? In other words, have we missed any statutory provisions, or are there entire areas, types of sentencing order etc. which are not reflected in the document but which consultees believe should properly fall within the remit of the New Sentencing Code?**
- (2) Is the document over-inclusive? In other words, are there provisions included in the document that deal with an area of law that consultees consider should properly fall outside the scope of the New Sentencing Code?**
- (3) Are there errors in the document, for instance provisions which have been repealed or amended?**

Given the length of the document, it is not envisaged that many consultees will have time to engage in detail with it in its entirety. However, we encourage all with a particular interest in the law and practice of sentencing to, first, look over the index to the document (which is fully electronically navigable) and, second, to look in detail at any sections in which they have a particular interest or expertise with the above questions in mind. Readers should note that this is a statement of the present law – it is certainly not intended that the New Sentencing Code will be as complex or difficult to navigate!

When considering questions (1) and (2) in particular, we would ask consultees to bear in mind the following decisions which have been made about the scope of the project. As a starting point, the New Sentencing Code would ideally contain all of the primary legislative material with which a court might possibly be concerned during the sentencing process, in addition to as much legal guidance from other sources (common law, practice directions, statutory instruments etc.) as proves practical and desirable. This aim is subject to the following qualifications:

- (1) We are not addressing the law on confiscation of the proceeds of crime. Whilst we recognise that this is closely related to issues of sentencing law, the sheer volume of the modern law of confiscation means it is not possible for us to include it within the New Sentencing Code. It may be possible for a future codification of confiscation law to take place. Further, given that in the vast majority of cases contested confiscation proceedings are adjourned to be dealt with on a separate occasion from the sentencing hearing, and a separate timetable is set for the confiscation proceedings, we believe that in practice it is possible without great difficulty to separate confiscation from sentencing. That is not to say the New Sentencing Code will contain no reference to confiscation whatsoever. It may do so where that would assist the sentencing court in keeping in mind all of its duties and powers at the sentencing hearing, perhaps by prompting sentencing courts to remember to address confiscation and set a timetable where relevant. However the main body of confiscation law will continue to rest, at least for now, in the Proceeds of Crime Act 2002, and related legislation.
- (2) Our provisional view is that it is necessary to include some provisions dealing with the administration of sentences. For instance there are some sections dealing with release from custody which we have included in the document. This is to enable a sentencing court to understand the effect of the sentence it is seeking to impose, and assist it with its obligation to explain the effect of any sentence imposed to the offender. However, it is not our intention to provide a comprehensive source of guidance for those whose role is the administration of sentences handed down by the courts (prison authorities, probation trusts etc.). For instance, the Code would not necessarily assist a prison governor when considering the (often difficult) question of when to release a prisoner serving a sentence handed down under some previous sentencing regime no longer in force. Again, to include all relevant material would be an enormous task in itself, and would not be something we could include in this project with the resources available.
- (3) At present we have included provisions and guidance relating to costs in criminal proceedings, as these would often be dealt with at the sentencing stage. We welcome consultees' views on whether these have been properly included.
- (4) However, at present, we have not included provisions relating to the administration or enforcement of financial penalties. This is because such provisions are not typically used at a sentencing hearing, since they relate to separate processes that are merely triggered by the imposition of a sentence, like confiscation (see above). We welcome consultees' views on whether these have been properly excluded.

Limitations of this publication

We have endeavoured to collect together all of the law on sentencing currently in force, and to display it in an accurate and up to date manner. Some illustration of the difficulty in identifying the present law with accuracy is demonstrated by the fact that this document was created over several months with the assistance of an expert consultant, Lyndon Harris,¹ with access to all the legal databases – legislation.gov.uk, LexisNexis, Westlaw, Lawtel and so on. For a lay person to discover the law would be practically impossible. However, given the sheer volume and complexity of the law in this area, the many different sources in which it is now contained and the frequency with which it is amended and added to, we acknowledge the likelihood that there will be some error or omission in our initial efforts.

It is in the nature of this publication, as a consultation document, that we recognise that it would benefit from the input and expertise of other legal professionals engaged in the theory and practice of sentencing. This document should therefore not be used as an authoritative statement of the current law, nor relied on in its current form in practice.

¹ Our sincere thanks to Lyndon for his work on this project, and to the providers of those databases.

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1.1 Aims and purposes of sentencing

1.1.1. Adults (Aged 18+ at conviction)

CJA 2003 s.142²: Purposes of sentencing

s.142(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.³

s.142(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 a provision mentioned in subsection (2A), 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.

s.142(2AA) - the provisions referred to in subsection (2)(c) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (b) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences);
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);
- (d) section 110(2) or 111(2) of the Sentencing Act (minimum sentence for certain drug trafficking and burglary offences);
- (e) section 224A of this Act (life sentence for second listed offence for certain dangerous offenders);
- (f) section 225(2) or 226(2) of this Act (imprisonment or detention for life for certain dangerous offenders);
- (g) section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentence in certain cases of using someone to mind a weapon).

² Commencement: 4 April 2005, 2005/950, art.2 and Sch.1 para.7

³ *R. v Rakib* [2011] EWCA Crim 870; [2012] 1 Cr. App. R. (S.) 1 (p.1) underlined the importance of the provision, stressing that courts must have regard to rehabilitation as an aim of any sentence they are imposing. Merely repeating the statute, the case has no effect other than to, albeit briefly, remind judges of their obligations.

s.142(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.

Note: “sentence” and “sentencing” includes “any order made by a court when dealing with the offender in respect of his offence” but does not include offences for which minimum or required sentences must be imposed, or hospital orders, interim hospital orders or “hybrid” orders under s.45A of the Mental Health Act 1983.

1.1.2. Youths (Aged under 18 at sentence)

CDA 1998 s.37⁴: Aim of the youth justice system⁵

- s.37(1) - it shall be the principal aim of the youth justice system to prevent offending by children and young persons.
- s.37(2) - in addition to any other duty to which they are subject, it shall be the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim.

CJA 2003 s.142A: Purposes etc. of sentencing: offenders under 18 [not in force]

- s.142A(1) - this section applies where a court is dealing with an offender aged under 18 in respect of an offence.
- s.142A(2) - the court must have regard to—
- (a) the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37(1) of the Crime and Disorder Act 1998),
 - (b) in accordance with section 44 of the Children and Young Persons Act 1933, the welfare of the offender, and
 - (c) the purposes of sentencing mentioned in subsection (3) (so far as it is not required to do so by paragraph (a)).
- s.142A(3) - those purposes of sentencing are—
- (a) the punishment of offenders,
 - (b) the reform and rehabilitation of offenders,
 - (c) the protection of the public, and
 - (d) the making of reparation by offenders to persons affected by their offences.
- s.142A(4) - this section does not apply—
- (a) to an offence the sentence for which is fixed by law,
 - (b) to an offence the sentence for which falls to be imposed under a provision mentioned in subsection (5), or,
 - (c) in relation to the making under Part 3 of the Mental Health Act 1983 of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

⁴ Commencement: 30 September 1998, 1998/2327 art.2(1)(g)

⁵ “youth justice system” means the system of criminal justice in so far as it relates to children and young persons, CDA 1998 s.42(1).

s.142A(5) - the provisions referred to in subsection (4)(b) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (b) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences);
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);
- (d) section 226(2) of this Act (detention for life for certain dangerous offenders);
- (e) section 29(6) of the Violent Crime Reduction Act 2006 (minimum sentence in certain cases of using someone to mind a weapon).

CYPA 1933 s.44⁶: General considerations

s.44(1) - every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

CYPA 1933 s.59⁷: Miscellaneous provisions as to summary proceedings against juvenile offenders

s.59(1) - the words “conviction” and “sentence” shall cease to be used in relation to children and young persons dealt with summarily and any reference in any enactment whether passed before or after the commencement of this Act to a person convicted, a conviction or a sentence shall, in the case of a child or young person, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be:

⁶ Commencement: 1 November 1933, CYPA 1933 s.109(2) and SI 1933/663 art.1.

⁷ Commencement: 1 November 1933, CYPA 1933 s.109(2) and SI 1933/663 art.1.

1.2 Legal representation

PCC(S)A 2000 s.83⁸: Restriction on imposing custodial sentences on persons not legally represented

- s.83(1) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who:
- (a) is not legally represented in that court, and
 - (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom,
- unless he is a person to whom subsection (3) below applies.
- s.83(2) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not:
- (a) pass a sentence of detention under section 90 or 91 below,
 - (b) pass a sentence of custody for life under section 93 or 94 below,
 - (c) pass a sentence of detention in a young offender institution, or
 - (d) make a detention and training order,
- on or in respect of a person who is not legally represented in that court unless he is a person to whom subsection (3) below applies.
- s.83(3) - this subsection applies to a person if either:
- (a) representation was made available to him for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of his conduct or because it appeared that his financial resources were such that he was not eligible [for such representation;
 - (aa) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible for such representation; or
 - (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply.
- s.83(4) - for the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- s.83(5) - for the purposes of subsection (1)(b) above a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 below or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded.
- s.83(6) - in this section "*sentence of imprisonment*" does not include a committal for contempt of court or any kindred offence.

⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

1.3 Determining the seriousness of an offence and statutory aggravating factors

1.3.1. Seriousness

CJA 2003 s.143⁹: Determining the seriousness of an offence

- s.143(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 foreseeably have caused.
- s.143(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.
- s.143(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.¹⁰
- s.143(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,
 - (aa) a previous conviction by a court in another member State of a relevant offence under the law of that State,
 - (b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction), or
 - (c) a finding of guilt in respect of a member State service offence.
- s.143(5) - subsections (2) and (4) do not prevent the court from treating:
 - (a) a previous conviction by a court outside both the United Kingdom and any other member State, or
 - (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence,as an aggravating factor in any case where the court considers it appropriate to do so.
- s.143(6) - for the purposes of this section—
 - (a) an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence,
 - (b) "*member State service offence*" means an offence which—

⁹ Commencement: 4 April 2005, 2005/950 art.2 and Sch.1 para.7.

¹⁰ Note: There is no discretion in this provision.

- (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
- (ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006), if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence,
- (c) "*Her Majesty's forces*" has the same meaning as in the Armed Forces Act 2006, and
- (d) "*service law*", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.

Note: This section has to be read in conjunction with the section detailing the custody threshold and when a community sentence can be imposed.

Note: The Sentencing Guidelines Council's Overarching Principles: Seriousness Guideline contains guidance as to the assessment of culpability and harm as a part of the assessment of seriousness of an offence.

1.3.2. Racial/religious aggravation

CDA 1998 s.28¹¹: Meaning of "racially or religiously aggravated"

- s.28(1) - an offence is [racially or religiously aggravated for the purposes of sections 29 to 32 below if—
- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a [racial or religious group; or
 - (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.
- s.28(2) - in subsection (1)(a) above—
- "membership"*, in relation to a racial or religious group, includes association with members of that group;
- "presumed"* means presumed by the offender.
- s.28(3) - it is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
- s.28(4) - in this section "*racial group*" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.
- s.28(5) - in this section "*religious group*" means a group of persons defined by reference to religious belief or lack of religious belief.

¹¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(g).

CJA 2003 s.145¹²: Increase in sentences for racial or religious aggravation

- s.145(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).
- s.145(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.
- s.145(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.

Note: There is no discretion as with other provisions e.g. s.143(2).

1.3.3. Disability/sexual orientation or transgender identity

CJA 2003 s.146¹³: Increase in sentences for aggravation related to disability, sexual orientation or transgender identity

- s.146(1) - this section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).
- s.146(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,
 - (ii) a disability (or presumed disability) of the victim, or
 - (iii) the victim being (or being presumed to be) transgender, or
 - (b) that the offence is motivated (wholly or partly)—
 - (i) by hostility towards persons who are of a particular sexual orientation,
 - (ii) by hostility towards persons who have a disability or a particular disability, or
 - (iii) by hostility towards persons who are transgender.
- s.146(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.
- s.146(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.

¹² Commencement: 4 April 2005, 2005/950 art.2 and Sch.1 para.7.

¹³ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

s.146(5) - in this section “*disability*” means any physical or mental impairment.

s.146(6) - in this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender re-assignment.

1.3.4. Drugs

MDA 1971 s.4A¹⁴: Aggravation of offence of supply of controlled drug

s.4A(1) - this section applies if–

- (a) a court is considering the seriousness of an offence under section 4(3) of this Act, and
- (b) at the time the offence was committed the offender had attained the age of 18.

s.4A(2) - if either of the following conditions is met the court–

- (a) must treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
- (b) must state in open court that the offence is so aggravated.

s.4A(3) - the first condition is that the offence was committed on or in the vicinity of school premises at a relevant time.

s.4A(4) - the second condition is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.

s.4A(5) - in subsection (3), a relevant time is–

- (a) any time when the school premises are in use by persons under the age of 18;
- (b) one hour before the start and one hour after the end of any such time.

s.4A(6) - for the purposes of subsection (4), a person uses a courier in connection with an offence under section 4(3) of this Act if he causes or permits another person (the courier)–

- (a) to deliver a controlled drug to a third person, or
- (b) to deliver a drug related consideration to himself or a third person.

s.4A(7) - for the purposes of subsection (6), a drug related consideration is a consideration of any description which–

- (a) is obtained in connection with the supply of a controlled drug, or
- (b) is intended to be used in connection with obtaining a controlled drug.

s.4A(8) - in this section–

“*school premises*” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and

“*school*” has the same meaning–

- (a) in England and Wales, as in section 4 of the Education Act 1996;
- (b) in Scotland, as in section 135(1) of the Education (Scotland) Act 1980;

¹⁴ Commencement: 1 January 2006, as inserted by DA 2006 s.1(1), SI 2005/3053 art.3(a).

- (c) in Northern Ireland, as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

1.3.5. Terrorist connection

CTA 2008 s.30¹⁵: Sentences for offences with a terrorist connection: England and Wales

- s.30(1) - this section applies where a court in England and Wales is considering for the purposes of sentence the seriousness of an offence specified in Schedule 2 (offences where terrorist connection to be considered).
- s.30(2) - if having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.
- s.30(3) - for that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- s.30(4) - if the court determines that the offence has a terrorist connection, the court—
 - (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence was so aggravated.
- s.30(5) - in this section “sentence”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.
- s.30(6) - this section has effect in relation only to offences committed on or after the day it comes into force.

CTA 2008 Sch.2: Offences where terrorist connection to be considered

Note: The provisions of the schedule are not listed in this document.

Note: There is a power to amend the list in Schedule 2, see CTA 2008 s.33.

¹⁵ Commencement: 18 June 2009, SI 2009/1256 art.2(b).

1.4 Custody/Custody threshold/Community sentences

1.4.1. General principles relating to discretionary custodial sentences

CJA 2003 s.153¹⁶: Length of discretionary custodial sentences: general provision

- s.153(1) - This section applies where a court passes a custodial sentence other than one fixed by law or imposed under section 224A, 225 or 226
- (2) Subject to section 1A(5) of the Prevention of Crime Act 1953, section 51A(2) of the Firearms Act 1968, section 139AA(7) of the Criminal Justice Act 1988, sections 110(2) and 111(2) of the Sentencing Act, section 29(4) or (6) of the Violent Crime Reduction Act 2006 and sections 226A(4) and 226B(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.

1.4.2. The custody threshold

CJA 2003 s.152¹⁷: General restrictions on imposing discretionary custodial sentences

- s.152(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 1A(5) of the Prevention of Crime Act 1953, under section 51A(2) of the Firearms Act 1968, under section 139AA(7) of the Criminal Justice Act 1988, under section 110(2) or 111(2) of the Sentencing Act, under section 29(4) or (6) of the Violent Crime Reduction Act 2006 or under 224A, section 225(2) or 226(2) of this Act.
- s.152(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.
- s.152(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)¹⁸ (pre-sentence drug testing).

¹⁶ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

¹⁷ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

¹⁸ Not in force.

CJA 2003 s.166¹⁹: Savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders

- s.166(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),
 - (e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance), or
 - (f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering),
- 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.
- s.166(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.
- s.166(3) - nothing in the sections mentioned in subsection (1)(a) to (f) 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.
- s.166(4) - subsections (2) and (3) are without prejudice to the generality of subsection (1).
- s.166(5) - nothing in the sections mentioned in subsection (1)(a) to (f) 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.
- s.166(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.

¹⁹ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

1.4.3. Community sentences

CJA 2003 s.148²⁰: Restrictions on imposing community sentences²¹

- s.148(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.
- s.148(2) - where a court passes a community sentence—
- (a) the particular requirement or requirements forming part of the community order, or, as the case may be, youth rehabilitation order, comprised in 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 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.
- s.148(2A) - subsection (2) is subject to section 177(2A) (community orders: punitive elements) and to paragraph 3(4) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance).
- s.148(4) - subsections (1) and (2)(b) have effect subject to section 151(2).
- s.148(5) - the fact that by virtue of any provision of this section—
- (a) a community sentence may be passed in relation to an offence; or
 - (b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,
- does not require a court to pass such a sentence or to impose those restrictions.

²⁰ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

²¹ “Community sentence” means a community order as defined by s.177 or a youth rehabilitation order under the CJA 2008 s.1

1.5 Concurrent/consecutive sentences

Note: See also the Sentencing Council's Definitive Guideline on Offences Taken into Consideration and Totality

CJA 2003 s.265²²: Restriction on consecutive sentences for released prisoners

- s.265(1) - a court sentencing a person to a term of imprisonment may not order the term to commence on the expiry of any other sentence of imprisonment from which he has been released: (a) under CJA 2003 Part 12 Chapter 6; or (b) under Criminal Justice Act 1991 Part 2
- s.265(2) - in this section “*sentence of imprisonment*” includes a sentence of detention under section 91 or 96 of the Sentencing Act or section 227 or 228 of this Act or a sentence of detention in a young offender institution under section 96 of the Sentencing Act or under section 226A, 226B, 227 of this Act, and “*term of imprisonment*” is to be read accordingly.

CJA 2003 s.155²³: Consecutive terms of imprisonment [Not in force]

Note: Section 155 amends MCA 1980 s.133 which deals with the powers of the magistrates' courts to impose consecutive sentences of imprisonment. Section 155 extends the power to impose consecutive sentences for summary only offences from 6 months to 65 weeks. The distinction between summary only and either way offences is removed. However, s.155 has not been amended to take account of the insertion of MCA 1980 s133(2A).

²² Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. In force 4 April 2005 otherwise, SI 2005/950 art.2(1) and Sch.1 para.19.

²³ CJA 2003 s.155 is not yet in force. See CJA 2003 s.336(3). No commencement order has been made.

1.6 Totality

CJA 2003 s.166²⁴: Mitigating sentence

s.166(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),
 - (e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance), or
 - (f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering),
- 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.

s.166(3) - nothing in the sections mentioned in subsection (1)(a) to (f) 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.

²⁴ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

1.7 Disparity

Note: Although not the subject of statutory provisions, this is a frequent complaint on appeal against sentence to the Court of Appeal (Criminal Division). The principle is to be found in R. v Weekes 1980 2 Cr. App. R. (S.) 377. The headnote reads:

“Where on a trial of two or more defendants, one of them pleads guilty and the other or others not guilty, and the one who pleads guilty proposes to give evidence either for his co-defendants or for the Crown, the better sentencing policy is not to sentence that defendant before he gives evidence; but to sentence all the defendants at the same time and that should be done by the same Court, whenever that is possible.

When a question of disparity of sentence is raised on appeal, the Court of Appeal should ask not only whether the appellants labour under a sense of grievance, but whether there is justification for that grievance.”

1.8 Assistance by offender/Informants

1.8.1. Formal agreements

SOCPA 2005 s.73²⁵: Assistance by defendant: reduction in sentence

- s.73(1) - this section applies if a defendant—
- (a) following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence, and
 - (b) has, pursuant to a written agreement made with a specified prosecutor, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.
- s.73(2) - in determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.
- s.73(3) - if the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
- (a) that it has passed a lesser sentence than it would otherwise have passed, and
 - (b) what the greater sentence would have been.
- s.73(4) - subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of subsection (3) to both the prosecutor and the defendant.
- s.73(5) - nothing in any enactment which—
- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances), or
 - (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),
- affects the power of a court to act under subsection (2).
- s.73(6) - if, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining—
- (a) the sentence, or
 - (b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.
- s.73(7) - if subsection (3) above does not apply by virtue of subsection (4) above, sections 174(1)(a) and 270 of the Criminal Justice Act 2003 (c. 44) (requirement to explain

²⁵ Commencement: 1 April 2006, 2006/378 art.5(1).

reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted in pursuance of this section.

s.73(8) - in this section:

- (a) a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly;
- (b) a reference to imprisonment includes a reference to any other custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or Article 2 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160).

s.73(9) - an agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor.

s.73(10) - references to a specified prosecutor must be construed in accordance with section 71.

Note: Beyond these provisions, the proper approach to discounting sentences for assistance given or offered is to be found in case law. The headnote to R. v King (1985) 7 Cr App R (S) 227 reads, in part, "No hard and fast rule can be laid down as to the amount by which a sentence can be reduced on a large scale informer by reason of the assistance he gives to the police. The Court should first of all turn to the offences which the informer has admitted to assess their gravity and their number, thus enabling a starting figure to be reached... The amount by which the above starting figure should be reduced will depend upon a number of variable features—the quality and quantity of the material disclosed by the informer, its accuracy and his willingness to confront other criminals or give evidence against them and the degree to which he put himself and his family at risk of reprisal. His criminal life would probably be at an end. Consequently, an expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely the information".

See also e.g. R. v A and B [1999] 1 Cr App R (S)

SOCPA 2005 s.74²⁶: Assistance by defendant: review of sentence

s.74(1) - this section applies if—

- (a) the Crown Court has passed a sentence on a person in respect of an offence, and
- (b) the person falls within subsection (2).

s.74(2) - a person falls within this subsection if—

- (a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;
- (b) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance;

²⁶ Commencement: 1 April 2006, 2006/378 art.5(1).

- (c) he receives a sentence which is not discounted but in pursuance of a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.
- s.74(3) - a specified prosecutor may at any time refer the case back to the court by which the sentence was passed if—
 - (a) the person is still serving his sentence, and
 - (b) the specified prosecutor thinks it is in the interests of justice to do so.
- s.74(4) - a case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- s.74(5) - if the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.
- s.74(6) - in a case of a person who falls within subsection (2)(b) or (c) the court may—
 - (a) take into account the extent and nature of the assistance given or offered;
 - (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.
- s.74(7) - any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.
- s.74(8) - a person in respect of whom a reference is made under this section and the specified prosecutor may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the Crown Court.
- s.74(9) - Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- s.74(10) - a discounted sentence is a sentence passed in pursuance of section 73 or subsection (6) above.
- s.74(11) - references—
 - (a) to a written agreement are to an agreement made in writing with a specified prosecutor;
 - (b) to a specified prosecutor must be construed in accordance with section 71.
- s.74(12) - in relation to any proceedings under this section:
 - (a) the Secretary of State may, in relation to proceedings in England and Wales, make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications);
 - (b) the Department of Justice in Northern Ireland may, in relation to proceedings in Northern Ireland, make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (subject to any specified modifications).
- s.74(13) - a person does not fall within subsection (2) if—
 - (a) he was convicted of an offence for which the sentence is fixed by law, and

(b) he did not plead guilty to the offence for which he was sentenced.

s.74(14) - Section 174(1)(a) or 270 of the Criminal Justice Act 2003 (c. 44) (as the case may be) applies to a sentence substituted under subsection (5) above unless the court thinks that it is not in the public interest to disclose that the person falls within subsection (2)(a) above.

s.74(15) - Subsections (3) to (9) of section 73 apply for the purposes of this section as they apply for the purposes of that section and any reference in those subsections to subsection (2) of that section must be construed as a reference to subsection (6) of this section.

SOCPA 2005 s.75²⁷: Proceedings under section 74: exclusion of public

s.75(1) - this section applies to—

- (a) any proceedings relating to a reference made under section 74(3), and
- (b) any other proceedings arising in consequence of such proceedings.

s.75(2) - the court in which the proceedings will be or are being heard may make such order as it thinks appropriate—

- (a) to exclude from the proceedings any person who does not fall within subsection (4);
- (b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made).

s.75(3) - an order under subsection (2) may be made only to the extent that the court thinks—

- (a) that it is necessary to do so to protect the safety of any person, and
- (b) that it is in the interests of justice.

s.75(4) - the following persons fall within this subsection—

- (a) a member or officer of the court;
- (b) a party to the proceedings;
- (c) counsel or a solicitor for a party to the proceedings;
- (d) a person otherwise directly concerned with the proceedings.

s.75(5) - this section does not affect any other power which the court has by virtue of any rule of law or other enactment—

- (a) to exclude any person from proceedings, or
- (b) to restrict the publication of any matter relating to proceedings.

SOCPA 2005 s.75A²⁸: Proceedings under section 74: use of live link

s.75A - Section 57E of the Crime and Disorder Act 1998 (use of live link in sentencing hearings) applies to hearings in proceedings relating to a reference under section 74(3) as it applies to sentencing hearings.

²⁷ Commencement: 1 April 2006, 2006/378 art.5(1).

²⁸ Commencement: 15 January 2007, as inserted by Police and Justice Act 2006 Sch.14 para.62, SI 2006/3364 art.2(k) and SI 2007/29 art.2.

SOCPA 2005 s.75B²⁹: Guidance about use of powers under sections 71 to 74

- s.75B(1) - the Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under sections 71 to 74.
- s.75B(2) - the Attorney General may from time to time revise any guidance issued under this section.
- s.75B(3) - in this section “*specified prosecutor*” is to be construed in accordance with section 71.

1.8.2. The “text” regime

See *R. v H* [2009] EWCA Crim 2485; [2010] 2 Cr. App. R. (S.) 18 (p.104) the headnote to which reads, in part, “It was clear that the 2005 Act did not abolish the former system, and that the previous “text” system might still be used where a defendant had provided assistance which did not fall within the new arrangements, and in particular the written agreement. The introduction of the statutory regime did not extinguish the text regime, nor alter the principles which applied to it.

²⁹ Commencement: 6 April 2010, as inserted by CJA 2009 s.113(7), SI 2010/816 art.2 and Sch.1 para.6.

1.9 Prevalence of the offence in the locality etc.

Note: There is guidance in the Sentencing Guidelines Council's Overarching Principles: Seriousness Guideline at para.1.38 as to the approach to take with regard to increasing a sentence on the basis of the offence in question being prevalent in the locality.

1.10 Duty of Secretary of State to publish information about sentencing

CJA 1991 s.95³⁰: Information for financial and other purposes

- s.95(1) - the Secretary of State shall in each year publish such information as he considers expedient for the purpose of—
- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions;
 - (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; or
 - (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.
- s.95(2) - publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

³⁰ Commencement: 31 October 1991, SI 1991/2208 art.2(4) and Sch.3 para.1. The section was amended by CJA 2003 s.175.

1.11 The age of the offender

Duty to enquire as to age of offender where it appears individual is a child or young person

CYPA 1933 s.99³¹: Presumption and determination of age

- s.99(1) - where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of eighteen years, that person shall for the purposes of this Act be deemed not to be a child or young person.

Determining the individual's age

CYPA 1933 s.99³²: Presumption and determination of age

- s.99(2) - where in any charge or indictment for any offence under this Act or any of the offences mentioned in the First Schedule to this Act except as provided in that Schedule, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or to have attained that age, as the case may be, unless the contrary is proved.
- s.99(3) - where, in any charge or indictment for any offence under this Act or any of the offences mentioned in the First Schedule to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.
- s.99(4) - where a person is charged with an offence under this Act in respect of a person apparently under a specified age it shall be a defence to prove that the person was actually of or over that age.

CYPA 1933 Sch.1³³: Offences against children and young persons, with respect to which special provisions of this Act apply

Note: The Schedule contains a list of offences. The list is not reproduced here.

³¹ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

³² Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

³³ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

PCC(S)A 2000 s.164³⁴: Further interpretive provisions

s.164(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.

Note: See also CJA 1982 s.1(6) which is a similar provision for that Act.

Individuals who attain the age of 18 prior to the conclusion of proceedings

CYP A 1964 s.29³⁵: Provisions as to persons between the ages of 17 and 18

s.29(1) - where proceedings in respect of a young person are begun for an offence and he attains the age of eighteen before the conclusion of the proceedings, the court may deal with the case and make any order which it could have made if he had not attained that age.

PCC(S)A 2000 s.7³⁶: Powers of Crown Court on committal under s.6

s.7(4) - where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence triable only on indictment in the case of an adult (being an offence which was tried summarily because of the offender's being under 18 years of age), the Crown Court's powers under subsection (1) above in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—

- (a) to impose a fine not exceeding £5,000;
- (b) to deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁵ Commencement: 1 February 1964, SI 1964/2056 art.1 and Sch.1 para.1.

³⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

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2.1 Committal/Remitting juvenile for sentence

2.1.1. Adults (aged 18+)

PCC(S)A 2000 s.3³⁷: committal after conviction on summary trial for either way offence

- s.3(1) - subject to subsection (4) below, this section applies where on the summary trial of an offence triable either way a person aged 18 or over is convicted of the offence.
- s.3(2) - if the court is of the opinion—
- (a) that the offence or the combination of the offence and one or more offences associated with it was so serious that the Crown Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment,
- the court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 5(1) below.
- s.3(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.3(4) - this section does not apply in relation to an offence as regards which this section is excluded by section 17D or 33 of the Magistrates' Courts Act 1980 (certain offences where value involved is small).
- s.3(5) - the preceding provisions of this section shall apply in relation to a corporation as if—
- (a) the corporation were an individual aged 18 or over; and
 - (b) in subsection (2) above, the words "in custody or on bail" were omitted.

PCC(S)A 2000 s.4³⁸: Guilty plea indicated for either way offence, with related offences³⁹

- s.4(1) - this section applies where—
- (a) a person aged 18 or over appears or is brought before a magistrates' court ("the court") on an information charging him with an offence triable either way ("the offence");
 - (b) he or (where applicable) his representative indicates under section 17A, 17B or 20(7) of the Magistrates' Courts Act 1980 that he would plead guilty if the offence were to proceed to trial; and
 - (c) proceeding as if section 9(1) of that Act were complied with and he pleaded guilty under it, the court convicts him of the offence.
- s.4(1A) - but this section does not apply to an offence as regards which this section is excluded by section 17D of that Act (certain offences where value involved is small).

³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁹ This section may only be used where the court has sent the adult defendant for trial for some offences but has to deal with the defendant for other either way offences in relation to which he has indicated a guilty plea. The defendant may be committed even though the magistrates are not of the view that greater sentencing powers are required.

- s.4(2) - if the court has sent the offender to the Crown Court for trial for one or more related offences, that is to say, one or more offences which, in its opinion, are related to the offence, it may commit him in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 5(1) below.
- s.4(3) - if the power conferred by subsection (2) above is not exercisable but the court is still to determine to, or to determine whether to, send the offender to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 for one or more related offences—
- (a) it shall adjourn the proceedings relating to the offence until after it has made those determinations; and
 - (b) if it sends the offender to the Crown Court for trial for one or more related offences, it may then exercise that power.
- s.4(4) - where the court—
- (a) under subsection (2) above commits the offender to the Crown Court to be dealt with in respect of the offence, and
 - (b) does not state that, in its opinion, it also has power so to commit him under section 3(2) or, as the case may be, section 3A(2) above,
- section 5(1) below shall not apply unless he is convicted before the Crown Court of one or more of the related offences.
- s.4(5) - where section 5(1) below does not apply, the Crown Court may deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.
- s.4(6) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.4(7) - for the purposes of this section one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.
- s.4(8) - in reaching any decision under or taking any step contemplated by this section—
- (a) the court shall not be bound by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable); and
 - (b) nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is not consistent with an indication of sentence.

PCC(S)A 2000 s.5⁴⁰: Powers of Crown Court on committal under ss.3, 3A and 4

- s.5(1) - where an offender is committed by a magistrates' court for sentence under section 3, 3A or 4 above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.

⁴⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.5(2) - in relation to committals under section 4 above, subsection (1) above has effect subject to section 4(4) and (5) above.
- s.5(3) - Section 20A(1) of the Magistrates' Courts Act 1980 (which relates to the effect of an indication of sentence under section 20 of that Act) shall not apply in respect of any specified offence (within the meaning of section 224 of the Criminal Justice Act 2003)—
- (a) in respect of which the offender is committed under section 3A(2) above; or
 - (b) in respect of which—
 - (i) the offender is committed under section 4(2) above; and
 - (ii) the court states under section 4(4) above that, in its opinion, it also has power to commit the offender under section 3A(2) above.

2.1.2. Youths (aged under 18)

PCC(S)A 2000 s.3B⁴¹: Committal for sentence of young offenders on summary trial of certain serious offences

- s.3B(1) - this section applies where on the summary trial of an offence mentioned in section 91(1) of this Act a person aged under 18 is convicted of the offence.
- s.3B(2) - if the court is of the opinion that—
- (a) the offence; or
 - (b) the combination of the offence and one or more offences associated with it,
- was such that the Crown Court should, in the court's opinion, have power to deal with the offender as if the provisions of section 91(3) below applied, the court may commit him in custody or on bail to the Crown Court for sentence in accordance with section 5A(1) below.
- s.3B(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.

⁴¹ As inserted by CJA 2003 Sch.3 para.23, in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c) and 2(2). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4

PCC(S)A 2000 s.4A⁴²: Youth indicated guilty plea, with related offences: defendant sent for trial on some offences, convicted/pleaded to other offences for which court would have power to impose detention under s.91⁴³

- s.4A(1) - this section applies where—
- (a) a person aged under 18 appears or brought before a magistrates' court ("the court") on an information charging him with an offence mentioned in subsection (1) of section 91 below ("the offence");
 - (b) he or his representative indicates under section 24A or (as the case may be) 24B of the Magistrates' Courts Act 1980 (child or young person to indicate intention as to plea in certain cases) that he would plead guilty if the offence were to proceed to trial; and
 - (c) proceeding as if section 9(1) of that Act were complied with and he pleaded guilty under it, the court convicts him of the offence.
- s.4A(2) - if the court has sent the offender to the Crown Court for trial for one or more related offences, that is to say one or more offences which, in its opinion, are related to the offence, it may commit him in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 5A(1) below.
- s.4A(3) - if the power conferred by subsection (2) above is not exercisable but the court is still to determine to, or to determine whether to, send the offender to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 for one or more related offences—
- (a) it shall adjourn the proceedings relating to the offence until after it has made those determinations; and
 - (b) if it sends the offender to the Crown Court for trial for one or more related offences, it may then exercise that power.
- s.4A(4) - where the court—
- (a) under subsection (2) above commits the offender to the Crown Court to be dealt with in respect of the offence; and
 - (b) does not state that, in its opinion, it also has power so to commit him under section 3B(2) or, as the case may be, section 3C(2) above,

⁴² As inserted by CJA 2003 Sch.3 para.25, in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 (see art.4) dealing with the effect of the commencement in relation to justice areas which had been combined since the original commencement. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c), 2(2) and 2(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4. The 2013 brought into force the new procedure for all local justice areas and abolished the old committal procedure, see the 2013 order and accompanying explanatory note for further information.

⁴³ This section may only be used where the court has sent the juvenile defendant for trial in relation to some offences, but has to deal with him for other offences for which the court would have the power to impose detention under PCC(S)A 2000 s.91 in respect of which he has indicated a guilty plea

section 5A(1) below shall not apply unless he is convicted before the Crown Court of one or more of the related offences.

- s.4A(5) - where section 5A(1) below does not apply, the Crown Court may deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.
- s.4A(6) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.4A(7) - Section 4(7) above applies for the purposes of this section as it applies for the purposes of that section.

PCC(S)A 2000 s.5A⁴⁴: Powers of Crown Court on committal under ss.3B, 3C and 4A

- s.5A(1) - where an offender is committed by a magistrates' court for sentence under section 3B, 3C or 4A above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.
- s.5A(2) - in relation to committals under section 4A above, subsection (1) above has effect subject to section 4A(4) and (5) above.

⁴⁴ As inserted by CJA 2003 Sch.3 para.27, (see 2005/950 Sch.1 para.29(c)) in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c), 2(2) and 2(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4. The 2013 order brought into force the new procedure for all local justice areas and abolished the old committal procedure, see the 2013 order and accompanying explanatory note for further information.

2.1.3. Dangerous offenders

PCC(S)A 2000 s.3A⁴⁵: Committal for sentence of dangerous adult offenders

- s.3A(1) - this section applies where on the summary trial of a specified offence triable either way a person aged 18 or over is convicted of the offence.
- s.3A(2) - if, in relation to the offence, it appears to the court that the criteria for the imposition of a sentence under section 226A of the Criminal Justice Act 2003 would be met, the court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 5(1) below.
- s.3A(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.3A(4) - in reaching any decision under or taking any step contemplated by this section—
 - (a) the court shall not be bound by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable); and
 - (b) nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is not consistent with an indication of sentence.
- s.3A(5) - nothing in this section shall prevent the court from committing an offender convicted of a specified offence to the Crown Court for sentence under section 3 above if the provisions of that section are satisfied.
- s.3A(6) - in this section, references to a specified offence are to a specified offence within the meaning of section 224 of the Criminal Justice Act 2003.

PCC(S)A 2000 s.5⁴⁶: Powers of Crown Court on committal under ss.3, 3A and 4

- s.5(1) - where an offender is committed by a magistrates' court for sentence under section 3, 3A or 4 above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.
- s.5(2) - in relation to committals under section 4 above, subsection (1) above has effect subject to section 4(4) and (5) above.

⁴⁵ As inserted by CJA 2003 Sch.3 para.23, in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c) and 2(2). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4

⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.5(3) - Section 20A(1) of the Magistrates' Courts Act 1980 (which relates to the effect of an indication of sentence under section 20 of that Act) shall not apply in respect of any specified offence (within the meaning of section 224 of the Criminal Justice Act 2003)—
- (a) in respect of which the offender is committed under section 3A(2) above; or
 - (b) in respect of which—
 - (i) the offender is committed under section 4(2) above; and
 - (ii) the court states under section 4(4) above that, in its opinion, it also has power to commit the offender under section 3A(2) above.

PCC(S)A 2000 s.3C⁴⁷: Committal for sentence of dangerous young offenders

- s.3C(1) - this section applies where on the summary trial of a specified offence a person aged under 18 is convicted of the offence.
- s.3C(2) - if, in relation to the offence, it appears to the court that the criteria for the imposition of a sentence under section 226B of the Criminal Justice Act 2003 would be met, the court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 5A(1) below.
- s.3C(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.3C(4) - nothing in this section shall prevent the court from committing a specified offence to the Crown Court for sentence under section 3B above if the provisions of that section are satisfied.
- s.3C(5) - in this section, references to a specified offence are to a specified offence within the meaning of section 224 of the Criminal Justice Act 2003.

PCC(S)A 2000 s.5A⁴⁸: Powers of Crown Court on committal under ss.3B, 3C and 4A

- s.5A(1) - where an offender is committed by a magistrates' court for sentence under section 3B, 3C or 4A above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.

⁴⁷ As inserted by PCC(S)A 2000 Sch.3 para.23, in force 4 April 2005, 2005/950 Sch.1 para.29(b)

⁴⁸ As inserted by CJA 2003 Sch.3 para.27, (see 2005/950 Sch.1 para.29(c)) in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c), 2(2) and 2(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4. The 2013 order brought into force the new procedure for all local justice areas and abolished the old committal procedure, see the 2013 order and accompanying explanatory note for further information.

- s.5A(2) - in relation to committals under section 4A above, subsection (1) above has effect subject to section 4A(4) and (5) above.

2.1.4. Corporations

See 'Adults' above, specifically PCC(S)A 2000 s.3(5)

2.1.5. Subsidiary (or "related") offences

Note: Where an offender is committed under any of the sections above (or provisions relating to specific sentencing orders) the magistrates' court may commit the offender for other offences which could not be committed under the principal provision.

PCC(S)A 2000 s.6⁴⁹: Committal where defendant committed in respect of another offence

- s.6(1) - this section applies where a magistrates' court ("the committing court") commits a person in custody or on bail to the Crown Court under any enactment mentioned in subsection (4) below to be sentenced or otherwise dealt with in respect of an offence ("the relevant offence").
- s.6(2) - where this section applies and the relevant offence is an indictable offence, the committing court may also commit the offender, in custody or on bail as the case may require, to the Crown Court to be dealt with in respect of any other offence whatsoever in respect of which the committing court has power to deal with him (being an offence of which he has been convicted by that or any other court).
- s.6(3) - where this section applies and the relevant offence is a summary offence, the committing court may commit the offender, in custody or on bail as the case may require, to the Crown Court to be dealt with in respect of—
- (a) any other offence of which the committing court has convicted him, being either—
 - (i) an offence punishable with imprisonment; or
 - (ii) an offence in respect of which the committing court has a power or duty to order him to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences); or
 - (b) any suspended sentence in respect of which the committing court has under paragraph 11(1) of Schedule 12 to the Criminal Justice Act 2003 power to deal with him.
- s.6(4) - the enactments referred to in subsection (1) above are—
- (a) the Vagrancy Act 1824 (incorrigible rogues);
 - (b) sections 3 to 4A above (committal for sentence for offences triable either way);
 - (c) section 13(5) below (conditionally discharged person convicted of further offence);
 - (e) paragraph 11(2) of Schedule 12 to the Criminal Justice Act 2003 (committal to Crown Court where offender convicted during operational period of suspended sentence).

⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

PCC(S)A 2000 s.7⁵⁰: Powers of Crown Court on committal under s.6

- s.7(1) - where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence, the Crown Court may after inquiring into the circumstances of the case deal with him in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.
- s.7(2) - subsection (1) above does not apply where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence, but in such a case the powers under paragraphs 8 and 9 of Schedule 12 to the Criminal Justice Act 2003 (power of court to deal with suspended sentence) shall be exercisable by the Crown Court.
- s.7(3) - without prejudice to subsections (1) and (2) above, where under section 6 above or any enactment mentioned in subsection (4) of that section a magistrates' court commits a person to be dealt with by the Crown Court, any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court shall not be discharged or exercised by that court but shall instead be discharged or may instead be exercisable by the Crown Court.
- s.7(4) - where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence triable only on indictment in the case of an adult (being an offence which was tried summarily because of the offender's being under 18 years of age), the Crown Court's powers under subsection (1) above in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000;
 - (b) to deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

2.1.6. Specific offences or sentencing orders

Adjournment prior to committal

R v Southwark Crown Court ex parte Commissioner of the Metropolis (1984) 6 Cr. App. R. (S.) 304

A court may adjourn for the purpose of obtaining a pre-sentence report prior to committal.⁵¹

Attendance Centre Order, Breach of

PCC(S)A 2000 Sch.5

- para.2(1)(c)⁵² - if it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under paragraph 1 above that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) of that paragraph or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b) of that paragraph, that court may deal with him in any one of the following ways—
- [...]

⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁵¹ However, it is necessary to consider the case law surrounding "legitimate expectation".

⁵² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (c) where the order was made by the Crown Court, it may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.3(1)⁵³ - where by virtue of paragraph 2(1)(c) above the offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court—

- (a) that he has failed without reasonable excuse to attend as mentioned in paragraph 1(1)(a) above, or
- (b) that he has committed such a breach of rules as is mentioned in paragraph 1(1)(b) above,

that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.

para.3(2) - where the Crown Court deals with an offender under sub-paragraph (1) above, it shall revoke the attendance centre order if it is still in force.

Bail, Failing to surrender

BA 1976 s.6⁵⁴

- s.6(6) - where a magistrates' court convicts a person of an offence under subsection (1) or (2) above the court may, if it thinks—
- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or
 - (b) in a case where it sends that person for trial to the Crown Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) above by the court before which he is tried for the other offence,

commit him in custody or on bail to the Crown Court for sentence.

- s.6(7) - a person who is convicted summarily of an offence under subsection (1) or (2) above and is not committed to the Crown Court for sentence shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or to both and a person who is so committed for sentence or is dealt with as for such a contempt shall be liable to imprisonment for a term not exceeding 12 months or to a fine or to both.

Conditional discharge, Breach of⁵⁵

PCC(S)A 2000 s.13⁵⁶: ***Commission of further offence by person conditionally discharged***

PCC(S)A 2000 s.13(5) - if a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—

- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and

⁵³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁵⁴ Commencement: 17 April 1978, 1978/132 art.2

⁵⁵ Where the order is breached by the commission of another offence

⁵⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) if it does so, shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the designated officer by whom the register is kept.

s.13(6) - where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.

Community Order, Breach of (failure to comply with requirement)

CJA 2003 Sch.8⁵⁷

para.9(6) - where a community order was made by the Crown Court and a magistrates' court would (apart from this sub-paragraph) be required to deal with the offender under subparagraph (1)(a), (aa), (b) or (c), it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.10(1) - (1) Where under paragraph 8 or by virtue of paragraph 9(6) an offender appears or is brought before the Crown Court and it is proved to the satisfaction of that court that he has failed without reasonable excuse to comply with any of the requirements of the community order, the Crown Court must deal with him in respect of the failure in any one of the following ways—

- (a) by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could impose if it were then making the order;
- (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
- (b) by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (c) where—
 - (i) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (ii) the offender is aged 18 or over,
 - (iii) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months.

⁵⁷ Commencement: 4 April 2005, except for the purposes specified in 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect for offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a). The relevant SIs are amended by 2007/391 and 2009/616 but the amendments have since been repealed. They deal with persons aged 16 and 17 and were never commenced.

Community order, Breach of (subsequent conviction)

CJA 2003 Sch.8⁵⁸

para.22(1) - where an offender in respect of whom a community order made by the Crown Court is in force is convicted of an offence by a magistrates' court, the magistrates' court may commit the offender in custody or release him on bail until he can be brought before the Crown Court.

para.22(2) - where the magistrates' court deals with an offender's case under subparagraph (1), it must send to the Crown Court such particulars of the case as may be desirable.

para.23(2) - the Crown Court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

Note: See R. v De Brito [2013] EWCA Crim 1134; [2014] 1 Cr. App. R. (S.) 38 (p.223) for an example of the way in which the committal provisions under the 2000 Act and other provisions conflict.

Confiscation order

POCA 2002 s.70⁵⁹: Committal by magistrates' court

s.70(1) - this section applies if—

- (a) a defendant is convicted of an offence by a magistrates' court, and
- (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 6.

s.70(2) - in such a case the magistrates' court—

- (a) must commit the defendant to the Crown Court in respect of the offence, and
- (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).

s.70(3) - an offence falls within this subsection if—

- (a) the defendant has been convicted of it by the magistrates' court or any other court, and
- (b) the magistrates' court has power to deal with him in respect of it.

s.70(4) - if a committal is made under this section in respect of an offence or offences—

- (a) section 6 applies accordingly, and
- (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 71.

⁵⁸ Commencement: 4 April 2005, 2005/950 art.2, Sch.1 para.32 and Sch.2 para.5(2)(a), 2007/391 art.2 (repealed) and 2009/616 art.2 (repealed)

⁵⁹ Commencement: 24 March 2003, 2003/333 art.2 and Sch.1 para.1

- s.70(5) - if a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under section 3(2) of the Sentencing Act (offences triable either way) or under section 3B(2) of that Act (committal of child or young person) the court must state whether it would have done so.
- s.70(6) - a committal under this section may be in custody or on bail.

POCA 2002 s.6⁶⁰: Making of order

- s.6(1) - the Crown Court must proceed under this section if the following two conditions are satisfied.
- s.6(2) - the first condition is that a defendant falls within any of the following paragraphs—
- (a) he is convicted of an offence or offences in proceedings before the Crown Court;
 - (b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 3A, 3B, 3C, 4, 4A or 6 of the Sentencing Act;
 - (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).
- s.6(3) - the second condition is that—
- (a) the prosecutor asks the court to proceed under this section, or
 - (b) the court believes it is appropriate for it to do so.
- s.6(4) - the court must proceed as follows—
- (a) it must decide whether the defendant has a criminal lifestyle;
 - (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
 - (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.
- s.6(5) - if the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—
- (a) decide the recoverable amount, and
 - (b) make an order (a confiscation order) requiring him to pay that amount.
- s.6(6) - but the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.
- s.6(6A) - the court must also treat the duty in subsection (5) as a power if—
- (a) an order has been made, or it believes an order may be made, against the defendant under section 4 (criminal unlawful profit orders) of the Prevention of Social Housing Fraud Act 2013 in respect of profit made by the defendant in connection with the conduct, or

⁶⁰ Commencement: 24 March 2003, 2003/333 art.2 and Sch.1 para.1

- (b) it believes that a person has at any time started or intends to start proceedings against the defendant under section 5 (civil unlawful profit orders) of that Act in respect of such profit.

s.6(7) - the court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

s.6(8) - the first condition is not satisfied if the defendant absconds (but section 27 may apply).

- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2)

POCA 2002 s.71⁶¹: Sentencing by Crown Court

s.71(1) - if a defendant is committed to the Crown Court under section 70 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 6).

s.71(2) - in the case of an offence in respect of which the magistrates' court has stated under section 70(5) that it would have committed the defendant for sentence, the Crown Court—

- (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.

s.71(3) - in the case of any other offence the Crown Court—

- (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

Disqualification from driving (interim)

RTOA 1988 s.26⁶²: Interim disqualification

s.26(1) - where a magistrates' court—

- (a) commits an offender to the Crown Court under section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 or any enactment mentioned in subsection (4) of that section, or
- (b) remits an offender to another magistrates' court under section 10 of that Act, to be dealt with for an offence involving obligatory or discretionary disqualification, it may order him to be disqualified until he has been dealt with in respect of the offence.

⁶¹ Commencement: 24 March 2003, 2003/333 art.2 and Sch.1 para.1

⁶² Commencement: 15 May 1989, RTOA 1988 s.99(2).

Restriction order, Committal for

MHA 1983 s.43⁶³: Power of magistrates' courts to commit for restriction order

- s.43(1) - if in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—
- (a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but
 - (b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made a restriction order should also be made,
- the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.
- s.43(2) - where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—
- (a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;
 - (b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.
- s.43(3) - the Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.
- s.43(4) - the powers of a magistrates' court under section 3 or 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.
- s.43(5) - the power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

⁶³ Commencement: 30 September 1983, MHA 1983 s.149(2)

Hospital where court has committed to Crown Court for Restriction order, Admission to⁶⁴

MHA 1983 s.44⁶⁵: Committal to hospital under s. 43

- s.44(1) - where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for his production from the hospital to attend the Crown Court by which his case is to be dealt with.
- s.44(2) - the evidence required by subsection (1) above shall be given by the approved clinician who would have overall responsibility for the offender's case or by some other person representing the managers of the hospital in question.
- s.44(3) - the power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order

Incorrigible rogues

VA 1824 s.5⁶⁶: Who shall be deemed incorrigible rogues

- s.5 - every person committing any offence against this Act which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be, and duly convicted thereof; shall, subject to section 70 of the Criminal Justice Act 1982, be deemed an incorrigible rogue within the true intent and meaning of this Act; and, subject to section 70 of the Criminal Justice Act 1982, it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the Crown Court, either in custody or on bail.

Suspended Sentence Order, Breach of

CJA 2003 Sch.12⁶⁷

para.8(1) - this paragraph applies where—

- (a) it is proved to the satisfaction of a court before which an offender appears or is brought under paragraph 6 or 7 or by virtue of section 192(6) that he has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order, or
- (b) an offender is convicted of an offence committed during the operational period of a suspended sentence (other than one which has already taken effect) and either—

⁶⁴ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶⁵ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶⁶ Commencement: 21 June 1824

⁶⁷ Commencement: 4 April 2005, 2005/950 art.2, Sch.1 para.34 and Sch.2 para.5. The commencement is of no effect in relation to offences committed before 4 April 2005.

- (i) he is so convicted by or before a court having power under paragraph 11 to deal with him in respect of the suspended sentence, or
- (ii) he subsequently appears or is brought before such a court.

para.8(2) - the court must consider his case and deal with him in one of the following ways—

- (a) the court may order that the suspended sentence is to take effect with its original term unaltered,
- (b) the court may order that the sentence is to take effect with the substitution for the original term of a lesser term,
- (ba) the court may order the offender to pay a fine of an amount not exceeding £2,500,
- (c) in the case of a suspended sentence order that imposes one or more community requirements, the court may amend the order by doing any one or more of the following—
 - (i) imposing more onerous community requirements which the court could include if it were then making the order,
 - (ii) subject to subsections (3) and (4) of section 189, extending the supervision period, or
 - (iii) subject to subsection (3) of that section, extending the operational period,
- (d) in the case of a suspended sentence order that does not impose any community requirements, the court may, subject to section 189(3), amend the order by extending the operational period.⁶⁸

para.8(6) - where a suspended sentence order was made by the Crown Court and a magistrates' court would (apart from this sub-paragraph) be required to deal with the offender under sub-paragraph (2)(a), (b), (ba) or (c) it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.8(7) - a magistrates' court which deals with an offender's case under subparagraph (6) must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the community requirements of the suspended sentence order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

para.11(2) - where an offender is convicted by a magistrates' court of any offence and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court—

- (a) the court may, if it thinks fit, commit him in custody or on bail to the Crown Court, and
- (b) if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court.

⁶⁸ The subsequent provisions of para.8 and para.10 contain, inter alia, supplementary provisions concerning the sentencing powers of the court. These powers are not dealt with here, in the committals section, and are instead dealt with in the Suspended Sentence Order section below.

PCC(S)A 2000 s.7⁶⁹:

- s.7(2) - subsection (1) above does not apply where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence, but in such a case the powers under paragraphs 8 and 9 of Schedule 12 to the Criminal Justice Act 2003 (power of court to deal with suspended sentence) shall be exercisable by the Crown Court.⁷⁰

Youth Rehabilitation Order, Breach of

CJIA 2008 Sch.2⁷¹

para.7(1) - sub-paragraph (2) applies if—

- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (b) a youth court or other magistrates' court would (apart from that subparagraph) be required, or has the power, to deal with the offender in one of the ways mentioned in paragraph 6(2).

para.7(2) - the court may instead—

- (a) commit the offender in custody, or
- (b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

para.7(3) - where a court deals with the offender's case under sub-paragraph (2) it must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

para.8(1) - this paragraph applies where—

- (a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 7(2), and
- (b) it is proved to the satisfaction of that court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.

(2) The Crown Court may deal with the offender in respect of that failure in any one of the following ways—

- (a) by ordering the offender to pay a fine of an amount not exceeding £2,500,
- (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—

⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰ For an example of the complications which can arise with committals and related offences, see *R. v Bateman* [2012] EWCA Crim 2518; [2013] 2 Cr. App. R. (S.) 26 (p.174). The case also explains the rationale for the different provisions.

⁷¹ Commencement: 30 November 2009, 2009/3074 art.2(n)

- (i) in addition to, or
- (ii) in substitution for,

any requirement or requirements already imposed by the order;

- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.

para.8(12) - the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).

para.8(13) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,

the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).

para.8(14) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of paragraph 6(13) or sub-paragraph (12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,

for the purposes of dealing with the offender under sub-paragraph (2)(c), the Crown Court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

2.1.7. Remitting juvenile for sentence

PCC(S)A 2000 s.8⁷²: Power and duty to remit young offender to youth court for sentence

- s.8(1) - subsection (2) below applies where a child or young person (that is to say, any person aged under 18) is convicted by or before any court of an offence other than homicide.
- s.8(2) - the court may and, if it is not a youth court, shall unless satisfied that it would be undesirable to do so, remit the case—
- (a) if the offender was sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, to a youth court acting for the place where he was sent to the Crown Court for trial;
 - (b) in any other case, to a youth court acting either for the same place as the remitting court or for the place where the offender habitually resides;
- but in relation to a magistrates' court other than a youth court this subsection has effect subject to subsection (6) below.
- s.8(3) - where a case is remitted under subsection (2) above, the offender shall be brought before a youth court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and convicted by that court.

⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.8(4) - a court by which an order remitting a case to a youth court is made under subsection (2) above—
- (a) may, subject to section 25 of the Criminal Justice and Public Order Act 1994 (restrictions on granting bail), give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail until he can be brought before the youth court; and
 - (b) shall cause to be transmitted to the designated officer for the youth court a certificate setting out the nature of the offence and stating—
 - (i) that the offender has been convicted of the offence; and
 - (ii) that the case has been remitted for the purpose of being dealt with under the preceding provisions of this section.
- s.8(5) - where a case is remitted under subsection (2) above, the offender shall have no right of appeal against the order of remission, but shall have the same right of appeal against any order of the court to which the case is remitted as if he had been convicted by that court.
- s.8(6) - without prejudice to the power to remit any case to a youth court which is conferred on a magistrates' court other than a youth court by subsections (1) and (2) above, where such a magistrates' court convicts a child or young person of an offence it must exercise that power unless the case falls within subsection (7) or (8) below.
- s.8(7) - the case falls within this subsection if the court would, were it not so to remit the case, be required by section 16(2) below to refer the offender to a youth offender panel (in which event the court may, but need not, so remit the case).
- s.8(8) - the case falls within this subsection if it does not fall within subsection (7) above but the court is of the opinion that the case is one which can properly be dealt with by means of—
- (a) an order discharging the offender absolutely or conditionally, or
 - (b) an order for the payment of a fine, or
 - (c) an order (under section 150 below) requiring the offender's parent or guardian to enter into a recognizance to take proper care of him and exercise proper control over him,
- with or without any other order that the court has power to make when absolutely or conditionally discharging an offender.
- s.8(9) - in subsection (8) above "*care*" and "*control*" shall be construed in accordance with section 150(11) below.
- s.8(10) - a document purporting to be a copy of an order made by a court under this section shall, if it purports to be certified as a true copy by the designated officer for the court, be evidence of the order.

PCC(S)A 2000 s.9⁷³: Power of youth court to remit offender who attains age of 18 to magistrates' court other than youth court for sentence

- s.9(1) - where a person who appears or is brought before a youth court charged with an offence subsequently attains the age of 18, the youth court may, at any time after conviction and before sentence, remit him for sentence to a magistrates' court (other than a youth court).
- s.9(2) - where an offender is remitted under subsection (1) above, the youth court shall adjourn proceedings in relation to the offence, and—
- (a) section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) and all other enactments, whenever passed, relating to remand or the granting of bail in criminal proceedings shall have effect, in relation to the youth court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the court to which he is being remitted; and
 - (b) subject to subsection (3) below, the court to which the offender is remitted ("the other court") may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the offence which took place before the youth court had taken place before the other court.
- s.9(3) - where an offender is remitted under subsection (1) above, section 8(6) above (duty of adult magistrates' court to remit young offenders to youth court for sentence) shall not apply to the court to which he is remitted.
- s.9(4) - where an offender is remitted under subsection (1) above he shall have no right of appeal against the order of remission (but without prejudice to any right of appeal against an order made in respect of the offence by the court to which he is remitted).
- s.9(5) - in this section—
- (a) "*enactment*" includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act; and
 - (b) "*bail in criminal proceedings*" has the same meaning as in the Bail Act 1976.

PCC(S)A 2000 s.10⁷⁴: Power of magistrates' court to remit case to another magistrates' court for sentence

- s.10(1) - where a person aged 18 or over ("the offender") has been convicted by a magistrates' court ("the convicting court") of an offence to which this section applies ("the instant offence") and—
- (a) it appears to the convicting court that some other magistrates' court ("the other court") has convicted him of another such offence in respect of which the other court has neither passed sentence on him nor committed him to the Crown Court for sentence nor dealt with him in any other way, and
 - (b) the other court consents to his being remitted under this section to the other court,
- the convicting court may remit him to the other court to be dealt with in respect of the instant offence by the other court instead of by the convicting court.

⁷³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.10(2) - this section applies to—
- (a) any offence punishable with imprisonment; and
 - (b) any offence in respect of which the convicting court has a power or duty to order the offender to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences).
- s.10(3) - where the convicting court remits the offender to the other court under this section, it shall adjourn the trial of the information charging him with the instant offence, and—
- (a) section 128 of the Magistrates' Court Act 1980 (remand in custody or on bail) and all other enactments, whenever passed, relating to remand or the granting of bail in criminal proceedings shall have effect, in relation to the convicting court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the court to which he is being remitted; and
 - (b) subject to subsection (7) below, the other court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the instant offence which took place before the convicting court had taken place before the other court.
- s.10(4) - the power conferred on the other court by subsection (3)(b) above includes, where applicable, the power to remit the offender under this section to another magistrates' court in respect of the instant offence.
- s.10(5) - where the convicting court has remitted the offender under this section to the other court, the other court may remit him back to the convicting court; and the provisions of subsections (3) and (4) above (so far as applicable) shall apply with the necessary modifications in relation to any remission under this subsection.
- s.10(6) - the offender, if remitted under this section, shall have no right of appeal against the order of remission (but without prejudice to any right of appeal against any other order made in respect of the instant offence by the court to which he is remitted).
- s.10(7) - nothing in this section shall preclude the convicting court from making any order which it has power to make under section 148 below (restitution orders) by virtue of the offender's conviction of the instant offence.
- s.10(8) - in this section—
- (a) "*conviction*" includes a finding under section 11(1) below (remand for medical examination) that the person in question did the act or made the omission charged, and "*convicted*" shall be construed accordingly;
 - (b) "*enactment*" includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act; and
 - (c) "*bail in criminal proceedings*" has the same meaning as in the Bail Act 1976.

2.1.8. Common law rules/principles concerning committals/remission for sentence

2.1.8.1. Committals

Magistrates' Court

Where a magistrates' court has accepted jurisdiction to summarily try an either-way offence, there is an unfettered discretion to commit to Crown Court where it subsequently considers that the offence(s) require(s) greater punishment.⁷⁵

MCA 1980 s 20: Procedure where summary trial appears more suitable

- s.20(2) The court shall explain to the accused in ordinary language—
- (a) that it appears to the court more suitable for him to be tried summarily for the offence;
 - (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and
 - (c) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 3 or (if applicable) section 3A of the Powers of Criminal Courts (Sentencing) Act 2000 if the court is of such opinion as is mentioned in subsection (2) of the applicable section.

Having adjourned sentence, indicating that the offender will not be committed for sentence, the court may not thereafter commit for sentence absent a change in relevant circumstances.⁷⁶

Having committed for sentence, a magistrates' court may not exercise the powers of a sentencing court, save for imposing a driving disqualification.⁷⁷

A court which adjourns a case after conviction to obtain a PSR is not prevented from committing the defendant for sentence.⁷⁸

A magistrates' court may commit a defendant for sentence if it considers its power to impose a financial penalty is insufficient to deal with the offence.⁷⁹

Invalid committals: where a committal has been made under the appropriate section, but the memorandum of conviction records the provision(s) incorrectly, the committal is not invalid.⁸⁰

⁷⁵ *R. v Dover Magistrates' Court, ex p. Pamment* (1994) 15 Cr. App. R. (S.) 778, cited with approval in *R. v Lawson* [2001] EWCA Crim 691.

⁷⁶ *R. v. Nottingham Magistrates' Court, ex p. Davidson* [2000] 1 Cr. App. R. (S.) 167 (LCJ)

⁷⁷ *R. v Brogan* (1975) 60 Cr. App. R. 279; on the particular facts, the court held it was inappropriate for the committing court to impose a compensation order.

⁷⁸ *R. v. Southwark Crown Court Ex p. Commissioner of Police for the Metropolis* (1984) 6 Cr. App. R. (S.) 304, however, where a legitimate expectation of a non-custodial sentence is held by the defendant, the Crown Court should not impose a custodial sentence, see *R. v Rennes* (1985) 7 Cr. App. R. (S.) 343. Other case law in relation to legitimate expectations will be relevant to this point.

⁷⁹ *R. v North Essex Justices ex parte Lloyd* [2001] 2 Cr.App.R.(S.) 15 (LCJ)

⁸⁰ *R. v Ayhan* [2011] EWCA Crim 3184; [2012] 2 Cr. App. R. (S.) 37 (p.207) (LCJ)

Crown Court

Where an offender who appears before a magistrates' court and ask for offences to be taken into consideration is thereafter committed for sentence, there is no obligation to ask for those offences to be taken into consideration by the Crown Court, and the sentencer in the Crown Court should follow the normal procedure for taking offences into consideration as in the case of a conviction on indictment.⁸¹

Where it appears to the Crown Court that a defendant is not guilty of the offences in respect of which he has indicated an intention to plead guilty before the magistrates' court, the Crown Court may allow him to change his plea and remit the case to the magistrates' court.⁸²

When an offender appears before the Crown Court for sentence following a committal for sentence, formal evidence of identity and conviction should be given; it is not sufficient to rely on the offender's own admission.⁸³

2.1.8.2. Remission

Where a juvenile is found guilty of an offence before the Crown Court, it will normally be appropriate for the Crown Court to deal with the juvenile without remitting him to a youth court.⁸⁴

Before dealing with an offender who has been committed for sentence, the Crown Court should ascertain whether an appeal against his conviction is pending.⁸⁵ However, the fact that the Crown Court has imposed sentence following a committal does not deprive it of power to hear an appeal subsequently.⁸⁶

Where a person who has been convicted by a magistrates' court appeals to the Crown Court, the Crown Court may not in the exercise of its power as an appellate court commit the appellant to the Crown Court for sentence.⁸⁷

⁸¹ *R. v Davies* (1980) 2 Cr. App. R. (S.) 364

⁸² *R. v Isleworth Crown Court and Uxbridge Magistrates' Court Ex p. Buda* [2000] 1 Cr. App. R. (S.) 538

⁸³ *R. v Jefferies* Unreported, 24 May 1963, see Current Sentencing Practice L12-4A

⁸⁴ *R. v Lewis* (1984) 6 Cr. App. R. (S.) 44. This was cited, with tacit approval of the principles, in *R. v Gaskell* [2006] EWCA Crim 2938.

⁸⁵ *R. v Faithful* (1950) 34 Cr. App. R. 220

⁸⁶ *R. v Croydon Crown Court Ex p. Bernard* (1980) 2 Cr. App. R. (S.) 144

⁸⁷ *R. v Bullock* (1963) 47 Cr. App. R. 288

2.2 Advance indication of sentence

2.2.1. Goodyear indications

Note: The procedure is not available in the magistrates' court.

The right to ask for an indication

R. v Goodyear [2005] EWCA Crim 888; [2006] 1 Cr. App. R. (S.) 6 (p.23) at [53]-[78]

“Guidelines

- 53 The objective of these guidelines is to ensure common process and continuing safeguards against the creation or appearance of judicial pressure on the defendant. The potential advantages include, first and foremost, that the defendant himself would make a better informed decision whether to plead, or not. Experience tends to suggest that this would result in an increased number of early guilty pleas, with a consequent reduction in the number of trials, and the number of cases which are listed for trial, and then, to use current language, “crack” at the last minute, usually at considerable inconvenience to those involved in the intended trial, and in particular, victims and witnesses. Properly applied, too, there may be a reduced number of sentences to be considered by the Attorney General, and where appropriate, referred to this court as unduly lenient. In short, an increase in the efficient administration of justice will not impinge on the defendant’s entitlement to tender a voluntary plea.
- 54 In our judgment, any advance indication of sentence to be given by the judge should normally be confined to the maximum sentence if a plea of guilty were tendered at the stage at which the indication is sought. In essence we accept the recommendation of the Report of the Royal Commission that the judge should treat the request for a sentence indication, in whatever form it reaches him, as if he were being asked to indicate the maximum sentence on the defendant at that stage. For the process to go further, and the judge to indicate his view of the maximum possible level of sentence following conviction by the jury, as well as its level after a plea of guilty, would have two specific disadvantages. First, by definition, the judge could not be sufficiently informed of the likely impact of the trial on him (or the trial judge) in the sentencing context. It would be unwise for him to bind himself to any indication of the sentence after a trial in advance of it, in effect on a hypothetical basis. If he were to do so, to cover all eventualities he would probably have to indicate a very substantial possible maximum sentence. This would lead to a second problem, arising from the comparison between the two alternatives available to the defendant, that is the maximum level after a trial, and the maximum level following an immediate plea. With some defendants at any rate, the very process of comparing the two alternatives would create pressure to tender a guilty plea.

The judge

- 55 The judge should not give an advance indication of sentence unless one has been sought by the defendant.
- 56 He remains entitled, if he sees fit, to exercise the power recognised in *Turner* [1970] 2 QB 321 to indicate that the sentence, or type of sentence, on the defendant would be the same, whether the case proceeded as a plea of guilty or went to trial, with a resulting conviction. Nowadays, given the guidance published by the Sentencing Guidelines Council on the credit to be given for a guilty plea, this would be unusual. He is also entitled in an appropriate case to remind the defence advocate that the defendant is entitled to seek an advance indication of sentence.

- 57 In whatever circumstances an advance indication of sentence is sought, the judge retains an unfettered discretion to refuse to give one. It may indeed be inappropriate for him to give any indication at all. For example, he may consider that for a variety of reasons the defendant is already under pressure (perhaps from a co-accused), or vulnerable, and that to give the requested indication, even in answer to a request, may create additional pressure. Similarly, he may be troubled that the particular defendant may not fully have appreciated that he should not plead guilty unless in fact he is guilty. Again, the judge may believe that if he were to give a sentence indication at the stage when it is sought, he would not properly be able to judge the true culpability of the defendant, or the differing levels of responsibility between defendants. In a case involving a number of defendants, he may be concerned that an indication given to one defendant who seeks it, may itself create pressure on another defendant. Yet again, the judge may consider that the application is no less than a “try on” by a defendant who intends or would be likely to plead guilty in any event, seeking to take a tactical advantage of the changed process envisaged in this judgment. If so, he would probably refuse to say anything at all, and indeed, a guilty plea tendered after such tactical manoeuvrings may strike the judge as a plea tendered later than the first reasonable opportunity for doing so, with a consequent reduction in the discount for the guilty plea.
- 58 Just as the judge may refuse to give an indication, he may reserve his position until such time as he feels able to give one, for example, until a pre-sentence report is available. There will be occasions when experience will remind him that in some cases the psychiatric or other reports may provide valuable insight into the level of risk posed by the defendant, and if so, he may justifiably feel disinclined to give an indication at the stage when it is sought. Another problem may simply be that the judge is not sufficiently familiar with the case to give an informed indication, and if so, he may defer doing so until he is.
- 59 In short, the judge may refuse altogether to give an indication, or may postpone doing so. He may or may not give reasons. In many cases involving an outright refusal, he would probably conclude that it would be inappropriate to give his reasons. If he has in mind to defer an indication, the probability is that he would explain his reasons, and further indicate the circumstances in which, and when, he would be prepared to respond to a request for a sentence indication.
- 60 If at any stage the judge refuses to give an indication (as opposed to deferring it) it remains open to the defendant to seek a further indication at a later stage. However once the judge has refused to give an indication, he should not normally initiate the process, except, where it arises, to indicate that the circumstances had changed sufficiently for him to be prepared to consider a renewed application for an indication.
- 61 Once an indication has been given, it is binding and remains binding on the judge who has given it, and it also binds any other judge who becomes responsible for the case. In principle, the judge who has given an indication should, where possible, deal with the case immediately, and if that is not possible, any subsequent hearings should be listed before him. This cannot always apply. We recognise that a new judge has his own sentencing responsibilities, but judicial comity as well as the expectation aroused in a defendant that he will not receive a sentence in excess of whatever the first judge indicated, requires that a later sentencing judge should not exceed the earlier indication. If, after a reasonable opportunity to consider his position in the light of the indication, the defendant does not plead guilty, the indication will cease to have effect. In straightforward cases, once an indication has been sought and given, we do not anticipate an adjournment for the plea to be taken on another day.
- 62 Later in this judgment we will deal with the obligations of the defence and the prosecution, and to the extent that they may be relevant to the judge’s decision, they should be applied. For example, an indication should not be sought on a basis of

hypothetical facts. Where appropriate, there must be an agreed, written basis of plea. Unless there is, the judge should refuse to give an indication: otherwise he may become inappropriately involved in negotiations about the acceptance of pleas, and any agreed basis of plea.

The defence

- 63 Subject to the judge's power to give an appropriate reminder to the advocate for the defendant (para 51) the process of seeking a sentence indication should normally be started by the defendant.
- 64 Whether or not the judge has given an appropriate reminder, the defendant's advocate should not seek an indication without written authority, signed by his client, that he, the client wishes to seek an indication.
- 65 The advocate is personally responsible for ensuring that his client fully appreciates that:
- (a) he should not plead guilty unless he is guilty;
 - (b) any sentence indication given by the judge remains subject to the entitlement of the Attorney General (where it arises) to refer an unduly lenient sentence to the Court of Appeal;
 - (c) any indication given by the judge reflects the situation at the time when it is given, and that if a "guilty plea" is not tendered in the light of that indication the indication ceases to have effect;
 - (d) any indication which may be given relates only to the matters about which an indication is sought. Thus, certain steps, like confiscation proceedings, follow automatically, and the judge cannot dispense with them, nor, by giving an indication of sentence, create an expectation that they will be dispensed with.
- 66 An indication should not be sought while there is any uncertainty between the prosecution and the defence about an acceptable plea or pleas to the indictment, or any factual basis relating to the plea. Any agreed basis should be reduced into writing before an indication is sought. Where there is a dispute about a particular fact which counsel for the defendant believes to be effectively immaterial to the sentencing decision, the difference should be recorded, so that the judge can make up his own mind.
- 67 The judge should never be invited to give an indication on the basis of what would be, or what would appear to be a "plea bargain". He should not be asked or become involved in discussions linking the acceptability to the prosecution of a plea or basis of plea, and the sentence which may be imposed. He is not conducting nor involving himself in any plea bargaining. In short, he is not to be asked to indicate levels of sentence which he may have in mind depending on possible different pleas. Thus, for example, he should refuse to give an indication based on the possibility that the defendant might plead guilty to section 18, alternatively section 20, alternatively section 47 of the Offences against the Person Act 1861 (24 & 25 Vict c 100).
- 68 In the unusual event that the defendant is unrepresented, he would be entitled to seek a sentence indication of his own initiative. There would be difficulties in either the judge or prosecuting counsel taking any initiative, and informing an unrepresented defendant of this right. That might too readily be interpreted as or subsequently argued to have been improper pressure.

The prosecution

- 69 As the request for an indication comes from the defence, the prosecution is obliged to react, rather than initiate the process. This presented no problem in the days before *R v Turner* [1970] 2 QB 321, when the common understanding, universally applied, was that the prosecution did not, indeed was obliged not to involve itself in or appeal against a sentencing decision. None of that continues to apply.
- 70 We must expressly identify a number of specific matters for which the advocate for the prosecution is responsible.
- (a) If there is no final agreement about the plea to the indictment, or the basis of plea, and the defence nevertheless proceeds to seek an indication, which the judge appears minded to give, prosecuting counsel should remind him of this guidance, that normally speaking an indication of sentence should not be given until the basis of the plea has been agreed, or the judge has concluded that he can properly deal with the case without the need for a *Newton* hearing (*R v Newton* (1982) 77 Cr App R 13).
 - (b) If an indication is sought, the prosecution should normally inquire whether the judge is in possession of or has had access to all the evidence relied on by the prosecution, including any personal impact statement from the victim of the crime, as well as any information of relevant previous convictions recorded against the defendant.
 - (c) If the process has been properly followed, it should not normally be necessary for counsel for the prosecution, before the judge gives any indication, to do more than, first, draw the judge's attention to any minimum or mandatory statutory sentencing requirements, and where he would be expected to offer the judge assistance with relevant guideline cases, or the views of the Sentencing Guidelines Council, to invite the judge to allow him to do so, and second, where it applies, to remind the judge that the position of the Attorney General to refer any eventual sentencing decision as unduly lenient is not affected.
 - (d) In any event, counsel should not say anything which may create the impression that the sentence indication has the support or approval of the Crown.

Section 36 of the Criminal Justice Act 1988

- 71 We have reflected on the possible impact of these changes on the exercise by the Attorney General of his responsibilities to refer unduly lenient sentences to this court, in the light of further submissions received in writing from counsel for the prosecution after the conclusion of the hearing. We do not envisage a process by which the judge should give some kind of preliminary indication, leading to comments on it by counsel for the Crown, with the judge then reconsidering his indication, and perhaps raising it to a higher level, with counsel for the defendant then making further submissions to persuade the judge, after all, to reduce his indication. If nothing else, such a process would smack of precisely the kind of bargaining process which should be avoided. In our judgment, if counsel for the prosecution has addressed his responsibilities in accordance with the previous paragraph, the discretion of the Attorney General to refer a sentence would be wholly unaffected by the advance sentence indication process. Of course, if a sentence indication has been given in accordance with these guidelines, before referring the eventual sentencing decision to this court, the Attorney General's decision would no doubt reflect that the defendant had indeed pleaded guilty in response to the sentence indication, properly sought from and given by the judge. As we have explained, we do not anticipate that counsel for the Crown will have said or done anything which may indicate or convey support for or approval of the sentence indication. If however he has done so, the question whether the sentence should nevertheless be referred to this court as unduly lenient, and the decision of the court

whether to interfere with and increase it, will be examined on a case by case basis, in the light of everything said and done by counsel for the Crown.

Appeal against sentence

- 72 We have expressly dealt with the position of the Attorney General if, in the event, an unduly lenient sentence is imposed. The defendant's entitlement to apply for leave to appeal against sentence if, for example, insufficient allowance has been made for matters of genuine mitigation, is similarly unaffected.

Process

- 73 We anticipate that any sentence indication would normally be sought at the plea and case management hearing. In cases "sent" to the Crown Court under section 51 of the Crime and Disorder Act 1998, or transferred under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991, this is usually the first opportunity for the defendant to plead guilty and therefore the moment when the maximum discount for the guilty plea will be available to the defendant. For victims and witnesses, too, there is a huge advantage in the earliest possible conclusion to the case. That said, as the judgment makes clear, we do not rule out the entitlement of a defendant to seek an indication at a later stage, or even, in what we know would be a rare case, during the course of the trial itself.
- 74 The judge is most unlikely to be able to give an indication, even if it is sought, in complicated or difficult cases, unless issues between the prosecution and the defence have been addressed and resolved. Therefore in such cases, no less than seven days' notice in writing of an intention to seek an indication should normally be given in writing to the prosecution, and the court. If an application is made without notice when it should have been given, the judge may conclude that any inevitable adjournment should have been avoided and that the discount for the guilty plea should be reduced accordingly. It may be that in due course the Criminal Procedure Rules Committee will wish to consider the question of notice, and its length, and indeed whether either of the relevant case progression forms should be amended.
- 75 The hearing should normally take place in open court, with a full recording of the entire proceedings, and both sides represented, in the defendant's presence.
- 76 As already indicated, in cases of any complexity or difficulty, proper notice should be given to the Crown that a sentence indication will be sought. The fact that notice has been given, and any reference to a request for a sentence indication, or the circumstances in which it was sought, would be inadmissible in any subsequent trial.
- 77 If the process we envisage is properly followed, there should be very little need for the judge to involve himself in the discussions with the advocates, although obviously he may wish to seek better information on any aspect of the case which is troubling him. We do not anticipate an opening by the Crown, or a mitigation plea by the defence. That must be postponed until after the defendant has pleaded guilty. Generally speaking, we assume that the process will be very short, the judge bearing in mind that the defendant and the public are present, and that he (the judge) may be the trial judge, and that he is simply deciding whether to respond, and if so how, to a request that he give an indication of the maximum sentence he would pass if the defendant pleaded guilty at that stage. The fact that the case may yet proceed as a trial, and that if it does so, no reference may be made to the request for a sentence indication, leads to the conclusion that reporting restrictions should normally be imposed, to be lifted if and when the defendant pleads or is found guilty.

Magistrates' court

- 78 In our judgment it would be impracticable for these new arrangements to be extended to proceedings in the magistrates' court. We are not at present satisfied that an advance sentence indication can readily be applied to and processed there. We believe that it would be better for the new arrangements in the Crown Court to settle in for some time before considering whether and, if so how, similar arrangements can be made in the context of summary trials. Accordingly, for the time being, the magistrates should confine themselves to the statutory arrangements in Schedule 3 to the 2003 Act."

Criminal Practice Directions 2015 VII Sentencing C.1

- C.1 Prior to pleading guilty, it is open to a defendant in the Crown Court to request from the judge an indication of the maximum sentence that would be imposed if a guilty plea were to be tendered at that stage in the proceedings, in accordance with the guidance in *R v Goodyear* [2005] EWCA Crim 888, [2005] 1 W.L.R. 2532, [2005] 2 Cr. App. R. 20. The defence should notify the court and the prosecution of the intention to seek an indication in advance of any hearing.
- C.2 Attention is drawn to the guidance set out in paragraphs 53 and following of *R v Goodyear*. The objective of the *Goodyear* guidelines is to safeguard against the creation or appearance of judicial pressure on a defendant. Any advance indication given should be the maximum sentence if a guilty plea were to be tendered at that stage of the proceedings only; the judge should not indicate the maximum possible sentence following conviction by a jury after trial. The judge should only give a *Goodyear* indication if one is requested by the defendant, although the judge can, in an appropriate case, remind the defence advocate of the defendant's entitlement to seek an advance indication of sentence.
- C.3 Whether to give a *Goodyear* indication, and whether to give reasons for a refusal, is a matter for the discretion of the judge, to be exercised in accordance with the principles outlined by the Court of Appeal in that case. Such indications should normally not be given if there is a dispute as to the basis of plea unless the judge concludes that he or she can properly deal with the case without the need for a *Newton* hearing. If there is a basis of plea agreed by the prosecution and defence, it must be reduced into writing and a copy provided to the judge. As always, any basis of plea will be subject to the approval of the court. In cases where a dispute arises, the procedure in *R v Underwood* should be followed prior to the court considering a sentence indication further, as set out above. The judge should not become involved in negotiations about the acceptance of pleas or any agreed basis of plea, nor should a request be made for an indication of the different sentences that might be imposed if various different pleas were to be offered.
- C.4 There should be no prosecution opening nor should the judge hear mitigation. However, during the sentence indication process the prosecution advocate is expected to assist the court by ensuring that the court has received all of the prosecution evidence, any statement from the victim about the impact of the offence, and any relevant previous convictions. Further, where appropriate, the prosecution should provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court requires.
- C.5 Attention is drawn to paragraph 70(d) of *Goodyear* which emphasises that the prosecution "should not say anything which may create the impression that the sentence indication has the support or approval of the Crown." This prohibition against the Crown indicating its approval of a particular sentence applies in all circumstances

when a defendant is being sentenced, including when joint sentencing submissions are made.

- C.6 An indication, once given, is, save in exceptional circumstances (such as arose in *R v Newman* [2010] EWCA Crim 1566, [2011] 1 Cr. App. R. (S.) 68), binding on the judge who gave it, and any other judge, subject to overriding statutory obligations such as those following a finding of “dangerousness”. In circumstances where a judge proposes to depart from a *Goodyear* indication this must only be done in a way that does not give rise to unfairness (see *Newman*). However, if the defendant does not plead guilty, the indication will not thereafter bind the court.
- C.7 If the offence is a specified offence such that the defendant might be liable to an assessment of ‘dangerousness’ in accordance with the Criminal Justice Act 2003 it is unlikely that the necessary material for such an assessment will be available. The court can still proceed to give an indication of sentence, but should state clearly the limitations of the indication that can be given.
- C.8 A *Goodyear* indication should be given in open court in the presence of the defendant but any reference to the hearing is not admissible in any subsequent trial; and reporting restrictions should normally be imposed.

Additional common law guidance

Judges should not give *Goodyear* indications in advance of *Newton* hearings.⁸⁸

Goodyear indications are not to be taken into account when considering the appropriate discount for a guilty plea.⁸⁹

An indication should confirm to the guidance given in *Goodyear*; it is not permissible to seek an indication as to which category in a Sentencing Council guideline an offence “falls” in.⁹⁰

Where the issue of dangerousness is live, an indication may be given but the court should make clear to the defendant the limitations of the indication, as it is unlikely that the necessary material to make such a determination would be present at that stage.⁹¹

Indications have to be able to be relied upon and although revisions are possible, they must be applied in a manner equitable to the defendant. That course may involve allowing the defendant to change his or her plea.⁹²

Multiple *Goodyear* applications may be made, but where subsequent applications are made before a different judge, the judge should be informed of the earlier indication and the reasons for it being declined.⁹³

⁸⁸ *R. v Martin* [2013] EWCA Crim 2565; [2014] 2 Cr. App. R. (S.) 21 (p.144)

⁸⁹ *R. v Hackney* [2013] EWCA Crim 1156

⁹⁰ *R. v Omole* [2011] EWCA Crim 1428; [2012] 1 Cr. App. R. (S.) 41 (p.240)

⁹¹ See for example, *R. v Kulah* [2007] EWCA Crim 1701; [2008] 1 Cr. App. R. (S.) 85 (p.494)

⁹² *R. v Newman* [2010] EWCA Crim 1566; [2011] 1 Cr. App. R. (S.) 68 (p.419)

⁹³ *R. v Kulah* [2007] EWCA Crim 1701; [2008] 1 Cr. App. R. (S.) 85 (p.494)

2.2.2. Indications in the Magistrates' Courts

MCA 1980 s.20⁹⁴: Procedure where summary trial appears more suitable

- s.20(1) - if the court decides under section 19 above that the offence appears to it more suitable for summary trial, the following provisions of this section shall apply (unless they are excluded by section 23 below).
- s.20(2) - the court shall explain to the accused in ordinary language—
 - (a) that it appears to the court more suitable for him to be tried summarily for the offence;
 - (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and
 - (c) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 3 or (if applicable) section 3A of the Powers of Criminal Courts (Sentencing) Act 2000 if the court is of such opinion as is mentioned in subsection (2) of the applicable section.
- s.20(3) - the accused may then request an indication ("an indication of sentence") of whether a custodial sentence or non-custodial sentence would be more likely to be imposed if he were to be tried summarily for the offence and to plead guilty.
- s.20(4) - if the accused requests an indication of sentence, the court may, but need not, give such an indication.
- s.20(5) - if the accused requests and the court gives an indication of sentence, the court shall ask the accused whether he wishes, on the basis of the indication, to reconsider the indication of plea which was given, or is taken to have been given, under section 17A or 17B above.
- s.20(6) - if the accused indicates that he wishes to reconsider the indication under section 17A or 17B above, the court shall ask the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

Note: See also CJA 2003 Sch.3 which made amendments to the allocation and sending procedure (including substituting a new MCA 1980 s.20).

⁹⁴ Commencement: 6 July 1981, SI 1981/457 art.2.

2.3 Factual basis for sentence

Note: The area is governed by the common law and though fairly settled is rather piecemeal. The Criminal Practice Directions 2015 (see CPD VII Sentencing B) set out the approach to be taken, though of course very few references are provided for the statements of the law.

2.3.1. General

The defendant should be given the benefit of any doubt as to the factual basis for sentencing.⁹⁵

Burden and standard of proof

The judge should openly direct him/herself however a failure to do so is not fatal. The defence version of events must be accepted unless the judge is sure that they are wrong.⁹⁶

Where the defendant raises extraneous issues in mitigation which are of doubtful validity, there is a civil burden of proof upon the defendant and he should be given the opportunity to call evidence in support. Ordinarily however, the court would accept the accuracy of the advocate's statement.⁹⁷

Bad character

The offender must be sentenced only for the offences of which they have been convicted.⁹⁸ Even where evidence which serves to establish the defendant's guilt of an offence charged on the indictment is deployed as evidence of bad character, sentencing cannot proceed on the basis that the defendant is guilty of a distinct and separate offence of which he has not been convicted and which he denies.⁹⁹

These principles apply to ancillary orders too.¹⁰⁰

Note: An exception to the principle in Chadderton would be where the defendant asks for offences to be taken into consideration or counts represent sample counts and are so treated by consent.

Using bad character to demonstrate offence was not an isolated incident/refute false mitigation

Where a defendant fell to be sentenced for drug offences and had made a statement detailing his involvement in drugs, to require the court to sentence him only for the drugs detailed in the counts was entirely artificial. The court was entitled to look at the statement to consider whether the incident was isolated.¹⁰¹

Such bad character is able to be used to refute a claim that an incident was isolated, where the contrary was in fact the truth.¹⁰²

Where there is a documented albeit unproven history of violence towards the victim, the offender cannot have the benefit of positive good character, however where allegations of assault are denied, and remain unproven the violence cannot be an aggravating feature.¹⁰³

⁹⁵ See for example *R. v Stosiek* (1982) 4 Cr. App. R. (S.) 205

⁹⁶ See for example *R. v Kerrigan* (1993) 14 Cr. App. R. (S.) 179

⁹⁷ *R. v Guppy* (1995) 16 Cr. App. R. (S.) 25

⁹⁸ *R. v Chadderton* (1980) 2 Cr. App. R. (S.) 272

⁹⁹ *R. v Oakes* [2012] EWCA Crim 2435; [2013] 2 Cr. App. R. (S.) 22 (p.132) (See the case of *Restivo*)

¹⁰⁰ See *Anderson v DPP* (1978) 67 Cr. App. R. 185, HL

¹⁰¹ *R. v Russen* (1981) 3 Cr. App. R. (S.) 134

¹⁰² *R. v Twisse* [2001] 2 Cr. App. R. (S.) 9 (p.37)

Non-criminal behaviour

It is open to a judge to have regard to the defendant's antecedent behaviour, not all of which is evidenced by previous convictions. PSRs frequently refer to attitude and behaviour and allow for example the court to determine whether or not the use of violence reveals an entrenched disregard for others or represents a "one-off".¹⁰⁴

Evidence

In determining the factual basis for sentence, a judge is not bound by the rules of admissibility which would be applicable in a trial. The aim is to provide the judge with the fullest information possible whilst ensuring that the defendant has the opportunity to put his side of the picture.¹⁰⁵

It is inappropriate for a judge to rely on evidence in a co-defendant's trial in order to reject the defendant's account and sentence on the prosecution's case.¹⁰⁶

Judge or magistrate making findings of fact

Mitigation does not have to be accepted.¹⁰⁷ The judge is entitled to determine any matter before him or her, however any doubt is to be resolved in the defendant's favour.¹⁰⁸

When rejecting the defendant's account in circumstances where the Crown feels it cannot accept the account or cannot challenge it, the court should state clearly that it is rejecting the account and give its reasons.¹⁰⁹

Where a judge "rubber stamped" a draft football banning order having not given the defence the chance to deal with an adverse finding, the order would have to be quashed.¹¹⁰

2.3.2. Following a trial

The judge must remain faithful to the verdict of the jury, even where it was logically incomprehensible.¹¹¹

Jury riders etc.

Regarding jury riders and answers, the only instance the Court of Appeal has found where it might be common practice to go behind the general verdict of the jury and enquire as to its basis is that of manslaughter where the jury may have reached their decision on alternative grounds left to them by the judge.¹¹²

¹⁰³ *Attorney General's Reference (No. 80 of 2009)* [2010] EWCA Crim 470

¹⁰⁴ *R. v Thomas* [2009] EWCA Crim 904; [2010] 1 Cr. App. R. (S.) 14 (p 75)

¹⁰⁵ *R. v Smith* (1988) 10 Cr. App. R. (S.) 271

¹⁰⁶ *R. v Michaels* (1981) 3 Cr. App. R. (S.) 188. See also Banks on Sentence (9th ed) Volume 1 para 73.21

¹⁰⁷ *R. v Worley* [1978] Crim LR 101

¹⁰⁸ *R. v Taggart* (1979) 1 Cr. App. R. (S.) 183

¹⁰⁹ *R. v Tolera* [1999] 1 Cr. App. R. (S.) 25

¹¹⁰ *R. v Irving* [2013] EWCA Crim 1932

¹¹¹ *R. v Baldwin* [1989] 11 Cr. App. R. (S.) 139

¹¹² *R. v Soloman* (1984) 6 Cr. App. R. (S.) 120. See also *R. v Jones* (The Times 17 February 1999).

Where the jury have expressed an opinion, the judge remains entitled to his own view of the facts, where the evidence supports such a conclusion.¹¹³

Uncertainty as to factual basis arising from jury's verdict

Where there is uncertainty over the jury's verdict, the judge is bound to sentence on the version most favourable to the defendant. In such a situation, the judge is not entitled to reject the defendant's account without holding a *Newton* hearing.¹¹⁴

2.3.3. Bases of plea

The key case is that of *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478), which sets out the basic principles where the defendant admits guilt but disputes the factual basis as alleged by the prosecution. The principles are reproduced in the Criminal Practice Directions [2013] EWCA Crim 1631 Sentencing B.8.¹¹⁵

Prosecution acceptance of the basis of plea

If the prosecution accepts the defendant's basis of plea, it must ensure that the basis of plea is factually accurate and enables the sentencing judge to impose a sentence appropriate to reflect the justice of the case.¹¹⁶

Whatever view may be formed by the Crown on any proposed basis of plea, it is deemed to be conditional on the judge's acceptance of it.¹¹⁷

The Crown may reject the defendant's version. If so, the areas of dispute should be identified in writing and the document should focus the court's attention on the precise fact or facts which are in dispute.¹¹⁸

Where an issue raised by the defence is outside the knowledge of the prosecution, the prosecution's position may well be that it had no evidence to contradict the defence assertions. That does not mean that the truth of matters outside its own knowledge should be agreed. In those circumstances, particularly if the facts relied on by the defendant arise from his personal knowledge and depend on his own account of the facts, the Crown should not normally agree the defendant's account unless it is supported by other material. There is an important distinction between assertions about the facts which the Crown is prepared to agree, and its possible agreement to facts about which, in truth, the prosecution is ignorant. Neither the prosecution nor the judge is bound to agree facts merely because the prosecution cannot "gainsay" the defendant's account. The court should be notified of the points in issue in writing.¹¹⁹

The prosecution's acceptance of a basis of plea is conditional upon the approval of the judge and the defence cannot hold the prosecution to it without that approval. Where following such an acceptance, a second judge rejects the basis of plea, the prosecution are not barred from advancing a different, more serious case than was the subject of the agreement.¹²⁰

¹¹³ *R. v Warner* (1967) 51 Cr. App. R. 437 and *R. v Cairns* [2013] EWCA Crim 467; [2013] 2 Cr. App. R. (S.) 73 (p.474)

¹¹⁴ *R. v Finch* (1993) 14 Cr. App. R. (S.) 226

¹¹⁵ Listed here are only those principles which relate to procedure to be adopted by the court. The case also lists advocates' duties.

¹¹⁶ CPD 2015 VII Sentencing para B.8(a).

¹¹⁷ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [3]

¹¹⁸ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [4]

¹¹⁹ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [5]

¹²⁰ *R. v Beswick* (1996) 1 Cr. App. R. (S.) 343

Prosecution does not, or cannot, challenge the basis of plea

Where the defendant, having pleaded guilty, advances an account of the offence which the prosecution does not, or feels it cannot, challenge, but which the court feels unable to accept, it is desirable that the court should make it clear that it does not accept the defence account and why. Failing any other resolution, a hearing can be held and evidence called to resolve the matter. That will ordinarily involve calling the defendant and the prosecutor should ask appropriate questions to test the defendant's evidence, adopting for this purpose the role of an amicus, exploring matters which the court wishes to be explored. It is not generally desirable that the prosecutor, on the ground that he has no evidence to contradict that of the defendant, should simply fold his hands and leave the questioning to the judge.¹²¹

The form and contents of the basis of plea

If the prosecution does accept the defendant's basis of plea, it must be reduced to writing, be signed by advocates for both sides, and made available to the judge prior to the prosecution's opening.¹²²

If a plea has already been accepted and approved, then it should be available before the sentencing hearing begins. If the written basis of plea is not signed by the advocates for both sides, the judge is entitled to ignore it; similarly, if the document is not legible.¹²³

In conspiracy cases, it is vital that the basis of plea is clear as to whether the plea is a) guilty to involvement in the overall conspiracy but only to an active role in limited incidents, or b) guilty to an active role in limited incidents and limited involvement in the conspiracy.¹²⁴

Judicial approach to the basis of plea

Whether or not the basis of plea is "agreed", the judge is not bound by any such agreement and is entitled of his own motion to insist that any evidence relevant to the facts in dispute should be called before him.¹²⁵

The judge is responsible for the sentencing decision and he may therefore order a *Newton* hearing to ascertain the truth about disputed facts.¹²⁶

Neither the prosecution nor the judge is bound to agree facts merely because the prosecution cannot "gainsay" the defendant's account. The court should be notified of the points in issue in writing.¹²⁷

If a defendant seeks to mitigate on the basis of assertions of fact outside the prosecutor's knowledge (for example as to his state of mind), the judge should be invited not to accept this version unless given on oath and tested in cross examination as set out in CPD [2013] EWCA Crim 1631 Sentencing B12. If evidence is not given in this way, then the judge might draw such inferences as he thought fit from that fact.¹²⁸

¹²¹ *R. v Tolera* [1999] 1 Cr. App. R. (S.) 25

¹²² *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [4]

¹²³ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [4]

¹²⁴ *R. v McFeeley* [1998] 2 Cr. App. R. (S.) 26

¹²⁵ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [6]

¹²⁶ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [6]

¹²⁷ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [5]

¹²⁸ *R. v Cairns* [2013] EWCA Crim 467; [2013] 2 Cr. App. R. (S.) 73 (p.474)

Judge rejects basis of plea

If a judge does not accept an important and relevant part of the basis of plea, he or she should make that clear to the defence so that they can decide how they wish to proceed.¹²⁹

Where a judge rejects the basis of plea and directs a trial of issue, this does not create a ground upon which the defendant should be permitted to vacate a plea of guilty when it is clear that unreal though the agreed facts may be, it does amount to an admission to the offence.¹³⁰

The prosecution's acceptance of a basis of plea is conditional upon the approval of the judge and the defence cannot hold the prosecution to it without that approval.¹³¹

Multi-defendant cases and cases involving multi-count indictments

At the end of the *Newton* hearing the judge cannot make findings of fact and sentence on a basis which is inconsistent with the pleas to counts which have already been accepted by the Crown and approved by the court. Particular care is needed in relation to a multi-count indictment involving one defendant, or an indictment involving a number of defendants, and to circumstances in which the Crown accepts, and the court approves, a guilty plea to a reduced charge.¹³²

In cases involving multiple defendants, the bases of plea for each defendant must be factually consistent with each other.¹³³

2.3.4. Dispute as to factual basis for sentencing: *Newton* hearings

General

Where the defendant pleads guilty, but disputes the basis of offending alleged by the prosecution and agreement as to that has not been reached, the following procedure should be followed:

- (a) The defendant's basis of plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;
- (b) The prosecution must respond in writing setting out their alternative contentions and indicating whether or not they submit that a *Newton* hearing is necessary;
- (c) The court may invite the parties to make representations about whether the dispute is material to sentence; and
- (d) If the court decides that it is a material dispute, the court will invite such further representations or evidence as it may require and resolve the dispute in accordance with the principles set out in *R v Newton*.¹³⁴

¹²⁹ *R. v Lucien* [2009] EWCA Crim 2004

¹³⁰ *R. v Beswick* [1996] 1 Cr. App. R. (S.) 343

¹³¹ *R. v Beswick* [1996] 1 Cr. App. R. (S.) 343

¹³² *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [10]

¹³³ *R. v Cairns* [2013] EWCA Crim 467; [2013] 2 Cr. App. R. (S.) 73 (p.474) at [5]

¹³⁴ CPD 2015 VII Sentencing B11

The *Newton* principles

Where there is a sharp¹³⁵ divergence on a question of fact which is relevant to sentence, there are three ways of approaching the problem of determining the matter:

- (a) obtain an answer from the jury, where the verdict of the jury on one count or another will determine the issue;
- (b) the judge can hear evidence and come to a conclusion
- (c) the judge can hear the submissions of an advocate only and come to a conclusion, but if he or she does that, they must come down on the side of the defendant, where there is a substantial conflict between the two sides: the version of the defendant must so far as is possible be accepted.¹³⁶

The procedure

The prosecuting advocate should assist the judge by calling any appropriate evidence and testing the evidence advanced by the defence. The defence advocate should similarly call any relevant evidence and, in particular, where the issue arises from facts which are within the exclusive knowledge of the offender and the offender is willing to give evidence in support of his case, be prepared to call the offender. If he is not, and subject to any explanation which may be proffered, the court may draw such inferences as it thinks fit from that fact. The court must then make up its mind about the facts in dispute. The court must direct itself in accordance with ordinary principles, such as, for example, the burden and standard of proof. In short, these self-directions should reflect the relevant directions the judge would have given to the jury. Having reached such conclusions, the judge should explain them in a judgment.¹³⁷

Account obviously false: No need for a *Newton*

A judge is not entitled to reject a defendant's basis of plea absent a *Newton* hearing unless it is determined by the court that the basis is manifestly false and as such does not merit examination by way of the calling of evidence or alternatively the defendant declines the opportunity to engage in the process of the *Newton* hearing whether by giving evidence on his own behalf or otherwise.¹³⁸

A judge is entitled to decline to hear evidence about disputed facts if the case advanced on the defendant's behalf is, for good reason, to be regarded as absurd or obviously untenable. If so, the judge should explain why he or she has reached that conclusion.¹³⁹

Judge declines to hold a *Newton* hearing because divergence of fact not substantial

In such a circumstance, the defendant should be sentenced on his or her version of events.¹⁴⁰

Magistrates' Courts

The procedure for determining factual disputes outlined in *Newton* is perfectly appropriate for the magistrates' courts.¹⁴¹

¹³⁵ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90

¹³⁶ *R. v Newton* (1982) 4 Cr. App. R. (S.) 388

¹³⁷ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [7]-[9]

¹³⁸ CPD 2015 VII Sentencing B.10

¹³⁹ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [10]

¹⁴⁰ *R. v McCreesh* [2010] EWCA Crim 314

¹⁴¹ *R. v Waltham Forrest Justices ex p. Barton* [1990] RTR 49

Committals for sentence

Where, upon a committal for sentence, there is a factual dispute relevant to sentence, the Crown Court has the jurisdiction to remit the case in order to determine the dispute, or alternatively it may hear evidence. Which is appropriate will depend on when the dispute arises; if it arises at the magistrates' court, they should determine the issue. If the magistrates' court then commits for sentence, the Crown Court should be informed of their findings. If it arises at the Crown Court, they should determine the issue.¹⁴²

Findings cannot be inconsistent with pleas which have already been accepted

At the end of the *Newton* hearing the judge cannot make findings of fact and sentence on a basis which is inconsistent with the pleas to counts which have already been accepted by the Crown and approved by the court. Particular care is needed in relation to a multi-count indictment involving one defendant, or an indictment involving a number of defendants, and to circumstances in which the Crown accepts, and the court approves, a guilty plea to a reduced charge.¹⁴³

Reduction for pleading guilty following a *Newton* hearing

If the issues at the *Newton* hearing are wholly resolved in the defendant's favour, the credit due to him should not be reduced. If for example, however, the defendant is disbelieved, or obliges the prosecution to call evidence from the victim, who is then subjected to a cross-examination, which, because it is entirely unfounded, causes unnecessary and inappropriate distress, or if the defendant conveys to the judge that he has no insight into the consequences of his offence and no genuine remorse for it, these are all matters which may lead the judge to reduce the discount which the defendant would otherwise have received for his guilty plea, particularly if that plea is tendered at a very late stage. Accordingly, there may even be exceptional cases in which the normal entitlement to credit for a plea of guilty is wholly dissipated by the *Newton* hearing. In such cases, again, the judge should explain his reasons.¹⁴⁴

Appeals

The Court of Appeal can hold a *Newton* hearing.¹⁴⁵ However the court cannot order an appellant to give evidence.¹⁴⁶

If findings of fact were not made at the Crown Court, the Court of Appeal are to determine the issue.¹⁴⁷

¹⁴² *Munroe v DPP* (1988) 152 JP 657, QBD

¹⁴³ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [10]

¹⁴⁴ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [11]

¹⁴⁵ *Attorney General's reference (Nos.3 and 4 of 1996)* [1997] 1 Cr. App. R. (S.) 29

¹⁴⁶ *R. v Guppy* (1995) 16 Cr. App. R. (S.) 25

¹⁴⁷ *R. v Bowden* [2001] 1 Cr. App. R. (S.) 82 (p.282)

2.4 Reports (including mental health)

2.4.1. Pre-sentence

What is a pre-sentence report?

CJA 2003 s.158¹⁴⁸: Meaning of “pre-sentence report”

s.158(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.

s.158(1A) - subject to any rules made under subsection (1)(b) and to subsection (1B), the court may accept a pre-sentence report given orally in open court.

s.158(1B) - but a pre-sentence report that—

- (a) relates to an offender aged under 18, and
- (b) is required to be obtained and considered before the court forms an opinion mentioned in section 156(3)(a),

must be in writing.

s.158(2) - in subsection (1) “an appropriate officer” means—

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

Duty to obtain pre-sentence report

CJA 2003 s.156¹⁴⁹: Pre-sentence reports and other requirements

s.156(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 226A(1)(b) or section 226B(1)(b), or
- (b) in the case of a community sentence, forming any such opinion as is mentioned in section 148(1) or (2)(b), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008, or any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order or youth rehabilitation order.

s.156(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.

¹⁴⁸ Commencement: Section 158(1)(a) and (2) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. Section 158(1)(b) in force 7 March 2005, SI 2005/373 art.2(2)(b). Section 158(1A) and (1B) in force 14 July 2008, as inserted by CJA 2008 s.12, SI 2008/1586 art.2(1) and Sch.1 para.3.

¹⁴⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

- s.156(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.
- s.156(9) - references in subsections (1) and (3) to a court forming the opinions mentioned in sections 152(2) and 153(2) include a court forming those opinions for the purposes of section 224A(3).
- s.156(10) - the reference in subsection (1) to a court forming the opinion mentioned in section 153(2) includes a court forming that opinion for the purposes of section 226A(6) or 226B(4).

Effect of not obtaining pre-sentence report

CJA 2003 s.156¹⁵⁰: Pre-sentence reports and other requirements

- s.156(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.
- s.156(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.
- s.156(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.

Disclosure of reports

CJA 2003 s.159¹⁵¹: Disclosure of pre-sentence reports

- s.159(1) - this section applies where the court obtains a pre-sentence report, other than a report given orally in open court.
- s.159(2) - subject to subsections (3) and (4), the court must give a copy of the report—

¹⁵⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

¹⁵¹ Commencement: Section 159(1) to (3) and (5) to (7) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. Section 159(4) in force 7 March 2005, SI 2005/373 art.2(2)(c).

- (a) to the offender or his legal representative,
- (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.

s.159(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.

s.159(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.

s.159(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.

s.159(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.

s.159(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).

2.4.2. Medical reports

Mentally disordered offender: Duty to obtain report

CJA 2003 s.157¹⁵²: Additional requirements in case of mentally disordered offender

s.157(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.

s.157(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.

¹⁵² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

- s.157(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.
- s.157(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.
- s.157(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).
- s.157(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 or by another person by virtue of section 12ZA or 12ZB of that Act as having special experience in the diagnosis or treatment of mental disorder.
- s.157(7) - nothing in this section is to be taken to limit the generality of section 156.

Magistrates’ Courts

PCC(S)A 2000 s.11¹⁵³: Remand by magistrates’ court for medical examination

- s.11(1) - if, on the trial by a magistrates’ court of an offence punishable on summary conviction with imprisonment, the court—
- (a) is satisfied that the accused did the act or made the omission charged, but
 - (b) is of the opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined,
- the court shall adjourn the case to enable a medical examination and report to be made, and shall remand him.
- s.11(2) - an adjournment under subsection (1) above shall not be for more than three weeks at a time where the court remands the accused in custody, nor for more than four weeks at a time where it remands him on bail.
- s.11(3) - where on an adjournment under subsection (1) above the accused is remanded on bail, the court shall impose conditions under paragraph (d) of section 3(6) of the Bail Act 1976 and the requirements imposed as conditions under that paragraph shall be or shall include requirements that the accused—
- (a) undergo medical examination by a registered medical practitioner or, where the inquiry is into his mental condition and the court so directs, two such practitioners; and
 - (b) for that purpose attend such an institution or place, or on such practitioner, as the court directs and, where the inquiry is into his mental condition, comply with any

¹⁵³ Commencement: 25 August 2000 s.168(1).

other directions which may be given to him for that purpose by any person specified by the court or by a person of any class so specified.

Crown Court

MHA 1983 s.35¹⁵⁴: Remand to hospital for report on accused's mental condition

- s.35(1) - subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.
- s.35(2) - for the purposes of this section an accused person is—
- (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
 - (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.
- s.35(3) - subject to subsection (4) below, the powers conferred by this section may be exercised if—
- (a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the accused person is suffering from mental disorder; and
 - (b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;
- but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.
- s.35(4) - the court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the approved clinician who would be responsible for making the report or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- s.35(5) - where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the approved clinician responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.
- s.35(6) - the power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

¹⁵⁴ Commencement: 1 October 1984, SI 1984/1357 art.2.

- s.35(7) - an accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- s.35(8) - an accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.
- s.35(9) - where an accused person is remanded under this section—
- (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.
- s.35(10) - if an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

MHA 1983 s.36¹⁵⁵: Remand of accused person to hospital for treatment

- s.36(1) - subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that
- (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
 - (b) appropriate medical treatment is available for him.
- s.36(2) - for the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.
- s.36(3) - the court shall not remand an accused person under this section to a hospital unless it is satisfied, on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- s.36(4) - where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible clinician, that a further remand is warranted.
- s.36(5) - the power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

¹⁵⁵ Commencement: 1 October 1984, SI 1984/1357 art.2.

- s.36(6) - an accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- s.36(7) - an accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.
- s.36(8) - Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

2.4.3. Other reports

Other reports

CJA 2003 s.160¹⁵⁶: Other reports of local probation boards, providers of probation services and members of youth offending teams

- s.160(1) - this section applies where—
 - (a) a report by an officer of a local probation board, an officer of a provider of probation services 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.
- s.160(2) - subject to subsection (3), the court must give a copy of the report—
 - (a) to the offender or his legal representative, and
 - (b) if the offender is aged under 18, to any parent or guardian of his who is present in court.
- s.160(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.
- s.160(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.

¹⁵⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

Youth Court

CYP A 1933 s.48¹⁵⁷: Miscellaneous provisions as to powers of juvenile courts

- s.48(3) - when a youth court has remanded a child or young person for information to be obtained with respect to him, any youth court acting in the same local justice area—
- (a) may in his absence extend the period for which he is remanded, so, however, that he appears before a court or a justice of the peace at least once in every twenty-one days;
 - (b) when the required information has been obtained, may deal with him finally

¹⁵⁷ Commencement: 1 November 1933, CYP A 1933 s.109(2) (now repealed) and SI 1933/663 art.1

2.5 Deferred sentences

2.5.1. Deferring sentence

Availability and power to defer sentence

PCC(S)A 2000 s.1¹⁵⁸: Deferment of sentence

- s.1(1) - the Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court, or any other court to which it falls to deal with him, to have regard in dealing with him to—
- (a) his conduct after conviction (including, where appropriate, the making by him of reparation for his offence); or
 - (b) any change in his circumstances;
- but this is subject to subsections (3) and (4) below.

Test to apply and power to impose undertakings

PCC(S)A 2000 s.1¹⁵⁹: Deferment of sentence

- s.1(3) - the power conferred by subsection (1) above shall be exercisable only if—
- (a) the offender consents;
 - (b) the offender undertakes to comply with any requirements as to his conduct during the period of the deferment that the court considers it appropriate to impose; and
 - (c) the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.
- s.1(4) - any deferment under this section shall be until such date as may be specified by the court, not being more than six months after the date on which the deferment is announced by the court; and, subject to section 1D(3) below, where the passing of sentence has been deferred under this section it shall not be further so deferred.

Undertakings

PCC(S)A 2000 s.1A¹⁶⁰: Further provision about undertakings

- s.1A(1) - without prejudice to the generality of paragraph (b) of section 1(3) above, the requirements that may be imposed by virtue of that paragraph include requirements as to the residence of the offender during the whole or any part of the period of deferment.
- s.1A(2) - where an offender has undertaken to comply with any requirements imposed under section 1(3)(b) above the court may appoint—
- (a) an officer of a local probation board or an officer of a provider of probation services, or
 - (b) any other person whom the court thinks appropriate,

¹⁵⁸ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁵⁹ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶⁰ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

to act as a supervisor in relation to him.

s.1A(3) - a person shall not be appointed under subsection (2)(b) above without his consent.

s.1A(4) - it shall be the duty of a supervisor appointed under subsection (2) above—

- (a) to monitor the offender's compliance with the requirements; and
- (b) to provide the court to which it falls to deal with the offender in respect of the offence in question with such information as the court may require relating to the offender's compliance with the requirements.

Copies of the order to be given to offender etc.

PCC(S)A 2000 s.1¹⁶¹: Deferment of sentence

s.1(5) - where a court has under this section deferred passing sentence on an offender, it shall forthwith give a copy of the order deferring the passing of sentence and setting out any requirements imposed under subsection (3)(b) above—

- (a) to the offender,
- (b) where an officer of a local probation board has been appointed to act as a supervisor in relation to him, to that board,
- (ba) where an officer of a provider of probation services has been appointed to act as a supervisor in relation to him, to that provider, and
- (c) where a person has been appointed under section 1A(2)(b) below to act as a supervisor in relation to him, to that person.

Cannot remand offender subject to deferred sentence

PCC(S)A 2000 s.1¹⁶²: Deferment of sentence

s.1(6) - notwithstanding any enactment, a court which under this section defers passing sentence on an offender shall not on the same occasion remand him.

Power to make restorative justice undertakings

PCC(S)A 2000 s.1ZA¹⁶³: Undertakings to participate in restorative justice activities

s.1ZA(1) - without prejudice to the generality of paragraph (b) of section 1(3), the requirements that may be imposed under that paragraph include restorative justice requirements.

s.1ZA(2) - any reference in this section to a restorative justice requirement is to a requirement to participate in an activity—

- (a) where the participants consist of, or include, the offender and one or more of the victims,
- (b) which aims to maximise the offender's awareness of the impact of the offending concerned on the victims, and
- (c) which gives an opportunity to a victim or victims to talk about, or by other means express experience of, the offending and its impact.

¹⁶¹ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶² Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶³ Commencement: 11 December 2003, as inserted by CCA 2013 Sch.16 para.5, SI 2013/2981 art.2(d).

- s.1ZA(3) - imposition under section 1(3)(b) of a restorative justice requirement requires, in addition to the offender's consent and undertaking under section 1(3), the consent of every other person who would be a participant in the activity concerned.
- s.1ZA(4) - for the purposes of subsection (3), a supervisor appointed under section 1A(2) does not count as a proposed participant.
- s.1ZA(5) - where a restorative justice requirement is imposed under section 1(3)(b), the duty under section 1(5) (to give copies of order) extends to every person who would be a participant in the activity concerned.
- s.1ZA(6) - in a case where there is such a restorative justice requirement, a person running the activity concerned must in doing that have regard to any guidance that is issued, with a view to encouraging good practice in connection with such an activity, by the Secretary of State.
- s.1ZA(7) - in this section “*victim*” means a victim of, or other person affected by, the offending concerned.

Effect of deferral order

PCC(S)A 2000 s.1¹⁶⁴: Deferment of sentence

- s.1(8) - nothing in this section or sections 1ZA to 1D below shall affect—
 - (a) the power of the Crown Court to bind over an offender to come up for judgment when called upon; or
 - (b) the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this section.

PCC(S)A 2000 s.1D¹⁶⁵: Deferment of sentence: supplementary

- s.1D(1) - in deferring the passing of sentence under section 1 above a magistrates' court shall be regarded as exercising the power of adjourning the trial conferred by section 10(1) of the Magistrates' Courts Act 1980, and accordingly sections 11(1) and 13(1) to (3A) and (5) of that Act (non-appearance of the accused) apply (without prejudice to section 1(7) above) if the offender does not appear on the date specified under section 1(4) above.

R. v Dwyer (1974) 60 Cr. App. R. 39

A court deferring sentence may not impose any other sentence on the same occasion in respect of the offence for which sentence is deferred, except a restitution order or a disqualification from driving.

R. v McQuaide (1974) 60 Cr. App. R. 239

Where a court has deferred sentence, it may not impose a sentence before the expiration of the period of deferment except under its powers to alter sentence, unless the offender is convicted of an offence during the period of deferment.

Attorney General's Reference (Nos. 36 and 38 of 1998) (R. v Jones) [1999] 2 Cr. App. R. (S.) 7

Where a court has deferred sentence, the Attorney may refer the case to the Court of Appeal under the unduly lenient sentence scheme.

¹⁶⁴ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶⁵ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

2.5.2. Breach of undertakings

PCC(S)A 2000 s.1B¹⁶⁶: Breach of undertakings

- s.1B(1) - a court which under section 1 above has deferred passing sentence on an offender may deal with him before the end of the period of deferment if—
- (a) he appears or is brought before the court under subsection (3) below; and
 - (b) the court is satisfied that he has failed to comply with one or more requirements imposed under section 1(3)(b) above in connection with the deferment.
- s.1B(2) - subsection (3) below applies where—
- (a) a court has under section 1 above deferred passing sentence on an offender;
 - (b) the offender undertook to comply with one or more requirements imposed under section 1(3)(b) above in connection with the deferment; and
 - (c) a person appointed under section 1A(2) above to act as a supervisor in relation to the offender has reported to the court that the offender has failed to comply with one or more of those requirements.
- s.1B(3) - where this subsection applies, the court may issue—
- (a) a summons requiring the offender to appear before the court at a time and place specified in the summons; or
 - (b) a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

2.5.3. Conviction during period of deferment

PCC(S)A 2000 s.1C¹⁶⁷: Conviction of offence during period of deferment

- s.1C(1) - a court which under section 1 above has deferred passing sentence on an offender may deal with him before the end of the period of deferment if during that period he is convicted in Great Britain of any offence.
- s.1C(2) - subsection (3) below applies where a court has under section 1 above deferred passing sentence on an offender in respect of one or more offences and during the period of deferment the offender is convicted in England and Wales of any offence (“the later offence”).
- s.1C(3) - where this subsection applies, then (without prejudice to subsection (1) above and whether or not the offender is sentenced for the later offence during the period of deferment), the court which passes sentence on him for the later offence may also, if this has not already been done, deal with him for the offence or offences for which passing of sentence has been deferred, except that—
- (a) the power conferred by this subsection shall not be exercised by a magistrates’ court if the court which deferred passing sentence was the Crown Court; and
 - (b) the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates’ court, shall not pass any sentence

¹⁶⁶ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

¹⁶⁷ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

which could not have been passed by a magistrates' court in exercising that power.

- s.1C(4) - where a court which under section 1 above has deferred passing sentence on an offender proposes to deal with him by virtue of subsection (1) above before the end of the period of deferment, the court may issue—
- (a) a summons requiring him to appear before the court at a time and place specified in the summons; or
 - (b) a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

2.5.4. Sentencing after period of deferment

Discretion to take account of compliance with conditions imposed under deferred sentence

PCC(S)A 2000 s.1¹⁶⁸: Deferment of sentence

- s.1(2) - without prejudice to the generality of subsection (1) above, the matters to which the court to which it falls to deal with the offender may have regard by virtue of paragraph (a) of that subsection include the extent to which the offender has complied with any requirements imposed under subsection (3)(b) below.

Power to postpone sentence

R. v Ingle (1974) 59 Cr. App. R. 306

Where an offender appears before a court at the end of a period of deferment, the court may postpone sentence in the exercise of its ordinary powers of adjournment, but should not do so unless there are strong reasons for so doing.

Offender subject to deferred sentence does not attend at new sentencing hearing

PCC(S)A 2000 s.1¹⁶⁹: Deferment of sentence

- s.1(7) - where—
- (a) a court which under this section has deferred passing sentence on an offender proposes to deal with him on the date originally specified by the court, or
 - (b) the offender does not appear on the day so specified,
- the court may issue a summons requiring him to appear before the court at a time and place specified in the summons, or may issue a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

Powers

PCC(S)A 2000 s.1D¹⁷⁰: Deferment of sentence: supplementary

- s.1D(2) - where the passing of sentence on an offender has been deferred by a court ("the original court") under section 1 above, the power of that court under that section to deal with the offender at the end of the period of deferment and any power of that court

¹⁶⁸ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶⁹ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁷⁰ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

under section 1B(1) or 1C(1) above, or of any court under section 1C(3) above, to deal with the offender—

- (a) is power to deal with him, in respect of the offence for which passing of sentence has been deferred, in any way in which the original court could have dealt with him if it had not deferred passing sentence; and
- (b) without prejudice to the generality of paragraph (a) above, in the case of a magistrates' court, includes the power conferred by section 3 below to commit him to the Crown Court for sentence.

s.1D(3) - where—

- (a) the passing of sentence on an offender in respect of one or more offences has been deferred under section 1 above, and
- (b) a magistrates' court deals with him in respect of the offence or any of the offences by committing him to the Crown Court under section 3 below,

the power of the Crown Court to deal with him includes the same power to defer passing sentence on him as if he had just been convicted of the offence or offences on indictment before the court.

Compelling witnesses etc.

PCC(S)A 2000 s.1D¹⁷¹: Deferment of sentence: supplementary

s.1D(4) - subsection (5) below applies where—

- (a) the passing of sentence on an offender in respect of one or more offences has been deferred under section 1 above;
- (b) it falls to a magistrates' court to determine a relevant matter; and
- (c) a justice of the peace is satisfied—
 - (i) that a person appointed under section 1A(2)(b) above to act as a supervisor in relation to the offender is likely to be able to give evidence that may assist the court in determining that matter; and
 - (ii) that that person will not voluntarily attend as a witness.

s.1D(5) - the justice may issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence.

s.1D(6) - for the purposes of subsection (4) above a court determines a relevant matter if it—

- (a) deals with the offender in respect of the offence, or any of the offences, for which the passing of sentence has been deferred; or
- (b) determines, for the purposes of section 1B(1)(b) above, whether the offender has failed to comply with any requirements imposed under section 1(3)(b) above.

¹⁷¹ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

2.6 Absent defendants

2.6.1. General

R v Allan [2011] EWCA Crim 1022

Short of extreme circumstances or voluntary absence, each defendant should be present throughout the hearing.

2.6.2. Magistrates' Courts

Note: See also the Criminal Procedure Rules.

MCA 1980 s.11¹⁷²: Non-appearance of accused: general provisions

- s.11(3) - in proceedings to which this subsection applies, the court shall not in a person's absence sentence him to imprisonment or detention in a young offender institution or make a detention and training order or an order under paragraph 8(2)(a) or (b) of Schedule 12 to the Criminal Justice Act 2003 that a suspended sentence passed on him shall take effect.
- s.11(3A) - but where a sentence or order of a kind mentioned in subsection (3) is imposed or given in the absence of the offender, the offender must be brought before the court before being taken to a prison or other institution to begin serving his sentence (and the sentence or order is not to be regarded as taking effect until he is brought before the court).
- s.11(4) - in proceedings to which this subsection applies, the court shall not in a person's absence impose any disqualification on him, except on resumption of the hearing after an adjournment under section 10(3) above; and where a trial is adjourned in pursuance of this subsection the notice required by section 10(2) above shall include notice of the reason for the adjournment.
- s.11(5) - subsections (3) and (4) apply to—
 - (a) proceedings instituted by an information, where a summons has been issued; and
 - (b) proceedings instituted by a written charge.
- s.11(6) - nothing in this section requires the court to enquire into the reasons for the accused's failure to appear before deciding whether to proceed in his absence.
- s.11(7) - the court shall state in open court its reasons for not proceeding under this section in the absence of an accused who has attained the age of 18 years; and the court shall cause those reasons to be entered in its register of proceedings.

Note: See also MCA 1980 s.12, 12A and 13 regarding non appearance of the accused in summary proceedings, and notifications of defendant's intention to plead guilty in absence.

¹⁷² Commencement: 6 July 1981, SI 1981/457 art.2.

2.6.3. Live link

CDA 1998 s.57A¹⁷³: Introductory

s.57A(1) - this Part–

- (a) applies to preliminary hearings and sentencing hearings in the course of proceedings for an offence and enforcement hearings relating to confiscation orders; and
- (b) enables the court in the circumstances provided for in sections 57B, 57C, 57E and 57F to direct the use of a live link for securing the accused's attendance at a hearing to which this Part applies.

s.57A(2) - the accused is to be treated as present in court when, by virtue of a live link direction under this Part, he attends a hearing through a live link.

s.57A(3) - in this Part–

"confiscation order" means an order made under—

- (a) section 71 of the Criminal Justice Act 1988;
- (b) section 2 of the Drug Trafficking Act 1994; or
- (c) section 6 of the Proceeds of Crime Act 2002;

"custody"–

- (a) includes local authority accommodation or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; but
- (b) does not include police detention;

"enforcement hearing" means a hearing under section 82 of the Magistrates' Courts Act 1980 to consider the issuing of a warrant of committal or to inquire into a person's means;

"live link" means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

"police detention" has the meaning given by section 118(2) of the Police and Criminal Evidence Act 1984;

"preliminary hearing" means a hearing in the proceedings held before the start of the trial (within the meaning of subsection (11A) or (11B) of section 22 of the 1985 Act) including, in the case of proceedings in the Crown Court, a preparatory hearing held under–

- (a) section 7 of the Criminal Justice Act 1987 (cases of serious or complex fraud); or
- (b) section 29 of the Criminal Procedure and Investigations Act 1996 (other serious, complex or lengthy cases);

¹⁷³ Commencement: Inserted by Police and Justice Act 2006 s.45. In force 15 January 2007, other than to the extent it substitutes new section 57C (use of live link at preliminary hearings where accused is at police station) and subject to the transitional provisions set out in art.4, SI 2006/3364 art.2(g). In force 1 April 2007 to the extent not already in force, in Lambeth and Southwark, SI 2007/709 art.3(n). In force 1 November 2008, to the extent not already in force in the local areas listed in SI 2008/2785 art.2. In force 3 October 2011 to the extent not already in force, in the areas listed in art.2(2), SI 2011/2144 art.2. In force 8 October 2012 to the extent not already in force, SI 2012/2373 art.2.

“*sentencing hearing*” means any hearing following conviction which is held for the purpose of–

- (a) proceedings relating to the giving or rescinding of a direction under section 57E;
- (b) proceedings (in a magistrates’ court) relating to committal to the Crown Court for sentencing; or
- (c) sentencing the offender or determining how the court should deal with him in respect of the offence.

CDA 1998 s.57D¹⁷⁴: Continued use of live link for sentencing hearing following a preliminary hearing

s.57D(1) - subsection (2) applies where–

- (a) a live link direction under section 57B or 57C is in force;
- (b) the accused is attending a preliminary hearing through a live link by virtue of the direction;
- (c) the court convicts him of the offence in the course of that hearing (whether by virtue of a guilty plea or an indication of an intention to plead guilty); and
- (d) the court proposes to continue the hearing as a sentencing hearing in relation to the offence.

s.57D(2) - the accused may continue to attend through the live link by virtue of the direction if–

- (a) the hearing is continued as a sentencing hearing in relation to the offence; and
- (c) the court is satisfied that [the accused continuing to attend through the live link is not contrary to the interests of justice.

s.57D(3) - but the accused may not give oral evidence through the live link during a continued hearing under subsection (2) unless–

- (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

CDA 1998 s.57E¹⁷⁵: Use of live link in sentencing hearings

s.57E(1) - this section applies where the accused is convicted of the offence.

s.57E(2) - if it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this section in relation to that hearing.

¹⁷⁴ Commencement: Inserted by Police and Justice Act 2006 s.45. In force 15 January 2007, other than to the extent it substitutes new section 57C (use of live link at preliminary hearings where accused is at police station) and subject to the transitional provisions set out in art.4, SI 2006/3364 art.2(g). In force 1 April 2007 to the extent not already in force, in Lambeth and Southwark, SI 2007/709 art.3(n). In force 14 November 2008, to the extent not already in force in the local areas listed in SI 2008/2785 art.2. In force 3 October 2011 to the extent not already in force, in the areas listed in art.2(2), SI 2011/2144 art.2. In force 8 October 2012 to the extent not already in force, SI 2012/2373 art.2.

¹⁷⁵ Commencement: Inserted by Police and Justice Act 2006 s.45. In force 15 January 2007, other than to the extent it substitutes new section 57C (use of live link at preliminary hearings where accused is at police station) and subject to the transitional provisions set out in art.4, SI 2006/3364 art.2(g). In force 1 April 2007 to the extent not already in force, in Lambeth and Southwark, SI 2007/709 art.3(n). In force 14 November 2008, to the extent not already in force in the local areas listed in SI 2008/2785 art.2. In force 3 October 2011 to the extent not already in force, in the areas listed in art.2(2), SI 2011/2144 art.2. In force 8 October 2012 to the extent not already in force, SI 2012/2373 art.2.

- s.57E(3) - a live link direction under this section is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.
- s.57E(4) - such a direction—
- (a) may be given by the court of its own motion or on an application by a party; and
 - (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.
- s.57E(5) - the court may not give such a direction unless—
- (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.
- s.57E(6) - the court may rescind such a direction at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction in relation to the offender).
- The court may exercise this power of its own motion or on an application by a party.
- s.57E(7) - the offender may not give oral evidence while attending a hearing through a live link by virtue of this section unless—
- (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.
- s.57E(8) - the court must—
- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
 - (b) if it is a magistrates' court, cause those reasons to be entered in the register of its proceedings.

2.7 Antecedents

2.7.1. The bundle

Criminal Practice Directions 2015 II Preliminary Proceedings

Copies of record

- 8A.1 The defendant's record (previous convictions, cautions, reprimands, etc) may be taken into account when the court decides not only on sentence but also, for example, about bail, or when allocating a case for trial. It is therefore important that up to date and accurate information is available. Previous convictions must be provided as part of the initial details of the prosecution case under CrimPR Part 8.
- 8A.2 The record should usually be provided in the following format:
- Personal details and summary of convictions and cautions – Police National Computer [“PNC”] Court / Defence / Probation Summary Sheet;
- Previous convictions – PNC Court / Defence / Probation printout, supplemented by Form MG16 if the police force holds convictions not shown on PNC;
- Recorded cautions – PNC Court / Defence / Probation printout, supplemented by Form MG17 if the police force holds cautions not shown on PNC.
- 8A.3 The defence representative should take instructions on the defendant's record and if the defence wish to raise any objection to the record, this should be made known to the prosecutor immediately.
- 8A.4 It is the responsibility of the prosecutor to ensure that a copy of the defendant's record has been provided to the Probation Service.
- 8A.5 Where following conviction a custodial order is made, the court must ensure that a copy is attached to the order sent to the prison.

Additional information

- 8A.6 In the Crown Court, the police should also provide brief details of the circumstances of the last three similar convictions and / or of convictions likely to be of interest to the court, the latter being judged on a case-by-case basis.
- 8A.7 Where the current alleged offence could constitute a breach of an existing sentence such as a suspended sentence, community order or conditional discharge, and it is known that that sentence is still in force then details of the circumstances of the offence leading to the sentence should be included in the antecedents. The detail should be brief and include the date of the offence.
- 8A.8 On occasions the PNC printout provided may not be fully up to date. It is the responsibility of the prosecutor to ensure that all of the necessary information is available to the court and the Probation Service and provided to the defence. Oral updates at the hearing will sometimes be necessary, but it is preferable if this information is available in advance.

2.7.2. Taking account of antecedents

CJA 2003 s.143¹⁷⁶: Determining the seriousness of an offence

- s.143(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.
- s.143(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,
 - (aa) a previous conviction by a court in another member State of a relevant offence under the law of that State,
 - (b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction), or
 - (c) a finding of guilt in respect of a member State service offence.

2.7.3. Spent convictions

ROA 1974 s.4¹⁷⁷: Effect of rehabilitation

- s.4(1) - subject to sections 7 and 8 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—
- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and
 - (b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

¹⁷⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

¹⁷⁷ Commencement: 1 July 1975, ROA 1974 s.11(2).

ROA 1974 s.7¹⁷⁸: Limitations on rehabilitation under this Act, etc.

- s.7(2) - nothing in section 4(1) above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto—
- (a) in any criminal proceedings before a court in England and Wales (including any appeal or reference in a criminal matter);
 - (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings; [...]

Criminal Practice Directions 2015 V Evidence

- 21A.1 The effect of section 4(1) of the Rehabilitation of Offenders Act 1974 is that a person who has become a rehabilitated person for the purpose of the Act in respect of a conviction (known as a 'spent' conviction) shall be treated for all purposes in law as a person who has not committed, or been charged with or prosecuted for, or convicted of or sentenced for, the offence or offences which were the subject of that conviction.
- 21A.2 Section 4(1) of the 1974 Act does not apply, however, to evidence given in criminal proceedings: section 7(2)(a). During the trial of a criminal charge, reference to previous convictions (and therefore to spent convictions) can arise in a number of ways. The most common is when a bad character application is made under the Criminal Justice Act 2003. When considering bad character applications under the 2003 Act, regard should always be had to the general principles of the Rehabilitation of Offenders Act 1974.
- 21A.3 On conviction, the court must be provided with a statement of the defendant's record for the purposes of sentence. The record supplied should contain all previous convictions, but those which are spent should, so far as practicable, be marked as such. No one should refer in open court to a spent conviction without the authority of the judge, which authority should not be given unless the interests of justice so require. When passing sentence the judge should make no reference to a spent conviction unless it is necessary to do so for the purpose of explaining the sentence to be passed.

¹⁷⁸ Commencement: 1 July 1975, ROA 1974 s.11(2).

2.8 Reporting restrictions and Derogatory Assertion Orders

2.8.1. Reporting restrictions

See the *Reporting Restrictions in the Criminal Courts* guide produced by the Judicial College

On 6 May 2015, the Judicial College produced an update version of the document.¹⁷⁹

2.8.2. Derogatory Assertion Orders

2.8.2.1. Making the order

Availability

CPIA 1996 s.58¹⁸⁰: Orders in respect of certain assertions

- s.58(1) - this section applies where a person has been convicted of an offence and a speech in mitigation is made by him or on his behalf before—
- (a) a court determining what sentence should be passed on him in respect of the offence, or
 - (b) a magistrates' court determining whether he should be committed to the Crown Court for sentence.
- s.58(2) - this section also applies where a sentence has been passed on a person in respect of an offence and a submission relating to the sentence is made by him or on his behalf before—
- (a) a court hearing an appeal against or reviewing the sentence, or
 - (b) a court determining whether to grant leave to appeal against the sentence.
- s.58(5) - an order under subsection (7) or (8) must not be made in relation to an assertion if it appears to the court that the assertion was previously made—
- (a) at the trial at which the person was convicted of the offence, or
 - (b) during any other proceedings relating to the offence.

CPIA 1996 s.61¹⁸¹: Reporting of assertions: commencement and supplementary

- s.61(1) - Section 58 applies where the offence mentioned in subsection (1) or (2) of that section is committed on or after the appointed day.
- s.61(2) - the reference in subsection (1) to the appointed day is to such day as is appointed for the purposes of this section by the Secretary of State by order.

¹⁷⁹ See <<https://www.judiciary.gov.uk/wp-content/uploads/2015/05/reporting-restrictions-guide-2015-final.pdf>>

¹⁸⁰ Commencement: 4 July 1996.

¹⁸¹ Commencement: 4 July 1996.

Test to apply

CPIA 1996 s.58¹⁸²: Orders in respect of certain assertions

- s.58(3) - where it appears to the court that there is a real possibility that an order under subsection (8) will be made in relation to the assertion, the court may make an order under subsection (7) in relation to the assertion.
- s.58(4) - where there are substantial grounds for believing—
- (a) that an assertion forming part of the speech or submission is derogatory to a person's character (for instance, because it suggests that his conduct is or has been criminal, immoral or improper), and
 - (b) that the assertion is false or that the facts asserted are irrelevant to the sentence,
- the court may make an order under subsection (8) in relation to the assertion.

The orders

CPIA 1996 s.58¹⁸³: Orders in respect of certain assertions

- s.58(7) - an order under this subsection—
- (a) may be made at any time before the court has made a determination with regard to sentencing;
 - (b) may be revoked at any time by the court;
 - (c) subject to paragraph (b), shall cease to have effect when the court makes a determination with regard to sentencing.
- s.58(8) - an order under this subsection—
- (a) may be made at any time before the court has made a determination with regard to sentencing, but only if it is made as soon as is reasonably practicable after the making of the determination;
 - (b) may be revoked at any time by the court;
 - (c) subject to paragraph (b), shall cease to have effect at the end of the period of 12 months beginning with the day on which it is made;
 - (d) may be made whether or not an order has been made under subsection (7) with regard to the case concerned.

Effect of an order

CPIA 1996 s.58¹⁸⁴: Orders in respect of certain assertions

- s.58(6) - Section 59 has effect where a court makes an order under subsection (7) or (8).

CPIA 1996 s.59¹⁸⁵: Restriction on reporting of assertions

- s.59(1) - where a court makes an order under section 58(7) or (8) in relation to any assertion, at any time when the order has effect the assertion must not—

¹⁸² Commencement: 4 July 1996.

¹⁸³ Commencement: 4 July 1996.

¹⁸⁴ Commencement: 4 July 1996.

¹⁸⁵ Commencement: 4 July 1996.

- (a) be published in Great Britain in a written publication available to the public, or
- (b) be included in a relevant programme for reception in Great Britain.

s.59(2) - in this section—

“*relevant programme*” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990;

“*written publication*” includes a film, a soundtrack and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

s.59(3) - for the purposes of this section an assertion is published or included in a programme if the material published or included—

- (a) names the person about whom the assertion is made or, without naming him, contains enough to make it likely that members of the public will identify him as the person about whom it is made, and
- (b) reproduces the actual wording of the matter asserted or contains its substance.

CPIA 1996 s.61¹⁸⁶: Reporting of assertions: commencement and supplementary

s.61(3) - nothing in section 58 or 59 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.

Meaning of “determination with regard to sentencing”

CPIA 1996 s.58¹⁸⁷: Orders in respect of certain assertions

s.58(9) - for the purposes of subsection (7) and (8) the court makes a determination with regard to sentencing—

- (a) when it determines what sentence should be passed (where this section applies by virtue of subsection (1)(a));
- (b) when it determines whether the person should be committed to the Crown Court for sentence (where this section applies by virtue of subsection (1)(b));
- (c) when it determines what the sentence should be (where this section applies by virtue of subsection (2)(a));
- (d) when it determines whether to grant leave to appeal (where this section applies by virtue of subsection (2)(b)).

2.8.2.2. Appeals

CPIA 1996 s.61¹⁸⁸: Reporting of assertions: commencement and supplementary

s.61(6) - in section 159 of the Criminal Justice Act 1988 (appeal to Court of Appeal against orders restricting reports etc.) in subsection (1) the following paragraph shall be inserted after paragraph (a)—

“(aa) an order made by the Crown Court under section 58(7) or (8) of the Criminal Procedure and Investigations Act 1996 of the Criminal Procedure and

¹⁸⁶ Commencement: 4 July 1996. It appears that the Act came into force upon Royal Assent.

¹⁸⁷ Commencement: 4 July 1996. It appears that the Act came into force upon Royal Assent.

¹⁸⁸ Commencement: 4 July 1996. It appears that the Act came into force upon Royal Assent.

Investigations Act 1996 in a case where the Court has convicted a person on a trial on indictment;”.

CJA 1988 s.159¹⁸⁹: Crown Court proceedings— orders restricting or preventing reports or restricting public access

- s.159(1) - a person aggrieved may appeal to the Court of Appeal, if that court grants leave, against—
- (a) an order under section 4 or 11 of the Contempt of Court Act 1981 made in relation to a trial on indictment;
 - (aa) an order made by the Crown Court under section 58(7) or (8) of the Criminal Procedure and Investigations Act 1996 in a case where the Court has convicted a person on a trial on indictment;
 - (b) any order restricting the access of the public to the whole or any part of a trial on indictment or to any proceedings ancillary to such a trial; and
 - (c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings;
- and the decision of the Court of Appeal shall be final.
- s.159(2) - subject to Rules of Court, the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this section shall be construed as references to that division.
- s.159(3) - on an application for leave to appeal under this section a judge shall have power to give such directions as appear to him to be appropriate and, without prejudice to the generality of this subsection, power—
- (a) to order the production in court of any transcript or note of proceedings or other document;
 - (b) to give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish and as to service of documents on any person;
- and the Court of Appeal shall have the same powers as the single judge.
- s.159(4) - subject to Rules of Court made by virtue of subsection (6) below, any party to an appeal under this section may give evidence before the Court of Appeal orally or in writing.
- s.159(5) - on the hearing of an appeal under this section the Court of Appeal shall have power—
- (a) to stay any proceedings in any other court until after the appeal is disposed of;
 - (b) to confirm, reverse or vary the order complained of; and
 - (c) to make such order as to costs as it thinks fit.
- s.159(6) - Rules of Court may make in relation to trials satisfying specified conditions special provision as to the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings and may in particular, but without prejudice to the generality of this subsection, provide that subsection (4) above shall not have effect.

¹⁸⁹ Commencement: 31 July 1989, SI 1989/1085 art.2 and Sch.1 para.1

s.159(7) - in the application of this section to Northern Ireland—

- (a) subsection (2) shall be omitted; and
- (b) in subsection (6), before “Rules of Court” there shall be inserted “Without prejudice to the generality of sections 52 and 55 of the Judicature (Northern Ireland) Act 1978”.

Note: There are two Home Office Circulars (11/1997 and 24/3/1997) that provides guidance on the making of such orders.

2.8.2.3. Breach

CPIA 1996 s.60¹⁹⁰: Reporting of assertions: offences

s.60(1) - if an assertion is published or included in a relevant programme in contravention of section 59, each of the following persons is guilty of an offence—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of publication in any other form, the person publishing the assertion;
- (c) in the case of an assertion included in a relevant programme, any body corporate engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

s.60(2) - a person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

s.60(3) - where a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence—

- (a) he was not aware, and neither suspected nor had reason to suspect, that an order under section 58(7) or (8) had effect at that time, or
- (b) he was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the assertion in question.

s.60(4) - where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person purporting to act in any such capacity,

he as well as the body, corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

s.60(5) - in relation to a body corporate whose affairs are managed by its members “*director*” in subsection (4) means a member of the body corporate.

s.60(6) - Subsections (2) and (3) of section 59 apply for the purposes of this section as they apply for the purposes of that.

¹⁹⁰ Commencement: 4 July 1996.

2.9 Financial circumstances order

Note: There is an offence under CJA 1991 s.20A pertaining to the making of false statements as to financial circumstances.

General power

CJA 2003 s.162¹⁹¹: Powers to order statement as to offender's financial circumstances

- s.162(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.
- s.162(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.
- s.162(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 assets and other financial circumstances as the court may require .
- s.162(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.
- s.162(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.
- s.162(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.

¹⁹¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

Parents and guardians

PCC(S)A 2000 s.136¹⁹²: Power to order statement as to financial circumstances of parent or guardian

- s.136(1) - before exercising its powers under section 137 below (power to order parent or guardian to pay fine, costs, compensation or surcharge) against the parent or guardian of an individual who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.
- s.136(2) - in this section “*financial circumstances order*” has the meaning given by subsection (3) of section 162 of the Criminal Justice Act 2003, and subsections (4) to (6) of that section shall apply in relation to a financial circumstances order made under this section as they apply in relation to such an order made under that section.

¹⁹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

2.10 Adjournment of sentence

Note: This section should be read in conjunction with 2.4.1, the pre-sentence reports section.

Magistrates' Court

MCA 1980 s.10¹⁹³: Adjournment of trial

- s.10(1) - a magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial, and may do so, notwithstanding anything in this Act, when composed of a single justice.
- s.10(2) - the court may when adjourning either fix the time and place at which the trial is to be resumed, or, unless it remands the accused, leave the time and place to be determined later by the court; but the trial shall not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice thereof.
- s.10(3) - a magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the accused and before sentencing him or otherwise dealing with him; but, if it does so, the adjournment shall not be for more than 4 weeks at a time unless the court remands the accused in custody and, where it so remands him, the adjournment shall not be for more than 3 weeks at a time.
- s.10(3A) - a youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—
 - (a) that the court commits the accused for trial for another offence; or
 - (b) that the accused is charged with another offence.
- s.10(4) - on adjourning the trial of an information the court may remand the accused and, where the accused has attained the age of 18 years, shall do so if the offence is triable either way and—
 - (a) on the occasion on which the accused first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
 - (b) the accused has been remanded at any time in the course of proceedings on the information;

and, where the court remands the accused, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below.

¹⁹³ Commencement: 6 July 1981, SI 1981/457 art.2.

Crown Court

R. v Annesley (1976) 62 Cr. App. R. 113

“It is clear from these authorities and statutory provisions that the Crown Court still enjoys the common law jurisdiction vested in its predecessors to put off passing the whole of a sentence, or indeed part of a sentence, if the circumstances make it necessary. While accepting that this will not generally be good practice, there may be circumstances in which it may be very desirable, when all the material necessary to complete all elements of a sentencing problem is not immediately available, to deal with the substantive sentence at once and postpone what may have to be done in addition, rather than postpone the whole of the sentence till all the material is to hand.”

2.11 Bail

2.11.1. General

Note: See also the other provisions of the Bail Act 1974. Section 4 and Sch.1 only are listed below as they create the presumption of bail post-conviction where none of the exceptions apply.

Right to bail etc.

BA 1976 s.4¹⁹⁴: General right to bail of accused persons and others

- s.4(1) - a person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.
- s.4(2) - this section applies to a person who is accused of an offence when—
- (a) he appears or is brought before a magistrates' court or the Crown Court in the course of or in connection with proceedings for the offence, or
 - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- This subsection does not apply as respects proceedings on or after a person's conviction of the offence.
- s.4(2A) - this section also applies to a person whose extradition is sought in respect of an offence, when—
- (a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or
 - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- s.4(2B) - but subsection (2A) above does not apply if the person is alleged to have been convicted of the offence.
- s.4(3) - this section also applies to a person who, having been convicted of an offence, appears or is brought before a magistrates' court or the Crown Court under—
- (za) Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders: referral back to appropriate court),
 - (zb) Schedule 8 to that Act (breach of reparation order),
 - (a) Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation orders),
 - (b) Part 2 of Schedule 8 to the Criminal Justice Act 2003 (breach of requirement of community order), or
 - (c) the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act).
- s.4(4) - this section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

¹⁹⁴ Commencement: 17 April 1978, SI 1978/132 art.2.

- s.4(5) - Schedule 1 to this Act also has effect as respects conditions of bail for a person to whom this section applies.
- s.4(6) - in Schedule 1 to this Act “*the defendant*” means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (4) above.
- s.4(7) - this section is subject to section 41 of the Magistrates’ Courts Act 1980 (restriction of bail by magistrates’ court in cases of treason) and section 115(1) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge).
- s.4(8) - this section is subject to section 25 of the Criminal Justice and Public Order Act 1994 (exclusion of bail in cases of homicide and rape).
- s.4(9) - in taking any decisions required by Part I or II of Schedule 1 to this Act, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant (“*controlled drugs*” and “*misuse*” having the same meanings as in the Misuse of Drugs Act 1971).

BA 1976 Sch.1: Persons Entitled To Bail: Supplementary Provisions

Part I Defendants Accused Or Convicted Of Imprisonable Offences

Application of Part 1

- para.1¹⁹⁵(1) - subject to sub-paragraph (2) and paragraph 1A, the following provisions of this Part of this Schedule apply to the defendant if—
- (a) the offence or one of the offences of which he is accused or convicted in the proceedings is punishable with imprisonment, or
 - (b) his extradition is sought in respect of an offence.
- para.1(2) - but those provisions do not apply by virtue of sub-paragraph (1)(a) if the offence, or each of the offences punishable with imprisonment, is—
- (a) a summary offence; or
 - (b) an offence mentioned in Schedule 2 to the Magistrates’ Courts Act 1980 (offences for which the value involved is relevant to the mode of trial) in relation to which—
 - (i) a determination has been made under section 22(2) of that Act (certain either way offences to be tried summarily if value involved is less than the relevant sum) that it is clear that the value does not exceed the relevant sum for the purposes of that section; or
 - (ii) a determination has been made under section 9A(4) of this Act to the same effect.
- para.1A¹⁹⁶(1) - the paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in non-extradition proceedings where—
- (a) the defendant has attained the age of 18,
 - (b) the defendant has not been convicted of an offence in those proceedings, and

¹⁹⁵ Commencement: 17 April 1978, SI 1978/132 art.2.

¹⁹⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

- (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

para.1A(2) - the paragraphs are—

- (a) paragraph 2 (refusal of bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses),
- (b) paragraph 2A (refusal of bail where defendant appears to have committed indictable or either way offence while on bail), and
- (c) paragraph 6 (refusal of bail where defendant has been arrested under section 7).

Exceptions to right to bail

para.2¹⁹⁷(1) - the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—

- (a) fail to surrender to custody, or
- (b) commit an offence while on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

para.2(2) - where the defendant falls within paragraph 6B, this paragraph does not apply unless—

- (a) the court is of the opinion mentioned in paragraph 6A, or
- (b) paragraph 6A does not apply by virtue of paragraph 6C.

para.2ZA¹⁹⁸(1) - the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

- (a) physical or mental injury to an associated person; or
- (b) an associated person to fear physical or mental injury.

para.2ZA(2) In sub-paragraph (1) “*associated person*” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

para.2A¹⁹⁹ - the defendant need not be granted bail if—

- (a) the offence is an indictable offence or an offence triable either way, and
- (b) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence.

para.2B²⁰⁰ - the defendant need not be granted bail in connection with extradition proceedings if—

- (a) the conduct constituting the offence would, if carried out by the defendant in England and Wales, constitute an indictable offence or an offence triable either way; and

¹⁹⁷ Commencement: 17 April 1978, SI 1978/132 art.2.

¹⁹⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

¹⁹⁹ Commencement: 10 April 1995, as inserted by CJPOA 1994 s.26(a), SI 1995/721 art.2 and Sch.1 para.1.

²⁰⁰ Commencement: 1 January 2004, as inserted by Extradition Act 2003 s.198(13), SI 2003/3103 art.2, subject to savings as specified in SI 2003/3103 arts.3 and 4.

(b) it appears to the court that the defendant was on bail on the date of the offence.

para.3²⁰¹ - the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

para.4²⁰² - the defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

para.5²⁰³ - the defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

para.6²⁰⁴ - the defendant need not be granted bail if, having previously been released on bail in, or in connection with, the proceedings, the defendant has been arrested in pursuance of section 7.

para.6ZA²⁰⁵ - if the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.

Exception applicable to drug users in certain areas

para.6A²⁰⁶ - subject to paragraph 6C below, a defendant who falls within paragraph 6B below may not be granted bail unless the court is of the opinion that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

para.6B²⁰⁷(1) - a defendant falls within this paragraph if—

- (a) he is aged 18 or over;
- (b) a sample taken—
 - (i) under section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs) in connection with the offence; or
 - (ii) under section 161 of the Criminal Justice Act 2003 (drug testing after conviction of an offence but before sentence),

has revealed the presence in his body of a specified Class A drug;

- (c) either the offence is one under section 5(2) or (3) of the Misuse of Drugs Act 1971 and relates to a specified Class A drug, or the court is satisfied that there are substantial grounds for believing—
 - (i) that misuse by him of any specified Class A drug caused or contributed to the offence; or

²⁰¹ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰² Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰³ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰⁴ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰⁵ Commencement: 1 February 2010, as inserted by CJA 2009 s.114(2), SI 2010/145 art.2 and Sch.1 para.7.

²⁰⁶ Commencement: 5 April 2004, as inserted by CJA 2003 s.19(4)(a), SI 2004/829 art.2(2)(b).

²⁰⁷ Commencement: 5 April 2004, as inserted by CJA 2003 s.19(4)(a), SI 2004/829 art.2(2)(b).

- (ii) (even if it did not) that the offence was motivated wholly or partly by his intended misuse of such a drug; and
- (d) the condition set out in sub-paragraph (2) below is satisfied or (if the court is considering on a second or subsequent occasion whether or not to grant bail) has been, and continues to be, satisfied.

para.6B(2) - the condition referred to is that after the taking and analysis of the sample—

- (a) a relevant assessment has been offered to the defendant but he does not agree to undergo it; or
- (b) he has undergone a relevant assessment, and relevant follow-up has been proposed to him, but he does not agree to participate in it.

para.6B(3) - in this paragraph and paragraph 6C below—

- (a) “*Class A drug*” and “*misuse*” have the same meaning as in the Misuse of Drugs Act 1971;
- (b) “*relevant assessment*” and “*relevant follow-up*” have the meaning given by section 3(6E) of this Act;
- (c) “*specified*” (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

para.6C²⁰⁸ - paragraph 6A above does not apply unless—

- (a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the [local justice area] 2 in which it appears to the court that the defendant would reside if granted bail; and
- (b) the notice has not been withdrawn.

Exception applicable only to defendant whose case is adjourned for inquiries or a report

para.7²⁰⁹ - where his case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

Restriction of conditions of bail

para.8²¹⁰(1) - subject to sub-paragraph (3) below, where the defendant is granted bail, no conditions shall be imposed under subsections (4) to (6B) or (7) (except subsection (6)(d) or (e)) of section 3 of this Act unless it appears to the court that it is necessary to do so—

- (a) for the purpose of preventing the occurrence of any of the events mentioned in paragraph 2(1) of this Part of this Schedule, or
- (b) for the defendant’s own protection or, if he is a child or young person, for his own welfare or in his own interests.

para.8(1A) - no condition shall be imposed under section 3(6)(d) of this Act unless it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made.

²⁰⁸ Commencement: 5 April 2004, as inserted by CJA 2003 s.19(4)(a), SI 2004/829 art.2(2)(b).

²⁰⁹ Commencement: 17 April 1978, SI 1978/132 art.2.

²¹⁰ Commencement: 17 April 1978, SI 1978/132 art.2.

para.8(2) - sub-paragraphs (1) and (1A) above also apply on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

para.8(3) - the restriction imposed by sub-paragraph (1A) above shall not apply to the conditions required to be imposed under section 3(6A) of this Act or operate to override the direction in section 11(3) of the Powers of Criminal Courts (Sentencing) Act 2000 to a magistrates' court to impose conditions of bail under section 3(6)(d) of this Act of the description specified in the said section 11(3) in the circumstances so specified.

Decisions under paragraph 2

para.9²¹¹ - in taking the decisions required by paragraph 2(1), or in deciding whether it is satisfied as mentioned in 2ZA(1) or of the opinion mentioned in paragraph 6ZA or 6A, of this Part of this Schedule, the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say—

- (a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it),
- (b) the character, antecedents, associations and community ties of the defendant,
- (c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings,
- (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted,
- (e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant,

as well as to any others which appear to be relevant.

para.9AA²¹²(1) - this paragraph applies if—

- (a) the defendant is a child or young person, and
- (b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

(2) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the court shall give particular weight to the fact that the defendant was on bail in criminal proceedings on the date of the offence.

para.9AB²¹³(1) - subject to sub-paragraph (2) below, this paragraph applies if—

- (a) the defendant is a child or young person, and

²¹¹ Commencement: 17 April 1978, SI 1978/132 art.2.

²¹² Commencement: 1 January 2007, as inserted by CJA 2003 s.14(2), for the purposes specified in SI 2006/3217 arts.2(1)(a) and 3(1). Otherwise, not in force.

²¹³ Commencement: 1 January 2007, as inserted by CJA 2003 s.15(2) for the purposes specified in SI 2006/3217 arts.2(1)(a) and 3(2). Otherwise, not in force.

- (b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.

para.9AB(2) - where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, this paragraph does not apply unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

para.9AB(3) - in deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would fail to surrender to custody, the court shall give particular weight to—

- (a) where the defendant did not have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody, or
- (b) where he did have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

para.9AB(4) - for the purposes of this paragraph, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody.

Cases under section 128A of Magistrates' Courts Act 1980

para.9B²¹⁴ - where the court is considering exercising the power conferred by section 128A of the Magistrates' Courts Act 1980 (power to remand in custody for more than 8 clear days), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.

Part 1A Defendants Accused Or Convicted Of Imprisonable Offences To Which Part 1 Does Not Apply

Application of Part 1A

para.1²¹⁵ - subject to paragraph 1A, the following provisions of this Part apply to the defendant if—

- (a) the offence or one of the offences of which he is accused or convicted is punishable with imprisonment, but
- (b) Part 1 does not apply to him by virtue of paragraph 1(2) of that Part.

para.1A²¹⁶(1) - the paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in, or in connection with, proceedings where—

- (a) the defendant has attained the age of 18,
- (b) the defendant has not been convicted of an offence in those proceedings, and
- (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

para.1A(2) - the paragraphs are—

²¹⁴ Commencement: 12 October 1988, as inserted by CJA 1988 s.155(2), SI 1988/1676 art.2 and Sch.1.

²¹⁵ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²¹⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

- (a) paragraph 2 (refusal of bail for failure to surrender to custody),
- (b) paragraph 3 (refusal of bail where defendant would commit further offences on bail), and
- (c) paragraph 7 (refusal of bail in certain circumstances when arrested under section 7).

Exceptions to right to bail

para.2²¹⁷ - the defendant need not be granted bail if—

- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and
- (b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

para.3²¹⁸ - the defendant need not be granted bail if—

- (a) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence; and
- (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would commit an offence while on bail.

para.4²¹⁹(1) - the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

- (a) physical or mental injury to an associated person; or
- (b) an associated person to fear physical or mental injury.

para.4(2) - in sub-paragraph (1) “*associated person*” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

para.5²²⁰ - the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

para.6²²¹ - the defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

para.7²²² - the defendant need not be granted bail if—

²¹⁷ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²¹⁸ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²¹⁹ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²⁰ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²¹ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

- (a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and
- (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).

para.8²²³ - the defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

Application of paragraphs 6A to 6C of Part 1

para.9²²⁴ - paragraphs 6A to 6C of Part 1 (exception applicable to drug users in certain areas and related provisions) apply to a defendant to whom this Part applies as they apply to a defendant to whom that Part applies.

Part II Defendants Accused Or Convicted Of Non-Imprisonable Offences

Defendants to whom Part II applies

para.1²²⁵ - where the offence or every offence of which the defendant is accused or convicted in the proceedings is one which is not punishable with imprisonment the following provisions of this Part of this Schedule apply.

Exceptions to right to bail

para.2²²⁶ - the defendant need not be granted bail if—

- (za) the defendant—
 - (i) is a child or young person, or
 - (ii) has been convicted in the proceedings of an offence;
- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and
- (b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

para.3²²⁷ - the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

²²² Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²³ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²⁴ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²⁵ Commencement: 17 April 1978, SI 1978/132 art.2.

²²⁶ Commencement: 17 April 1978, SI 1978/132 art.2.

²²⁷ Commencement: 17 April 1978, SI 1978/132 art.2.

para.4²²⁸ - the defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

para.5²²⁹ - the defendant need not be granted bail if—

(za) the defendant—

(i) is a child or young person, or

(ii) has been convicted in the proceedings of an offence;

(a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).

para.6²³⁰(1) - the defendant need not be granted bail if—

(a) having been released on bail in, or in connection with, the proceedings for the offence, the defendant has been arrested in pursuance of section 7, and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

(i) physical or mental injury to an associated person, or

(ii) an associated person to fear physical or mental injury.

para.6(2) - in sub-paragraph (1) “*associated person*” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

Part IIA Decisions Where Bail Refused On Previous Hearing

para.1²³¹ - if the court decides not to grant the defendant bail, it is the court’s duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.

para.2²³² - at the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

para.3²³³ - at subsequent hearings the court need not hear arguments as to fact or law which its has heard previously.

²²⁸ Commencement: 17 April 1978, SI 1978/132 art.2.

²²⁹ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

²³¹ Commencement: 5 January 1989, as inserted by CJA 1988 s.154, SI 1988/2073 art.2 and Sch.1.

²³² Commencement: 5 January 1989, as inserted by CJA 1988 s.154, SI 1988/2073 art.2 and Sch.1.

²³³ Commencement: 5 January 1989, as inserted by CJA 1988 s.154, SI 1988/2073 art.2 and Sch.1.

Part III Interpretation

para.1²³⁴ - for the purposes of this Schedule the question whether an offence is one which is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

para.2²³⁵ - references in this Schedule to previous grants of bail include—

- (a) bail granted before the coming into force of this Act;
- (b) as respects the reference in paragraph 2A of Part 1 of this Schedule (as substituted by paragraph 16 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012), bail granted before the coming into force of that paragraph;
- (c) as respects the references in paragraph 6 of Part 1 of this Schedule (as substituted by paragraph 17 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012), bail granted before the coming into force of that paragraph;
- (d) as respects the references in paragraph 9AA of Part 1 of this Schedule, bail granted before the coming into force of that paragraph;
- (e) as respects the references in paragraph 9AB of Part 1 of this Schedule, bail granted before the coming into force of that paragraph;
- (f) as respects the reference in paragraph 5 of Part 2 of this Schedule (as substituted by section 13(4) of the Criminal Justice Act 2003), bail granted before the coming into force of that paragraph;
- (g) as respects the reference in paragraph 6 of Part 2 of this Schedule, bail granted before the coming into force of that paragraph.

para.3²³⁶ - references in this Schedule to a defendant's being kept in custody or being in custody include (where the defendant is a child or young person) references to his being kept or being in accommodation pursuant to a remand under section 91(3) or (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands to local authority accommodation or youth detention accommodation).

para.4²³⁷ - in this Schedule—

“*court*”, in the expression “sentence of a court”, includes a service court as defined in section 12(1) of the Visiting Forces Act 1952 and “*sentence*”, in that expression, shall be construed in accordance with that definition;

“*default*”, in relation to the defendant, means the default for which he is to be dealt with under [Part 2 of Schedule 8 to the Criminal Justice Act 2003 (breach of requirement of order).

Note: Schedule 1 qualifies the general right to bail set out in section 4(1) of the Act. It is not reproduced here.

²³⁴ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁵ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁶ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁷ Commencement: 17 April 1978, SI 1978/132 art.2.

No issue of bail where sentence is deferred

R. v Ross (1988) 86 Cr. App. R. 337

When sentence is deferred, no question of bail arises.

2.11.2. Magistrates' Courts

Power

MCA 1980 s.128²³⁸: Remand in custody or on bail

s.128(1) - where a magistrates' court has power to remand any person, then, subject to section 4 of the Bail Act 1976 and to any other enactment modifying that power, the court may—

- (a) remand him in custody, that is to say, commit him to custody to be brought before the court, subject to subsection (3A) below, at the end of the period of remand or at such earlier time as the court may require; or
- (b) where it is trying an offence alleged to have been committed by that person or has convicted him of an offence, remand him on bail in accordance with the Bail Act 1976, that is to say, by directing him to appear as provided in subsection (4) below; or
- (c) except in a case falling within paragraph (b) above, remand him on bail by taking from him a recognizance (with or without sureties) conditioned as provided in that subsection;

and may, in a case falling within paragraph (c) above, instead of taking recognizances in accordance with that paragraph, fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 119 above.

s.128(1A) - where—

- (a) on adjourning a case under section 10(1), 17C, 18(4) or 24C above the court proposes to remand or further remand a person in custody; and
- (b) he is before the court; and
- (d) he is legally represented in that court,

it shall be the duty of the court—

- (i) to explain the effect of subsections (3A) and (3B) below to him in ordinary language; and
- (ii) to inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before a court, he would be brought before a court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the court that he had no legal representative acting for him in the case.

s.128(1B) - for the purposes of subsection (1A) above a person is to be treated as legally represented in a court if, but only if, he has the assistance of a legal representative to represent him in the proceedings in that court.

s.128(1C) - after explaining to an accused as provided by subsection (1A) above the court shall ask him whether he consents to hearing and determination of such applications in his absence.

²³⁸ Commencement: 6 July 1981, SI 1981/457 art.2.

- s.128(2) - where the court fixes the amount of a recognizance under subsection (1) above or section 8(3) of the Bail Act 1976 with a view to its being taken subsequently the court shall in the meantime commit the person so remanded to custody in accordance with paragraph (a) of the said subsection (1).
- s.128(3) - where a person is brought before the court after remand, the court may further remand him.
- s.128(3A) - subject to subsection (3B) below, where a person has been remanded in custody and the remand was not a remand under section 128A below for a period exceeding 8 clear days, the court may further remand him (otherwise than in the exercise of the power conferred by that section) on an adjournment under section 10(1), 17C, 18(4) or 24C above without his being brought before it if it is satisfied—
- (a) that he gave his consent, either in response to a question under subsection (1C) above or otherwise, to the hearing and determination in his absence of any application for his remand on an adjournment of the case under any of those provisions; and
 - (b) that he has not by virtue of this subsection been remanded without being brought before the court on more than two such applications immediately preceding the application which the court is hearing; and
 - (d) that he has not withdrawn his consent to their being so heard and determined.
- s.128(3B) - the court may not exercise the power conferred by subsection (3A) above if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates has no legal representative acting for him in the case (whether present in court or not).
- s.128(3C) - where—
- (a) a person has been remanded in custody on an adjournment of a case under section 10(1), 17C, 18(4) or 24C above; and
 - (b) an application is subsequently made for his further remand on such an adjournment; and
 - (c) he is not brought before the court which hears and determines the application; and
 - (d) that court is not satisfied as mentioned in subsection (3A) above,
- the court shall adjourn the case and remand him in custody for the period for which it stands adjourned.
- s.128(3D) - an adjournment under subsection (3C) above shall be for the shortest period that appears to the court to make it possible for the accused to be brought before it.
- s.128(3E) - where—
- (a) on an adjournment of a case under section 10(1), 17C, 18(4) or 24C above a person has been remanded in custody without being brought before the court; and
 - (b) it subsequently appears—
 - (i) to the court which remanded him in custody; or
 - (ii) to an alternate magistrates' court to which he is remanded under section 130 below,

that he ought not to have been remanded in custody in his absence, the court shall require him to be brought before it at the earliest time that appears to the court to be possible.

s.128(4) - where a person is remanded on bail under subsection (1) above the court may, where it remands him on bail in accordance with the Bail Act 1976 direct him to appear or, in any other case, direct that his recognizance be conditioned for his appearance—

- (a) before that court at the end of the period of remand; or
- (b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned;

and, where it remands him on bail conditionally on his providing a surety during an inquiry into an offence alleged to have been committed by him, may direct that the recognizance of the surety be conditioned to secure that the person so bailed appears—

- (c) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned and also before the Crown Court in the event of the person so bailed being committed for trial there.

s.128(5) - where a person is directed to appear or a recognizance is conditioned for a person's appearance in accordance with paragraph (b) or (c) of subsection (4) above, the fixing at any time of the time for him next to appear shall be deemed to be a remand; but nothing in this subsection or subsection (4) above shall deprive the court of power at any subsequent hearing to remand him afresh.

s.128(6) - subject to the provisions of sections 128A and 129 below, a magistrates' court shall not remand a person for a period exceeding 8 clear days, except that—

- (a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent;
- (b) where the court adjourns a trial under section 10(3) above or section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, the court may remand him for the period of the adjournment;
- (c) where a person is charged with an offence triable either way, then, if it falls to the court to try the case summarily but the court is not at the time so constituted, and sitting in such a place, as will enable it to proceed with the trial, the court may remand him until the next occasion on which it will be practicable for the court to be so constituted, and to sit in such a place, as aforesaid, notwithstanding that the remand is for a period exceeding 8 clear days.

s.128(7) - a magistrates' court having power to remand a person in custody may, if the remand is for a period not exceeding 3 clear days, commit him to detention at a police station.

s.128(8) - where a person is committed to detention at a police station under subsection (7) above—

- (a) he shall not be kept in such detention unless there is a need for him to be so detained for the purposes of inquiries into other offences;
- (b) if kept in such detention, he shall be brought back before the magistrates' court which committed him as soon as that need ceases;
- (c) he shall be treated as a person in police detention to whom the duties under section 39 of the Police and Criminal Evidence Act 1984 (responsibilities in relation to persons detained) relate;
- (d) his detention shall be subject to periodic review at the times set out in section 40 of that Act (review of police detention).

Appeals

B(A)A 1993 s.1²³⁹: Prosecution right of appeal

- s.1(1) - where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail.
- s.1(1A) - where a magistrates' court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the High Court against the granting of bail.
- s.1(1B) - where a judge of the Crown Court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to the High Court against the granting of bail.
- s.1(1C) - an appeal under subsection (1B) may not be made where a judge of the Crown Court has granted bail on an appeal under subsection (1).
- s.1(2) - Subsections (1) and (1B) above apply only where the prosecution is conducted—
 - (a) by or on behalf of the Director of Public Prosecutions; or
 - (b) by a person who falls within such class or description of person as may be prescribed for the purposes of this section by order made by the Secretary of State.
- s.1(3) - an appeal under subsection (1), (1A) or (1B) may be made only if—
 - (a) the prosecution made representations that bail should not be granted; and
 - (b) the representations were made before it was granted.
- s.1(4) - in the event of the prosecution wishing to exercise the right of appeal set out in subsection (1), (1A) or (1B) above, oral notice of appeal shall be given to the court which has granted bail at the conclusion of the proceedings in which bail has been granted and before the release from custody of the person concerned.
- s.1(5) - written notice of appeal shall thereafter be served on the [court which has granted bail and the person concerned within two hours of the conclusion of such proceedings.
- s.1(6) - upon receipt from the prosecution of oral notice of appeal from its decision to grant bail the court which has granted bail shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.
- s.1(7) - where the prosecution fails, within the period of two hours mentioned in subsection (5) above, to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.
- s.1(8) - the hearing of an appeal under subsection (1), (1A) or (1B) above against a decision of the court to grant bail shall be commenced within forty-eight hours, excluding weekends and any public holiday (that is to say, Christmas Day, Good Friday or a bank holiday), from the date on which oral notice of appeal is given.
- s.1(9) - at the hearing of any appeal by the prosecution under this section, such appeal shall be by way of re-hearing, and the judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such conditions (if any) as he thinks fit.

²³⁹ Commencement: 27 June 1994, SI 1994/1437 art.2.

- s.1(10) - in relation to a person under the age of 18—
- (a) the references in subsections (1) and (1B) above to an offence punishable by imprisonment are to be read as references to an offence which would be so punishable in the case of an adult; and
 - (b) the references in subsections (6) and (9) above to remand in custody are to be read subject to the provisions of Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail).
- s.1(11) - the power to make an order under subsection (2) above shall be exercisable by statutory instrument and any instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.1(12) - in this section—
- “*extradition proceedings*” means proceedings under the Extradition Act 2003;
- “*magistrates’ court*” and “*court*” in relation to extradition proceedings means a District Judge (Magistrates’ Courts) designated in accordance with section 67 or section 139 of the Extradition Act 2003;
- “*prosecution*” in relation to extradition proceedings means the person acting on behalf of the territory to which extradition is sought.

MCA 1980 s.113²⁴⁰: Bail on appeal or case stated

- s.113(1) - where a person has given notice of appeal to the Crown Court against the decision of a magistrates’ court or has applied to a magistrates’ court to state a case for the opinion of the High Court, then, if he is in custody, the magistrates’ court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant him bail.
- s.113(2) - if a person is granted bail under subsection (1) above, the time and place at which he is to appear (except in the event of the determination in respect of which the case is stated being reversed by the High Court) shall be—
- (a) if he has given notice of appeal, the Crown Court at the time appointed for the hearing of the appeal;
 - (b) if he has applied for the statement of a case, the magistrates’ court at such time within 10 days after the judgment of the High Court has been given as may be specified by the magistrates’ court;
- and any recognizance that may be taken from him or from any surety for him shall be conditioned accordingly.
- s.113(3) - subsection (1) above shall not apply where the accused has been committed to the Crown Court for sentence under section 37 above or section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
- s.113(4) - Section 37(6) of the Criminal Justice Act 1948 (which relates to the currency of a sentence while a person is released on bail by the High Court) shall apply to a person released on bail by a magistrates’ court under this section pending the hearing of a case stated as it applies to a person released on bail by the High Court under section 22 of the Criminal Justice Act 1967.

Note: There is also an appeal against conditions of bail under CJA 2003 s.16. Section 18 of the 2003 Act amends the Bail (Amendment) Act 1993.

²⁴⁰ Commencement: 6 July 1982, SI 1981/457 art.2.

2.11.3. Crown Court

SCA 1981 s.81²⁴¹: Bail

- s.81(1) - the Crown Court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant bail to any person—
- (a) who has been sent in custody to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998; or
 - (b) who is in custody pursuant to a sentence imposed by a magistrates' court, and who has appealed to the Crown Court against his conviction or sentence; or
 - (c) who is in the custody of the Crown Court pending the disposal of his case by that court; or
 - (d) who, after the decision of his case by the Crown Court, has applied to that court for the statement of a case for the High Court on that decision; or
 - (e) who has applied to the High Court for a quashing order to remove proceedings in the Crown Court in his case into the High Court, or has applied to the High Court for leave to make such an application;
- or
- (f) to whom the Crown Court has granted a certificate under section 1(2) or 11(1A) of the Criminal Appeal Act 1968 or under subsection(1B) below;
- or
- (g) who has been remanded in custody by a magistrates' court on adjourning a case under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination), section 52(5) of the Crime and Disorder Act 1998 (adjournment of proceedings under section 51 etc) or—
 - (ii) section 10 (adjournment of trial);
 - (iia) section 17C (intention as to plea: adjournment);
 - (iii) section 18 (initial procedure on information against adult for offence triable either way); or
 - (iiia) section 24C (intention as to plea by child or young person: adjournment);
 - (h) in respect of whom a judge of the Crown Court is required to make a decision pursuant to section 115(3) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge);
- and the time during which a person is released on bail under any provision of this subsection shall not count as part of any term of imprisonment or detention under his sentence.
- s.81(1A) - the power conferred by subsection (1)(f) does not extend to a case to which section 12 or 15 of the Criminal Appeal Act 1968 (appeal against verdict of not guilty by reason of insanity or against findings that the accused is under a disability and that he did the act or made the omission charged against him) applies.
- s.81(1B) - a certificate under this subsection is a certificate that a case is fit for appeal on a ground which involves a question of law alone.
- s.81(1C) - the power conferred by subsection (1)(f) is to be exercised—

²⁴¹ Commencement: 1 January 1982, SA 1981 s.153(2).

- (a) where the appeal is under section 1 or 9 of the Criminal Appeal Act 1968, by the judge who tried the case; and
 - (b) where it is under section 10 of that Act, by the judge who passed the sentence.
- s.81(1D) - the power may only be exercised within twenty-eight days from the date of the conviction appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.
- s.81(1E) - the power may not be exercised if the appellant has made an application to the Court of Appeal for bail in respect of the offence or offences to which the appeal relates.
- s.81(1F) - it shall be a condition of bail granted in the exercise of the power that, unless a notice of appeal has previously been lodged in accordance with subsection (1) of section 18 of the Criminal Appeal Act 1968—
 - (a) such a notice shall be so lodged within the period specified in subsection (2) of that section; and
 - (b) not later than 14 days from the end of that period, the appellant shall lodge with the Crown Court a certificate from the registrar of criminal appeals that a notice of appeal was given within that period.
- s.81(1G) - if the Crown Court grants bail to a person in the exercise of the power, it may direct him to appear—
 - (a) if a notice of appeal is lodged within the period specified in section 18(2) of the Criminal Appeal Act 1968 at such time and place as the Court of Appeal may require; and
 - (b) if no such notice is lodged within that period, at such time and place as the Crown Court may require.
- s.81(1H) - where the Crown Court grants a person bail under subsection (1)(g) it may direct him to appear at a time and place which the magistrates' court could have directed and the recognizance of any surety shall be conditioned accordingly.
- s.81(1J) - the Crown Court may only grant bail to a person under subsection(1)(g) if the magistrates' court which remanded him in custody has certified under section 5(6A) of the Bail Act 1976 that it heard full argument on his application for bail before it refused the application.
- s.81(2) - provision may be made by rules of court as respects the powers of the Crown Court relating to bail, including any provision—
 - (a) except in the case of bail in criminal proceedings (within the meaning of the Bail Act 1976), allowing the court instead of requiring a person to enter into a recognizance, to consent to his giving other security;
 - (b) allowing the court to direct that a recognizance shall be entered into or other security given before a magistrates' court or a justice of the peace, or, if the rules so provide, a person of such other description as is specified in the rules;
 - (c) prescribing the manner in which a recognizance is to be entered into or other security given, and the persons by whom and the manner in which the recognizance or security may be enforced;
 - (d) authorising the recommittal, in such cases and by such courts or justices as may be prescribed by the rules, of persons released from custody in pursuance of the powers;

- (e) making provision corresponding to sections 118 and 119 of the Magistrates' Courts Act 1980 (varying or dispensing with requirements as to sureties, and postponement of taking recognizances).

s.81(3) - any reference in any enactment to a recognizance shall include, unless the context otherwise requires, a reference to any other description of security given instead of a recognizance, whether in pursuance of subsection (2)(a) or otherwise.

s.81(4) - the Crown Court, on issuing a warrant for the arrest of any person, may endorse the warrant for bail, and in any such case—

- (a) the person arrested under the warrant shall, unless the Crown Court otherwise directs, be taken to a police station; and
- (b) the officer in charge of the station shall release him from custody if he, and any sureties required by the endorsement and approved by the officer, enter into recognizances of such amount as may be fixed by the endorsement:

Provided that in the case of bail in criminal proceedings (within the meaning of the Bail Act 1976) the person arrested shall not be required to enter into a recognizance.

s.81(5) - a person in custody in pursuance of a warrant issued by the Crown Court with a view to his appearance before that court shall be brought forthwith before—

- (a) if the person is charged with murder or with murder and one or more other offences, the Crown Court, and
- (b) in any other case, either the Crown Court or a magistrates' court.

s.81(6) - a magistrates' court shall have jurisdiction, and a justice of the peace may act, under or in pursuance of rules under subsection (2) whether or not the offence was committed, or the arrest was made, within the court's area, or the area for which he was appointed.

2.11.4. Pending appeal to the Court of Appeal (Criminal Division)

CAA 1968 s.19²⁴²: Bail

s.19(1) - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if they think fit,—

- (a) grant an appellant bail pending the determination of his appeal; or
- (b) revoke bail granted to an appellant by the Crown Court under paragraph (f) of section 81(1) of the Senior Courts Act 1981 or paragraph (a) above; or
- (c) vary the conditions of bail granted to an appellant in the exercise of the power conferred by either of those paragraphs

s.19(2) - the powers conferred by subsection (1) above may be exercised—

- (a) on the application of an appellant; or
- (b) if it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as "*the registrar*") that any of them ought to be exercised, on a reference to the court by him.

²⁴² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1967/1234 art.1 and Sch.3.

2.11.5. Pending appeal to the Supreme Court

CAA 1968 s.36²⁴³: Bail on appeal by defendant

- s.36 - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if it seems fit, on the application of a person appealing or applying for leave to appeal to the Supreme Court, other than a person appealing or applying for leave to appeal from a decision on an appeal under Part 9 of the Criminal Justice Act 2003 or section 9(11) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 (appeals against orders or rulings at preparatory hearings) or section 47 of the Criminal Justice Act 2003, grant him bail pending the determination of his appeal.

CAA 1968 s.37²⁴⁴: Detention of defendant on appeal by the Crown

- s.37(1) - the following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.
- s.37(2) - if, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal shall make—
- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 36 above), so long as the appeal is pending, or
 - (b) an order that he be released without bail.
- s.37(2A) - the Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.
- s.37(3) - an order under subsection (2)(a) shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the Court of Appeal.
- s.37(4) - where an order is made under subsection (2)(a) in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—
- (a) an order or direction under Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act) (admission to hospital of persons convicted by criminal courts); or
 - (b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc),
- the order under subsection (2)(a) shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) or (b) of this subsection; and the provisions of the Mental Health Act 1983 with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

²⁴³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1967/1234 art.1 and Sch.3.

²⁴⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1967/1234 art.1 and Sch.3.

- s.37(4A) - where an order is made under subsection (2)(a) in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under section 36 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—
- (a) subsection (3) of this section shall not apply to the order;
 - (b) Part III of the said Act of 1983 shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the Supreme Court is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
 - (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.
- s.37(5) - the defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
- (a) the Court of Appeal have made an order under subsection (2)(b), or
 - (b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).

2.12 Impact statements

Note: See also the Victims' Code.

2.12.1. Victims

CPD 2015 VII Sentencing F²⁴⁵

Victim personal statements

- F.1 Victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'). The statement gives victims a formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. The court will take the statement into account when determining sentence. In some circumstances, it may be appropriate for relatives of a victim to make a VPS, for example where the victim has died as a result of the relevant criminal conduct. The revised Code of Practice for Victims of Crime, published on 29 October 2013 gives further information about victims' entitlements within the criminal justice system, and the duties placed on criminal justice agencies when dealing with victims of crime.
- F.2 When a police officer takes a statement from a victim, the victim should be told about the scheme and given the chance to make a VPS. The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear on their decision, and no conclusion should be drawn if they choose not to make such a statement. A VPS or a further VPS may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not normally be appropriate for a VPS to be made after the disposal of the case; there may be rare occasions between sentence and appeal when a further VPS may be necessary, for example, when the victim was injured and the final prognosis was not available at the date of sentence. However, VPS after disposal should be confined to presenting up to date factual material, such as medical information, and should be used sparingly.
- F.3 If the court is presented with a VPS the following approach, subject to the further guidance given by the Court of Appeal in *R v Perkins; Bennett; Hall* [2013] EWCA Crim 323, [2013] Crim L.R. 533, should be adopted:
- (a) The VPS and any evidence in support should be considered and taken into account by the court, prior to passing sentence.
 - (b) Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. The maker of a VPS may be cross-examined on its content.

²⁴⁵ As amended.

- (c) At the discretion of the court, the VPS may also be read aloud or played in open court, in whole or in part, or it may be summarised. If the VPS is to be read aloud, the court should also determine who should do so. In making these decisions, the court should take account of the victim's preferences, and follow them unless there is good reason not to do so; examples of this include the inadmissibility of the content or the potentially harmful consequences for the victim or others. Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS. For the purposes of CPD I General matters 5B: Access to information held by the court, a VPS that is read aloud or played in open court in whole or in part should be considered as such, and no longer treated as a confidential document.
- (d) In all cases it will be appropriate for a VPS to be referred to in the course of the sentencing hearing and/or in the sentencing remarks.
- (e) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

2.12.2. Family

CPD 2015 VII Sentencing G²⁴⁶

Families bereaved by homicide and other criminal conduct

- G.1 In cases in which the victim has died as a result of the relevant criminal conduct, the victim's family is not a party to the proceedings, but does have an interest in the case. Bereaved families have particular entitlements under the Code of Practice for Victims of Crime. All parties should have regard to the needs of the victim's family and ensure that the trial process does not expose bereaved families to avoidable intimidation, humiliation or distress.
- G.2 In so far as it is compatible with family members' roles as witnesses, the court should consider the following measures:
 - (a) Practical arrangements being discussed with the family and made in good time before the trial, such as seating for family members in the courtroom; if appropriate, in an alternative area, away from the public gallery.
 - (b) Warning being given to families if the evidence on a certain day is expected to be particularly distressing.
 - (c) Ensuring that appropriate use is made of the scheme for Victim Personal Statements, in accordance with the paragraphs above.
- G.3 The sentencer should consider providing a written copy of the sentencing remarks to the family after sentence has been passed. Sentencers should tend in favour of providing such a copy, unless there is good reason not to do so, and the copy should be provided as soon as is reasonably practicable after the sentencing hearing.

²⁴⁶ As amended.

2.12.3. Community

CPD 2015 VII Sentencing H²⁴⁷

Community Impact Statements

- H.1 A community impact statement may be prepared by the police to make the court aware of particular crime trends in the local area and the impact of these on the local community.
- H.2 Such statements must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he is not represented.
- H.3 The community impact statement and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court.
- H.4 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the local community. Opinions as to what the sentence should be are therefore not relevant. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
- H.5 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the local community.
- H.6 It will not be appropriate for a Community Impact Statement to be made after disposal of the case but before an appeal.

R. v Skelton [2014] EWCA Crim 2409; [2015] 1 Cr. App. R. (S.) 34 (p.265)

A community impact statement was to be limited to expressing the effect of particular crimes upon a particular community and should not be used as a character assassination of defendants.

²⁴⁷ As amended.

2.12.4. Business

*CPD 2015 VII Sentencing I*²⁴⁸

Impact statements for businesses

- I.1 Individual victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'), see CPD VII Sentencing F. If the victim, or one of the victims, is a business or enterprise (including charities but excluding public sector bodies), of any size, a nominated representative may make an Impact Statement for Business ('ISB'). The ISB gives a formal opportunity for the court to be informed how a crime has affected a business. The court will take the statement into account when determining sentence. This does not prevent individual employees from making a VPS about the impact of the same crime on them as individuals. Indeed the ISB should be about the impact on the business exclusively, and the impact on any individual included within a VPS.
- I.2 When a police officer takes statements about the alleged offence, he or she should also inform the business about the scheme. An ISB may be made to the police at that time, or the ISB template may be downloaded from www.police.uk, completed and emailed or posted to the relevant police contact. Guidance on how to complete the form is available on www.police.uk and on the CPS website. There is no obligation on any business to make an ISB.
- I.3 An ISB or an updated ISB may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not be appropriate for an ISB to be made after disposal of the case but before an appeal.
- I.4 A business wishing to make an ISB should consider carefully who to nominate as the representative to make the statement on its behalf. A person making an ISB on behalf of a business, the nominated representative, must be authorised to do so on behalf of the business, either by nature of their position within the business, such as a director or owner, or by having been suitably authorised, such as by the owner or Board of Directors. The nominated representative must also be in a position to give admissible evidence about the impact of the crime on the business. This will usually be through first hand personal knowledge, or using business documents (as defined in section 117 of the Criminal Justice Act 2003). The most appropriate person will vary depending on the nature of the crime, and the size and structure of the business and may for example include a manager, director, chief executive or shop owner.
- I.5 If the nominated representative leaves the business before the case comes to court, he or she will usually remain the representative, as the ISB made by him or her will still provide the best evidence of the impact of the crime, and he or she could still be asked to attend court. Nominated representatives should be made aware of the on-going nature of the role at the time of making the ISB.
- I.6 If necessary a further ISB may be provided to the police if there is a change in circumstances. This could be made by an alternative nominated representative. However, the new ISB will usually supplement, not replace, the original ISB and again must contain admissible evidence. The prosecutor will decide which ISB to serve on the defence as evidence, and any ISB that is not served in evidence will be included in the unused material and considered for disclosure to the defence.

²⁴⁸ As amended.

- I.7 The ISB must be made in proper form, that is as a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. The maker of an ISB can be cross-examined on its content.
- I.8 The ISB and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court; the views of the business should be taken into account in reaching a decision.
- I.9 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victims, including any business victim. Opinions as to what the sentence should be are therefore not relevant. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
- I.10 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on a business.

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3.1 General provisions

3.1.1. Guilty plea reduction

3.1.1.1. Statutory provisions

Duty to take account of guilty plea

CJA 2003 s.144²⁴⁹: Reduction in sentences for a guilty plea

- s.144(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.

Minimum and required sentences

CJA 2003 s.144²⁵⁰: Reduction in sentences for a guilty plea

- s.144(2) - in the case of an offender who—
- (a) is convicted of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (3), and
 - (b) is aged 18 or over when convicted,
- nothing in that provision 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 provision.
- s.144(3) - the provisions referred to in subsection (2) are:
- section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
 - section 110(2) of the Sentencing Act;
 - section 111(2) of the Sentencing Act;
 - section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988.

CJA 2003 s.144²⁵¹: Reduction in sentences for a guilty plea

- s.144(4) - in the case of an offender who—
- (a) is convicted of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (5), and
 - (b) is aged 16 or 17 when convicted,
- nothing in that provision prevents the court from imposing any sentence that it considers appropriate after taking into account any matter referred to in subsection (1) of this section.

²⁴⁹ Commencement: 4 April 2005, SI 2005/950 art. 2 and Sch.1 para.7

²⁵⁰ Commencement: 4 April 2005, SI 2005/950 art. 2 and Sch.1 para.7

²⁵¹ Commencement: 4 April 2005, SI 2005/950 art. 2 and Sch.1 para.7

s.144(5) - the provisions referred to in subsection (4) are:

section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;

section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988.

3.1.1.2. Sentencing Guideline

Reduction in sentence for a guilty plea, Sentencing Guidelines Council

Note: The guideline gives guidance as to the way in which the reduction for a guilty plea should be administered. The guideline is not reproduced here.

3.1.1.3. Early Guilty Plea Scheme

Criminal Practice Directions 2015

Early guilty plea hearing

3A.6 The magistrates' court or the Crown Court may order an early guilty plea hearing, in accordance with directions given by the presiding judges, where a guilty plea is anticipated, to allow the Crown Court promptly to deal with such a case.

3A.7 Sentence should normally be passed at an early guilty plea hearing. The parties must prepare accordingly in advance of the hearing. This may include:

i) addressing any issue arising from a basis of plea,

ii) making timely application for a pre-sentence report and, if

granted, ensuring that the Probation Service is provided with details of the offence(s) in respect of which the defendant intends to plead guilty, the details of any basis of plea(s) and of the defendant's current address and telephone number(s),

iii) obtaining medical or other material necessary for sentencing, and

iv) quantifying costs.

3A.8 The court must be notified promptly of any difficulty which may mean that sentence cannot be passed at the hearing so that an alternative date can be considered.

3.1.1.4. Interaction with other sentencing orders

R. v B [2012] EWCA Crim 1272

In argument it was suggested that a guilty plea should have the effect of reducing the licence period under an extended sentence. That proposition could not be accepted; the guideline only referred to the custodial period and the extension period was designed to protect the public.

3.1.1.5. Other principal sources

R. v Caley [2012] EWCA Crim 2821; [2013] 2 Cr. App. R. (S.) 47 (p.305)

Overarching principles - Sentencing youths guideline, Sentencing Guidelines Council

3.1.2. Time spent on curfew/tag

3.1.2.1. General

Interpretation

CJA 2003 s.240A²⁵²: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(12) - in this section:

“curfew requirement” means a requirement (however described) to remain at one or more specified places for a specified number of hours in any given day, provided that the requirement is imposed by a court or the Secretary of State and arises as a result of a conviction;

“electronic monitoring condition” means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person’s compliance with a qualifying curfew condition;

“qualifying curfew condition” means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day.

CJA 2003 s.242²⁵³: Interpretations of sections 240ZA, 240A and 241

s.242(1) - for the purposes of sections 240ZA, 240A and 241, the definition of “sentence of imprisonment” in section 305 applies as if for the words from the beginning of the definition to the end of paragraph (a) there were substituted:

“sentence of imprisonment” does not include a committal:

- (a) in default of payment of any sum of money, other than one adjudged to be paid on a conviction,”;

and references in those sections to sentencing an offender to imprisonment, and to an offender’s sentence, are to be read accordingly.

s.242(2) - references in sections 240ZA and 241 to an offender’s being remanded in custody are references to his being:

- (a) remanded in or committed to custody by order of a court,
- (b) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
- (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983 (c. 20).

²⁵² Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

²⁵³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

3.1.2.2. Availability

CJA 2003 s.240A²⁵⁴: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(1) - this section applies where:

- (a) a court sentences an offender to imprisonment for a term in respect of an offence,
- (b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, after the coming into force of section 21 of the Criminal Justice and Immigration Act 2008, and
- (c) the offender's bail was subject to a qualifying curfew condition and an electronic monitoring condition ("the relevant conditions").

Duty to credit period spent on curfew or tag

CJA 2003 s.240A²⁵⁵: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(2) - subject to subsections (3A) and (3B), the court must direct that the credit period is to count as time served by the offender as part of the sentence.

3.1.2.3. Step by step guide

CJA 2003 s.240A²⁵⁶: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(3) - the credit period is calculated by taking the following steps.

Step 1

Add:

- (a) the day on which the offender's bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question), and
- (b) the number of other days on which the offender's bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).

Step 2

Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also:

²⁵⁴ Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

²⁵⁵ Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

²⁵⁶ Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

- (a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender's compliance with a curfew requirement, or
- (b) on temporary release under rules made under section 47 of the Prison Act 1952.

Step 3

From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

Step 4

Divide the result by 2.

Step 5

If necessary, round up to the nearest whole number.

3.1.2.4. Applying the discount

How does the credit manifest itself?

CJA 2003 s.240A²⁵⁷: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(3A) - a day of the credit period counts as time served:

- (a) in relation to only one sentence, and
- (b) only once in relation to that sentence.

s.240A(3B) - a day of the credit period is not to count as time served as part of any automatic release period served by the offender (see section 255B(1)).

Duty to state discount in open court

CJA 2003 s.240A²⁵⁸: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(8) - where the court gives a direction under subsection (2) it shall state in open court:

- (a) the number of days on which the offender was subject to the relevant conditions, and
- (b) the number of days (if any) which it deducted under each of steps 2 and 3.

²⁵⁷ Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

²⁵⁸ Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

Supplementary provisions

CJA 2003 s.240A²⁵⁹: Time remanded on bail to count towards time served: terms of imprisonment and detention

s.240A(11) - Subsections (7) to (9) and (11) of section 240ZA apply for the purposes of this section as they apply for the purposes of that section but as if:

- (a) in subsection (7):
 - (i) the reference to a suspended sentence is to be read as including a reference to a sentence to which an order under section 118(1) of the Sentencing Act relates;
 - (ii) in paragraph (a) after “Schedule 12” there were inserted “or section 119(1)(a) or (b) of the Sentencing Act”; and
- (b) in subsection (9) the references to subsections (3) and (5) of section 240ZA are to be read as a reference to subsection (2) of this section and, in paragraph (b), after “Chapter” there were inserted “or Part 2 of the Criminal Justice Act 1991”.

CJA 2003 s.240ZA²⁶⁰: Time remanded in custody to count as time served: terms of imprisonment and detention

s.240ZA(7) - for the purposes of this section a suspended sentence—

- (a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 8(2)(a) or (b) of Schedule 12, and
- (b) is to be treated as being imposed by the order under which it takes effect.

s.240ZA(8) - in this section “*related offence*” means an offence, other than the offence for which the sentence is imposed (“offence A”), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.

s.240ZA(9) - for the purposes of the references in subsections (3) and (5) to the term of imprisonment to which a person has been sentenced (that is to say, the reference to the offender’s “sentence”), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if:

- (a) the sentences were passed on the same occasion, or
- (b) where they were passed on different occasions, the person has not been released at any time during the period beginning with the first and ending with the last of those occasions.

s.240ZA(11) - this section applies to a determinate sentence of detention under section 91 or 96 of the Sentencing Act or section 226A, 226B, 227 or 228 of this Act as it applies to an equivalent sentence of imprisonment.

²⁵⁹ Commencement: Section 21(1) and (3) to (7) in force 3 November 2008, as inserted by CJIA 2008 s.21(4), SI 2008/2712 art.2 and Sch.1 para.1. Section 21(2) in force 31 October 2009, SI 2009/2606 art.3(a).

²⁶⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.108(2), SI 2012/2906 art.2(d). The insertion applies in relation to any person who falls to be released under Chapter 6 on or after the commencement date, LASPOA 2012 Sch.15 para.2(1)(a).

3.1.2.5. Particular situations

Bailed after sentencing pending appeal

R. v Robertson [2012] EWCA Crim 609

The language of section 240A(1)(b) is broad enough to cover such a period.

Detention and Training Orders

PCC(S)A 2000 s.101²⁶¹: Term of order, consecutive terms and taking account of remands

s.101(8) - in determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded:

- (a) in custody, or
- (b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of section 240A of the Criminal Justice Act 2003), in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.

s.101(11) - any reference in subsection (8) or (9) above to an offender's being remanded in custody is a reference to his being—

- (a) held in police detention;
- (b) remanded in or committed to custody by an order of a court;
- (c) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; or
- (d) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

Effect upon release

CJA 2003 s.241²⁶²: Effect of section 240ZA or direction under section 240A on release on licence

s.241(1) - in determining for the purposes of this Chapter whether a person to whom section 240ZA applies or a direction under section 240A relates —

- (a) has served, or would (but for his release) have served, a particular proportion of his sentence, or
 - (b) has served a particular period,
- the number of days specified in section 240ZA or in the direction under section 240A are to be treated as having been served by him as part of that sentence or period.

s.241(1A) - in subsection (1) the reference to section 240ZA includes section 246 of the Armed Forces Act 2006.

²⁶¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

²⁶² Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

Extradited prisoners

CJA 2003 s.243²⁶³: Persons extradited to the United Kingdom

- s.243(1) - a fixed-term prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence was imposed or he received that sentence —
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (b) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in paragraph (a).
- s.243(2) - in the case of an extradited prisoner, the court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.
- s.243(2A) - Section 240ZA applies to days specified under subsection (2) as if they were days for which the prisoner was remanded in custody in connection with the offence or a related offence.

3.1.3. Time spent on remand

3.1.3.1. General

Note: CJA 1982 s.10 remains in force and amends CJA 1967 s.67 in relation to the reduction in sentence for time spent on remand, however s.67 has been repealed.

Interpretation

CJA 2003 s.240ZA²⁶⁴: Time remanded in custody to count as time served: terms of imprisonment and detention

- s.240ZA(7) - for the purposes of this section a suspended sentence:
- (a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 8(2)(a) or (b) of Schedule 12, and
 - (b) is to be treated as being imposed by the order under which it takes effect.
- s.240ZA(8) - in this section “*related offence*” means an offence, other than the offence for which the sentence is imposed (“offence A”), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.
- s.240ZA(9) - for the purposes of the references in subsections (3) and (5) to the term of imprisonment to which a person has been sentenced (that is to say, the reference to the offender’s “sentence”), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if:
- (a) the sentences were passed on the same occasion, or

²⁶³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

²⁶⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.108(2), SI 2012/2906 art.2(d). The insertion applies in relation to any person who falls to be released under Chapter 6 on or after the commencement date, LASPOA 2012 Sch.15 para.2(1)(a).

- (b) where they were passed on different occasions, the person has not been released at any time during the period beginning with the first and ending with the last of those occasions.
- (10) The reference in subsection (4) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes:
 - (a) detention pursuant to any custodial sentence;
 - (b) committal in default of payment of any sum of money;
 - (c) committal for want of sufficient distress to satisfy any sum of money;
 - (d) committal for failure to do or abstain from doing anything required to be done or left undone.
- (11) This section applies to a determinate sentence of detention under section 91 or 96 of the Sentencing Act or section 226A, 226B, 227 or 228 of this Act as it applies to an equivalent sentence of imprisonment.

CJA 2003 s.242²⁶⁵: Interpretations of sections 240ZA, 240A and 241

s.242(1) - for the purposes of sections 240ZA, 240A and 241, the definition of “sentence of imprisonment” in section 305 applies as if for the words from the beginning of the definition to the end of paragraph (a) there were substituted:

“*sentence of imprisonment*’ does not include a committal:

- (a) in default of payment of any sum of money, other than one adjudged to be paid on a conviction,”;

and references in those sections to sentencing an offender to imprisonment, and to an offender’s sentence, are to be read accordingly.

s.242(2) - references in sections 240ZA and 241 to an offender’s being remanded in custody are references to his being:

- (a) remanded in or committed to custody by order of a court,
- (b) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
- (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983 (c. 20).

CJA 2003 s.305²⁶⁶: Interpretation of Part 12

s.305(1) [...] “*sentence of imprisonment*” does not include a committal—

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

²⁶⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

²⁶⁶ Commencement: Section 305(1) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2. Section 305 otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.24.

and references to sentencing an offender to imprisonment are to be read accordingly [...]

3.1.3.2. Applying the credit

Availability

CJA 2003 s.240ZA²⁶⁷: Time remanded in custody to count as time served: terms of imprisonment and detention

s.240ZA(1) - this section applies where:

- (a) an offender is serving a term of imprisonment in respect of an offence, and
- (b) the offender has been remanded in custody (within the meaning given by section 242) in connection with the offence or a related offence.

Remanded for other offences

CJA 2003 s.240ZA²⁶⁸: Time remanded in custody to count as time served: terms of imprisonment and detention

s.240ZA(2) - it is immaterial for that purpose whether, for all or part of the period during which the offender was remanded in custody, the offender was also remanded in custody in connection with other offences (but see subsection (5)).

s.240ZA(5) - a day counts as time served:

- (a) in relation to only one sentence, and
- (b) only once in relation to that sentence.

How does the discount manifest itself?

CJA 2003 s.240ZA²⁶⁹: Time remanded in custody to count as time served: terms of imprisonment and detention

s.240ZA(3) - the number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by the offender as part of the sentence.

But this is subject to subsections (4) to (6).

s.240ZA(4) - if, on any day on which the offender was remanded in custody, the offender was also detained in connection with any other matter, that day is not to count as time served.

s.240ZA(6) - a day is not to count as time served as part of any automatic release period served by the offender (see section 255B(1)).

²⁶⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.108(2), SI 2012/2906 art.2(d). The insertion applies in relation to any person who falls to be released under Chapter 6 on or after the commencement date, LASPOA 2012 Sch.15 para.2(1)(a).

²⁶⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.108(2), SI 2012/2906 art.2(d). The insertion applies in relation to any person who falls to be released under Chapter 6 on or after the commencement date, LASPOA 2012 Sch.15 para.2(1)(a).

²⁶⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.108(2), SI 2012/2906 art.2(d). The insertion applies in relation to any person who falls to be released under Chapter 6 on or after the commencement date, LASPOA 2012 Sch.15 para.2(1)(a).

3.1.3.3. Particular situations

Attorney General's references

CJA 1988 Sch.3²⁷⁰: Reviews of sentencing

- para.5 - the time during which a person whose case has been referred for review under section 36 above is in custody pending its review and pending any reference to the Supreme Court under subsection (5) of that section shall be reckoned as part of the term of any sentence to which he is for the time being subject.

Community orders

CJA 2003 s.149²⁷¹: Passing of community order on offender remanded in custody

- s.149(1) - in determining the restrictions on liberty to be imposed by a community order or youth rehabilitation 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.
- s.149(2) - in subsection (1) "*remanded in custody*" has the meaning given by section 242(2).

Detention and Training Orders

PCC(S)A 2000 s.101²⁷²: Term of order, consecutive terms and taking account of remands

- s.101(8) - in determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded:
- (a) in custody, or
 - (b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of section 240A of the Criminal Justice Act 2003),
- in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.
- s.101(11) - any reference in subsection (8) or (9) above to an offender's being remanded in custody is a reference to his being:
- (a) held in police detention;
 - (b) remanded in or committed to custody by an order of a court;
 - (c) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; or
 - (d) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

²⁷⁰ Commencement: 1 February 1989, SI 1989/1 art.2(b).

²⁷¹ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.7. The coming into force of the section is of no effect in relation to an offence committed before 4 April 2005, 2005/950 Sch.2 para.5(2)(a).

²⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Detention in police custody

Note: The statute refers to “remand in custody” and so days spent in police custody do not count subject to the exception for Detention and Training Orders noted above.

Extradition

CJA 2003 s.243²⁷³: Persons extradited to the United Kingdom

- s.243(1) - a fixed-term prisoner is an extradited prisoner for the purposes of this section if:
- (a) he was tried for the offence in respect of which his sentence was imposed or he received that sentence:
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (b) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in paragraph (a).
- s.243(2) - in the case of an extradited prisoner, the court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.
- s.243(2A) - Section 240ZA applies to days specified under subsection (2) as if they were days for which the prisoner was remanded in custody in connection with the offence or a related offence.

PCC(S)A 2000 s.101²⁷⁴: Term of order, consecutive terms and taking account of remands

- s.101(8) - in determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded:
- (a) in custody, or
 - (b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of section 240A of the Criminal Justice Act 2003),
- in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.
- s.101(12A) - Section 243 of the Criminal Justice Act 2003 (persons extradited to the United Kingdom) applies in relation to a person sentenced to a detention and training order as it applies in relation to a fixed-term prisoner, with the reference in subsection (2A) of that section to section 240ZA being read as a reference to subsection (8) above.

²⁷³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

²⁷⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Remand to hospital etc.

CJA 2003 s.242²⁷⁵: Interpretations of sections 240ZA, 240A and 241

- s.242(2) - references in sections 240ZA and 241 to an offender's being remanded in custody are references to his being:
- (a) remanded in or committed to custody by order of a court,
 - (b) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
 - (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983 (c. 20).

Life sentences (non-murder cases)

PCC(S)A 2000 s.82A²⁷⁶: Determination of tariffs

- s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:
- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
 - (b) the effect of any direction which it would have given under section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody) or under section 246 of the Armed Forces Act 2006 (equivalent provision for service courts) or under section 240A of that Act of 2003 (crediting periods of remand on bail subject to certain types of condition) if it had sentenced him to a term of imprisonment; and
 - (c) the early release provisions as compared with section 244(1) of the Criminal Justice Act 2003.

Mandatory life

CJA 2003 s.269²⁷⁷: Determination of minimum term in relation to mandatory life sentence

- s.269(3) - the part of his sentence is to be such as the court considers appropriate taking into account:
- (a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
 - (b) the effect of section 240ZA (crediting periods of remand in custody) or of any direction which it would have given under section 240A (crediting periods of remand on certain types of bail) if it had sentenced him to a term of imprisonment.
- s.269(3A) - the reference in subsection (3)(b) to section 240ZA includes section 246 of the Armed Forces Act 2006 (crediting periods in service custody).

²⁷⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

²⁷⁶ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80.

²⁷⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

Non-custodial sentences

New Sentences: CJA 2003 Guideline, Sentencing Guidelines Council

Time on remand

- 1.1.37 The court will need to consider whether to give any credit for time spent in custody on remand.¹⁰ (For further detail from the Panel's Advice, see Annex A)
- The court should seek to give credit for time spent on remand (in custody or equivalent status) in all cases. It should make clear, when announcing sentence, whether or not credit for time on remand has been given (bearing in mind that there will be no automatic reduction in sentence once section 67 of the Criminal Justice Act 1967 is repealed) and should explain its reasons for not giving credit when it considers either that this is not justified, would not be practical, or would not be in the best interests of the offender.
- 1.1.38 Where an offender has spent a period of time in custody on remand, there will be occasions where a custodial sentence is warranted but the length of the sentence justified by the seriousness of the offence would mean that the offender would be released immediately. Under the present framework, it may be more appropriate to pass a community sentence since that will ensure supervision on release.
- 1.1.39 However, given the changes in the content of the second part of a custodial sentence of 12 months or longer, a court in this situation where the custodial sentence would be 12 months or more should, under the new framework, pass a custodial sentence in the knowledge that licence requirements will be imposed on release from custody. This will ensure that the sentence imposed properly reflects the seriousness of the offence.
- 1.1.40 Recommendations made by the court at the point of sentence will be of particular importance in influencing the content of the licence. This will properly reflect the gravity of the offence(s) committed.

Retrial

CAA 1968 Sch.2: Procedural and other provisions applicable on order for retrial

- para.2(4) - Sections 240ZA and 240A of the Criminal Justice Act 2003 (crediting of periods of remand in custody or on bail subject to certain types of condition: terms of imprisonment and detention) shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

3.1.4. Explaining sentences

3.1.4.1. The general rule

Sentencers' duties

CJA 2003 s.174²⁷⁸: Duty to give reasons for and to explain effect of sentence

- s.174(1) - a court passing sentence on an offender has the duties in subsections (2) and (3).
- s.174(2) - the court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence.
- s.174(3) - the court must explain to the offender in ordinary language—
 - (a) the effect of the sentence,
 - (b) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence,
 - (c) any power of the court to vary or review any order that forms part of the sentence, and
 - (d) the effects of failure to pay a fine, if the sentence consists of or includes a fine.

Sentencing Guidelines

CJA 2003 s.174²⁷⁹: Duty to give reasons for and to explain effect of sentence

- s.174(2) - the court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence.
- s.174(5) - subsections (6) to (8) are particular duties of the court in complying with the duty in subsection (2).
- s.174(6) - the court must identify any definitive sentencing guidelines relevant to the offender's case and—
 - (a) explain how the court discharged any duty imposed on it by section 125 of the Coroners and Justice Act 2009 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);
 - (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.
- s.174(9) - in this section "*definitive sentencing guidelines*" means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued.

²⁷⁸ Commencement: Section 174(4) in force 5 April 2004, SI 2004/829 art.2(2)(e). Otherwise, in force 4 April 2005, SI 2005/950 art.2 and Sch.1 art.7.

²⁷⁹ Commencement: Section 174(4) in force 5 April 2004, SI 2004/829 art.2(2)(e). Otherwise, in force 4 April 2005, SI 2005/950 art.2 and Sch.1 art.7.

Guilty pleas

CJA 2003 s.174²⁸⁰: Duty to give reasons for and to explain effect of sentence

s.174(7) - where, as a result of taking into account any matter referred to in section 144(1) (guilty pleas), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.

Offenders aged under 18

CJA 2003 s.174²⁸¹: Duty to give reasons for and to explain effect of sentence

s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—

- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
- (b) section 152(2) of this Act (discretionary custodial sentence),

the court must state why it is of that opinion.

3.1.5. Sentencing procedure in special cases

3.1.5.1. Power to make rules

Criminal Procedure Rules amendment of duties under s.174

CJA 2003 s.174²⁸²: Duty to give reasons for and to explain effect of sentence

s.174(4) - the Criminal Procedure Rules may—

- (a) prescribe cases in which either duty does not apply, and
- (b) make provision about how an explanation under subsection (3) is to be given.

3.1.5.2. Giving reasons for, and explanations of, sentences

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.1(1) This rule applies where the court decides—

- (a) not to follow a relevant sentencing guideline;
- (b) not to make, where it could—
 - (i) a reparation order (unless it passes a custodial or community sentence),
 - (ii) a compensation order,
 - (iii) a slavery and trafficking reparation order, or

²⁸⁰ Commencement: Section 174(4) in force 5 April 2004, SI 2004/829 art.2(2)(e). Otherwise, in force 4 April 2005, SI 2005/950 art.2 and Sch.1 art.7.

²⁸¹ Commencement: Section 174(4) in force 5 April 2004, SI 2004/829 art.2(2)(e). Otherwise, in force 4 April 2005, SI 2005/950 art.2 and Sch.1 art.7.

²⁸² Commencement: Section 174(4) in force 5 April 2004, SI 2004/829 art.2(2)(e). Otherwise, in force 4 April 2005, SI 2005/950 art.2 and Sch.1 art.7.

- (iv) a travel restriction order;
- (c) not to order, where it could—
 - (i) that a suspended sentence of imprisonment is to take effect,
 - (ii) the endorsement of the defendant's driving record, or
 - (iii) the defendant's disqualification from driving, for the usual minimum period or at all;
- (d) to pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.

rule.28.1(2) The court must explain why it has so decided, when it explains the sentence that it has passed.

rule.28.1(3) Where paragraph (1)(d) applies, the court must arrange for such an explanation to be given to the defendant and to the prosecutor in writing, if the court thinks that it would not be in the public interest to explain in public.

*Note.*²⁸³ See section 174 of the Criminal Justice Act 2003; section 73(8) of the Powers of Criminal Courts (Sentencing) Act 2000; section 130(3) of the 2000 Act; section 8(7) of the Modern Slavery Act 2015; section 33(2) of the Criminal Justice and Police Act 2001; paragraph 8(3) of Schedule 12 to the 2003 Act; section 47(1) of the Road Traffic Offenders Act 1988; and section 73 of the Serious Organised Crime and Police Act 2005.

For the duty to explain the sentence the court has passed, see section 174(1) of the 2003 Act and rules 24.11(9) (procedure where a magistrates' court convicts) and 25.16(7) (procedure where the Crown Court convicts).

Under section 125 of the Coroners and Justice Act 2009, the court when sentencing must follow any relevant sentencing guideline unless satisfied that to do so would be contrary to the interests of justice.

For the circumstances in which the court may make—

- (a) a reparation or compensation order, see sections 73 and 130 of the 2000 Act;
- (b) a slavery and trafficking reparation order, see section 8 of the 2015 Act;
- (c) a travel restriction order against a defendant convicted of drug trafficking, see sections 33 and 34 of the 2001 Act.

3.1.5.3. Community orders and Suspended Sentence Orders

Requirements under community orders and suspended sentence orders

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.2(1) This rule applies where the court—

- (a) makes a suspended sentence order;
- (b) imposes a requirement under—
 - (i) a community order,

²⁸³ This note is contained within the CPR.

- (ii) a youth rehabilitation order, or
- (iii) a suspended sentence order; or
- (c) orders the defendant to attend meetings with a supervisor.

rule.28.2(2) The court officer must notify—

- (a) the defendant of—
 - (i) the length of the sentence suspended by a suspended sentence order, and
 - (ii) the period of the suspension;
- (b) the defendant and, where the defendant is under 14, an appropriate adult, of—
 - (i) any requirement or requirements imposed, and
 - (ii) the identity of any responsible officer or supervisor, and the means by which that person may be contacted;
- (c) any responsible officer or supervisor, and, where the defendant is under 14, the appropriate qualifying officer (if that is not the responsible officer), of—
 - (i) the defendant's name, address and telephone number (if available),
 - (ii) the offence or offences of which the defendant was convicted, and
 - (iii) the requirement or requirements imposed; and
- (d) the person affected, where the court imposes a requirement—
 - (i) for the protection of that person from the defendant, or
 - (ii) requiring the defendant to reside with that person.

rule.28.2(3) If the court imposes an electronic monitoring requirement, the monitor of which is not the responsible officer, the court officer must—

- (a) notify the defendant and, where the defendant is under 16, an appropriate adult, of the monitor's identity, and the means by which the monitor may be contacted; and
- (b) notify the monitor of—
 - (i) the defendant's name, address and telephone number (if available),
 - (ii) the offence or offences of which the defendant was convicted,
 - (iii) the place or places at which the defendant's presence must be monitored,
 - (iv) the period or periods during which the defendant's presence there must be monitored, and
 - (v) the identity of the responsible officer, and the means by which that officer may be contacted.

*Note.*²⁸⁴ See section 219(1) of the Criminal Justice Act 2003; paragraph 34(1) of Schedule 1 to the Criminal Justice and Immigration Act 2008; and section 1A(7) of the Street Offences Act 1959.

²⁸⁴ This note is contained within the CPR.

For the circumstances in which the court may—

- (a) *make a suspended sentence order, see section 189 of the 2003 Act;*
- (b) *make a community order (defined by section 177 of the Criminal Justice Act 2003(5)), or a youth rehabilitation order (defined by section 7 of the Criminal Justice and Immigration Act 2008), and for the identity and duties of responsible officers and qualifying officers, see generally—*
 - (i) *Part 12 of the 2003 Act, and*
 - (ii) *Part 1 of the 2008 Act;*
- (c) *order the defendant to attend meetings with a supervisor, see section 1(2A) of the Street Offences Act 1959.*

Under sections 190 or 215 of the 2003 Act, or section 1(2) of the 2008 Act, the court may impose an electronic monitoring requirement to secure the monitoring of the defendant's compliance with certain other requirements (for example, a curfew or an exclusion).

3.1.5.4. Notification regimes

Notification requirements

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.3(1) *This rule applies where, on a conviction, sentence or order, legislation requires the defendant—*

- (a) *to notify information to the police; or*
- (b) *to be included in a barred list.*

rule.28.3(2) *The court must tell the defendant that such requirements apply, and under what legislation.*

*Note.*²⁸⁵ *For the circumstances in which a defendant is required to notify information to the police, see—*

- (a) *Part 2 of, and Schedule 3 to, the Sexual Offences Act 2003 (notification after conviction of a specified sexual offence for which a specified sentence is imposed);*
- (b) *Part 4 of the Counter Terrorism Act 2008 (notification after conviction of a specified offence of, or connected with, terrorism, for which a specified sentence is imposed).*

For the circumstances in which a defendant will be included in a barred list, see paragraphs 1, 2, 7, 8 and 24 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006. See also paragraph 25 of that Schedule.

These requirements are not part of the court's sentence.

²⁸⁵ This note is contained within the CPR.

3.1.5.5. Variation or alteration of sentence

Varying or altering sentence

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.4(1) This rule—

- (a) applies where a magistrates' court or the Crown Court can vary or rescind a sentence or order, other than an order to which rule 24.18 applies (Setting aside a conviction or varying a costs etc. order); and
- (b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—
 - (i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and
 - (ii) one is sentenced before another is acquitted or sentenced.

rule.28.4(2) The court may exercise its power—

- (a) on application by a party, or on its own initiative;
- (b) at a hearing, in public or in private, or without a hearing.

rule.28.4(3) A party who wants the court to exercise that power must—

- (a) apply in writing as soon as reasonably practicable after—
 - (i) the sentence or order that that party wants the court to vary or rescind, or
 - (ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party; and
- (c) in the application—
 - (i) explain why the sentence should be varied or rescinded,
 - (ii) specify the variation that the applicant proposes, and
 - (iii) if the application is late, explain why.

rule.28.4(4) The court must not exercise its power in the defendant's absence unless—

- (a) the court makes a variation—
 - (i) which is proposed by the defendant, or
 - (ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or
- (b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

rule.28.4(5) The court may—

- (a) extend (even after it has expired) the time limit under paragraph (3), unless the court's power to vary or rescind the sentence cannot be exercised;
- (b) allow an application to be made orally.

*Note.*²⁸⁶ Under section 142 of the Magistrates' Courts Act 1980, in some cases a magistrates' court can vary or rescind a sentence or other order that it has imposed or made, if that appears to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order. See also rule 24.18 (Setting aside a conviction or varying a costs etc. order), which governs the exercise by a magistrates' court of the power conferred by section 142 of the 1980 Act in the circumstances to which that rule applies.

Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000, the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—

- (a) after the period of 56 days beginning with the sentence or order (but see the note below); or
- (b) if an appeal or application for permission to appeal against that sentence or order has been determined.

Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.

3.1.5.6. Variation or discharge of compensation order

Application to vary/discharge a compensation order

Criminal Procedure Rules 2015 (SI 2015/1490)

rule28.5(1) This rule applies where on application by the defendant a magistrates' court can vary or discharge—

- (a) a compensation order; or
- (b) a slavery and trafficking reparation order.

rule28.5(2) A defendant who wants the court to exercise that power must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on the magistrates' court officer;
- (c) where the order was made in the Crown Court, serve a copy of the application on the Crown Court officer; and
- (d) in the application, specify the order that the defendant wants the court to vary or discharge and explain (as applicable)—
 - (i) what civil court finding shows that the injury, loss or damage was less than it had appeared to be when the order was made,
 - (ii) in what circumstances the person for whose benefit the order was made has recovered the property for the loss of which it was made,
 - (iii) why a confiscation order, unlawful profit order or slavery and trafficking reparation order makes the defendant now unable to pay compensation or reparation in full, or
 - (iv) in what circumstances the defendant's means have been reduced substantially and unexpectedly, and why they seem unlikely to increase for a considerable period.

²⁸⁶ This note is contained within the CPR.

rule.28.5(3) The court officer must serve a copy of the application on the person for whose benefit the order was made.

rule.28.5(4) The court must not vary or discharge the order unless—

- (a) the defendant, and the person for whose benefit it was made, each has had an opportunity to make representations at a hearing (whether or not either in fact attends); and
- (b) where the order was made in the Crown Court, the Crown Court has notified its consent.

*Note.*²⁸⁷ For the circumstances in which—

- (a) the court may make a compensation order, see section 130 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) the court may make a slavery and trafficking reparation order, see section 8 of the Modern Slavery Act 2015;
- (c) a magistrates' court with power to enforce such an order may vary or discharge it under the 2000 Act, see section 133. (Under section 133(4), where the order was made in the Crown Court, the magistrates' court must first obtain the Crown Court's consent.)

3.1.5.7. Disqualifications or restrictions

Application to remove, revoke or suspend a disqualification or restriction

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.6(1) This rule applies where, on application by the defendant, the court can remove, revoke or suspend a disqualification or restriction included in a sentence (except a disqualification from driving).

rule.28.6(2) A defendant who wants the court to exercise such a power must—

- (a) apply in writing, no earlier than the date on which the court can exercise the power;
- (b) serve the application on the court officer; and
- (c) in the application—
 - (i) specify the disqualification or restriction, and
 - (ii) explain why the defendant wants the court to remove, revoke or suspend it.

rule.28.6(3) The court officer must serve a copy of the application on the chief officer of police for the local justice area.

*Note.*²⁸⁸ Part 29 contains rules about disqualification from driving. See in particular rule 29.2.

Part 34 (Appeal to the Crown Court) and Part 35 (Appeal to the High Court by case stated) contain rules about applications to suspend disqualifications pending appeal.

²⁸⁷ This note is contained within the CPR.

²⁸⁸ This note is contained within the CPR.

For the circumstances in which the court may—

- (a) *remove a disqualification from keeping a dog, see section 4(6) of the Dangerous Dogs Act 1991(1). The court may not consider an application made within 1 year of the disqualification; or, after that, within 1 year of any previous application that was refused.*
- (b) *revoke or suspend a travel restriction order against a defendant convicted of drug trafficking, see section 35 of the Criminal Justice and Police Act 2001(2). The court may not consider an application made within 2 years of the disqualification, in any case; or, after that, before a specified period has expired.*

3.1.5.8. Restitution orders

Application for a restitution order by the victim of a theft

Criminal Procedure Rules 2015 (SI 2015/1490)

rule 28.7(1) This rule applies where, on application by the victim of a theft, the court can order a defendant to give that person goods obtained with the proceeds of goods stolen in that theft.

rule 28.7(2) A person who wants the court to exercise that power if the defendant is convicted must—

- (a) apply in writing as soon as practicable (without waiting for the verdict);
- (b) serve the application on the court officer; and
- (c) in the application—
 - (i) identify the goods, and
 - (ii) explain why the applicant is entitled to them.

rule 28.7(3) The court officer must serve a copy of the application on each party.

rule 28.7(4) The court must not determine the application unless the applicant and each party has had an opportunity to make representations at a hearing (whether or not each in fact attends).

rule 28.7(5) The court may —

- (a) extend (even after it has expired) the time limit under paragraph (2); and
- (b) allow an application to be made orally.

*Note.*²⁸⁹ *For the circumstances in which the court may order—*

- (a) *the return of stolen goods, see section 148 of the Powers of Criminal Courts (Sentencing) Act 2000;*
- (b) *the defendant to give the victim of the theft goods that are not themselves the stolen goods but which represent their proceeds, see section 148(2)(b) of the 2000 Act.*

²⁸⁹ This note is contained within the CPR.

3.1.5.9. Medical reports etc.

Requests for medical reports, etc.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.8(1) This rule applies where the court—

- (a) requests a medical examination of the defendant and a report; or
- (b) requires information about the arrangements that could be made for the defendant where the court is considering—
 - (i) a hospital order, or
 - (ii) a guardianship order.

rule.28.8(2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on each person from whom a report or information is sought a note that—

- (a) specifies the power exercised by the court;
- (b) explains why the court seeks a report or information from that person; and
- (c) sets out or summarises any relevant information available to the court.

*Note.*²⁹⁰ The court may request a medical examination of the defendant and a report in connection with—

- (a) section 4 of the *Criminal Procedure (Insanity) Act 1964*, under which the Crown Court may determine a defendant's fitness to plead;
- (b) section 35 of the *Mental Health Act 1983*, under which the court may order the defendant's detention in hospital to obtain a further medical report;
- (c) section 36 of the 1983 Act, under which the Crown Court may order the defendant's detention in hospital instead of in custody pending trial;
- (d) section 37 of the 1983 Act, under which the court may order the defendant's detention and treatment in hospital, or make a guardianship order, instead of disposing of the case in another way;
- (e) section 38 of the 1983 Act, under which the court may order the defendant's temporary detention and treatment in hospital instead of disposing of the case in another way;
- (f) section 157 of the *Criminal Justice Act 2003*, under which the court must usually obtain and consider a medical report before passing a custodial sentence if the defendant is, or appears to be, mentally disordered;
- (g) section 207 of the 2003 Act (in the case of a defendant aged 18 or over), or section 1(1)(k) of the *Criminal Justice and Immigration Act 2008* (in the case of a defendant who is under 18), under which the court may impose a mental health treatment requirement.

For the purposes of the legislation listed in (a), (d) and (e) above, the court requires the written or oral evidence of at least two registered medical practitioners, at least one of whom is approved as having special experience in the diagnosis or treatment of mental disorder. For the purposes of (b), the court requires one medical practitioner's evidence. For the purposes of (c), the court requires two medical practitioners' evidence. For the purposes of (f) and (g), the court requires the evidence of a registered medical practitioner with special experience in the diagnosis or treatment of mental disorder.

²⁹⁰ This note is contained within the CPR.

Under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, a magistrates' court may adjourn a trial to obtain medical reports.

Part 19 (Expert evidence) contains rules about the content of expert medical reports.

For the authorities from whom the court may require information about hospital treatment or guardianship, see sections 39 and 39A of the 1983 Act.

3.1.5.10. Hospital or guardianship admission

Information to be supplied on admission to hospital or guardianship

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.9(1) This rule applies where the court—

- (a) orders the defendant's detention and treatment in hospital; or
- (b) makes a guardianship order.

rule.28.9(2) Unless the court otherwise directs, the court officer must, as soon as practicable, serve on (as applicable) the hospital or the guardian—

- (a) a record of the court's order;
- (b) such information as the court has received that appears likely to assist in treating or otherwise dealing with the defendant, including information about—
 - (i) the defendant's mental condition,
 - (ii) the defendant's other circumstances, and
 - (iii) the circumstances of the offence.

*Note.*²⁹¹ *For the circumstances in which the court may order the defendant's detention and treatment in hospital, see sections 35, 36, 37, 38 and 44 of the Mental Health Act 1983(1). For the circumstances in which the court may make a guardianship order, see the same section 37.*

3.1.5.11. Committal for sentence

Information to be supplied on committal for sentence, etc.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.10(1) This rule applies where a magistrates' court or the Crown Court convicts the defendant and—

- (a) commits or adjourns the case to another court—
 - (i) for sentence, or
 - (ii) for the defendant to be dealt with for breach of a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by that other court;
- (b) deals with a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court; or
- (c) makes an order that another court is, or may be, required to enforce.

²⁹¹ This note is contained within the CPR.

rule.28.10(2) Unless the convicting court otherwise directs, the court officer must, as soon as practicable—

- (a) where paragraph (1)(a) applies, arrange the transmission from the convicting to the other court of a record of any relevant—
 - (i) certificate of conviction,
 - (ii) magistrates' court register entry,
 - (iii) decision about bail, for the purposes of section 5 of the Bail Act 1976(1),
 - (iv) note of evidence,
 - (v) statement or other document introduced in evidence,
 - (vi) medical or other report,
 - (vii) representation order or application for such order, and
 - (viii) interim driving disqualification;
- (b) where paragraph (1)(b) or (c) applies, arrange—
 - (i) the transmission from the convicting to the other court of notice of the convicting court's order, and
 - (ii) the recording of that order at the other court;
- (c) in every case, notify the defendant and, where the defendant is under 14, an appropriate adult, of the location of the other court.

*Note.*²⁹² *For the circumstances in which—*

- (a) *a magistrates' court may (and in some cases must) commit the defendant to the Crown Court for sentence, see sections 3, 3A, 3B, 3C, 4, 4A and 6 of the Powers of Criminal Courts (Sentencing) Act 2000(2) and section 43 of the Mental Health Act 1983(3);*
- (b) *a magistrates' court may adjourn the case to another magistrates' court for sentence, see section 10 of the Magistrates' Courts Act 1980(4) and section 10 of the 2000 Act(5);*
- (c) *a magistrates' court or the Crown Court may (and in some cases must) adjourn the case to a youth court for sentence, see section 8 of the 2000 Act(6);*
- (d) *a youth court may adjourn the case to a magistrates' court for sentence, see section 9 of the 2000 Act(7);*
- (e) *a magistrates' court may transfer a fine to be enforced to another court, see sections 89 and 90 of the 1980 Act(8).*

For the court's powers where it convicts a defendant who is subject to a deferred sentence, a conditional discharge, or a suspended sentence of imprisonment, imposed by another court, see sections 1C and 13 of the 2000 Act(9) and section 189 of, and Schedule 12 to, the Criminal Justice Act 2003(10).

Under section 140 of the 2000 Act(11), a fine imposed or other sum ordered to be paid in the Crown Court is enforceable by a magistrates' court specified in the order, or from which the case was committed or sent to the Crown Court.

See also section 219(3) of the 2003 Act(12); paragraph 34(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008(13); and section 1A(9) of the Street Offences Act 1959

²⁹² This note is contained within the CPR.

3.1.5.12. Assistance given by an informant

Application to review sentence because of assistance given or withheld

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.11(1) This rule applies where the Crown Court can reduce or increase a sentence on application by a prosecutor in a case in which—

- (a) since being sentenced, the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence; or
- (b) since receiving a reduced sentence for agreeing to give such assistance, the defendant has failed to do so.

rule.28.11(2) A prosecutor who wants the court to exercise that power must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) the defendant; and
- (c) in the application—
 - (i) explain why the sentence should be reduced, or increased, as appropriate, and
 - (ii) identify any other matter relevant to the court's decision, including any sentencing guideline or guideline case.

rule.28.11(3) The general rule is that the application must be determined by the judge who passed the sentence, unless that judge is unavailable.

rule.28.11(4) The court must not determine the application in the defendant's absence unless the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

*Note.*²⁹³ *Under section 73 of the Serious Organised Crime and Police Act 2005(1), the Crown Court may pass a lesser sentence than it otherwise would have passed because the defendant has assisted, or has agreed to assist, an investigator or prosecutor in relation to an offence.*

Under section 74 of the 2005 Act(2), where the Crown Court has sentenced a defendant a prosecutor may apply to the court—

- (a) *to reduce the sentence, if the defendant subsequently assists, or agrees to assist, in the investigation or prosecution of an offence; or*
- (b) *to increase a reduced sentence to that which the court otherwise would have passed, if the defendant agreed to give such assistance but subsequently has knowingly failed to do so.*

Such an application may be made only where the defendant is still serving the sentence and the prosecutor thinks it is in the interests of justice to apply.

²⁹³ This note is contained within the CPR.

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3.2 Custodial penalties

3.2.1. General principles

3.2.1.1. General

Meaning of “custodial sentence”

PCC(S)A 2000 s.76²⁹⁴: Meaning of “custodial sentence”

- s.76(1) - in the PCC(S)A 2000 “custodial sentence” means:
- (a) a sentence of imprisonment (as to which, see s.89(1)(a) below);
 - (b) a sentence of detention under ss.90 or 91;
 - (bb) a sentence of detention for public protection under CJA 2003 s.226;
 - (bc) a sentence of detention under CJA 2003 s.226B or 228;
 - (c) a sentence of custody for life under PCC(S)A 2000 ss.93 or 94;
 - (d) a sentence of detention in a young offender institution (under s.96 or otherwise);
or
 - (e) a detention and training order (under s.100 below).
- s.76(2) - in s.76(1), “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence

3.2.1.2. Limits on imposing custodial sentences

Maximum sentence on indictment

PCC(S)A 2000 s.77²⁹⁵: Liability to imprisonment on conviction on indictment

- s.77 - Where a person is convicted on indictment of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted shall be liable to imprisonment for not more than two years

Maximum sentence in magistrates’ court

PCC(S)A 2000 s.78²⁹⁶: General limit on magistrates’ court’s power to impose imprisonment or detention in a young offender institution

- s.78(1) - a magistrates’ court shall not have power to impose imprisonment, or detention in a young offender institution, for more than six months in respect of any one offence
- s.78(2) - unless expressly excluded, subsec.(1) applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than six months

²⁹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

²⁹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

²⁹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.78(3) - subsec.(1) is without prejudice to MCA 1980 s.133 (consecutive terms of imprisonment)
- s.78(4) - any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine etc. is not limited by subsec.(1)
- s.78(4A) - supplementary to subsec.(4) re want of sufficient goods to satisfy a fine
- s.78(5) - definition of "fine": it includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation
- s.78(6) - definition of "impose imprisonment": it 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
- s.78(7) - MCA 1980 s.132 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court.

MCA 1980 s.32²⁹⁷: Penalties on summary conviction for offences triable either way

- s.32(1) - on summary conviction of any of the offences triable either way listed in Schedule 1 to this Act a person shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding the prescribed sum or both, except that—
 - (a) a magistrates' court shall not have power to impose imprisonment for an offence so listed if the Crown Court would not have that power in the case of an adult convicted of it on indictment.
- s.32(2) - for any offence triable either way which is not listed in Schedule 1 to this Act, being an offence under a relevant enactment, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the prescribed sum unless the offence is one for which by virtue of an enactment other than this subsection a larger fine may be imposed on summary conviction.
- s.32(3) - where, by virtue of any relevant enactment, a person summarily convicted of an offence triable either way would, apart from this section, be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (2) above shall apply irrespective of whether the conviction is a first, second or subsequent one.
- s.32(4) - subsection (2) above shall not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event.
- s.32(5) - subsection (2) above shall not apply on summary conviction of any of the following offences:—
 - (a) offences under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug;

²⁹⁷ Commencement: 6 July 1981, SI 1981/457 art.2.

- (b) offences under the following provisions of that Act, where the controlled drug in relation to which the offence was committed was a Class C drug, namely—
 - (i) section 4(2) (production, or being concerned in the production, of a controlled drug);
 - (ii) section 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another);
 - (iii) section 5(3) (having possession of a controlled drug with intent to supply it to another);
 - (iv) section 8 (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there);
 - (v) section 12(6) (contravention of direction prohibiting practitioner etc. from possessing, supplying etc. controlled drugs); or
 - (vi) section 13(3) (contravention of direction prohibiting practitioner etc. from prescribing, supplying etc. controlled drugs).

s.32(6) - where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence—

- (a) subsection (2) above shall not affect that power or override any restriction imposed in the exercise of that power; and
- (b) the amount to which that fine may be restricted in the exercise of that power shall be any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed.

s.32(8) - in subsection (5) above “*controlled drug*”, “*Class B drug*” and “*Class C drug*” have the same meaning as in the Misuse of Drugs Act 1971.

s.32(9) - in this section—

“*fine*” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;

“*the prescribed sum*” means £5,000 or such sum as is for the time being substituted in this definition by an order in force under section 143(1) below;

“*relevant enactment*” means an enactment contained in the Criminal Law Act 1977 or in any Act passed before, or in the same Session as, that Act.

s.32(10) - Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates’ court) makes provision that affects the application of this section.

MCA 1980 Sch.1²⁹⁸: Offences triable either way by virtue of section 17

Note: The list of offences is not reproduced here.

Note: CJA 2003 s.154 (not in force) concerns the general limit on magistrates’ courts power to impose imprisonment.

²⁹⁸ Commencement: 6 July 1981, SI 1981/457 art.2.

Minimum sentence in magistrates' court

PCC(S)A 2000 s.78²⁹⁹: General limit on magistrates' court's power to impose imprisonment or detention in a young offender institution

- s.78(7) - MCA 1980 s.132 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court

MCA 1980 s.132³⁰⁰: Minimum term

- s.132 - a magistrates' court shall not impose imprisonment for less than five days

Magistrates' Court may impose sentence less than the specified maximum

MCA 1980 s.34³⁰¹: Mitigation of penalties, etc.

- s.34(1) - where under any enactment whether passed before or after the commencement of this Act a magistrates' court has power to sentence an offender to imprisonment for a period specified by the enactment, or to a fine of an amount specified by the enactment, then, except where an Act passed after 31st December 1879 expressly provides to the contrary, the court may sentence him to imprisonment for less than that period or, as the case may be, to a fine of less than that amount.
- s.34(2) - where under any such enactment an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognizance with or without sureties to keep the peace or observe any other condition, the court convicting him may dispense with or modify the requirement.
- s.34(3) - where under any such enactment a magistrates' court has power to sentence an offender to imprisonment or other detention but not to a fine, then, except where an Act passed after 31st December 1879 expressly provides to the contrary, the court may, instead of sentencing him to imprisonment or other detention, impose a fine which—
- (a) for an offence triable either way, shall not exceed the prescribed sum within the meaning of section 32 above; and
 - (b) for a summary offence, shall—
 - (i) not exceed level 3 on the standard scale; and
 - (ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.

Detention in court house etc.

MCA 1980 s.135³⁰²: Detention of offender for one day in court-house or police station

- s.135(1) - a magistrates' court that has power to commit to prison a person convicted of an offence, or would have that power but for section 82 or 88 above, may order him to be detained within the precincts of the court-house or at any police station until such hour,

²⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁰⁰ Commencement: 6 July 1981, SI 1981/457 art.2

³⁰¹ Commencement: 6 July 1981, SI 1981/457 art.2

³⁰² Commencement: 6 July 1981, SI 1981/457 art.2

not later than 8 o'clock in the evening of the day on which the order is made, as the court may direct, and, if it does so, shall not, where it has power to commit him to prison, exercise that power.

- s.135(2) - a court shall not make such an order under this section as will deprive the offender of a reasonable opportunity of returning to his abode on the day of the order.
- s.135(3) - this section shall have effect in relation to a person aged 18 or over but less than 21 as if references in it to prison were references to detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention of persons aged 18 to 20 for default).

Conspiracy cases

CLA 1977 s.3³⁰³: Penalties for conspiracy

- s.3(1) - a person guilty by virtue of section 1 above of conspiracy to commit any offence or offences shall be liable on conviction on indictment—
- (a) in a case falling within subsection (2) or (3) below, to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to below in this section as the relevant offence or offences); and
 - (b) in any other case, to a fine.

Paragraph (b) above shall not be taken as prejudicing the application of section 163 of the Criminal Justice Act 2003 (general power of court to fine offender convicted on indictment) in a case falling within subsection (2) or (3) below.

- s.3(2) - where the relevant offence or any of the relevant offences is an offence of any of the following descriptions, that is to say—
- (a) murder, or any other offence the sentence for which is fixed by law;
 - (b) an offence for which a sentence extending to imprisonment for life is provided; or
 - (c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided,
- the person convicted shall be liable to imprisonment for life.

- s.3(3) - where in a case other than one to which subsection (2) above applies the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

In the case of an offence triable either way the references above in this subsection to the maximum term provided for that offence are references to the maximum term so provided on conviction on indictment.

³⁰³ Commencement: 1 December 1977, SI 1977/1682 art.2 and Sch.1 para.1.

Attempts

CAA 1981 s.4³⁰⁴: Trial and penalties

- s.4(1) - a person guilty by virtue of section 1 above of attempting to commit an offence shall—
- (a) if the offence attempted is murder or any other offence the sentence for which is fixed by law, be liable on conviction on indictment to imprisonment for life; and
 - (b) if the offence attempted is indictable but does not fall within paragraph (a) above, be liable on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence; and
 - (c) if the offence attempted is triable either way, or is low-value shoplifting (which is defined in, and is triable only summarily by virtue of, section 22A of the Magistrates' Courts Act 1980), be liable on summary conviction to any penalty to which he would have been liable on summary conviction of that offence.
- [...]
- s.4(5) - subsection (1) above shall have effect—
- (b) notwithstanding anything—
 - (i) in section 32(1) (no limit to fine on conviction on indictment) of the Criminal Law Act 1977; or
 - (ii) in section 78(1) and (2) (maximum of six months' imprisonment on summary conviction unless express provision made to the contrary) of the Powers of Criminal Courts (Sentencing) Act 2000.

3.2.1.3. Consecutive sentences

MCA 1980 s.133³⁰⁵: Consecutive sentences

- s.133(1) - subject to CJA 2003 s.265 (restriction on consecutive sentences for released prisoners), a magistrates' court imposing imprisonment may order that the term of imprisonment shall commence on the expiration of any other term of imprisonment imposed by that or any other court; but where a magistrates' court imposes two or more terms of imprisonment to run consecutively, the aggregate may not, subject to the provisions of MCA 1980 s.133, exceed 6 months
- s.133(2) - if two or more of the terms imposed are imposed in respect of an offence triable either way which was tried summarily (otherwise than in pursuance of MCA 1980 s.22(2) (certain offences triable either way to be tried summarily if value involved is small)), the aggregate of the terms and any other terms imposed by the court may exceed 6 months but may not, subject to the following provisions of MCA 1980 s.133, exceed 12 months
- s.133(2A) - in relation to the imposition of terms of detention in a young offender institution, MCA 1980 s.133(2) shall have effect as if the reference to an offence triable either way were a reference to such an offence or an offence triable only on indictment

³⁰⁴ Commencement: 27 August 1981, CAA 1981 s.11(1).

³⁰⁵ Commencement: 6 July 1981, SI 1981/457 art.2

- s.133(3) - the limitations imposed by MCA 1980 s.133(1)-(2A) shall not operate to reduce the aggregate of the terms that the court may impose in respect of any offences below the term which the court has power to impose in respect of any one of those offences
- s.133(4) - where a person has been sentenced by a magistrates' court to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine etc., shall not be subject to the limitations imposed by MCA 1980 s.133(1)-(3)
- s.133(5) - for the purposes of MCA 1980 s.133, a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction etc.

CJA 2003 s.265³⁰⁶: Restriction on consecutive sentences for released prisoners

- s.265(1) - a court sentencing a person to a term of imprisonment may not order the term to commence on the expiry of any other sentence of imprisonment from which he has been released: (a) under CJA 2003 Part 12 Chapter 6; or (b) under Criminal Justice Act 1991 Part 2
- s.265(2) - definition of "imprisonment": includes PCC(S)A 2000 ss.91 and 96, CJA 2003 ss.227, 228, 226A, 226B

Note: CJA 2003 ss.154 and 155 (concerning the general limit on magistrates' courts power to impose imprisonment) are not currently in force.

3.2.1.4. Sentence start date

Sentences cannot be backdated

PCC(S)A 2000 s.154³⁰⁷: Commencement of Crown Court sentence

- s.154(1) - a sentence imposed...by the Crown Court when dealing with a defendant shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs

R. v Gilbert [1974] 60 Cr. App. R. 220

Having reviewed the predecessor to PCC(S)A 2000 s.154, the court concluded that there was not, nor had there ever been, a power to order that a sentence should commence at a time earlier than the date upon which it was pronounced.

³⁰⁶ Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. In force 4 April 2005 otherwise, SI 2005/950 art.2(1) and Sch.1 para.19.

³⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.2.1.5. Legal representation

Legal representation

PCC(S)A 2000 s.83³⁰⁸: Restriction on imposing custodial sentences on persons not legally represented

- s.83(1) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who (a) is not legally represented in that court, and (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom, subsection (3) applies
- s.83(2) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not: (a) pass a sentence of detention under section 90 or 91, (b) pass a sentence of custody for life under section 93 or 94, (c) pass a sentence of detention in a young offender institution, or (d) impose a detention and training order, on a person who is not legally represented in that court unless subsection (3) applies
- s.83(3) - this subsection applies if either: (a) representation was made available for the purposes of the proceedings under LASPOA 2012 Part 1 but was withdrawn because of his conduct or because it appeared that his financial resources were such that he was not eligible; (aa) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible; or (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply
- s.83(4) - for the purposes of PCC(S)A 2000 s.83 a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced
- s.83(5) - for the purposes of s.83(1)(b) a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded³⁰⁹
- s.83(6) - in s.83 "*sentence of imprisonment*" does not include a committal for contempt of court or any kindred offence

CJA 2003 s.189³¹⁰: Suspended sentences of imprisonment

- s.189(6) - subject to any provision to the contrary contained in the CJA 1967, PCC(S)A 2000 or any other enactment passed or instrument made under any enactment after 31 December 1967, a suspended sentence which has not taken effect under CJA 2003 Sch.12 para.8 is to be treated as a sentence of imprisonment or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for the purposes of all enactments and instruments made under enactments

³⁰⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁰⁹ Note that this subsection has not been amended to include a suspended sentence order under CJA 2003.

³¹⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.9. The commencement is of no effect in relation to offences committed prior to the commencement date, SI 2005/950 Sch.2 para.5(2)(a).

3.2.1.6. Imposing a custodial sentence

Offence must be so serious that a fine or community order cannot be justified

CJA 2003 s.152³¹¹: General restrictions on imposing discretionary custodial sentences

- s.152(1) - application of section: a person is convicted of an offence punishable with imprisonment other than one: (a) fixed by law, or (b) falling to be imposed under a provision mentioned in subsection (1A).
- s.152(1A) - the provisions referred to in subsection (1)(b) are—
- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
 - (b) section 51A(2) of the Firearms Act 1968;
 - (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
 - (d) section 110(2) or 111(2) of the Sentencing Act;
 - (e) section 224A, 225(2) or 226(2) of this Act;
 - (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.
- s.152(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
- s.152(3) - exceptions: nothing in s.152(2) prevents a court from imposing a custodial sentence 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)

Custodial sentence must be for the shortest period

CJA 2003 s.153³¹²: Length of discretionary custodial sentences: general provision

- s.153(1) - this section applies where a court passes a custodial sentence other than one fixed by law or imposed under section 224A, 225 or 226.
- s.153(2) - subject to the provisions listed in subsection (3), 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.
- s.153(3) - the provisions referred to in subsection (2) are—
- (a) sections 1(2B) and 1A(5) of the Prevention of Crime Act 1953;
 - (b) section 51A(2) of the Firearms Act 1968;
 - (c) sections 139(6B), 139A(5B) and 139AA(7) of the Criminal Justice Act 1988;
 - (d) sections 110(2) and 111(2) of the Sentencing Act;

³¹¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to an offence committed prior to the commencement date, SI 2005/950 Sch.2 para.5(2)(a).

³¹² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to an offence committed prior to the commencement date, SI 2005/950 Sch.2 para.5(2)(a).

- (e) sections 226A(4) and 226B(2) of this Act;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

Duty to take account of all information

CJA 2003 s.156³¹³: Pre-sentence reports and other requirements

- s.156(1) - in forming any such opinion as is mentioned in section 148(1) or (2)(b), section 152(2) or section 153(2), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering), 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.
- s.156(9) - references in subsections (1) and (3) to a court forming the opinions mentioned in sections 152(2) and 153(2) include a court forming those opinions for the purposes of section 224A(3).
- s.156(10) - the reference in subsection (1) to a court forming the opinion mentioned in section 153(2) includes a court forming that opinion for the purposes of section 226A(6) or 226B(4).

3.2.1.7. Interaction with other sentencing orders

Criminal Behaviour Orders

R. v P [2004] EWCA Crim 287; [2004] 2 Cr. App. R. (S.) 63 (p.343)

Where custodial sentences in excess of a few months are imposed and offenders are able to be released on licence, circumstances in which there is a demonstrable need to make an ASBO are likely to be limited.

Note: The similarity between ASBOs and the new Criminal Behaviour Order make it very likely much of the caselaw will continue to apply. For that reason, this case has been listed under 'Criminal Behaviour Order'.

Compensation orders

TICs and Totality Guideline, Sentencing Council p.16

A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

Costs

Practice Direction (Costs in Criminal Proceedings) Amendment No.2 2015 para 3.4

The order is not intended to be in the nature of a penalty which can only be satisfied on the defendant's release from prison.

³¹³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

Fines

TICs and Totality Guideline, Sentencing Council p.13

A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:

- the sentence is suspended;
- a confiscation order is not contemplated; and
- there is no obvious victim to whom compensation can be awarded; and
- the offender has, or will have, resources from which a fine can be paid.

Magistrates' Court Sentencing Guidelines, Sentencing Guidelines Council p.152

A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.

Care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.

Hospital/Guardianship order

Mental Health Act 1983 s.37³¹⁴: Powers of courts to order hospital admission or guardianship

s.37(8) - where a hospital or guardianship order is made under s.37, the court shall not: (a) impose a sentence of imprisonment ... in respect of the offence ... but the court may make any other order which it has power to make apart from s.37; and for the purposes of s.37(8) "sentence of imprisonment" includes any sentence or order for detention.

Prison in default

PCC(S)A 2000 s.139³¹⁵: Powers and duties of Crown Court in relation to fines and forfeited recognizances

s.139(5) - where any person liable for the payment of a fine or a sum due under a recognizance ... is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment or detention in a young offender institution etc., the court may order that any prison in default term shall not begin to run until after the end of the first-mentioned term

³¹⁴ Commencement: 30 September 1983, MHA 1983 s.149(2)

³¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.2. Adults

3.2.2.1. Determinate custodial sentences

3.2.2.1.1 Imprisonment

3.2.2.1.1.1 Availability

PCC(S)A 2000 s.89³¹⁶: Restriction on imposing imprisonment on persons under 21

s.89(1) - subject to s.189(2), no court shall:

- (a) pass a sentence of imprisonment on a person for an offence if he is aged under 21 when convicted; or
- (b) commit a person aged under 21 to prison for any reason

s.89(2) - nothing in s.89(1) prevents the committal to prison of a person aged under 21 who is:

- (a) remanded in custody;
- (b) committed in custody for sentence; or
- (c) sent in custody for trial under CDA 1998 s.51 or 51A

3.2.2.1.1.2 Interaction with other sentencing orders

Detention in Young Offender Institution

PCC(S)A 2000 s.97³¹⁷: Term of detention in a young offender institution, and consecutive sentences

s.97(5) - subject to PCC(S)A 2000 s.84 (restriction on consecutive sentences for released prisoners), where a defendant who:

- (a) is serving a sentence of detention in a young offender institution, and
- (b) is aged 21 or over,

is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution

Suspended sentence order

R. v Butters and Fitzgerald (1971) 55 Cr. App. R. 515

The offender had been made subject to immediate and suspended sentences of imprisonment at the same time. The Court of Appeal held that that was undesirable as a matter of sentencing practice, notwithstanding that there was no statutory bar to so doing. In general, courts should avoid mixing sentences which fall into different categories.

³¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³¹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.2.1.2 Detention in a young offender institution

3.2.2.1.2.1 Availability and power to impose

PCC(S)A 2000 s.96³¹⁸: Detention in a young offender institution for other cases where offender at least 18 but under 21

- s.96 - subject to PCC(S)A 2000 ss.90 (detention during HM's Pleasure) , 93 (duty to impose custody for life) and 94 (power to impose custody for life), where:
- (a) a person aged at least 18 but under 21 is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
 - (b) the court is of the opinion that either or both of PCC(S)A 2000 s.79(2)(a) and (b) (general restrictions on imposing discretionary custodial sentences: repealed) apply or the case falls within PCC(S)A 2000 s.79(3) (general restrictions on imposing discretionary custodial sentences: repealed), the sentence that the court is to pass is a sentence of detention in a young offender institution.

Maximum term

PCC(S)A 2000 s.97³¹⁹: Term of detention in a young offender institution, and consecutive sentences

- s.97(1) - the maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence

Minimum term

PCC(S)A 2000 s.97³²⁰: Term of detention in a young offender institution, and consecutive sentences

- s.97(2) - a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days

Note: Section 97 was amended by CJA 2015 s.15 on 13 April 2015 to omit subsection (3).

3.2.2.1.2.2 Consecutive sentences

PCC(S)A 2000 s.97³²¹: Term of detention in a young offender institution, and consecutive sentences

- s.97(4) - where: (a) a defendant is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution, or (b) a defendant who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,
- the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment

³¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.2.1.2.3 Place of detention

PCC(S)A 2000 s.98³²²: Detention in a young offender institution: Place of detention

- (1) subject to Prison Act 1952 s.22(2)(b) (removal to hospital etc.), a defendant sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under PCC(S)A 2000 s.98(2) is in force in relation to him.
- (2) the Secretary of State may from time to time direct that a defendant sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution.

3.2.2.1.2.4 Interaction with other sentencing orders

PCC(S)A 2000 s.97³²³: Term of detention in a young offender institution, and consecutive sentences

- s.97(5) - subject to PCC(S)A 2000 s.84 (restriction on consecutive sentences for released prisoners), where a defendant who:
- (a) is serving a sentence of detention in a young offender institution, and
 - (b) is aged 21 or over,
- is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution

3.2.2.1.3 Suspended sentence orders

3.2.2.1.3.1 Making the order

CJA 2003 s.189³²⁴: Suspended sentences of imprisonment

- s.189(1) - if a court passes a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for a term of least 14 days but not more than 2 years, it may make an order providing that the sentence of imprisonment or detention in a young offender institution is not to take effect unless—
- (a) during a period specified in the order for the purposes of this paragraph (“the operational period”) the offender commits another offence in the United Kingdom (whether or not punishable with imprisonment), and
 - (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- s.189(1A) - an order under subsection (1) may also provide that the offender must comply during a period specified in the order for the purposes of this subsection (“the supervision period”) with one or more requirements falling within section 190(1) and specified in the order.

³²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²⁴ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

- s.189(1B) - where an order under subsection (1) contains provision under subsection (1A), it must provide that the sentence of imprisonment or detention in a young offender institution will also take effect if—
- (a) during the supervision period the offender fails to comply with a requirement imposed under subsection (1A), and
 - (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- s.189(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 2 years.
- s.189(3) - the supervision period (if any) 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.
- s.189(4) - where an order under subsection (1) imposes one or more community requirements, the supervision period must not end later than the operational period.
- s.189(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.
- s.189(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 or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for the purposes of all enactments and instruments made under enactments.
- s.189(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 (1A).

3.2.2.1.3.2 Requirements

CJA 2003 s.190³²⁵: Imposition of requirements by suspended sentence order

- s.190(1) - the requirements falling within this subsection are—
- (a) an unpaid work requirement (as defined by section 199),
 - (aa) a rehabilitation activity requirement (as defined by section 200A),
 - (c) a programme requirement (as defined by section 202),
 - (d) a prohibited activity requirement (as defined by section 203),

³²⁵ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

- (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),
- (ga) a foreign travel prohibition requirement (as defined by section 206A),
- (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),
- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

s.190(2) - Section 189(1A) 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),
- (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).

s.190(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.

s.190(4) - where the court makes a suspended sentence order imposing an unpaid work requirement, a rehabilitation activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a foreign travel prohibition requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment 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).

s.190(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.

Note: There is a modified version of this section in force in relation to the south London justice area, see SI 2014/1777 as amended by SIs 2015/1480 and 2015/1482

Note: For the details of the requirements, see the community orders section.

3.2.2.1.3.3 Reviews of suspended sentence orders

CJA 2003 s.191³²⁶: Power to provide for review of suspended sentence order

- s.191(1) - a suspended sentence order that imposes one or more community requirements 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 an officer of a provider of probation services 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.
- s.191(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).
- s.191(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.
- s.191(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.
- s.191(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.

CJA 2003 s.192³²⁷: Periodic reviews of suspended sentence order

- s.192(1) - at a review hearing (within the meaning of subsection (1) of section 191) the court may, after considering the officer’s report referred to in that subsection (“the review officer’s report”), amend the community requirements of the suspended sentence order, or any provision of the order which relates to those requirements.
- s.192(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,

³²⁶ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

³²⁷ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

- (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.

s.192(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.

s.192(4) - if before a review hearing is held at any review the court, after considering the review 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.

s.192(5) - if at a review held without a hearing the court, after considering the review 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.

s.192(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.

s.192(7) - at a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 191(1).

s.192(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.

3.2.2.1.3.4 Breach

CJA 2003 s.193³²⁸: Breach, revocation or amendment of suspended sentence order, and effect of further conviction

s.193 - 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.

³²⁸ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

Interpretation

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1 - in this Schedule—

“the offender”, in relation to a suspended sentence order, means the person in respect of whom the order is made;

“the local justice area concerned”, in relation to a suspended sentence order, means the local justice area for the time being specified in the order;

“the responsible officer” has the meaning given by section 197.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1A(1) - in this Schedule *“enforcement officer”* means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

para.1A(2) - an enforcement officer must be an officer of a provider of probation services that is a public sector provider.

para.1A(3) - in sub-paragraph (2) *“public sector provider”* means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.2 - in this Schedule—

- (a) any reference to a suspended sentence order being subject to review is a reference to such an order being subject to review in accordance with section 191(1)(b) or to a drug rehabilitation requirement of such an order being subject to review in accordance with section 210(1)(b);
- (b) any reference to the court responsible for a suspended sentence order which is subject to review is to be construed in accordance with section 191(3) or, as the case may be, 210(2).

Orders made on appeal

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.3 - where a suspended sentence order is made on appeal it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

Duty to give warning in relation to community requirement

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.4(1) - if the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the community requirements of a suspended sentence order, the officer must give him a warning under this paragraph unless—
- (a) the offender has within the previous twelve months been given a warning under this paragraph in relation to a failure to comply with any of the community requirements of the order, or
 - (b) the officer refers the matter to an enforcement officer (see paragraph 5A).
- para.4(2) - a warning under this paragraph must—
- (a) describe the circumstances of the failure,
 - (b) state that the failure is unacceptable, and
 - (c) inform the offender that if within the next twelve months he again fails to comply with any requirement of the order, he will be liable to be brought before a court.
- para.4(3) - the responsible officer must, as soon as practicable after the warning has been given, record that fact.
- para.4(4) - in relation to any suspended sentence order which is made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1)(b) to a justice of the peace is to be read as a reference to the Crown Court.

Breach of order after warning

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.5(1) - if—
- (a) the responsible officer has given a warning under paragraph 4 to the offender in respect of a suspended sentence order, and
 - (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the community requirements of the order,
- the officer must refer the matter to an enforcement officer (see paragraph 5A).
- para.5(2) - in relation to any suspended sentence order which is made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

Role of enforcement officer

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.5A(1) - where a matter is referred to an enforcement officer under paragraph 4(1)(b) or 5(1), it is the duty of the enforcement officer to consider the case and, where appropriate, to cause an information to be laid before a justice of the peace in respect of the offender's failure to comply with the requirement.

para.5A(2) - in relation to any suspended sentence order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

Issue of summons or warrant by justice of the peace

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.6(1) - this paragraph applies to—

- (a) a suspended sentence order made by a magistrates' court, or
- (b) any suspended sentence order which was made by the Crown Court and includes a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court.

para.6(2) - if at any time while a suspended sentence order to which this paragraph applies is in force it appears on information to a justice of the peace that the offender has failed to comply with any of the community requirements of the order, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
- (b) if the information is in writing and on oath, issue a warrant for his arrest.

para.6(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

- (a) in the case of a suspended sentence order which is subject to review, before the court responsible for the order,
- (b) in any other case, before a magistrates' court acting in the local justice area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned.

para.6(4) - where a summons issued under sub-paragraph (2)(a) requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender.

Issue of summons or warrant by Crown Court

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.7(1) - this paragraph applies to a suspended sentence order made by the Crown Court which does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court.

- para.7(2) - if at any time while a suspended sentence order to which this paragraph applies is in force it appears on information to the Crown Court that the offender has failed to comply with any of the community requirements of the order, the Crown Court may—
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- para.7(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.
- para.7(4) - where a summons issued under sub-paragraph (1)(a) requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender.

Powers of court on breach of community requirement or conviction of further offence

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.8(1) - this paragraph applies where—
- (a) it is proved to the satisfaction of a court before which an offender appears or is brought under paragraph 6 or 7 or by virtue of section 192(6) that he has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order, or
 - (b) an offender is convicted of an offence committed during the operational period of a suspended sentence (other than one which has already taken effect) and either—
 - (i) he is so convicted by or before a court having power under paragraph 11 to deal with him in respect of the suspended sentence, or
 - (ii) he subsequently appears or is brought before such a court.
- para.8(2) - the court must consider his case and deal with him in one of the following ways—
- (a) the court may order that the suspended sentence is to take effect with its original term unaltered,
 - (b) the court may order that the sentence is to take effect with the substitution for the original term of a lesser term,
 - (ba) the court may order the offender to pay a fine of an amount not exceeding £2,500,
 - (c) in the case of a suspended sentence order that imposes one or more community requirements, the court may amend the order by doing any one or more of the following—
 - (i) imposing more onerous community requirements which the court could include if it were then making the order,
 - (ii) subject to subsections (3) and (4) of section 189, extending the supervision period, or
 - (iii) subject to subsection (3) of that section, extending the operational period.
 - (d) in the case of a suspended sentence order that does not impose any community requirements, the court may, subject to section 189(3), amend the order by extending the operational period.

- para.8(3) - the court must make an order under sub-paragraph (2)(a) or (b) unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the matters mentioned in sub-paragraph (4); and where it is of that opinion the court must state its reasons.
- para.8(4) - the matters referred to in sub-paragraph (3) are—
- (a) the extent to which the offender has complied with any community requirements of the suspended sentence order, and
 - (b) in a case falling within sub-paragraph (1)(b), the facts of the subsequent offence.
- para.8(4ZA) - a fine imposed under sub-paragraph (2)(ba) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- para.8(5) - where a court deals with an offender under sub-paragraph (2) in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.
- para.8(6) - where a suspended sentence order was made by the Crown Court and a magistrates' court would (apart from this sub-paragraph) be required to deal with the offender under sub-paragraph (2)(a), (b), (ba) or (c) it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- para.8(7) - a magistrates' court which deals with an offender's case under subparagraph (6) must send to the Crown Court—
- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the community requirements of the suspended sentence order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.
- para.8(8) - in proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with any community requirements of the suspended sentence order and any question whether the offender has been convicted of an offence committed during the operational period of the suspended sentence is to be determined by the court and not by the verdict of a jury.

Further provisions as to order that suspended sentence is to take effect

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.9(1) - when making an order under paragraph 8(2)(a) or (b) that a sentence is to take effect (with or without any variation of the original term), the court—
- (b) may order that the sentence is to take effect immediately or that the term of that sentence is to commence on the expiry of another term of imprisonment passed on the offender by that or another court.
- para.9(2) - the power to make an order under sub-paragraph (1)(b) has effect subject to section 265 (restriction on consecutive sentences for released prisoners).

- para.9(3) - for the purpose of any enactment conferring rights of appeal in criminal cases, each of the following orders—
- (a) an order made by the court under paragraph 8(2)(a) or (b);
 - (b) an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when making an order described in paragraph (a),
- is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Restriction of powers in paragraph 8 where treatment required

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.10(1) - an offender who is required by any of the following community requirements of a suspended sentence order—
- (a) a mental health treatment requirement,
 - (b) a drug rehabilitation requirement, or
 - (c) an alcohol treatment requirement,
- to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for the purposes of paragraph 8(1)(a) as having failed to comply with that requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- para.10(2) - a court may not under paragraph 8(2)(c)(i) 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.

Court by which suspended sentence may be dealt with under paragraph 8(1)(b)

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.11(1) - an offender may be dealt with under paragraph 8(1)(b) in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought.
- para.11(2) - where an offender is convicted by a magistrates' court of any offence and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court—
- (a) the court may, if it thinks fit, commit him in custody or on bail to the Crown Court, and
 - (b) if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court.

Procedure where court convicting of further offence does not deal with suspended sentence

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.12(1) - if it appears to the Crown Court, where that court has jurisdiction in accordance with sub-paragraph (2), or to a justice of the peace having jurisdiction in accordance with that sub-paragraph—

- (a) that an offender has been convicted in the United Kingdom of an offence committed during the operational period of a suspended sentence, and
 - (b) that he has not been dealt with in respect of the suspended sentence,
- that court or justice may, subject to the following provisions of this paragraph, issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his arrest.

para.12(2) - jurisdiction for the purposes of sub-paragraph (1) may be exercised—

- (a) if the suspended sentence was passed by the Crown Court, by that court;
- (b) if it was passed by a magistrates' court, by a justice acting in the local justice area in which the court acted.

para.12(3) - where—

- (a) an offender is convicted in Scotland or Northern Ireland of an offence, and
- (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales,

the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed.

para.12(4) - unless he is acting in consequence of a notice under sub-paragraph (3), a justice of the peace may not issue a summons under this paragraph except on information and may not issue a warrant under this paragraph except on information in writing and on oath.

para.12(5) - a summons or warrant issued under this paragraph must direct the offender to appear or be brought before the court by which the suspended sentence was passed.

Power to amend amount of fine

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.12A(1) - the Secretary of State may by order amend the sum for the time being specified in paragraph 8(2)(ba).

para.12A(2) - the power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.

para.12A(3) - in sub-paragraph (2), "*the relevant date*" means—

- (a) if the sum specified in paragraph 8(2)(ba) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;

- (b) otherwise, the date on which section 69 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.

para.12A(4) - an order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any suspended sentence order made in respect of an offence committed before the fine amendment order comes into force.

3.2.2.1.3.5 Amendment of suspended sentence order

CJA 2003 s.193³²⁹: Breach, revocation or amendment of suspended sentence order, and effect of further conviction

s.193 - 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.

Interpretation

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1 - in this Schedule—

“*the offender*”, in relation to a suspended sentence order, means the person in respect of whom the order is made;

“*the local justice area concerned*”, in relation to a suspended sentence order, means the local justice area for the time being specified in the order;

“*the responsible officer*” has the meaning given by section 197.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1A(1) - in this Schedule “*enforcement officer*” means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

para.1A(2) - an enforcement officer must be an officer of a provider of probation services that is a public sector provider.

para.1A(3) - in sub-paragraph (2) “*public sector provider*” means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

³²⁹ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.2 - in this Schedule—

- (a) any reference to a suspended sentence order being subject to review is a reference to such an order being subject to review in accordance with section 191(1)(b) or to a drug rehabilitation requirement of such an order being subject to review in accordance with section 210(1)(b);
- (b) any reference to the court responsible for a suspended sentence order which is subject to review is to be construed in accordance with section 191(3) or, as the case may be, 210(2).

Orders made on appeal

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.3 - where a suspended sentence order is made on appeal it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

When does this part apply?

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.12B - this Part of this Schedule applies only in relation to a suspended sentence order that imposes one or more community requirements.

Power to cancel requirements due to change of circumstances

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.13(1) - where at any time while a suspended sentence order is in force, it appears to the appropriate court on the application of the offender or an officer of a provider of probation services that, having regard to the circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may cancel the community requirements of the suspended sentence order.

para.13(2) - the circumstances in which the appropriate court may exercise its power under subparagraph (1) include the offender's making good progress or his responding satisfactorily to supervision.

para.13(3) - in this paragraph "*the appropriate court*" means—

- (a) in the case of a suspended sentence order which is subject to review, the court responsible for the order,
- (b) in the case of a suspended sentence order which was made by the Crown Court and does not include any direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the Crown Court, and
- (c) in any other case, a magistrates' court acting in the local justice area concerned.

Change of residence etc.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.14(1) - this paragraph applies where at any time while a suspended sentence order is in force in respect of an offender—

- (a) the offender is given permission under section 220A to change residence, and
- (b) the local justice area in which the new residence is situated (“the new local justice area”) is different from the local justice area specified in the order.

para.14(2) - if the permission is given by a court, the court must amend the order to specify the new local justice area.

para.14(3) - the court may not amend under this paragraph a suspended sentence order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender resides in the local justice area concerned unless, in accordance with paragraph 15 it either—

- (a) cancels those requirements, or
- (b) substitutes for those requirements other requirements which can be complied with if the offender does not reside in that area.

para.14(4) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 13.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.14A(1) - this paragraph applies where at any time while a suspended sentence order is in force in respect of an offender—

- (a) a court amends the order,
- (b) the order as amended includes a residence requirement requiring the offender to reside at a specified place, and
- (c) the local justice area in which that place is situated (“the new local justice area”) is different from the local justice area specified in the order.

para.14A(2) - the court must amend the order to specify the new local justice area.

Note: Para.14A came into force on 1 February 2015, except as specified in SI 2015/40 art.2(p)(ii).

Power to cancel/amend/replace requirement

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.15(1) - at any time during the supervision period, the appropriate court may, on the application of the offender or an officer of a provider of probation services, by order amend any community requirement of a suspended sentence order—

- (a) by cancelling the requirement, or
- (b) by replacing it with a requirement of the same kind, which the court could include if it were then making the order.

para.15(2) - for the purposes of sub-paragraph (1)—

- (a) a requirement falling within any paragraph of section 190(1) is of the same kind as any other requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 190(1) to which it relates.

para.15(3) - the court may not under this paragraph 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.

para.15(4) - if the offender fails to express his willingness to comply with a mental health treatment requirement, drug rehabilitation requirement or alcohol treatment requirement as proposed to be amended by the court under this paragraph, the court may—

- (a) revoke the suspended sentence order and the suspended sentence to which it relates, and
- (b) deal with him, for the offence in respect of which the suspended sentence was imposed, in any way in which it could deal with him if he had just been convicted by or before the court of the offence.

para.15(5) - in dealing with the offender under sub-paragraph (4)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.

para.15(6) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 13.

Mental health, drugs and alcohol

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.16(1) - where the medical practitioner or other person by whom or under whose direction an offender is, in pursuance of any requirement to which this sub-paragraph applies, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol—

- (a) is of the opinion mentioned in sub-paragraph (3), or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he must make a report in writing to that effect to the responsible officer and that officer must [cause an application to be made]¹ under paragraph 15 to the appropriate court for the variation or cancellation of the requirement.

para.16(2) - the requirements to which sub-paragraph (1) applies are—

- (a) a mental health treatment requirement,
- (b) a drug rehabilitation requirement, and
- (c) an alcohol treatment requirement.

para.16(3) - the opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order,
- (b) that the offender needs different treatment,
- (c) that the offender is not susceptible to treatment, or

- (d) that the offender does not require further treatment.

para.16(4) - in this paragraph *“the appropriate court”* has the same meaning as in paragraph 13.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.17 - where an officer of a provider of probation services is of the opinion that a suspended sentence order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each periodic review (required by section 211) to be made without a hearing instead of at a review hearing, or vice versa, he must apply under paragraph 15 to the court responsible for the order for the variation of the order.

Unpaid work

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.18(1) - where—

- (a) a suspended sentence order imposing an unpaid work requirement is in force in respect of the offender, and
 - (b) on the application of the offender or an officer of a provider of probation services, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,
- the court may, in relation to the order, extend the period of twelve months specified in section 200(2).

para.18(2) - in this paragraph *“the appropriate court”* has the same meaning as in paragraph 13.

No amendment where appeal pending

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.19(1) - no application may be made under paragraph 13, 15 or 18 while an appeal against the suspended sentence is pending.

para.19(2) - sub-paragraph (1) does not apply to an application under paragraph 15 which—

- (a) relates to a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement, and
- (b) is made by an officer of a provider of probation services with the consent of the offender.

Procedure

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.20(1) - subject to sub-paragraph (2), where a court proposes to exercise its powers under paragraph 15, otherwise than on the application of the offender, the court—

- (a) must summon him to appear before the court, and
- (b) if he does not appear in answer to the summons, may issue a warrant for his arrest.

para.20(2) - this paragraph does not apply to an order cancelling any community requirement of a suspended sentence order.

para.21 - Paragraphs 8(2)(c) and 15(1)(b) have effect subject to the provisions mentioned in subsection (2) of section 190, and to subsections (3) and (5) of that section.

para.22(1) - on the making under this Schedule of an order amending a suspended sentence order, the proper officer of the court must—

- (a) provide copies of the amending order to the offender and the responsible officer,
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to—
 - (i) a provider of probation services that is a public sector provider operating in that area, and
 - (ii) the magistrates' court acting in that area, and
- (c) in the case of an amending order which imposes or amends a requirement specified in the first column of Schedule 14, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Schedule, and
- (d) where the court acts in a local justice area other than the one specified in the order prior to the revocation or amendment, provide a copy of the revoking or amending order to a magistrates' court acts in a local justice area so specified.

para.22(2) - where under sub-paragraph (1)(b) the proper officer of the court provides a copy of an amending order to a magistrates' court [acting in a different area, the officer must also provide to that court such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

para.22(3) - in this paragraph "*proper officer*" means—

- (a) in relation to a magistrates' court, the designated officer for the court; and
- (b) in relation to the Crown Court, the appropriate officer.

para.22(4) - in this paragraph "*public sector provider*" means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

3.2.2.1.3.6 Transfer of orders to Scotland or Northern Ireland

Note: CJA 2003 s.194 and Sch.13 sets out the provisions dealing with the transfer of orders. They are not reproduced here.

Note: CJA 2003 s.195 concerns the interpretation of Part 3 of the Act dealing with suspended sentence orders.

3.2.2.2. Extended sentences (EDS)

3.2.2.2.1 General

CJA 2003 s.226A³³⁰: Extended sentence for certain violent or sexual offences: persons 18 or over

What is an extended sentence?

CJA 2003 s.226A³³¹: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(5) - an extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of:

- (a) the appropriate custodial term, and
- (b) a further period (the “extension period”) for which the defendant is to be subject to a licence.

3.2.2.2.2 Availability and power to order

Availability and power to order

R. v Robson [2006] EWCA Crim 1414; [2007] 1 Cr. App. R. (S.) 54 (p.301)

As a matter of statutory construction, we conclude that the age of the offender for the purpose of determining which of the statutory regimes under Chapter 5 of Part 12 of the 2003 Act applies to him is the offender’s age at the date of conviction (Keith J, at [13])

CJA 2003 s.226A³³²: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(1) - application of section:

- (a) a person aged 18 or over is convicted of a specified offence (whether the offence was committed before or after the section came into force),
- (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences,
- (c) the court is not required by CJA 2003 ss.224A or 225(2) to impose a sentence of imprisonment for life, and
- (d) condition A or B is met

s.226A(4) - the court may impose an extended sentence of imprisonment on the defendant

³³⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³³¹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³³² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

CJA 2003 s.224³³³: Meaning of “specified offence”

s.224(1) - an offence is a “specified offence” for the purposes of CJA 2003 Part 12 Chapter 5 if it is a specified violent offence or a specified sexual offence

s.224(3) in CJA 2003 Part 12 Chapter 5:

“serious harm” means death or serious personal injury, whether physical or psychological;

“specified violent offence” means an offence specified in Part 1 of Schedule 15;

“specified sexual offence” means an offence specified in Part 2 of Schedule 15

CJA 2003 Sch.15³³⁴: Specified offences for the purposes of CJA 2003 Part 5 Chapter 12

Note: The schedule lists the offences for the purposes of the dangerous offender provisions. There are pending amendments to the schedule and some paragraphs are not yet in force. The Schedule was amended by SI 2015/778 art.3 and Sch.1 on 13 April 2015, SI 2015/820 reg.2(r)(ix) on 3 May 2015 and SI 2015/1476 reg.2(a) on 31 July 2015.

Specified violent offences

- 1 Manslaughter.
- 2 Kidnapping.
- 3 False imprisonment.
- 4 An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).
- 5 An offence under section 16 of that Act (threats to kill).
- 6 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 7 An offence under section 20 of that Act (malicious wounding).
- 8 An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).
- 9 An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).
- 10 An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).
- 11 An offence under section 27 of that Act (abandoning children).
- 12 An offence under section 28 of that Act (causing bodily injury by explosives).

³³³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 224 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.15

³³⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.37.

- 13 An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).
- 14 An offence under section 30 of that Act (placing explosives with intent to do bodily injury).
- 15 An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).
- 16 An offence under section 32 of that Act (endangering the safety of railway passengers).
- 17 An offence under section 35 of that Act (injuring persons by furious driving).
- 18 An offence under section 37 of that Act (assaulting officer preserving wreck).
- 19 An offence under section 38 of that Act (assault with intent to resist arrest).
- 20 An offence under section 47 of that Act (assault occasioning actual bodily harm).
- 21 An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).
- 22 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 22A An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).
- 23 An offence under section 1 of the Infant Life (Preservation) Act 1929 (c. 34) (child destruction).
- 24 An offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to children).
- 25 An offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide).
- 26 An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).
- 27 An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).
- 28 An offence under section 17(1) of that Act (use of firearm to resist arrest).
- 29 An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).
- 30 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 31 An offence under section 8 of the Theft Act 1968 (c. 60) (robbery or assault with intent to rob).
- 32 An offence under section 9 of that Act of burglary with intent to—
 - (a) inflict grievous bodily harm on a person, or
 - (b) do unlawful damage to a building or anything in it.
- 33 An offence under section 10 of that Act (aggravated burglary).

- 34 An offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.
- 35 An offence of arson under section 1 of the Criminal Damage Act 1971 (c. 48).
- 36 An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.
- 37 An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).
- 38 An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).
- 39 An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).
- 40 An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).
- 41 An offence under section 4 of that Act (offences in relation to certain dangerous articles).
- 42 An offence under section 127 of the Mental Health Act 1983 (c. 20) (ill-treatment of patients).
- 43 An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).
- 44 An offence under section 1 of the Public Order Act 1986 (c. 64) (riot).
- 45 An offence under section 2 of that Act (violent disorder).
- 46 An offence under section 3 of that Act (affray).
- 47 An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).
- 48 An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).
- 48A. An offence under section 3ZC of that Act (causing death by driving: disqualified drivers).
- 49 An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).
- 50 An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).
- 51 An offence under section 9 of that Act (hijacking of ships).
- 52 An offence under section 10 of that Act (seizing or exercising control of fixed platforms).
- 53 An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).
- 54 An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

- 55 An offence under section 13 of that Act (offences involving threats).
- 56 An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).
- 57 An offence under section 4 or 4A of the Protection from Harassment Act 1997 (c. 40) (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress)
- 58 An offence under section 29 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults).
- 59 An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (c. 64)).
- 59A An offence under section 54 of the Terrorism Act 2000 (weapons training).
- 59B An offence under section 56 of that Act (directing terrorist organisation).
- 59C An offence under section 57 of that Act (possession of article for terrorist purposes).
- 59D An offence under section 59 of that Act (inciting terrorism overseas).
- 60 An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.
- 60A An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
- 60B An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
- 60C An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
- 61 An offence under section 1 of the Female Genital Mutilation Act 2003 (c. 31) (female genital mutilation).
- 62 An offence under section 2 of that Act (assisting a girl to mutilate her own genitalia).
- 63 An offence under section 3 of that Act (assisting a non-UK person to mutilate overseas a girl's genitalia).
- 63A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm)
- 63B An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
- 63C An offence under section 6 of that Act (training for terrorism).
- 63D An offence under section 9 of that Act (making or possession of radioactive device or material).
- 63E An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).

- 63F An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc).
- 63G An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).
- 63H An offence under section 2 of that Act (human trafficking) which is not within Part 2 of this Schedule.
- 64 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Part of this Schedule.
- (2) An attempt to commit such an offence.
- (3) Conspiracy to commit such an offence.
- (4) Incitement to commit such an offence.
- (5) An offence under Part 2 of the Serious Crime Act 2007 in relation to which an offence specified in the preceding paragraphs of this Part of this Schedule is the offence (or one of the offences) which the person intended or believed would be committed.
- 65 (1) An attempt to commit murder.
- (2) Conspiracy to commit murder.
- (3) Incitement to commit murder.
- (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed.

Specified sexual offences

- 66 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 67 An offence under section 2 of that Act (procurement of woman by threats).
- 68 An offence under section 3 of that Act (procurement of woman by false pretences).
- 69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse).
- 70 An offence under section 5 of that Act (intercourse with girl under thirteen).
- 71 An offence under section 6 of that Act (intercourse with girl under 16).
- 72 An offence under section 7 of that Act (intercourse with a defective).
- 73 An offence under section 9 of that Act (procurement of a defective).
- 74 An offence under section 10 of that Act (incest by a man).
- 75 An offence under section 11 of that Act (incest by a woman).
- 76 An offence under section 14 of that Act (indecent assault on a woman).
- 77 An offence under section 15 of that Act (indecent assault on a man).
- 78 An offence under section 16 of that Act (assault with intent to commit buggery).

- 79 An offence under section 17 of that Act (abduction of woman by force or for the sake of her property).
- 80 An offence under section 19 of that Act (abduction of unmarried girl under eighteen from parent or guardian).
- 81 An offence under section 20 of that Act (abduction of unmarried girl under sixteen from parent or guardian).
- 82 An offence under section 21 of that Act (abduction of defective from parent or guardian).
- 83 An offence under section 22 of that Act (causing prostitution of women).
- 84 An offence under section 23 of that Act (procurement of girl under twenty-one).
- 85 An offence under section 24 of that Act (detention of woman in brothel).
- 86 An offence under section 25 of that Act (permitting girl under thirteen to use premises for intercourse).
- 87 An offence under section 26 of that Act (permitting girl under sixteen to use premises for intercourse).
- 88 An offence under section 27 of that Act (permitting defective to use premises for intercourse).
- 89 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under sixteen).
- 90 An offence under section 29 of that Act (causing or encouraging prostitution of defective).
- 91 An offence under section 32 of that Act (soliciting by men).
- 92A An offence under section 33A of that Act (keeping a brothel used for prostitution).
- 93 An offence under section 128 of the Mental Health Act 1959 (c. 72) (sexual intercourse with patients).
- 94 An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).
- 95 An offence under section 4 of the Sexual Offences Act 1967 (c. 60) (procuring others to commit homosexual acts).
- 96 An offence under section 5 of that Act (living on earnings of male prostitution).
- 97 An offence under section 9 of the Theft Act 1968 (c. 60) of burglary with intent to commit rape.
- 98 An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under sixteen to have incestuous sexual intercourse).
- 99 An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children).

- 100 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles).
- 101 An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child).
- 102 An offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape).
- 103 An offence under section 2 of that Act (assault by penetration).
- 104 An offence under section 3 of that Act (sexual assault).
- 105 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent).
- 106 An offence under section 5 of that Act (rape of a child under 13).
- 107 An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 108 An offence under section 7 of that Act (sexual assault of a child under 13).
- 109 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).
- 110 An offence under section 9 of that Act (sexual activity with a child).
- 111 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).
- 112 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).
- 113 An offence under section 12 of that Act (causing a child to watch a sexual act).
- 114 An offence under section 13 of that Act (child sex offences committed by children or young persons).
- 115 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).
- 116 An offence under section 15 of that Act (meeting a child following sexual grooming etc.).
- 117 An offence under section 16 of that Act (abuse of position of trust: sexual activity with a child).
- 118 An offence under section 17 of that Act (abuse of position of trust: causing or inciting a child to engage in sexual activity).
- 119 An offence under section 18 of that Act (abuse of position of trust: sexual activity in the presence of a child).
- 120 An offence under section 19 of that Act (abuse of position of trust: causing a child to watch a sexual act).
- 121 An offence under section 25 of that Act (sexual activity with a child family member).

- 122 An offence under section 26 of that Act (inciting a child family member to engage in sexual activity).
- 123 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice).
- 124 An offence under section 31 of that Act (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity).
- 125 An offence under section 32 of that Act (engaging in sexual activity in the presence of a person with a mental disorder impeding choice).
- 126 An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act).
- 127 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder).
- 128 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception).
- 129 An offence under section 36 of that Act (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder).
- 130 An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception).
- 131 An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder).
- 132 An offence under section 39 of that Act (care workers: causing or inciting sexual activity).
- 133 An offence under section 40 of that Act (care workers: sexual activity in the presence of a person with a mental disorder).
- 134 An offence under section 41 of that Act (care workers: causing a person with a mental disorder to watch a sexual act).
- 135 An offence under section 47 of that Act (paying for sexual services of a child).
- 136 An offence under section 48 of that Act (causing or inciting sexual exploitation of a child or pornography).
- 137 An offence under section 49 of that Act (controlling a child in relation to sexual exploitation).
- 138 An offence under section 50 of that Act (arranging or facilitating sexual exploitation of a child).
- 139 An offence under section 52 of that Act (causing or inciting prostitution for gain).
- 140 An offence under section 53 of that Act (controlling prostitution for gain).
- 141 An offence under section 57 of that Act (trafficking into the UK for sexual exploitation).
- 142 An offence under section 58 of that Act (trafficking within the UK for sexual exploitation).

- 143 An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation).
- 143A An offence under section 59A of that Act (trafficking for sexual exploitation).
- 144 An offence under section 61 of that Act (administering a substance with intent).
- 145 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence).
- 146 An offence under section 63 of that Act (trespass with intent to commit a sexual offence).
- 147 An offence under section 64 of that Act (sex with an adult relative: penetration).
- 148 An offence under section 65 of that Act (sex with an adult relative: consenting to penetration).
- 149 An offence under section 66 of that Act (exposure).
- 150 An offence under section 67 of that Act (voyeurism).
- 151 An offence under section 69 of that Act (intercourse with an animal).
- 152 An offence under section 70 of that Act (sexual penetration of a corpse).
- 152A An offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).
- 153 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in this Part of this Schedule.
- (2) An attempt to commit such an offence.
- (3) Conspiracy to commit such an offence.
- (4) Incitement to commit such an offence.
- (5) An offence under Part 2 of the Serious Crime Act 2007 in relation to which an offence specified in this Part of this Schedule is the offence (or one of the offences) which the person intended or believed would be committed.

The assessment of dangerousness

CJA 2003 s.229³³⁵: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

³³⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

Pre-sentence report

CJA 2003 s.156³³⁶: Pre-sentence reports and other requirements

s.156(3) - subject to CJA s.156(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 CJA 2003 ss.152(2), 153(2) [...] or 226A(1)(b) [...]

s.156(4) - CJA 2003 s.156(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

The conditions which must be satisfied

CJA 2003 s.226A³³⁷: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(2) - condition A is that, at the time the offence was committed, the defendant had been convicted of an offence listed in Schedule 15B

s.226A(3) - condition B is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least four years

Note: As to the requirement that the custodial term be at least four years, see R. v Pinnell [2010] EWCA Crim 2848; [2011] 2 Cr. App. R. (S.) 30 (p.168) and the way in which it was applied in R. v S [2014] EWCA Crim 968. See also the TICs and Totality Guideline (Sentencing Council) p.10.

CJA 2003 Sch.15B: Offences listed for the purposes of ss.224A, 226A and 246A

Note: The schedule lists the offences for the purposes of ss.224A, 226A and 246A. There are pending amendments to the schedule and some paragraphs are not yet in force. The Schedule was amended by SI 2015/778 art.3 and Sch.1 on 13 April 2015 SI 2015/820 reg.2(r)(x) on 3 May 2015 and SI 2015/1476 reg2(a) on 31 July 2015.

³³⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

³³⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

Part 1

- 1 Manslaughter.
- 2 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).
- 3 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 3A An offence under section 28 of that Act (causing bodily injury by explosives).
- 3B An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm).
- 3C An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).
- 3D An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 3E An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).
- 4 An offence under section 16 of the Firearms Act 1968 (possession of a firearm with intent to endanger life).
- 5 An offence under section 17(1) of that Act (use of a firearm to resist arrest).
- 6 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 7 An offence of robbery under section 8 of the Theft Act 1968 where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.
- 8 An offence under section 1 of the Protection of Children Act 1978 (indecent images of children).
- 8A An offence under section 54 of the Terrorism Act 2000 (weapons training).
- 9 An offence under section 56 of that Act (directing terrorist organisation).
- 10 An offence under section 57 of that Act (possession of article for terrorist purposes).
- 11 An offence under section 59 of that Act (inciting terrorism overseas) if the offender is liable on conviction on indictment to imprisonment for life.
- 12 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
- 13 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
- 14 An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
- 15 An offence under section 1 of the Sexual Offences Act 2003 (rape).

- 16 An offence under section 2 of that Act (assault by penetration).
- 17 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if the offender is liable on conviction on indictment to imprisonment for life.
- 18 An offence under section 5 of that Act (rape of a child under 13).
- 19 An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 20 An offence under section 7 of that Act (sexual assault of a child under 13).
- 21 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).
- 22 An offence under section 9 of that Act (sexual activity with a child).
- 23 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).
- 24 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).
- 25 An offence under section 12 of that Act (causing a child to watch a sexual act).
- 26 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).
- 27 An offence under section 15 of that Act (meeting a child following sexual grooming etc).
- 28 An offence under section 25 of that Act (sexual activity with a child family member) if the offender is aged 18 or over at the time of the offence.
- 29 An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if the offender is aged 18 or over at the time of the offence.
- 30 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if the offender is liable on conviction on indictment to imprisonment for life.
- 31 An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender is liable on conviction on indictment to imprisonment for life.
- 32 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender is liable on conviction on indictment to imprisonment for life.
- 33 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc) if the offender is liable on conviction on indictment to imprisonment for life.
- 34 An offence under section 47 of that Act (paying for sexual services of a child) against a person aged under 16.
- 35 An offence under section 48 of that Act (causing or inciting sexual exploitation of a child)

- 36 An offence under section 49 of that Act (controlling a child in relation to sexual exploitation)
- 37 An offence under section 50 of that Act (arranging or facilitating sexual exploitation of a child)
- 38 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) if the offender is liable on conviction on indictment to imprisonment for life.
- 39 An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).
- 40 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
- 40A An offence under section 6 of that Act (training for terrorism).
- 41 An offence under section 9 of that Act (making or possession of radioactive device or materials).
- 42 An offence under section 10 of that Act (misuse of radioactive devices or material and misuse and damage of facilities).
- 43 An offence under section 11 of that Act (terrorist threats relating to radioactive devices, materials or facilities).
- 44 (1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule (“a listed offence”) or murder.
- (2) Conspiracy to commit a listed offence or murder.
- (3) Incitement to commit a listed offence or murder.
- (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a listed offence or murder is the offence (or one of the offences) which the person intended or believed would be committed.
- (5) Aiding, abetting, counselling or procuring the commission of a listed offence.
- 43A An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).
- 43B An offence under section 2 of that Act (human trafficking).

Part 2

- 45 Murder.
- 46 (1) Any offence that—
- (a) was abolished (with or without savings) before the coming into force of this Schedule, and
- (b) would, if committed on the relevant day, have constituted an offence specified in Part 1 of this Schedule.
- (2) “Relevant day”, in relation to an offence, means—
- (a) for the purposes of this paragraph as it applies for the purposes of section 246A(2), the day on which the offender was convicted of that offence, and

- (b) for the purposes of this paragraph as it applies for the purposes of sections 224A(4) and 226A(2), the day on which the offender was convicted of the offence referred to in section 224A(1)(a) or 226A(1)(a) (as appropriate).

Part 3

[Service law - not included in this document]

Part 4

[Scots/NI/other member state law - not included in this document]

Part 5

50 In this Schedule “imprisonment for life” includes custody for life and detention for life.

3.2.2.2.3 Making the order

Determining the length of the custodial portion of the sentence

CJA 2003 s.226A³³⁸: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(6) - the appropriate custodial term is the term of imprisonment that would (apart from CJA 2003 s.226A) be imposed in compliance with CJA 2003 s.153(2)

Determining the length of the extended licence

CJA 2003 s.226A³³⁹: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(7) - the extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the defendant of further specified offences, subject to CJA 2003 s.226A(7A) to (9).

s.226A(7A) - the extension period must be at least 1 year.

s.226A(8) - the extension period must not exceed:

- (a) five years in the case of a specified violent offence, and
- (b) eight years in the case of a specified sexual offence.

³³⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³³⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

Length of total sentence may not exceed the maximum permitted for the offence

CJA 2003 s.226A³⁴⁰: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(9) - the term of an extended sentence of imprisonment imposed under this section in respect of an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

Consecutive sentences

Note: It is permissible to impose consecutive extended sentences but it is not desirable to do so, see e.g. R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13) and R. v Hibbert [2015] EWCA Crim 507.

Judge should give reasons for imposing an extended sentence

R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13)

In accordance with CJA 2003 s.174, sentencers should usually give reasons for all their conclusions, in particular a finding of dangerousness. Such an explanation should briefly identify the information which has been taken into account.

CJA 2003 s.174³⁴¹: Duty to give reasons for and to explain effect of sentence

s.174(1) - a court passing sentence on an offender has the duties in subsections (2) [...]

s.174(2) - the court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence

³⁴⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³⁴¹ Commencement: Section 174(4) in force 5 April 2005, SI 2004/829 art.2(2)(e). Section 174(1)-(3)(b) and (5)-(6) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

3.2.2.2.4 Offences committed before 5 April 2005 etc.

Offences which have been abolished/were committed prior to 5 April 2005

CJA 2003 s.226A³⁴²: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(10) - “specified offence”: in subsections (1)(a) and (8), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that:

- (a) was abolished before 4 April 2005, and
- (b) would have constituted such an offence if committed on the day on which the defendant was convicted of the offence.

s.226A(11) - where the offence mentioned in subsection (1)(a) was committed before 4 April 2005:

- (a) subsection (1)(c) has effect as if the words “by section 224A or 225(2)” were omitted, and
- (b) subsection (6) has effect as if the words “in compliance with section 153(2)” were omitted.

3.2.2.2.5 Modification in case of offenders aged under 21

Offenders aged under 21

CJA 2003 s.226A³⁴³: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(12) - in the case of a person aged at least 18 but under 21, this section has effect as if:

- (a) the reference in subsection (1)(c) to imprisonment for life were to custody for life, and
- (b) other references to imprisonment (including in the expression “extended sentence of imprisonment”) were to detention in a young offender institution.

Note: Section 226A(12) is inserted until the commencement of CJCSA 2000 s.61 is in force, which abolishes sentences of detention in a young offender institution and custody for life.

³⁴² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³⁴³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

3.2.2.2.6 Appeals

Fresh evidence

CJA 2003 s.229³⁴⁴: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

CAA 1968 s.23: Evidence

s.23(1) - the Court of Appeal may, if they think it necessary or expedient in the interests of justice:

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies

s.23(1A) - the power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—

- (a) the Court;
- (b) the appellant;
- (c) the respondent.

³⁴⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

- s.23(2) - the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to:
- (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings

R. v Beesley [2011] EWCA Crim 1021; [2012] 1 Cr. App. R. (S.) 15 (p.71)

As the provisions in relation to dangerousness require the court to take into account all information and in the light of the practice set out in *R. v Roberts* [2006] EWCA Crim 2915; [2007] 1 W.L.R. 1109, CAA 1968 s.23 does not constrain the Court of Appeal from receiving further information about the offender where it is right to do so.

Where previous conviction set aside

CJA 2003 s.231³⁴⁵: Appeals where previous convictions set aside

- s.231(1) - application of section: CJA 2003 s.231(2) applies where:
- (a) a sentence has been imposed on any person under ... CJA 2003 s.226A,
 - (b) the condition in s.226A(2) was met but the condition in s.226A(3) was not, and
 - (c) any previous conviction of his without which the condition in section 226A(2) would not have been met has been subsequently set aside on appeal
- s.231(2) - notwithstanding anything in CAA 1968 s.18, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside

3.2.2.2.7 Certificates of conviction

CJA 2003 s.232A³⁴⁶: Certificates of conviction for Sch.15B offence

- s.232A - where:
- (a) after the commencement of CJA 2003 Sch.15B a person is convicted in England and Wales of an offence listed in that Schedule, and
 - (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that date, and
 - (c) that court subsequently certifies that fact,
- that certificate is evidence, for the purposes of CJA 2003 ss.224A and 226A, that the person was convicted of such an offence on that date

³⁴⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.19. Note that this section has been amended to insert a new subsection (A1) which pertains to appeals relevant to sentences imposed under CJA 2003 s.224A.

³⁴⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.19 para.21

3.2.2.8 Interaction with other sentencing orders

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A. Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.2.9 Other sources of guidance

Dangerous Offenders Guide, Sentencing Guidelines Council³⁴⁷

TICs and Totality Guideline, Sentencing Council

³⁴⁷ Note that this is not a definitive guideline and that it concerns the old extended sentences under the CJA 2003.

3.2.2.3. Life imprisonment (discretionary under CJA 2003)

3.2.2.3.1 Power to order and test to apply

CJA 2003 s.225³⁴⁸: Life sentence or imprisonment for public protection for serious offences

s.225(1) - application of section: where:

- (a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and
- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences

s.225(2) - If:

- (a) the offence is one in respect of which the defendant would apart from this section be liable to imprisonment for life, and
- (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,

the court must impose a sentence of imprisonment for life or in the case of a person aged at least 18 but under 21, a sentence of custody for life.

s.225(5) - sentence under s.225 is not regarded as one fixed by law

PCC(S)A 2000 s.94³⁴⁹: Power to impose custody for life in certain other cases where offender at least 18 but under 21

s.94(1) - where a person aged at least 18 but under 21 is convicted of an offence:

- (a) for which the sentence is not fixed by law, but
 - (b) for which a person aged 21 or over would be liable to imprisonment for life,
- the court shall, if it considers that a sentence for life would be appropriate, sentence him to custody for life.

s.94(2) - subsection (1) above is subject to (in particular) sections 79 and 80, but this subsection does not apply in relation to a sentence which falls to be imposed under section 109(2).

PCC(S)A 2000 s.95³⁵⁰: Custody for life: place of detention

s.95(1) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to custody for life shall be detained in a young offender institution unless a direction under subsection (2) below is in force in relation to him.

s.95(2) - the Secretary of State may from time to time direct that an offender sentenced to custody for life shall be detained in a prison or remand centre instead of a young offender institution.

³⁴⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.225 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

³⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

CJA 2003 s.224³⁵¹: Meaning of “specified offence” etc.

- s.224(1) - an offence is a “specified offence” for the purposes of CJA 2003 Part 12 Chapter 5 if it is a specified violent offence or a specified sexual offence
- s.224(2) - an offence is a “serious offence” for the purposes of CJA 2003 Part 12 Chapter 5 if and only if:
- (a) it is a specified offence, and
 - (b) it is, apart from CJA 2003 s.224A, punishable in the case of a person aged 18 or over by
 - (i) imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life, or
 - (ii) imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a determinate period of ten years or more

s.224(3) in CJA 2003 Part 12 Chapter 5:

“serious harm” means death or serious personal injury, whether physical or psychological;

“specified violent offence” means an offence specified in Part 1 of Schedule 15;

“specified sexual offence” means an offence specified in Part 2 of Schedule 15

Note: For offences committed before the 2003 Act was brought into force, the criteria for imposing a sentence of life imprisonment are contained in a number of decisions of the Court of Appeal which are not listed here.

CJA 2003 s.229³⁵²: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and

³⁵¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 224 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.15

³⁵² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

(c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

Guidance

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[...] [T]aking into account the law prior to the coming into force of the CJA 2003 and the whole of the new statutory provisions, the question in s.225(2)(b) as to whether the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify a life sentence requires consideration of:—

- i) The seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of CJA 2003 s.143(1). This is always a matter for the judgment of the court.
- ii) The defendant's previous convictions (in accordance with CJA 2003 s.143(2)).
- iii) The level of danger to the public posed by the defendant and whether there is a reliable estimate of the length of time he will remain a danger.
- iv) The available alternative sentences.

It is inevitable that the application of s.225 in its current form will lead to the imposition of life sentences in circumstances where previously the sentence would have been one of IPP. It is what Parliament intended and also ensures (as Parliament also intended), so far as is possible, the effective protection of the public.

(Lord Thomas CJ, at [22]-[23])

3.2.2.3.2 Setting the minimum term

What is a life sentence?

Criminal Practice Directions 2015 VII Sentencing

- L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.
- L.2 Thus the life sentence falls into two parts:
- (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and
 - (b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

Definitions

PCC(S)A 2000 s.82A³⁵³: Determination of tariffs

s.82A(7) - definitions for s.82A:

“court” includes the Court Martial;

“life sentence” means a sentence mentioned in C(S)A 1997 s.34(2) other than a sentence mentioned in s.34(2)(d) or (e)

s.82A(8) - [provision dealing with service courts]

Duty to specify minimum term

PCC(S)A 2000 s.82A³⁵⁴: Determination of tariffs

s.82A(1) - application of section: where a court passes a life sentence in circumstances where the sentence is not fixed by law

s.82A(2) - the court shall, unless it makes an order under PCC(S)A 2000 s.82A(4), order that C(S)A 1997 s.28(5)-(8) (referred to in this section as the “early release provisions”) shall apply to the defendant as soon as he has served the part of his sentence which is specified in the order

Criminal Practice Directions 2015 VII Sentencing

L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

Determining the length

PCC(S)A 2000 s.82A³⁵⁵: Determination of tariffs

s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
- (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

³⁵³ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁵⁴ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁵⁵ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

- (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition); and
- (c) the early release provisions as compared with CJA 2003 s.244(1) (duty to release prisoners at half-way point of sentence etc.)

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L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

Note: As to the appropriate length of the minimum term, as a proportion of the notional determinate sentence, see R. v Szczerba [2002] EWCA Crim 440; [2002] 2 Cr. App. R. (S.) 86 (p.387).

Power to impose a “whole life” minimum term

PCC(S)A 2000 s.82A³⁵⁶: Determination of tariffs

s.82A(4) - if the defendant was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under PCC(S)A 2000 s.82A(2), the court shall order that, the early release provisions shall not apply

Criminal Practice Directions 2015 VII Sentencing

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

³⁵⁶ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

3.2.2.3.3 Interaction with other sentencing orders

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468)

The court did not say that no SOPO will ever be appropriate in the case of an indefinite sentence, but the court had not on the material before it been able to envisage an instance when it would. The usual rule ought to be that an indeterminate sentence needs no SOPO, at least unless there was some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later.³⁵⁷

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A. Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.2.3.5 Other sources of guidance

Dangerous Offenders Guide, Sentencing Guidelines Council³⁵⁸

TICs and Totality Guideline, Sentencing Council

³⁵⁷ It seems likely that this decision would apply with equal force to the new SHPOs, dealt with in part 3(4)

³⁵⁸ Note that this is not a definitive guideline and that it concerns the old extended sentences under the CJA 2003.

3.2.2.4. Life imprisonment (discretionary where offender not “dangerous”)

3.2.2.4.1 The existence of the power

R. v Saunders [2013] EWCA Crim 1027; [2014] 1 Cr. App. R. (S.) 45 (p.258) at [11] and [12]

[...] [N]either the 2003 Act, nor LASPOA 2012, imposed any limit on the power of the court to impose a sentence of life imprisonment in cases where a sentence of life imprisonment may be imposed but the case does not fall within either the statutory life sentence (CJA 2003 s.224A) or the discretionary life sentence (CJA 2003 s.225). Some of these offences may involve a significant risk of serious harm to the public, but are not included within the list of “specified” offences in the dangerousness provisions in the 2003 Act. One obvious example is the offender who commits repeated offences of very serious drug supplying which justifies the imposition of the life sentence. In circumstances like these the court is not obliged to impose the sentence in accordance with s.225(2), but its discretion to do so is unaffected.

In reality, the occasions when this second form of discretionary life sentence is likely to be imposed will be rare, and no inconvenience has yet resulted from applying the description “discretionary” to both forms of sentence. We have reflected whether any advantages might accrue to sentencing courts if we were able to offer alternative descriptions which would identify the distinction between these two forms of discretionary life sentence. In reality, none is needed. (Lord Chief Justice, at [11]-[12])

3.2.2.4.2 Setting the minimum term

Note: See 3.2.2.3.2, ‘Setting the minimum term’ in the Life imprisonment (CJA 2003 s.225) section.

3.2.2.5. Life imprisonment (“two strikes life”)

3.2.2.5.1 General

Definitions

CJA 2003 s.224A³⁵⁹: Life for second listed offence

s.224A(10) For the purposes of subsections (4) to (9):

“*extended sentence*” means:

- (a) a sentence imposed under section 85 of the Sentencing Act or under section 226A, 226B, 227 or 228 of this Act (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or
- (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

“*life sentence*” means:

- (a) a life sentence as defined in section 34 of the Crime (Sentences) Act 1997, or
- (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

³⁵⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

“relevant pre-sentence period”, in relation to the previous offence referred to in subsection (4), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

“sentence of imprisonment or detention” includes any sentence of a period in custody (however expressed).

Automatic life sentence is not a sentence fixed by law

CJA 2003 s.224A³⁶⁰: Life for second listed offence

s.224A(11) - an offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

3.2.2.5.2 Availability

Applicability

CJA 2003 s.224A³⁶¹: Life for second listed offence

s.224A(1) - this section applies where:

- (a) a person aged 18 or over is convicted of an offence listed in Part 1 of Schedule 15B,
- (b) the offence was committed after this section comes into force, and
- (c) the sentence condition and the previous offence condition are met.

s.224A(12) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(b) and (4)(a) to have been committed on the last of those days.”

The sentence condition

CJA 2003 s.224A³⁶²: Life for second listed offence

s.224A(3) - the sentence condition is that, but for this section, the court would, in compliance with CJA 2003 ss.152(2) and 153(2), impose a sentence of imprisonment for 10 years or more, or, if the person is aged at least 18 but under 21, a sentence of detention in a young offender institution for such a period disregarding any extension period imposed under CJA 2003 s.226A.

³⁶⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

³⁶¹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

³⁶² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

The previous offence condition

CJA 2003 s.224A³⁶³: Life for second listed offence

s.224A(4) - the previous offence condition is that:

- (a) at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B (“the previous offence”), and
- (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.

s.224A(5) - a life sentence is relevant for the purposes of subsection (4)(b) if:

- (a) the offender was not eligible for release during the first 5 years of the sentence, or
- (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.

s.224A(6) - an extended sentence imposed under this Act (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (4)(b) if the appropriate custodial term imposed was 10 years or more.

s.224A(7) - any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

s.224A(8) - any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (4)(b) if it was for a period of 10 years or more.

s.224A(9) - an extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (7) or (8) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.

No requirement that the offender satisfies the dangerous criteria

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[...] for a life sentence to be imposed under s.224A there is no requirement of a finding that the offender is dangerous within the meaning of the CJA 2003, although it is likely that in most such cases he will be. It follows that the fact that an offender is not dangerous is not something that of itself would make it unjust to pass a life sentence under this section. (Lord Thomas CJ, at [8])

No requirement that the “seriousness” threshold is passed

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[...] s.225(2)(b) does not apply to the relevant offence in s.224A. There is no requirement to consider whether the “seriousness” threshold has been passed. (Lord Thomas CJ, at [8])

³⁶³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

Life sentence available where offence does not have life imprisonment as its maximum

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[Applying section 224A] could lead in cases that may be rare to the imposition of a life sentence in respect of an offence which does not carry life as a maximum. (Lord Thomas CJ, at [8])

3.2.2.5.3 Duty to impose life sentence unless unjust to do so

CJA 2003 s.224A³⁶⁴: Life for second listed offence

s.224A(2) - the court must impose a sentence of imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life under PCC(S)A 2000 s.94 unless the court is of the opinion that there are particular circumstances which:

- (a) relate to the offence, to the previous offence referred to in subsection (4) or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

3.2.2.5.4 Setting the minimum term

What is a life sentence?

Criminal Practice Directions 2015 VII Sentencing

- L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.
- L.2 Thus the life sentence falls into two parts:
 - (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and
 - (b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

³⁶⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

Definitions

PCC(S)A 2000 s.82A³⁶⁵: Determination of tariffs

s.82A(7) - definitions for s.82A:

“court” includes the Court Martial;

“life sentence” means a sentence mentioned in C(S)A 1997 s.34(2) other than a sentence mentioned in s.34(2)(d) or (e)

s.82A(8) - [provision dealing with service courts]

Duty to specify minimum term

PCC(S)A 2000 s.82A³⁶⁶: Determination of tariffs

s.82A(1) - application of section: where a court passes a life sentence in circumstances where the sentence is not fixed by law

s.82A(2) - the court shall, unless it makes an order under PCC(S)A 2000 s.82A(4), order that C(S)A 1997 s.28(5)-(8) (referred to in this section as the “early release provisions”) shall apply to the defendant as soon as he has served the part of his sentence which is specified in the order

Criminal Practice Directions 2015 VII Sentencing

L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

Determining the length

PCC(S)A 2000 s.82A³⁶⁷: Determination of tariffs

s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
- (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

³⁶⁵ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁶⁶ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁶⁷ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

- (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition); and
- (c) the early release provisions as compared with CJA 2003 s.244(1) (duty to release prisoners at half-way point of sentence etc.)

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L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

Note: As to the appropriate length of the minimum term, as a proportion of the notional determinate sentence, see R. v Szczerba [2002] EWCA Crim 440; [2002] 2 Cr. App. R. (S.) 86 (p.387)

Power to impose a “whole life” minimum term

PCC(S)A 2000 s.82A³⁶⁸: Determination of tariffs

s.82A(4) - if the defendant was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under PCC(S)A 2000 s.82A(2), the court shall order that, the early release provisions shall not apply

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L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

³⁶⁸ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

3.2.2.5.5 Interaction with other sentencing orders

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A. Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.2.5.6 Other sources of guidance

Dangerous Offenders Guide, Sentencing Guidelines Council³⁶⁹

TICs and Totality Guideline, Sentencing Council

3.2.2.6. Life imprisonment (mandatory life)

3.2.2.6.1 Duty to impose life imprisonment or custody for life

Imprisonment for life

M(ADP)A 1965 s.1³⁷⁰: Abolition of death penalty for murder

s.1(1) - no person shall suffer death for murder, and a person convicted of murder shall be sentenced to imprisonment for life.

³⁶⁹ Note that this is not a definitive guideline and that it concerns the old extended sentences under the CJA 2003.

³⁷⁰ Commencement: 9 November 1965, M(ADPA) 1965 s.3(4).

- s.1(3) - for the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if at the commencement of this Act a person is under sentence of death for murder, the sentence shall have effect as a sentence of imprisonment for life.

Custody for life

PCC(S)A 2000 s.93³⁷¹: Duty to impose custody for life in certain cases where offender under 21

- s.93 - where a person aged under 21 is convicted of murder or any other offence the sentence for which is fixed by law as imprisonment for life, the court shall sentence him to custody for life unless he is liable to be detained under section 90 (detention during HM's Pleasure).

PCC(S)A 2000 s.95³⁷²: Custody for life: place of detention

- s.95(1) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to custody for life shall be detained in a young offender institution unless a direction under subsection (2) below is in force in relation to him.
- s.95(2) - the Secretary of State may from time to time direct that an offender sentenced to custody for life shall be detained in a prison or remand centre instead of a young offender institution.

3.2.2.6.2 Setting the minimum term

Application of section

CJA 2003 s.269³⁷³: Determination of minimum term in relation to mandatory life sentence

- s.269(1) - this section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

Duty to set minimum term or impose whole life order

CJA 2003 s.269³⁷⁴: Determination of minimum term in relation to mandatory life sentence

- s.269(2) - the court must, unless it makes an order under subsection (4), order that the provisions of C(S)A 1997 s.28(5) to (8) (referred to in this Chapter as "*the early release provisions*") are to apply to the defendant as soon as he has served the part of his sentence which is specified in the order.
- s.269(4) - if the defendant was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the defendant.

³⁷¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁷³ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁷⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Determining the length

CJA 2003 s.269³⁷⁵: Determination of minimum term in relation to mandatory life sentence

s.269(3) - the part of his sentence is to be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
- (b) the effect of section 240ZA (crediting periods of remand in custody) or of any direction which it would have given under section 240A (crediting periods of remand on certain types of bail) if it had sentenced him to a term of imprisonment.

s.269(3A) - the reference in subsection (3)(b) to section 240ZA includes AFA 2006 s.246 (crediting periods in service custody).

s.269(5) - in considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), the court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

Starting points

CJA 2003 Sch.21 para.4³⁷⁶: Determination of minimum term in relation to mandatory life sentence

para.4(1) - if:

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
 - (b) the offender was aged 21 or over when he committed the offence,
- the appropriate starting point is a whole life order.

para.4(2) cases that would normally fall within sub-paragraph (1)(a) include:

- (a) the murder of two or more persons, where each murder involves any of the following:
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (ba) the murder of a police officer or prison officer in the course of his or her duty,
- (c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

³⁷⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁷⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (d) a murder by a defendant previously convicted of murder.

CJA 2003 Sch.21 para.5³⁷⁷: Determination of minimum term in relation to mandatory life sentence

para.5(1) - if:

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
 - (b) the defendant was aged 18 or over when he committed the offence,
- the appropriate starting point, in determining the minimum term, is 30 years.

para.5(2) - cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include:

- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,
- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity, or
- (h) a murder falling within paragraph 4(2) committed by a defendant who was aged under 21 when he committed the offence.

CJA 2003 Sch.21 para.5A³⁷⁸: Determination of minimum term in relation to mandatory life sentence

para.5A(1) - if:

- (a) the case does not fall within paragraph 4(1) or 5(1),
 - (b) the offence falls within sub-paragraph (2), and
 - (c) the defendant was aged 18 or over when the offender committed the offence,
- the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

para.5A(2) - The offence falls within this sub-paragraph if the defendant took a knife or other weapon to the scene intending to:

- (a) commit any offence, or
 - (b) have it available to use as a weapon,
- and used that knife or other weapon in committing the murder.

³⁷⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁷⁸ Commencement: 2 March 2010, as inserted by SI 2010/197 art.2(2). Paragraph 5A does not apply in relation to a life sentence imposed for an offence of murder committed before the commencement day, SI 2010/197 art.3.

CJA 2003 Sch.21 para.6³⁷⁹: Determination of minimum term in relation to mandatory life sentence

- para.6 - if the defendant was aged 18 or over when he committed the offence and the case does not fall within paragraph 4(1), 5(1) or 5A(1), the appropriate starting point, in determining the minimum term, is 15 years.

CJA 2003 Sch.21 para.7³⁸⁰: Determination of minimum term in relation to mandatory life sentence

- para.7 - if the defendant was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravation and Mitigation

CJA 2003 Sch.21 para.8³⁸¹: Determination of minimum term in relation to mandatory life sentence

- para.8 - having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

CJA 2003 Sch.21 para.9³⁸²: Determination of minimum term in relation to mandatory life sentence

- para.9 - detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

CJA 2003 Sch.21 para.10³⁸³: Determination of minimum term in relation to mandatory life sentence

- para.10 - aggravating factors (additional to those mentioned in paragraph 4(2), 5(2) and 5A(2)) that may be relevant to the offence of murder include:
- (a) a significant degree of planning or premeditation,
 - (b) the fact that the victim was particularly vulnerable because of age or disability,
 - (c) mental or physical suffering inflicted on the victim before death,
 - (d) the abuse of a position of trust,
 - (e) the use of duress or threats against another person to facilitate the commission of the offence,
 - (f) the fact that the victim was providing a public service or performing a public duty, and
 - (g) concealment, destruction or dismemberment of the body.

³⁷⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸² Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸³ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.21 para.11³⁸⁴: Determination of minimum term in relation to mandatory life sentence

para.11 - mitigating factors that may be relevant to the offence of murder include:

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the defendant suffered from any mental disorder or mental disability which (although not falling within Homicide Act 1957 s.2(1)), lowered his degree of culpability,
- (d) the fact that the defendant was provoked (for example, by prolonged stress),
- (e) the fact that the defendant acted to any extent in self-defence or in fear of violence,
- (f) a belief by the defendant that the murder was an act of mercy, and
- (g) the age of the defendant.

CJA 2003 Sch.21 para.12³⁸⁵: Determination of minimum term in relation to mandatory life sentence

para.12 - nothing in Sch.21 restricts the application of:

- (a) section 143(2) (previous convictions),
 - (b) section 143(3) (bail), or
 - (c) section 144 (guilty plea),
- or of Armed Forces Act 2006 s.238(1)(b) or (c) or s.239

3.2.2.6.3 Giving reasons

CJA 2003 s.270³⁸⁶: Duty to give reasons

s.270(1) - subsection (2) applies where a court makes an order under section 269(2) or (4).

s.270(2) - in complying with the duty under section 174(2) to state its reasons for deciding on the order made, the court must, in particular:

- (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
- (b) state its reasons for any departure from that starting point.

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P.1 Having gone through the three or four steps outlined above, the court is then under a duty, under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.

P.2 In order to comply with this duty, the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and

³⁸⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features, it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point, the court should also declare how much, if any, time is being deducted for time spent in custody and/or on bail subject to a qualifying curfew condition. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release, the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.

- P.3 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a 'whole life order' is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

3.2.2.6.4 Guidance

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- M.1 The purpose of this section is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 ('the Act'). This direction also gives guidance as to the transitional arrangements under section 276 and schedule 22 of the Act. It clarifies the correct approach to looking at the practice of the Secretary of State prior to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67.
- M.2 Section 269 came into force on 18 December 2003. Under section 269, all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act), or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a 'whole life order').
- M.3 In setting the minimum term, the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence, the court must have regard to the general principles set out in Schedule 21 of the Act as amended and any guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to such guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the starting points given in Schedule 21, the court is under a duty to state its reasons for doing so (section 270(2)(b) of the Act).
- M.4 Schedule 21 states that the first step is to choose one of five starting points: "whole life", 30 years, 25 years, 15 years or 12 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At paragraph 35 of *Sullivan*, the court found it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point, to 15 years.

- M.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a 'whole life order'. (paragraph 4(1) of Schedule 21). The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4 (2) sets out examples of cases where it would normally be appropriate to take the 'whole life order' as the appropriate starting point.
- M.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years. (Paragraph 5(2)(h) of Schedule 21).
- M.7 Where a case is not so serious as to require a 'whole life order' but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence, the appropriate starting point is 30 years (paragraph 5(1) of Schedule 21). Paragraph 5 (2) sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a 'whole life order').
- M.8 Where the offender was aged 18 or over when he committed the offence, took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used it in committing the murder, the offence is normally to be regarded as sufficiently serious for an appropriate starting point of 25 years (paragraph 5A of Schedule 21).
- M.9 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1), 5 (1) or 5A(1) of Schedule 21, the appropriate starting point is 15 years (see paragraph 6).
- M.10 18 to 20 year olds are only the subject of the 30-year, 25-year and 15-year starting points.
- M.11 The appropriate starting point when setting a sentence of detention during Her Majesty's pleasure for offenders aged under 18 when they committed the offence is always 12 years (paragraph 7 of Schedule 21).
- M.12 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in paragraphs 4 (2), 5(2) and 5A) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features, the court may add to or subtract from the starting point to arrive at the appropriate punitive period.
- M.13 The third step is that the court should consider the effect of section 143(2) of the Act in relation to previous convictions; section 143(3) of the Act where the offence was committed whilst the offender was on bail; and section 144 of the Act where the offender has pleaded guilty (paragraph 12 of Schedule 21). The court should then take into account what credit the offender would have received for a remand in custody under section 240 or 240ZA of the Act and/or for a remand on bail subject to a qualifying curfew condition under section 240A, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been thus remanded in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should make any appropriate subtraction from the punitive period it would otherwise impose, in order to reach the minimum term.

- M.14 Following these calculations, the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21 makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

3.2.2.6.5 Appeals

Appeals against sentence

CJA 2003 s.271³⁸⁷: Appeals

- s.271(1) - in CAA 1968 s.9 (appeal against sentence following conviction on indictment), after subsection (1) there is inserted:
- “(1A) In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.”.
- s.271(2) - [provision dealing with CMAC]

Attorney General's References

CJA 2003 s.272³⁸⁸: Review of minimum term on a reference by Attorney General

- s.272(1) - in CJA 1988 s.36 (reviews of sentencing) after subsection (3) there is inserted:
- “(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.”.
- s.272(2) - [provision dealing with armed forces]
- s.272(3) - [provision dealing with armed forces]

3.2.2.6.6 Life prisoners transferred to England and Wales

CJA 2003 s.273³⁸⁹: Life prisoners transferred to England and Wales

- s.273(1) - the SoS must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.
- s.273(2) - in subsection (1) “*transferred life prisoner*” means a person:
- (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and

³⁸⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (b) who has been transferred to England and Wales after the commencement of this section in pursuance of:
 - (i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or
 - (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),

there to serve his sentence or sentences or the remainder of his sentence or sentences.

s.273(3) - in subsection (1) “a relevant order” means:

- (a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and
- (b) in any other case, an order under PCC(S)A 2000 s.82A(2) or (4)

s.273(4) - in C(S)A 1997 s.34(1)(meaning of “life prisoner” in Chapter 2 of Part 2 of that Act) at the end there is inserted “and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003”.

s.273(5) - the reference in subsection (2)(b) above to a person who has been transferred to England and Wales in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in England and Wales in pursuance of a warrant under section 4A of that Act (warrant transferring responsibility for detention and release of defendant).

CJA 2003 s.274³⁹⁰: Life prisoners transferred to England and Wales

s.274(1) - a reference to the High Court under section 273 is to be determined by a single judge of that court without an oral hearing.

s.274(2) - in relation to a reference under that section, any reference to “the court” in subsections (2) to (5) of section 269, in Schedule 21 or in section 82A(2) to (4) of the Sentencing Act is to be read as a reference to the High Court.

s.274(3) - a person in respect of whom a reference has been made under section 273 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the reference.

s.274(4) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which subsection (3) applies.

s.274(5) - the jurisdiction conferred on the Court of Appeal by subsection (3) is to be exercised by the criminal division of that court.

s.274(6) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this section.

³⁹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

s.274(7) - in relation to appeals to the Court of Appeal or the Supreme Court under this section, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

3.2.2.6.7 Supplementary

Interpretation of Sch.21

CJA 2003 Sch.21 para.1³⁹¹: Determination of minimum term in relation to mandatory life sentence

para.1 - in Sch.21:

“child” means a person under 18 years;

“mandatory life sentence” means a life sentence passed in circumstances where the sentence is fixed by law;

“minimum term”, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under section 269(2);

“whole life order” means an order under subsection (4) of section 269.

CJA 2003 Sch.21 para.2³⁹²: Determination of minimum term in relation to mandatory life sentence

para.2 - CDA 1998 s.28 (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of sections 29 to 32 of that Act.

CJA 2003 Sch.21 para.3³⁹³: Determination of minimum term in relation to mandatory life sentence

para.3 - for the purposes of Sch.21:

- (a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);
- (b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);
- (c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).

Lord Chancellor’s power to amend Sch.21

CJA 2003 s.269³⁹⁴: Determination of minimum term in relation to mandatory life sentence

s.269(6) - the Lord Chancellor may by order amend Schedule 21.

s.269(7) - before making an order under subsection (6), the Lord Chancellor must consult the Sentencing Council for England and Wales.

³⁹¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹² Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Interpretation of CJA 2003 Part 12 Chapter 7

CJA 2003 s.277³⁹⁵: Interpretation of Chapter 7

s.277 - in this Chapter:

“court” includes the Court Martial;

“guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales as definitive guidelines under Coroners and Justice Act 2009 s.120 as revised by any subsequent guidelines so issued;

“life sentence” means:

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention during Her Majesty’s pleasure, or
- (c) a sentence of custody for life passed before the commencement of CJCSA 2000 s.61(1) (which abolishes that sentence).

3.2.2.6.8 Transitional cases

Statute

CJA 2003 s.276³⁹⁶: Mandatory life sentences: Transitional cases

s.276 - Schedule 22 (which relates to the effect in transitional cases of mandatory life sentences) shall have effect.

Interpretation

CJA 2003 Sch.22 para.1³⁹⁷: Mandatory life sentences: Transitional cases

para.1 - in Sch.22:

“the commencement date” means the day on which section 269 comes into force;

“the early release provisions” means the provisions of C(S)A 1997 s.28(5) to (8);

“existing prisoner” means a person serving one or more mandatory life sentences passed before the commencement date (whether or not he is also serving any other sentence);

“life sentence” means a sentence of imprisonment for life or custody for life passed in England and Wales or by a court-martial outside England and Wales;

“mandatory life sentence” means a life sentence passed in circumstances where the sentence was fixed by law.

³⁹⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

Existing prisoners notified by Secretary of State

CJA 2003 Sch.22 para.2³⁹⁸: Mandatory life sentences: Transitional cases

- para.2 - para.3 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has before the commencement date been notified in writing by the Secretary of State (otherwise than in a notice that is expressed to be provisional) either:
- (a) of a minimum period which in the view of the Secretary of State should be served before the prisoner's release on licence, or
 - (b) that the Secretary of State does not intend that the prisoner should ever be released on licence.

CJA 2003 Sch.22 para.3³⁹⁹: Mandatory life sentences: Transitional cases

- para.3(1) - on the application of the existing prisoner, the High Court must, in relation to the mandatory life sentence, either:
- (a) order that the early release provisions are to apply to him as soon as he has served the part of the sentence which is specified in the order, which in a case falling within paragraph 2(a) must not be greater than the notified minimum term, or
 - (b) in a case falling within paragraph 2(b), order that the early release provisions are not to apply to the offender.
- para.3(2) - in a case falling within paragraph 2(a), no application may be made under this paragraph after the end of the notified minimum term.
- para.3(3) - where no application under this paragraph is made in a case falling within paragraph 2(a), the early release provisions apply to the prisoner in respect of the sentence as soon as he has served the notified minimum term (or, if he has served that term before the commencement date but has not been released, from the commencement date).
- para.3(4) - in this paragraph "*the notified minimum term*" means the minimum period notified as mentioned in paragraph 2(a), or where the prisoner has been so notified on more than one occasion, the period most recently so notified.

CJA 2003 Sch.22 para.4⁴⁰⁰: Mandatory life sentences: Transitional cases

- para.4(1) - in dealing with an application under paragraph 3, the High Court must have regard to:
- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it,
 - (b) where the court is satisfied that, if the prisoner had been sentenced to a term of imprisonment, the length of his sentence would have been treated by section 67 of the Criminal Justice Act 1967 (c. 80) as being reduced by a particular period, the effect which that section would have had if he had been sentenced to a term of imprisonment, and

³⁹⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (c) the length of the notified minimum term or, where a notification falling within paragraph 2(b) has been given to the prisoner, to the fact that such a notification has been given.

para.4(2) - in considering under sub-paragraph (1) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, the High Court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

para.4(3) - in this paragraph "*the notified minimum term*" has the same meaning as in paragraph 3.

CJA 2003 Sch.22 para.5⁴⁰¹: Mandatory life sentences: Transitional cases

para.5 - para.6 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has not before the commencement date been notified as mentioned in paragraph 2(a) or (b) by the Secretary of State.

CJA 2003 Sch.22 para.6⁴⁰²: Mandatory life sentences: Transitional cases

para.6 - the Secretary of State must refer the prisoner's case to the High Court for the making by the High Court of an order under s.269(2) or (4) in relation to the mandatory life sentence.

CJA 2003 Sch.22 para.7⁴⁰³: Mandatory life sentences: Transitional cases

para.7(1) - in considering under s.269(3) or (4) the seriousness of an offence (or the combination of an offence and one or more offences associated with it) in a case referred to the High Court under paragraph 6, the High Court must have regard not only to the matters mentioned in subsection (5) of that section but also to any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

CJA 2003 Sch.22 para.8⁴⁰⁴: Mandatory life sentences: Transitional cases

para.8(1) - in dealing with a reference under paragraph 6, the High Court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

⁴⁰¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰² Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Sentences passed on or after commencement date in respect of offences committed before that date

CJA 2003 Sch.22 para.9⁴⁰⁵: Mandatory life sentences: Transitional cases

para.9 - para.10 applies where:

- (a) on or after the commencement date a court passes a life sentence in circumstances where the sentence is fixed by law, and
- (b) the offence to which the sentence relates was committed before the commencement date.

CJA 2003 Sch.22 para.10⁴⁰⁶: Mandatory life sentences: Transitional cases

para.10 - the court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

CJA 2003 Sch.22 para.11⁴⁰⁷: Mandatory life sentences: Transitional cases

para.11(1) - an application under paragraph 3 or a reference under paragraph 6 is to be determined by a single judge of the High Court without an oral hearing.

para.11(2) - in relation to such an application or reference, any reference to “the court” in s.269(2) to (5) and Sch.21 is to be read as a reference to the High Court.

Giving reasons

CJA 2003 Sch.22 para.12⁴⁰⁸: Mandatory life sentences: Transitional cases

para.12(1) - where the High Court makes an order under paragraph 3(1)(a) or (b), it must state in open court, in ordinary language, its reasons for deciding on the order made.

para.12(2) - where the order is an order under paragraph 3(1)(a) specifying a part of the sentence shorter than the notified minimum term the High Court must, in particular, state its reasons for departing from the notified minimum term.

CJA 2003 Sch.22 para.13⁴⁰⁹: Mandatory life sentences: Transitional cases

para.13 - where the High Court makes an order under s.269(2) or (4) on a reference under paragraph 6, s.270(2) does not apply.

⁴⁰⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

Right of appeal

CJA 2003 Sch.22 para.14⁴¹⁰: Mandatory life sentences: Transitional cases

- para.14(1) - a person who has made an application under paragraph 3 or in respect of whom a reference has been made under paragraph 6 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the application or reference.
- para.14(2) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1)(a) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which sub-paragraph (1) applies.
- para.14(3) - the jurisdiction conferred on the Court of Appeal by this paragraph is to be exercised by the criminal division of that court.
- para.14(4) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this paragraph.
- para.14(5) - in relation to appeals to the Court of Appeal or the Supreme Court under this paragraph, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Review of minimum term on reference by Attorney General

CJA 2003 Sch.22 para.15⁴¹¹: Mandatory life sentences: Transitional cases

- para.15 - CJA 1988 s.36 applies in relation to an order made by the High Court under paragraph 3(1)(a) as it applies in relation to an order made by the Crown Court under section 269(2).

Modification of early release provisions

CJA 2003 Sch.22 para.16⁴¹²: Mandatory life sentences: Transitional cases

- para.16(1) - in relation to an existing prisoner, C(S)A 1997 s.28 has effect subject to the following modifications.
- para.16(2) - Any reference to a life prisoner in respect of whom a minimum term order has been made includes a reference to:
- (a) an existing prisoner in respect of whom an order under paragraph 3(1)(a) has been made, and
 - (b) an existing prisoner serving a sentence in respect of which paragraph 3(3) applies.

⁴¹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴¹¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴¹² Commencement: 18 December 2003, CJA 2003 s.336(2).

para.16(3) - any reference to the relevant part of the sentence is to be read:

- (a) in relation to a sentence in respect of which an order under paragraph 3(1)(a) has been made, as a reference to the part specified in the order, and
- (b) in relation to a sentence in respect of which paragraph 3(3) applies, as a reference to the notified minimum term as defined by paragraph 3(4).

para.16(4) - in subsection (1B) (life prisoner serving two or more sentences), paragraph (a) is to be read as if it referred to each of the sentences being one:

- (a) in respect of which a minimum term order or an order under paragraph 3(1)(a) has been made, or
- (b) in respect of which paragraph 3(3) applies.

CJA 2003 Sch.22 para.17⁴¹³: Mandatory life sentences: Transitional cases

para.17 - in C(S)A 1997 s.34(1) (interpretation of Chapter 2 of that Act), in the definition of “life prisoner”, the reference to a transferred prisoner as defined by section 273 of this Act includes a reference to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of section 33 of that Act.

Transferred life prisoners

CJA 2003 Sch.22 para.18⁴¹⁴: Mandatory life sentences: Transitional cases

para.18 - in relation to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of C(S)A 1997 s.33, this Schedule is to be read as if:

- (a) any certificate under subsection (2) of that section were a notification falling within paragraph 2(a) of this Schedule, and
- (b) references to any recommendation of the trial judge or the Lord Chief Justice were omitted.

Guidance

Criminal Practice Directions 2015 VII Sentencing

- N.1 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and Schedule 22 of the Act.
- N.2 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity, by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term, the court must check whether the proposed term is greater than that which the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.

⁴¹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴¹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

- N.3 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.
- N.4 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out below.
- N.5 The practice of Lord Bingham, as set out in his letter of 10 February 1997, was to take 14 years as the period actually to be served for the 'average', 'normal' or 'unexceptional' murder. Examples of factors he outlined as capable, in appropriate cases, of mitigating the normal penalty were:
- (1) Youth;
 - (2) Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison);
 - (3) [Intellectual disability or mental disorder];
 - (4) Provocation (in a non-technical sense), or an excessive response to a personal threat;
 - (5) The absence of an intention to kill;
 - (6) Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress);
 - (7) Mercy killing;
 - (8) A plea of guilty, or hard evidence of remorse or contrition.
- N.6 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:
- (1) Evidence of planned, professional, revenge or contract killing;
 - (2) The killing of a child or a very old or otherwise vulnerable victim;
 - (3) Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
 - (4) Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.);
 - (5) Multiple killings;
 - (6) The killing of a witness, or potential witness, to defeat the ends of justice;
 - (7) The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc.);
 - (8) Terrorist or politically motivated killings;
 - (9) The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;
 - (10) A substantial record of serious violence;
 - (11) Macabre attempts to dismember or conceal the body.

- N.7 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a couple, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.
- N.8 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives to the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.
- N.9 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paragraphs N.10 to N.20 below.
- N.10 This Statement replaces the previous single normal tariff of 14 years by substituting a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

The normal starting point of 12 years

- N.11 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph N.13. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
- N.12 The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:-
- (a) the case came close to the borderline between murder and manslaughter; or
 - (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or
 - (c) the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or
 - (d) the case involved an over-reaction in self-defence; or
 - (e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

- N.13 The higher starting point will apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:-
- (a) the killing was 'professional' or a contract killing;
 - (b) the killing was politically motivated;
 - (c) the killing was done for gain (in the course of a burglary, robbery etc.);
 - (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);

- (e) the victim was providing a public service;
- (f) the victim was a child or was otherwise vulnerable;
- (g) the killing was racially aggravated;
- (h) the victim was deliberately targeted because of his or her religion or sexual orientation;
- (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
- (j) extensive and/or multiple injuries were inflicted on the victim before death;
- (k) the offender committed multiple murders.

Variation of the starting point

- N.14 Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.
- N.15 Aggravating factors relating to the offence can include:
- (a) the fact that the killing was planned;
 - (b) the use of a firearm;
 - (c) arming with a weapon in advance;
 - (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
 - (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.
- N.16 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.
- N.17 Mitigating factors relating to the offence will include:
- (a) an intention to cause grievous bodily harm, rather than to kill;
 - (b) spontaneity and lack of pre-meditation.
- N.18 Mitigating factors relating to the offender may include:
- (a) the offender's age;
 - (b) clear evidence of remorse or contrition;
 - (c) a timely plea of guilty.

Very serious cases

- N.19 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

- N.20 Among the categories of case referred to in paragraph N.13, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder, or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.
- N.21 In following this guidance, judges should bear in mind the conclusion of the Court in *Sullivan* that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

3.2.2.7. Offenders of particular concern

Availability

CJA 2003 s.236A⁴¹⁵: Special custodial sentence for certain offenders of particular concern

s.236A(1) - subsection (2) applies where—

- (a) a person is convicted of an offence listed in Schedule 18A (whether the offence was committed before or after this section comes into force),
- (b) the person was aged 18 or over when the offence was committed, and
- (c) the court does not impose one of the following for the offence—
 - (i) a sentence of imprisonment for life, or
 - (ii) an extended sentence under section 226A.

Mandatory order

CJA 2003 s.236A⁴¹⁶: Special custodial sentence for certain offenders of particular concern

s.236A(2) - if the court imposes a sentence of imprisonment for the offence, the term of the sentence must be equal to the aggregate of—

- (a) the appropriate custodial term, and
- (b) a further period of 1 year for which the offender is to be subject to a licence.

Determining the length

CJA 2003 s.236A⁴¹⁷: Special custodial sentence for certain offenders of particular concern

s.236A(3) - the “*appropriate custodial term*” is the term that, in the opinion of the court, ensures that the sentence is appropriate.

⁴¹⁵ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

⁴¹⁶ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

⁴¹⁷ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

s.236A(4) - the term of a sentence of imprisonment imposed under this section for an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence.

Associated offences

CJA 2003 s.236A⁴¹⁸: Special custodial sentence for certain offenders of particular concern

s.236A(5) - the references in subsections (1)(c) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.

Secretary of State's power to amend the Schedule

CJA 2003 s.236A⁴¹⁹: Special custodial sentence for certain offenders of particular concern

s.236A(6) - the Secretary of State may by order amend Schedule 18A by—

- (a) adding offences, or
- (b) varying or omitting offences listed in the Schedule.

s.236A(7) - an order under subsection (6) may, in particular, make provision that applies in relation to the sentencing of a person for an offence committed before the provision comes into force.”

CJA 2003 Sch.18A: Sentence under section 236A⁴²⁰: Offences

1. An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder) that has a terrorist connection.
2. An offence under section 28 of that Act (causing bodily injury by explosives) that has a terrorist connection.
3. An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm) that has a terrorist connection.
4. An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property) that has a terrorist connection.
5. An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) that has a terrorist connection.
6. An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances) that has a terrorist connection.
7. An offence under section 54 of the Terrorism Act 2000 (weapons training).

⁴¹⁸ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

⁴¹⁹ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within CJA 2015 Sch.1 para.9.

⁴²⁰ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.4, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

8. An offence under section 56 of that Act (directing terrorist organisation).
9. An offence under section 57 of that Act (possession of article for terrorist purposes).
10. An offence under section 59 of that Act (inciting terrorism overseas).
11. An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
12. An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
13. An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
14. An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
15. An offence under section 6 of that Act (training for terrorism).
16. An offence under section 9 of that Act (making or possession of radioactive device or material).
17. An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).
18. An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc).
19. An offence under section 5 of the Sexual Offences Act 2003 (rape of a child under 13).
20. An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 21.—
 - (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Schedule (a “relevant offence”).
 - (2) An attempt to commit a relevant offence.
 - (3) Conspiracy to commit a relevant offence.
 - (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a relevant offence is the offence (or one of the offences) which the person intended or believed would be committed.
22. An offence in the following list that has a terrorist connection—
 - (a) an attempt to commit murder,
 - (b) conspiracy to commit murder, and
 - (c) an offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed.
23. An offence that—
 - (a) was abolished before the coming into force of section 236A, and
 - (b) if committed on the day on which the offender was convicted of the offence, would have constituted an offence specified in the preceding paragraphs of this Schedule.

24. For the purposes of this Schedule, an offence has a terrorist connection if a court has determined under section 30 of the Counter-Terrorism Act 2008 that the offence has such a connection.

3.2.3. Youths (aged 10-18)

3.2.3.1. General principles

Note: CJA 1982 s.11 remains in force, and amended PA 1952 s.43 as to the location in which young offenders are held etc., however s.43 has since been further amended and so s.11 now appears to serve no purpose. See also CJPOA 1994 ss.17 and 18, which remain in force, having amended other enactments.

Age of offender unclear

CJA 1982 s.1⁴²¹: General restriction on custodial sentences

- s.1(6) - 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 the Secretary of State (as the case may be) to be after considering any available evidence.

Restriction on imposing imprisonment for those under 21

PCC(S)A 2000 s.89⁴²²: Restriction on imposing imprisonment on persons under 21

- s.89(1) - subject to s.189(2), no court shall:
- (a) pass a sentence of imprisonment on a person for an offence if he is aged under 21 when convicted; or
 - (b) commit a person aged under 21 to prison for any reason
- s.89(2) - nothing in s.89(1) prevents the committal to prison of a person aged under 21 who is:
- (a) remanded in custody;
 - (b) committed in custody for sentence; or
 - (c) sent in custody for trial under CDA 1998 s.51 or 51A

⁴²¹ Commencement: 24 May 1983, SI 1983/182 art.1(2)

⁴²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Offender crossed age threshold since offence

The principal cases are *R. v Danga* (1992) 13 Cr. App. R. (S.) 408 and *R. v Ghafoor* [2002] EWCA Crim 1857; [2003] 1 Cr. App. R. (S.) 84 (p.428). The headnote to *Ghafoor* reads, in part:

...the judge was not under any obligation to pass a sentence which did not exceed the sentence which could lawfully have been passed in the youth court. The judge should however have had regard to the age of the appellant at the date of the offence, and the maximum penalty permissible at that time. It was accepted that the sentencing tribunal should have regard to the defendant's age at the time of the commission of the offence as a powerful factor in determining sentence, and that matters such as maximum penalties available at that time should be taken into account. The Court had decided in *Danga* that the form of sentence was dictated by the defendant's age at the date of conviction. A defendant aged 21 at the date of conviction would be sentenced to imprisonment, rather than detention in a young offender institution even if the offence had been committed before he was 21. That approach had been consistently applied in subsequent cases. The present case illustrated the potential significance of the relevant date for determining the defendant's age for the purposes of sentence. Since the appellant had passed his 18th birthday before he pleaded guilty, the sentencing powers available to the court permitted the judge to pass a sentence of up to a maximum of 10 years detention in a young offender institution. If he had pleaded guilty when still only 17, the maximum available custodial sentence would have been a detention and training order for a term of 24 months. It had been stated in *Danga* that the broad conceptual approach to sentencing did not undergo a fundamental change simply because the offender passed his 21st birthday. If all factors were identical, an offender aged 21 years was likely to receive in substance much the same punishment as one who was 20 years and 11 months.

Conversion of detention to imprisonment

PCC(S)A 2000 s.99⁴²³: Conversion of sentence of detention to sentence of imprisonment

- s.99(1) power to convert sentences of detention to imprisonment: subject to the following provisions of PCC(S)A 2000 s.99, where a defendant has been sentenced by a relevant sentence of detention to a term of detention and either:
- (a) he has attained the age of 21, or
 - (b) he has attained the age of 18 and has been reported to the SoS by the independent monitoring board of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates,
- the SoS may direct that he shall be treated as if he had been sentenced to imprisonment for the same term
- s.99(2) - where the SoS gives a direction under PCC(S)A 2000 s.99(1) in relation to a defendant, the portion of the term of detention imposed under the relevant sentence of detention which he has already served shall be deemed to have been a portion of a term of imprisonment
- s.99(3A) - where the SoS gives a direction under PCC(S)A 2000 s.99(1) in relation to a defendant serving an extended sentence of detention imposed under CJA 2003:
- (a) if the sentence was imposed under s.226B, the defendant shall be treated as if he had been sentenced under s.226A ...

⁴²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.3.2. Detention and Training Orders

3.2.3.2.1 General

Explanation of DTO

PCC(S)A 2000 s.100⁴²⁴: Offenders under 18: detention and training orders

s.100(3) - a detention and training order is an order that the offender in respect of whom it is made shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

Interpretation

PCC(S)A 2000 s.107⁴²⁵: Meaning of “youth detention accommodation” and references to terms

s.107(1) - in PCC(S)A 2000 ss.102, 104 and 105 “youth detention accommodation” means:

- (a) a secure training centre;
- (b) a young offender institution;
- (c) accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons;
- (d) accommodation provided for that purpose under CA 1989 s.82(5) (financial support by the Secretary of State); or
- (e) such other accommodation or descriptions of accommodation as the Secretary of State may by order specify.

s.107(2) - in PCC(S)A 2000 ss.102-105 and 106B references to the term of a detention and training order shall be construed in accordance with section 101(13).

s.107(3) - for the purposes of PCC(S)A 2000 ss.103(2A) and 106B(1), where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.

3.2.3.2.2 Duty to impose DTO

PCC(S)A 2000 s.100⁴²⁶: Offenders under 18: detention and training orders

s.100(1) - subject to PCC(S)A 2000 ss.90 and 91, CJA 2003 ss.226 and 226B, and PCC(S)A 2000 s.100(2), where:

- (a) a child or young person (that is to say, any person aged under 18) is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
- (b) the court is of the opinion that CJA 2003 s.152(2) applies or the case falls within subsection (3) of that section,

the sentence that the court is to pass is a detention and training order.

⁴²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

s.100(1A) - subsection (1) applies with the omission of paragraph (b) in the case of an offence the sentence for which falls to be imposed under these provisions:

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (b) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon).

Limitation on imposing DTO for those under 15

PCC(S)A 2000 s.100⁴²⁷: Offenders under 18: detention and training orders

s.100(2) - a court shall not make a detention and training order:

- (a) in the case of an offender under the age of 15 at the time of the conviction, unless it is of the opinion that he is a persistent offender;
- (b) in the case of an offender under the age of 12 at that time, unless:
 - (i) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
 - (ii) the offence was committed on or after such date as the Secretary of State may by order appoint.

3.2.3.2.3 Determining the length of the order

The permitted periods

PCC(S)A 2000 s.101⁴²⁸: Term of order, consecutive terms and taking account of remands

s.101(1) - subject to subsection (2) below, the term of a detention and training order made in respect of an offence (whether by a magistrates' court or otherwise) shall be 4, 6, 8, 10, 12, 18 or 24 months.

Order cannot exceed maximum sentence for the offence

PCC(S)A 2000 s.101⁴²⁹: Term of order, consecutive terms and taking account of remands

s.101(2) - the term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21 or over) impose for the offence.

Power to impose consecutive DTOs

PCC(S)A 2000 s.101⁴³⁰: Term of order, consecutive terms and taking account of remands

s.101(3) - subject to subsections (4) and (6) below, a court making a detention and training order may order that its term shall commence on the expiry of the term of any other detention and training order made by that or any other court.

⁴²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴³⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- s.101(4) - a court shall not make in respect of an offender a detention and training order the effect of which would be that he would be subject to detention and training orders for a term which exceeds 24 months.
- s.101(5) - where the term of the detention and training orders to which an offender would otherwise be subject exceeds 24 months, the excess shall be treated as remitted.
- s.101(6) - a court making a detention and training order shall not order that its term shall commence on the expiry of the term of a detention and training order under which the period of supervision has already begun (under PCC(S)A 2000 s.103(1)).

Crediting remand time and time spent on qualifying curfew

PCC(S)A 2000 s.101⁴³¹: Term of order, consecutive terms and taking account of remands

- s.101(8) - in determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded:
 - (a) in custody, or
 - (b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of CJA 2003 s.240A),in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.
- s.101(9) - where a court proposes to make detention and training orders in respect of an offender for two or more offences:
 - (a) subsection (8) above shall not apply; but
 - (b) in determining the total term of the detention and training orders it proposes to make in respect of the offender, the court shall take account of the total period (if any) for which he has been remanded as mentioned in that subsection in connection with any of those offences, or any other offence the charge for which was founded on the same facts or evidence.
- s.101(10) - once a period of remand has, under subsection (8) or (9) above, been taken account of in relation to a detention and training order made in respect of an offender for any offence or offences, it shall not subsequently be taken account of (under either of those subsections) in relation to such an order made in respect of the offender for any other offence or offences.
- s.101(11) - any reference in subsection (8) or (9) above to an offender's being remanded in custody is a reference to his being:
 - (a) held in police detention;
 - (b) remanded in or committed to custody by an order of a court;
 - (c) remanded to youth detention accommodation under LASPOA 2012 s.91(4); or
 - (d) remanded, admitted or removed to hospital under MHA 1983 ss.35, 36, 38 or 48
- s.101(12) - a person is in police detention for the purposes of subsection (11):
 - (a) at any time when he is in police detention for the purposes of PACE 1984; and

⁴³¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) at any time when he is detained under TA 2000 s.41

s.101(12A) - CJA 2003 s.243 (persons extradited to the United Kingdom) applies in relation to a person sentenced to a detention and training order as it applies in relation to a fixed-term prisoner, with the reference in CJA 2003 s.243(2A) to section 240ZA being read as a reference to subsection (8) above.

Treating multiple terms as a single term

PCC(S)A 2000 s.101⁴³²: Term of order, consecutive terms and taking account of remands

s.101(13) - for the purpose of any reference in PCC(S)A 2000 ss.102-105 and 106B to the term of a detention and training order, consecutive terms of such orders and terms of such orders which are wholly or partly concurrent shall be treated as a single term if:

- (a) the orders were made on the same occasion; or
- (b) where they were made on different occasions, the offender has not been released (by virtue of subsection (2), (3), (4) or (5) of section 102 below) at any time during the period beginning with the first and ending with the last of those occasions.

3.2.3.2.4 The effect of the order

The custodial period

PCC(S)A 2000 s.102⁴³³: The period of detention and training

- s.102(1) - an offender shall serve the period of detention and training under a detention and training order in such youth detention accommodation as may be determined by the Secretary of State.
- s.102(2) - subject to subsections (3) to (5) below, the period of detention and training under a detention and training order shall be one-half of the term of the order.
- s.102(3) - the Secretary of State may at any time release the offender if he is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds.
- s.102(4) - the Secretary of State may release the offender:
- (a) in the case of an order for a term of 8 months or more but less than 18 months, at any time during the period of one month ending with the half-way point of the term of the order; and
 - (b) in the case of an order for a term of 18 months or more, at any time during the period of two months ending with that point.
- s.102(5) - if a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State shall release the offender:
- (a) in the case of an order for a term of 8 months or more but less than 18 months, one month after the half-way point of the term of the order; and

⁴³² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴³³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) in the case of an order for a term of 18 months or more, one month or two months after that point.

s.102(6) - an offender detained in pursuance of a detention and training order shall be deemed to be in legal custody.

The supervision period

PCC(S)A 2000 s.103⁴³⁴: The period of supervision

s.103(1) - the period of supervision of an offender who is subject to a detention and training order:

- (a) shall begin with the offender's release, whether at the half-way point of the term of the order or otherwise; and
- (b) subject to subsection (2) below, shall end when the term of the order ends.

s.103(2) - subject to subsection (2A), the Secretary of State may by order provide that the period of supervision shall end at such point during the term of a detention and training order as may be specified in the order under this subsection.

s.103(2A) - an order under subsection (2) may not include provision about cases in which:

- (a) the offender is aged 18 or over at the half-way point of the term of the detention and training order, and
- (b) the order was imposed in respect of an offence committed on or after the day on which ORA 2014 s.6(4) came into force.

s.103(3) - during the period of supervision, the offender shall be under the supervision of:

- (a) an officer of a local probation board or an officer of a provider of probation services ; or
- (c) a member of a youth offending team;

and the category of person to supervise the offender shall be determined from time to time by the Secretary of State.

s.103(4) - where the supervision is to be provided by an officer of a local probation board, the officer of a local probation board shall be an officer appointed for or assigned to the local justice area within which the offender resides for the time being.

s.103(4A) - where the supervision is to be provided by an officer of a provider of probation services, the officer of a provider of probation services shall be an officer acting in the local justice area within which the offender resides for the time being.

s.103(5) - where the supervision is to be provided by:

- (b) a member of a youth offending team,
- the member shall be a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.

s.103(6) - the offender shall be given a notice from the Secretary of State specifying:

- (a) the category of person for the time being responsible for his supervision; and

⁴³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) any requirements with which he must for the time being comply.

s.103(7) - A notice under subsection (6) above shall be given to the offender:

- (a) before the commencement of the period of supervision; and
- (b) before any alteration in the matters specified in subsection (6)(a) or (b) above comes into effect.

PCC(S)A 2000 s.106B⁴³⁵: Further supervision after end of term of detention and training order

s.106B(1) - this section applies where a detention and training order is made in respect of an offender if:

- (a) the offender is aged 18 or over at the half-way point of the term of the order,
- (b) the term of the order is less than 24 months, and
- (c) the order was imposed in respect of an offence committed on or after the day on which ORA 2014 s.6(4) came into force.

s.106B(2) - the following provisions of the Criminal Justice Act 2003 (which relate to supervision after end of sentence) apply as they apply in cases described in section 256AA(1) of that Act—

- (a) sections 256AA(2) to (11), 256AB and 256AC,
- (b) sections 256D and 256E, and
- (c) Schedule 19A,

but with the following modifications.

s.106B(3) - “*The supervision period*”, in relation to the offender, is the period which:

- (a) begins on the expiry of the term of the detention and training order, and
- (b) ends on the expiry of the period of 12 months beginning immediately after the half-way point of the term of the order.

s.106B(4) - “*The supervisor*”, in relation to the offender, must be:

- (a) an officer of a provider of probation services, or
- (b) a member of the youth offending team established by the local authority in whose area the offender resides for the time being.

s.106B(5) - the power under section 256AB(4) includes power to make provision about the supervision requirements that may be imposed under section 256AA as applied by this section and to amend this Act.

s.106B(6) - subsection (7) applies where the term of the detention and training order is determined by section 101(13) (consecutive and concurrent orders).

⁴³⁵ Commencement: 1 February 2015, as inserted by ORA 2014 s.6(4), SI 2015/40 art.2(f). The insertion applies in relation to: (a) any person who falls to be released under Chapter 6 of Part 12 of the Criminal Justice Act 2003 on or after the commencement day, and (b) any person who falls to be released under a detention and training order (including an order under section 211 of the Armed Forces Act 2006) on or after the commencement day, SI 2015/40 Sch.7 para.2

s.106B(7) - the offender is subject to supervision under section 256AA (as applied by this section) if that section (as applied) so requires in respect of one or more of the consecutive or concurrent orders.

3.2.3.2.5 Interaction with other sentencing orders

Detention under s.91

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p. 350)

Detention in Young Offender Institution

PCC(S)A 2000 s.106⁴³⁶: Interaction with sentences of detention in a young offender institution

- s.106(1) - where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:
- (a) if the offender has been released by virtue of s.102(2)-(5), at the beginning of the day on which it is passed;
 - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.
- s.106(4) - subject to subsection (5) below, where at any time an offender is subject concurrently:
- (a) to a detention and training order, and
 - (b) to a sentence of detention in a young offender institution,
- he shall be treated for the purposes of sections 102 to 105 and of section 98 (place of detention), PCC(S)A 2000 Part 5 Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.
- s.106(5) - nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

Existing DTOs

PCC(S)A 2000 s.101⁴³⁷: Term of order, consecutive terms and taking account of remands

- s.101(7) - where a detention and training order ("the new order") is made in respect of an offender who is subject to a detention and training order under which the period of

⁴³⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

supervision has begun (“the old order”), the old order shall be disregarded in determining—

- (a) for the purposes of subsection (4) above whether the effect of the new order would be that the offender would be subject to detention and training orders for a term which exceeds 24 months; and
- (b) for the purposes of subsection (5) above whether the term of the detention and training orders to which the offender would (apart from that subsection) be subject exceeds 24 months.

Hospital and Guardianship Orders

MHA 1983 s.37⁴³⁸: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37, the court shall not pass [...] a sentence of imprisonment [...] and for the purposes of this subsection “*sentence of imprisonment*” includes any sentence or order for detention.

3.2.3.2.6 Breach

3.2.3.2.6.1 Breach of supervision

PCC(S)A 2000 s.104⁴³⁹: Breach of supervision requirements

s.104(1) - where a detention and training order is in force in respect of an offender and it appears on information to a justice of the peace that the offender has failed to comply with requirements under PCC(S)A 2000 s.103(6)(b), the justice:

- (a) may issue a summons requiring the offender to appear at the place and time specified in the summons; or
- (b) if the information is in writing and on oath, may issue a warrant for the offender's arrest.

s.104(2) - any summons or warrant issued under this section shall direct the offender to appear or be brought:

- (a) before a youth court acting in the local justice in which the offender resides; or
- (b) if it is not known where the offender resides, before a youth court acting in the same local justice area as the justice who issued the summons or warrant.

s.104(3) - if it is proved to the satisfaction of the youth court before which an offender appears or is brought under this section that he has failed to comply with requirements under PCC(S)A 2000 s.103(6)(b), that court may:

- (a) order the offender to be detained, in such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding the maximum period found under subsection (3A) below, as the court may specify;
- (aa) order the offender to be subject to such period of supervision, not exceeding the maximum period found under subsection (3A) below, as the court may specify; or
- (b) impose on the offender a fine not exceeding level 3 on the standard scale.

⁴³⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

⁴³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- s.104(3A) - the maximum period referred to in subsection (3)(a) and (aa) above is the shorter of:
- (a) three months, and
 - (b) the period beginning with the date of the offender's failure and ending with the last day of the term of the detention and training order.
- s.104(3B) - for the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the first of those days.
- s.104(3C) - a court may order a period of detention or supervision, or impose a fine, under subsection (3) above before or after the end of the term of the detention and training order.
- s.104(3D) - a period of detention or supervision ordered under subsection (3) above:
- (a) begins on the date the order is made, and
 - (b) may overlap to any extent with the period of supervision under the detention and training order.
- s.104(4) - an offender detained in pursuance of an order under subsection (3)(a) above shall be deemed to be in legal custody.
- s.104(4A) - where an order under subsection (3)(a) above is made in the case of a person who has attained the age of 18, the order has effect to require the person to be detained in prison for the period specified by the court.
- s.104(5) - a fine imposed under subsection (3)(b) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- s.104(5A) - PCC(S)A 2000 ss.104A and 104B make further provision about the operation of orders under subsection (3) above.
- s.104(6) - an offender may appeal to the Crown Court against any order made under subsection (3)(a), (aa) or (b) above.

PCC(S)A 2000 s.104A⁴⁴⁰: Application of sections 103 to 105 in relation to orders under section 104(3)(aa)

- s.104A(1) - PCC(S)A 2000 s.103(3)-(7) apply in relation to a period of supervision to which an offender is subject by virtue of an order under PCC(S)A 2000 s.104(3)(aa) as they apply to the period of supervision under a detention and training order.
- s.104A(2) - in the application of s.103 by virtue of subsection (1) above, s.103(7)(a) is to be read as requiring a notice to be given to the offender as soon as is reasonably practicable after the order under s.104(3)(aa) is made.
- s.104A(3) - Sections 104 and 105 apply where an offender is subject to a period of supervision under s.104(3)(aa) as they apply where a detention and training order is in force in respect of an offender.
- s.104A(4) - in the application of s.104 by virtue of subsection (3) above:

⁴⁴⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.80(7).

- (a) the references in s.104 to s.103(6)(b) are to be read as references to that provision as applied by subsection (1) above,
- (b) the references in s.104(3A)(b) and s.104(3C) to the term of the detention and training order are to be read as references to the term of the period of supervision under s.104(3)(aa), and
- (c) the reference in s.104(3D)(b) of that section to the period of supervision under the detention and training order is to be read as including a reference to the period of supervision under s.104(3)(aa).

s.104A(5) - in the application of s.105 by virtue of subsection (3) above:

- (a) s.105(1)(a) is to be read as if the words “after his release and” were omitted, and
- (b) the reference in that paragraph to the date on which the term of the detention and training order ends is to be read as a reference to the date on which the period of supervision under s.104(3)(aa) ends.

Note: A fine imposed under s.104 may be subject to a parenting order. See the ‘Parenting/Parental Orders’ section for details.

Interaction with other sentencing orders

PCC(S)A 2000 s.104B⁴⁴¹: Interaction of orders under section 104(3)(a) with other sentences

s.104B(1) - where a court makes a detention and training order in the case of an offender who is subject to a period of detention under section 104(3)(a), the detention and training order takes effect:

- (a) at the beginning of the day on which it is made, or
- (b) if the court so orders, at the time when the period of detention under section 104(3)(a) ends.

s.104B(2) - where a court orders an offender who is subject to a detention and training order to be subject to a period of detention under section 104(3)(a) above for a failure to comply with requirements under a different detention and training order, the period of detention takes effect as follows:

- (a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which the order for the period of detention is made, and
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102 above.

s.104B(3) - subject to subsection (4) below, where at any time an offender is subject concurrently:

- (a) to a detention and training order, and
- (b) to a period of detention under section 104(3)(a) above,

the offender is to be treated for the purposes of sections 102 to 105 as if the offender were subject only to the detention and training order.

⁴⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- s.104B(4) - nothing in subsection (3) above requires the offender to be released in respect of either the order or the period of detention unless and until the offender is required to be released in respect of each of them.
- s.104B(5) - the Secretary of State may by regulations make provision about the interaction between a period of detention under section 104(3)(a) above and a custodial sentence in a case where:
- (a) an offender who is subject to such a period of detention becomes subject to a custodial sentence, or
 - (b) an offender who is subject to a custodial sentence becomes subject to such a period of detention.
- s.104B(6) - the provision that may be made by regulations under subsection (5) above includes—
- (a) provision as to the time at which the period of detention under section 104(3)(a) above or the custodial sentence is to take effect;
 - (b) provision for the offender to be treated, for the purposes of the enactments specified in the regulations, as subject only to the period of detention or the custodial sentence;
 - (c) provision about the effect of enactments relating to the person's release from detention or imprisonment in a case where that release is not to take effect immediately by virtue of provision in the regulations.
- s.104B(7) - the power of the Secretary of State to make regulations under subsection (5):
- (a) is exercisable by statutory instrument;
 - (b) includes power to make supplementary, incidental, transitional, transitory or saving provision.
- s.104B(8) - a statutory instrument containing regulations under subsection (5) above is subject to annulment in pursuance of a resolution of either House of Parliament.

3.2.3.2.6.2 Breach: Commission of further offence

PCC(S)A 2000 s.105⁴⁴²: Offences during currency of order

- s.105(1) - this section applies to a person subject to a detention and training order if:
- (a) after his release and before the date on which the term of the order ends, he commits an offence punishable with imprisonment in the case of a person aged 21 or over ("the new offence"); and
 - (b) whether before or after that date, he is convicted of the new offence.
- s.105(2) - subject to section 8(6) above (duty of adult magistrates' court to remit young offenders to youth court for sentence), the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be detained in such youth detention accommodation as the Secretary of State may determine for the whole or any part of the period which:
- (a) begins with the date of the court's order; and

⁴⁴² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.
- s.105(3) - the period for which a person to whom this section applies is ordered under subsection (2) above to be detained in [youth detention] accommodation:
 - (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
 - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- s.105(4) - where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- s.105(5) - a person detained in pursuance of an order under subsection (2) above shall be deemed to be in legal custody.

Interaction with other sentencing orders

PCC(S)A 2000 s.106⁴⁴³: Interaction with sentences of detention in a young offender institution

- s.106(1) - where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:
 - (a) if the offender has been released by virtue of s.102(2)-(5), at the beginning of the day on which it is passed;
 - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.
- s.106(4) - subject to subsection (5) below, where at any time an offender is subject concurrently:
 - (a) to a detention and training order, and
 - (b) to a sentence of detention in a young offender institution,he shall be treated for the purposes of sections 102 to 105 and of section 98 (place of detention), PCC(S)A 2000 Part 5 Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.
- s.106(5) - nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.
- s.106(6) - where, by virtue of any enactment giving a court power to deal with a person in a way in which a court on a previous occasion could have dealt with him, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person shall be treated as if he had been sentenced to detention in a young offender institution for the same term.

⁴⁴³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

PCC(S)A 2000 s.106A⁴⁴⁴: Interaction with sentences of detention

s.106A(1) - in this section:

“the 2003 Act” means the Criminal Justice Act 2003;

“sentence of detention” means:

- (a) a sentence of detention under section 91 or section 209 of the Armed Forces Act 2006, or
- (b) a sentence of detention under CJA 2003 ss.226B or 228 (extended sentence for certain violent or sexual offences: persons under 18);

and references in this section to a sentence of detention under CJA 2003 ss.226B or 228 include such a sentence passed as a result of Armed Forces Act 2006 ss.221A or 222

s.106A(2) - where a court passes a sentence of detention in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:

- (a) if the offender has at any time been released by virtue of s.102(2)-(5), at the beginning of the day on which the sentence is passed, and
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.

s.106A(3) - where a court makes a detention and training order in the case of an offender who is subject to a sentence of detention, the order shall take effect as follows—

- (a) if the offender has at any time been released under CJA 2003 Part 12 Chapter 6 (release on licence of fixed-term prisoners), at the beginning of the day on which the order is made, and
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released under that Chapter.

s.106A(4) - where an order under section 102(5) above is made in the case of a person in respect of whom a sentence of detention is to take effect as mentioned in subsection (2)(b) above, the order is to be expressed as an order that the period of detention attributable to the detention and training order is to end at the time determined under section 102(5)(a) or (b) above.

s.106A(5) - in determining for the purposes of subsection (3)(b) the time when an offender would otherwise be released under CJA 2003 Part 12 Chapter 6, CJA 2003 s.246 (power of Secretary of State to release prisoners on licence before he is required to do so) is to be disregarded.

s.106A(6) - where by virtue of subsection (3)(b) above a detention and training order made in the case of a person who is subject to a sentence of detention under CJA 2003 ss.226B or 228 is to take effect at the time when he would otherwise be released under CJA 2003 Part 12 Chapter 6, any direction by the Parole Board under CJA 2003 s.246A(5)(b) or (as the case may be) s.247(2)(b) in respect of him is to be expressed as a direction that the Board would, but for the detention and training order, have directed his release under that section.

⁴⁴⁴ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.32 para.113, SI 2005/950 art.2 and Sch.1 para.42(34)

s.106A(7) - subject to subsection (9) below, where at any time an offender is subject concurrently:

- (a) to a detention and training order, and
- (b) to a sentence of detention,

he shall be treated for the purposes of the provisions specified in subsection (8) below as if he were subject only to the sentence of detention.

s.106A(8) - those provisions are:

- (a) sections 102 to 105,
- (b) PCC(S)A 2000 s.92, CJA 2003 s.235 and AFA 2006 s.210 (place of detention etc),
- (c) CJA 2003 Part 12 Chapter 6 and
- (d) AFA 2006 s.214 (offences committed during a detention and training order under that Act).

s.106A(9) - nothing in subsection (7) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

3.2.3.3. Determinate custodial sentences

3.2.3.3.1 Detention under s.91

3.2.3.3.1.1 Availability and power to order

Availability

PCC(S)A 2000 s.91⁴⁴⁵: Offenders under 18 convicted of certain serious offences: power to detain for specified period

s.91(1) - PCC(S)A 2000 s.91(3) applies where a person aged under 18 is convicted on indictment of:

- (a) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; or
- (b) an offence under SOA 2003 s.3 (sexual assault); or
- (c) an offence under SOA 2003 s.13 (child sex offences committed by children or young persons); or
- (d) an offence under SOA 2003 s.25 (sexual activity with a child family member); or
- (e) an offence under SOA 2003 s.26 (inciting a child family member to engage in sexual activity).

s.91(1A) - PCC(S)A 2000 s.91(3) also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence:
 - (i) under FA 1968 s.5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) (prohibited weapons), or

⁴⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (ii) under FA 1968 s.5(1A)(a),
- (b) the offence was committed after the commencement of FA 1968 s.51A and for the purposes of subsection (3) of that section at a time when he was aged 16 or over, and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2) (exceptional circumstances which justify its not imposing required custodial sentence).

s.91(1B) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence under the Firearms Act 1968 that is listed in section 51A(1A)(b), (e) or (f) of that Act and was committed in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of that Act;
- (b) the offence was committed after the commencement of Violent Crime Reduction Act 2006 s.30 and for the purposes of section 51A(3) of the Firearms Act 1968 at a time when he was aged 16 or over; and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2).

s.91(1C) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted of an offence under VCRA 2006 s.28 (using someone to mind a weapon);
- (b) VCRA 2006 s.29(3) applies (minimum sentences in certain cases); and
- (c) the court is of the opinion mentioned in VCRA 2006 s.29(6) (exceptional circumstances which justify not imposing the minimum sentence).

Discretionary power to impose detention under s.91

PCC(S)A 2000 s.91⁴⁴⁶: Offenders under 18 convicted of certain serious offences: power to detain for specified period

s.91(3) - if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

s.91(4) - subsection (3) above is subject to (in particular) CJA 2003 ss.152 and 153

s.91(5) - where:

- (a) FA 1968 s.51A(2), or
- (b) VCRA 2006 s.29(6),

requires the imposition of a sentence of detention under this section for a term of at least the term provided for in that section, the court shall sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.

⁴⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.3.3.1.2 Interaction with other sentencing orders

DTO/Detention in YOI

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p. 350)

Hospital and Guardianship Orders

MHA 1983 s.37⁴⁴⁷: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37, the court shall not pass [...] a sentence of imprisonment [...] and for the purposes of this subsection “*sentence of imprisonment*” includes any sentence or order for detention.

Place of detention etc.

PCC(S)A 2000 s.92⁴⁴⁸: Detention under sections 90 and 91: place of detention etc.

- s.92(1) - a person sentenced to be detained under section 90 or 91 above shall be liable to be detained in such place and under such conditions—
- (a) as the Secretary of State may direct; or
 - (b) as the Secretary of State may arrange with any person.
- s.92(2) - a person detained pursuant to the directions or arrangements made by the Secretary of State under this section shall be deemed to be in legal custody.

CYP A 1933 s.58⁴⁴⁹: Power of Secretary of State to send certain juvenile offenders to approved schools

- s.58 - the Secretary of State may by order direct that—
- (a) a person who is under the age of eighteen years and is undergoing detention in a Borstal institution; or
 - (b) a child or young person [sentenced to be detained under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 with respect to whom he is authorised to give directions under section 92 of that Act; or
 - (c) a young person who has been ordered to be imprisoned and has been pardoned by His Majesty on condition of his agreeing to undergo training in a school,
- shall be transferred or sent to and detained in an approved school specified in the order; and any such order shall be an authority for his detention in that approved school or in such other approved school as the Secretary of State may from time to time determine until such date as may be specified in the order:

⁴⁴⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

⁴⁴⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁴⁹ Commencement: 1 November 1933, CYP A 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

Provided that the date to be so specified shall be not later than that on which he will in the opinion of the Secretary of State attain the age of nineteen years nor later—

- (a) in the case of a person who was sentenced to detention under the said section 91, than the date on which his detention would have expired;
- (b) in the case of a young person who has been sentenced to imprisonment and pardoned as aforesaid, than three years from the date as from which his sentence began to run;
- (c) in the case of a person who was undergoing detention in a Borstal institution, than the end of the period for which he would have been liable to be detained therein.

3.2.3.3.2 Detention in a Young Offender Institution

3.2.3.3.2.1 Availability and power to order

Availability

PCC(S)A 2000 s.96⁴⁵⁰: Detention in a young offender institution for other cases where offender at least 18 but under 21

s.96 - subject to sections 90, 93 and 94, where:

- (a) a person aged at least 18 but under 21 is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
- (b) the court is of the opinion that either or both of paragraphs (a) and (b) of section 79(2) above apply or the case falls within section 79(3),

the sentence that the court is to pass is a sentence of detention in a young offender institution.

Maximum length of order

PCC(S)A 2000 s.97⁴⁵¹: Term of detention in a young offender institution, and consecutive sentences

s.97(1) - the maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence.

Minimum length of order

PCC(S)A 2000 s.97⁴⁵²: Term of detention in a young offender institution, and consecutive sentences

s.97(2) - a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days.

Note: Section 97 was amended by CJA 2015 s.15 on 13 April 2015 to omit subsection (3).

⁴⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Consecutive sentences

PCC(S)A 2000 s.97⁴⁵³: Term of detention in a young offender institution, and consecutive sentences

s.97(4) - where:

- (a) an offender is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution, or
- (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,

the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

Place of detention

PCC(S)A 2000 s.98⁴⁵⁴: Detention in a young offender institution: place of detention

- s.98(1) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.
- s.98(2) - the Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution.

3.2.2.3.2 Interaction with other sentencing orders

Offender serving detention in YOI turns 21 and convicted of subsequent offence

PCC(S)A 2000 s.97⁴⁵⁵: Term of detention in a young offender institution, and consecutive sentences

- s.97(5) - subject to section 84 above (restriction on consecutive sentences for released prisoners), where an offender who:
 - (a) is serving a sentence of detention in a young offender institution, and
 - (b) is aged 21 or over,is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

⁴⁵³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

DTO

PCC(S)A 2000 s.106⁴⁵⁶: Interaction with sentences of detention in a young offender institution

- s.106(1) - where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:
- (a) if the offender has been released by virtue of s.102(2)-(5), at the beginning of the day on which it is passed;
 - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.
- s.106(4) - subject to subsection (5) below, where at any time an offender is subject concurrently:
- (a) to a detention and training order, and
 - (b) to a sentence of detention in a young offender institution,
- he shall be treated for the purposes of sections 102 to 105 and of section 98 (place of detention), PCC(S)A 2000 Part 5 Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.
- s.106(5) - nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

Detention under s.91

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p.350)

3.2.3.4. Extended sentences (EDS)

3.2.3.4.1 General

What is an extended sentence?

CJA 2003 s.226B⁴⁵⁷: Extended sentence for certain violent or sexual offences: under 18

- s.226B(3) - an extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of:

⁴⁵⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

- (a) the appropriate custodial term, and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

Place of detention

CJA 2003 s.235⁴⁵⁸: Detention under sections 226, 226B and 228

s.235 - a person sentenced to be detained under section 226, 226B or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

3.2.3.4.2 Availability and power to order

Availability and power to order

R. v Robson [2006] EWCA Crim 1414; [2007] 1 Cr. App. R. (S.) 54 (p.301)

As a matter of statutory construction, we conclude that the age of the offender for the purpose of determining which of the statutory regimes under Chapter 5 of Part 12 of the 2003 Act applies to him is the offender’s age at the date of conviction... (Keith J, at [13])

CJA 2003 s.226B⁴⁵⁹: Extended sentence for certain violent or sexual offences: under 18

s.226B(1) - this section applies where:

- (a) a person aged under 18 is convicted of a specified offence (whether the offence was committed before or after this section comes into force),
- (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences,
- (c) the court is not required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act, and
- (d) if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.

s.226B(2) - the court may impose an extended sentence of detention on the offender.

Note: As to the requirement that the custodial term be at least four years, see R. v Pinnell [2010] EWCA Crim 2848; [2011] 2 Cr. App. R. (S.) 30 (p.168): the headnote to which reads, in part:

... although by section 227(2B) of the 2003 Act, as inserted, the appropriate custodial term in relation to each extended sentence had to be at least four years and separate consecutive sentences, each shorter than four years, could not be extended even if their total was more than four years, by section 153 of the Act the court in fixing the custodial term of an extended sentence under section 227 could aggregate with a specified offence non-specified associated offences, to consider the totality of offending, and so pass an extended sentence for the specified offence with a custodial term longer than that offence alone would justify, provided that the custodial and the extension term did not in aggregate exceed the maximum term permitted for that offence

⁴⁵⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18.

⁴⁵⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

See also the TICs and Totality Guideline (Sentencing Council) p.10.

CJA 2003 s.224⁴⁶⁰: Meaning of “specified offence”

s.224(1) - an offence is a “specified offence” for the purposes of CJA 2003 Part 12 Chapter 5 if it is a specified violent offence or a specified sexual offence

s.224(3) in CJA 2003 Part 12 Chapter 5:

“serious harm” means death or serious personal injury, whether physical or psychological;

“specified violent offence” means an offence specified in Part 1 of Schedule 15;

“specified sexual offence” means an offence specified in Part 2 of Schedule 15

CJA 2003 Sch.15⁴⁶¹: Specified offences for the purposes of CJA 2003 Part 5 Chapter 12

Note: The schedule lists the offences for the purposes of the dangerous offender provisions. There are pending amendments to the schedule and some paragraphs are not yet in force. The individual paragraphs are not listed here. The Schedule was amended by SI 2015/778 art.3 and Sch.1 on 13 April 2015.

The assessment of dangerousness

CJA 2003 s.229⁴⁶²: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

⁴⁶⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 224 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.15

⁴⁶¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.37.

⁴⁶² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

Pre-sentence report

CJA 2003 s.156⁴⁶³: Pre-sentence reports and other requirements

- s.156(3) - subject to CJA s.156(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 CJA 2003 ss.152(2), 153(2) [...] or 226A(1)(b) [...]
- s.156(4) - CJA 2003 s.156(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

3.2.3.4.3 Making the order

Determining the length of the custodial portion of the sentence

CJA 2003 s.226B⁴⁶⁴: Extended sentence for certain violent or sexual offences: under 18

- s.226B(4) - the appropriate custodial term is the term of detention that would (apart from this section) be imposed in compliance with section 153(2).

Determining the length of the extended licence

CJA 2003 s.226B⁴⁶⁵: Extended sentence for certain violent or sexual offences: under 18

- s.226B(5) - the extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences, subject to subsections (5A) to (7).
- s.226B(5A) - the extension period must be at least 1 year.
- (6) The extension period must not exceed:
 - (a) 5 years in the case of a specified violent offence, and
 - (b) 8 years in the case of a specified sexual offence.

Length of total sentence may not exceed the maximum permitted for the offence

CJA 2003 s.226B⁴⁶⁶: Extended sentence for certain violent or sexual offences: under 18

- s.226B(7) - the term of an extended sentence of detention imposed under this section in respect of an offence may not exceed the term that, at the time the offence was committed, was the maximum term of imprisonment permitted for the offence in the case of a person aged 21 or over.

⁴⁶³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁴⁶⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

⁴⁶⁵ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

⁴⁶⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

Consecutive sentences

Note: It is permissible to impose consecutive extended sentences but it is desirable to not do so, see e.g. R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13)

Judge should give reasons for imposing an extended sentence

R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13)

In accordance with CJA 2003 s.174, sentencers should usually give reasons for all their conclusions, in particular a finding of dangerousness. Such an explanation should briefly identify the information which has been taken into account.

CJA 2003 s.174⁴⁶⁷: Duty to give reasons for and to explain effect of sentence

s.174(1) - a court passing sentence on an offender has the duties in subsections (2) [...]

s.174(2) - the court must state in open court, in ordinary language and in general terms, the court’s reasons for deciding on the sentence

3.2.3.4.4 Offences committed before 5 April 2005 etc.

Offences which have been abolished/were committed prior to 5 April 2005

CJA 2003 s.226B⁴⁶⁸: Extended sentence for certain violent or sexual offences: under 18

s.226B(8) - in subsections (1)(a) and (6), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that:

- (a) was abolished before 4 April 2005, and
- (b) would have constituted such an offence if committed on the day on which the offender was convicted of the offence.

s.226B(9) - where the offence mentioned in subsection (1)(a) was committed before 4 April 2005:

- (a) subsection (1) has effect as if paragraph (c) were omitted, and
- (b) subsection (4) has effect as if the words “in compliance with section 153(2)” were omitted.

⁴⁶⁷ Commencement: Section 174(4) in force 5 April 2005, SI 2004/829 art.2(2)(e). Section 174(1)-(3)(b) and (5)-(6) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁴⁶⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

3.2.3.4.5 Appeals

Fresh evidence

CJA 2003 s.229⁴⁶⁹: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

CAA 1968 s.23: Evidence

s.23(1) - the Court of Appeal may, if they think it necessary or expedient in the interests of justice:

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies

s.23(1A) - [supplementary to s.23(1)(a)]

s.23(2) - the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to:

- (a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

⁴⁶⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

- (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings

R. v Beesley [2011] EWCA Crim 1021; [2012] 1 Cr. App. R. (S.) 15 (p.71)

As the provisions in relation to dangerousness require the court to take into account all information and in the light of the practice set out in *R. v Roberts* [2006] EWCA Crim 2915; [2007] 1 W.L.R. 1109, s.23 [CAA 1968] does not constrain the Court of Appeal from receiving further information about the offender where it is right to do so. (Thomas LJ, at [35])

3.2.3.4.6 Certificates of conviction

CJA 2003 s.232A⁴⁷⁰: Certificates of conviction for Sch.15B offence

s.232A - where:

- (a) after the commencement of CJA 2003 Sch.15B a person is convicted in England and Wales of an offence listed in that Schedule, and
 - (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that date, and
 - (c) that court subsequently certifies that fact,
- that certificate is evidence, for the purposes of CJA 2003 s.224A, that the person was convicted of such an offence on that date

3.2.3.4.7 Interaction with other sentencing orders

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and

⁴⁷⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.19 para.21

- v) if s.224A does not apply the judge should then consider the provisions of s.226A . Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.3.5. Detention for life (discretionary under CJA 2003)

3.2.3.5.1 General

Interpretation

CJA 2003 s.226⁴⁷¹: Detention for life for serious offences committed by those under 18

s.226(5) - an offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Note: The title to section 226 states it applies to offenders who committed offences when they were aged 18, however the section reveals that it is the age at date of conviction which determines whether or not the section applies. Therefore, an offence committed by a 17-year-old who was convicted of the offence aged 18, section 225 would apply, not 226.

Place of detention

CJA 2003 s.235⁴⁷²: Detention under sections 226, 226B and 228

s.235 - a person sentenced to be detained under section 226, 226B or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

3.2.3.5.2 Availability and test to apply

Availability

CJA 2003 s.226⁴⁷³: Detention for life for serious offences committed by those under 18

s.226(1) - this section applies where:

- (a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and
- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

⁴⁷¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.226 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

⁴⁷² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18.

⁴⁷³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.226 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

Assessment of dangerousness

CJA 2003 s.229⁴⁷⁴: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

3.2.3.5.3 Duty to impose life sentence

Duty to impose detention for life under s.91

CJA 2003 s.226⁴⁷⁵: Detention for life for serious offences committed by those under 18

s.226(2) - if:

- (a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under PCC(S)A 2000 s.91, and
- (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,

the court must impose a sentence of detention for life under that section.

⁴⁷⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

⁴⁷⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.226 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

PCC(S)A 2000 s.91⁴⁷⁶: Offenders under 18 convicted of certain serious offences: power to detain for specified period

- s.91(1) - PCC(S)A 2000 s.91(3) applies where a person aged under 18 is convicted on indictment of:
- (a) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; or
 - (b) an offence under SOA 2003 s.3 (sexual assault); or
 - (c) an offence under SOA 2003 s.13 (child sex offences committed by children or young persons); or
 - (d) an offence under SOA 2003 s.25 (sexual activity with a child family member); or
 - (e) an offence under SOA 2003 s.26 (inciting a child family member to engage in sexual activity).
- s.91(1A) - PCC(S)A 2000 s.91(3) also applies where:
- (a) a person aged under 18 is convicted on indictment of an offence:
 - (i) under FA 1968 s.5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) (prohibited weapons), or
 - (ii) under FA 1968 s.5(1A)(a),
 - (b) the offence was committed after the commencement of FA 1968 s.51A and for the purposes of subsection (3) of that section at a time when he was aged 16 or over, and
 - (c) the court is of the opinion mentioned in FA 1968 s.51A(2) (exceptional circumstances which justify its not imposing required custodial sentence).
- s.91(1B) - subsection (3) below also applies where:
- (a) a person aged under 18 is convicted on indictment of an offence under the Firearms Act 1968 that is listed in section 51A(1A)(b), (e) or (f) of that Act and was committed in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of that Act;
 - (b) the offence was committed after the commencement of Violent Crime Reduction Act 2006 s.30 and for the purposes of section 51A(3) of the Firearms Act 1968 at a time when he was aged 16 or over; and
 - (c) the court is of the opinion mentioned in FA 1968 s.51A(2).
- s.91(1C) - subsection (3) below also applies where:
- (a) a person aged under 18 is convicted of an offence under VCRA 2006 s.28 (using someone to mind a weapon);
 - (b) VCRA 2006 s.29(3) applies (minimum sentences in certain cases); and
 - (c) the court is of the opinion mentioned in VCRA 2006 s.29(6) (exceptional circumstances which justify not imposing the minimum sentence).
- s.91(3) - if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable, the court may sentence the offender to be detained for such
-

⁴⁷⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

s.91(4) - subsection (3) above is subject to (in particular) CJA 2003 ss.152 and 153

s.91(5) - where:

(a) FA 1968 s.51A(2), or

(b) VCRA 2006 s.29(6),

requires the imposition of a sentence of detention under this section for a term of at least the term provided for in that section, the court shall sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.

3.2.3.5.4 Guidance

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359) at [22] and [23]

[...] [T]aking into account the law prior to the coming into force of the CJA 2003 and the whole of the new statutory provisions, the question in s.225(2)(b) as to whether the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify a life sentence requires consideration of:

- i) The seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of CJA 2003 s.143(1). This is always a matter for the judgment of the court.
- ii) The defendant's previous convictions (in accordance with CJA 2003 s.143(2)).
- iii) The level of danger to the public posed by the defendant and whether there is a reliable estimate of the length of time he will remain a danger.
- iv) The available alternative sentences.

It is inevitable that the application of s.225 in its current form will lead to the imposition of life sentences in circumstances where previously the sentence would have been one of IPP. It is what Parliament intended and also ensures (as Parliament also intended), so far as is possible, the effective protection of the public.

(Lord Thomas CJ at [22]-[23])

Note: It is important to remember that the comments above were in the context of the adult form of life sentence and different considerations may apply.

3.2.3.5.5 Setting the minimum term

What is a life sentence?

Criminal Practice Directions 2015 VII Sentencing

- L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.

L.2 Thus the life sentence falls into two parts:

- (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and
- (b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

Definitions

PCC(S)A 2000 s.82A⁴⁷⁷: Determination of tariffs

s.82A(7) - definitions for s.82A:

“court” includes the Court Martial;

“life sentence” means a sentence mentioned in C(S)A 1997 s.34(2) other than a sentence mentioned in s.34(2)(d) or (e)

s.82A(8) - [provision dealing with service courts]

C(S)A 1997 s.34⁴⁷⁸: Interpretation of Chapter II

s.34(1) - in this Chapter “life prisoner” means a person serving one or more life sentences and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003.

s.34(2) - in this section “life sentence” means any of the following imposed for an offence, whether committed before or after the commencement of this Chapter, namely—

- (a) a sentence of imprisonment for life;
- (b) a sentence of detention during Her Majesty's pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000; and
- (c) a sentence of custody for life under section 93 or 94 of that Act.
- (d) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006),
- (e) a sentence of detention for public protection under section 226 of that Act (including one passed as a result of section 221 of the Armed Forces Act 2006);
- (f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;
- (g) a sentence under section 218 of that Act (detention at Her Majesty's pleasure).

⁴⁷⁷ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

⁴⁷⁸ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

Duty to specify minimum term

PCC(S)A 2000 s.82A⁴⁷⁹: Determination of tariffs

- s.82A(1) - application of section: where a court passes a life sentence in circumstances where the sentence is not fixed by law
- s.82A(2) - the court shall, unless it makes an order under PCC(S)A 2000 s.82A(4), order that C(S)A 1997 s.28(5)-(8) (referred to in this section as the “*early release provisions*”) shall apply to the defendant as soon as he has served the part of his sentence which is specified in the order

Criminal Practice Directions 2015 VII Sentencing

- L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

Determining the length

PCC(S)A 2000 s.82A⁴⁸⁰: Determination of tariffs

- s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:
- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
 - (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—
 - (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition); and
 - (c) the early release provisions as compared with CJA 2003 s.244(1) (duty to release prisoners at half-way point of sentence etc.)

Criminal Practice Directions 2015 VII Sentencing

- L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

⁴⁷⁹ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

⁴⁸⁰ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

Note: As to the appropriate length of the minimum term, as a proportion of the notional determinate sentence, see R. v Szczerba [2002] EWCA Crim 440; [2002] 2 Cr. App. R. (S.) 86 (p.387). The headnote to which reads:

half the notional determinate sentence should be taken, less time spent in custody on a remand, as the period specified to be served. If a judge specified a higher proportion than one half, he should always state his reasons for so doing.

No power to impose a “whole life” minimum term

PCC(S)A 2000 s.82A⁴⁸¹: Determination of tariffs

s.82A(4) - if the defendant was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under PCC(S)A 2000 s.82A(2), the court shall order that, the early release provisions shall not apply

Criminal Practice Directions 2015 VII Sentencing

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

3.2.3.5.6 Interaction with other sentencing orders

Dangerousness provisions

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;

⁴⁸¹ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A. Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

Note: It is important to remember that the comments of the court were in the context of adult offenders.

DTO/Detention in YOI

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p. 350)

Hospital and Guardianship Orders

MHA 1983 s.37⁴⁸²: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37, the court shall not pass [...] a sentence of imprisonment [...] and for the purposes of this subsection “*sentence of imprisonment*” includes any sentence or order for detention.

Sexual Offences Prevention Orders

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468)

The court did not say that no SOPO will ever be appropriate in the case of an indefinite sentence, but the court had not on the material before it been able to envisage an instance when it would. The usual rule ought to be that an indeterminate sentence needs no SOPO, at least unless there was some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later.⁴⁸³

R. v MI [2012] EWCA Crim 1792

As a result of *Smith* it will be rare for a SOPO to be made simultaneously with an indeterminate custodial sentence. Rare, of course, does not mean never. In general, however, SOPOs should

⁴⁸² Commencement: 30 September 2003, MHA 1983 s.149(2).

⁴⁸³ It seems likely that this decision would apply with equal force to the new SHPOs, dealt with in part 3(4).

not be ordered when a defendant is sentenced to imprisonment for public protection. (Lord Judge CJ, at [2])

3.2.3.6. Detention for life (discretionary under common law)

3.2.3.6.1 The existence of the power

R. v Saunders [2013] EWCA Crim 1027; [2014] 1 Cr. App. R. (S.) 45 (p.258)

[...] [N]either the 2003 Act, nor LASPOA 2012, imposed any limit on the power of the court to impose a sentence of life imprisonment in cases where a sentence of life imprisonment may be imposed but the case does not fall within either the statutory life sentence (CJA 2003 s.224A) or the discretionary life sentence (CJA 2003 s.225). Some of these offences may involve a significant risk of serious harm to the public, but are not included within the list of “specified” offences in the dangerousness provisions in the 2003 Act. One obvious example is the offender who commits repeated offences of very serious drug supplying which justifies the imposition of the life sentence. In circumstances like these the court is not obliged to impose the sentence in accordance with s.225(2), but its discretion to do so is unaffected.

In reality, the occasions when this second form of discretionary life sentence is likely to be imposed will be rare, and no inconvenience has yet resulted from applying the description “discretionary” to both forms of sentence. (Lord Chief Justice, at [11] – [12])

3.2.3.6.2 Setting the minimum term

Note: See 3.2.2.3.2, ‘Setting the minimum term’ in the Life imprisonment (CJA 2003 s.225) section.

3.2.3.7. Life (mandatory life)

3.2.3.7.1 Power

M(ADP)A 1965 s.1⁴⁸⁴: Abolition of death penalty for murder

- s.1(1) - no person shall suffer death for murder, and a person convicted of murder shall be sentenced to imprisonment for life.
- s.1(3) - for the purpose of any proceedings on or subsequent to a person’s trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if at the commencement of this Act a person is under sentence of death for murder, the sentence shall have effect as a sentence of imprisonment for life.

PCC(S)A 2000 s.90⁴⁸⁵: Offenders who commit murder etc. when under 18: duty to detain at Her Majesty’s pleasure

- s.90 - where a person convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment appears to the court to have been aged under 18 at the time the offence was committed, the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty’s pleasure.

Note: The title of the section and the section contents use two different terms: detained at/during HM’s pleasure.

⁴⁸⁴ Commencement: 9 November 1965, M(ADPA) 1965 s.3(4).

⁴⁸⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.3.7.2 Setting the minimum term

Application of section

CJA 2003 s.269⁴⁸⁶: Determination of minimum term in relation to mandatory life sentence

s.269(1) - this section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

Duty to set minimum term or impose whole life order

CJA 2003 s.269⁴⁸⁷: Determination of minimum term in relation to mandatory life sentence

s.269(2) - the court must, unless it makes an order under subsection (4), order that the provisions of C(S)A 1997 s.28(5) to (8) (referred to in this Chapter as “*the early release provisions*”) are to apply to the defendant as soon as he has served the part of his sentence which is specified in the order.

s.269(4) - if the defendant was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the defendant.

Determining the length

CJA 2003 s.269⁴⁸⁸: Determination of minimum term in relation to mandatory life sentence

s.269(3) - the part of his sentence is to be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
- (b) the effect of section 240ZA (crediting periods of remand in custody) or of any direction which it would have given under section 240A (crediting periods of remand on certain types of bail) if it had sentenced him to a term of imprisonment.

s.269(3A) - the reference in subsection (3)(b) to section 240ZA includes AFA 2006 s.246 (crediting periods in service custody).

s.269(5) - in considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), the court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

⁴⁸⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁸⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁸⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

Starting points

CJA 2003 Sch.21 para.4⁴⁸⁹: Determination of minimum term in relation to mandatory life sentence

para.4(1) - if:

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
 - (b) the offender was aged 21 or over when he committed the offence,
- the appropriate starting point is a whole life order.

para.4(2) cases that would normally fall within sub-paragraph (1)(a) include:

- (a) the murder of two or more persons, where each murder involves any of the following:
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (ba) the murder of a police officer or prison officer in the course of his or her duty,
- (c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or
- (d) a murder by a defendant previously convicted of murder.

CJA 2003 Sch.21 para.5⁴⁹⁰: Determination of minimum term in relation to mandatory life sentence

para.5(1) - if:

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
 - (b) the defendant was aged 18 or over when he committed the offence,
- the appropriate starting point, in determining the minimum term, is 30 years.

para.5(2) - cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include:

- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,

⁴⁸⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity, or
- (h) a murder falling within paragraph 4(2) committed by a defendant who was aged under 21 when he committed the offence.

CJA 2003 Sch.21 para.5A⁴⁹¹: Determination of minimum term in relation to mandatory life sentence

para.5A(1) - if:

- (a) the case does not fall within paragraph 4(1) or 5(1),
- (b) the offence falls within sub-paragraph (2), and
- (c) the defendant was aged 18 or over when the offender committed the offence, the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

para5A(2) -the offence falls within this sub-paragraph if the defendant took a knife or other weapon to the scene intending to:

- (a) commit any offence, or
- (b) have it available to use as a weapon, and used that knife or other weapon in committing the murder.

CJA 2003 Sch.21 para.6⁴⁹²: Determination of minimum term in relation to mandatory life sentence

para.6 - if the defendant was aged 18 or over when he committed the offence and the case does not fall within paragraph 4(1), 5(1) or 5A(1), the appropriate starting point, in determining the minimum term, is 15 years.

CJA 2003 Sch.21 para.7⁴⁹³: Determination of minimum term in relation to mandatory life sentence

para.7 - if the defendant was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravation and Mitigation

CJA 2003 Sch.21 para.8⁴⁹⁴: Determination of minimum term in relation to mandatory life sentence

para.8 - having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

⁴⁹¹ Commencement: 2 March 2010, as inserted by SI 2010/197 art.2(2). Paragraph 5A does not apply in relation to a life sentence imposed for an offence of murder committed before the commencement day, SI 2010/197 art.3.

⁴⁹² Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.21 para.9⁴⁹⁵: Determination of minimum term in relation to mandatory life sentence

para.9 - detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

CJA 2003 Sch.21 para.10⁴⁹⁶: Determination of minimum term in relation to mandatory life sentence

para.10 - aggravating factors (additional to those mentioned in paragraph 4(2), 5(2) and 5A(2)) that may be relevant to the offence of murder include:

- (a) a significant degree of planning or premeditation,
- (b) the fact that the victim was particularly vulnerable because of age or disability,
- (c) mental or physical suffering inflicted on the victim before death,
- (d) the abuse of a position of trust,
- (e) the use of duress or threats against another person to facilitate the commission of the offence,
- (f) the fact that the victim was providing a public service or performing a public duty, and
- (g) concealment, destruction or dismemberment of the body.

CJA 2003 Sch.21 para.11⁴⁹⁷: Determination of minimum term in relation to mandatory life sentence

para.11 - mitigating factors that may be relevant to the offence of murder include:

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the defendant suffered from any mental disorder or mental disability which (although not falling within Homicide Act 1957 s.2(1)), lowered his degree of culpability,
- (d) the fact that the defendant was provoked (for example, by prolonged stress),
- (e) the fact that the defendant acted to any extent in self-defence or in fear of violence,
- (f) a belief by the defendant that the murder was an act of mercy, and
- (g) the age of the defendant.

CJA 2003 Sch.21 para.12⁴⁹⁸: Determination of minimum term in relation to mandatory life sentence

para.12 - nothing in Sch.21 restricts the application of:

- (a) section 143(2) (previous convictions),

⁴⁹⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (b) section 143(3) (bail), or
 - (c) section 144 (guilty plea),
- or of Armed Forces Act 2006 s.238(1)(b) or (c) or s.239

3.2.3.7.3 Giving reasons

CJA 2003 s.270⁴⁹⁹: Duty to give reasons

s.270(1) - subsection (2) applies where a court makes an order under section 269(2) or (4).

s.270(2) - in complying with the duty under section 174(2) to state its reasons for deciding on the order made, the court must, in particular:

- (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
- (b) state its reasons for any departure from that starting point.

Criminal Practice Directions 2015 VII Sentencing

- P.1 Having gone through the three or four steps outlined above, the court is then under a duty, under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.
- P.2 In order to comply with this duty, the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features, it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point, the court should also declare how much, if any, time is being deducted for time spent in custody and/or on bail subject to a qualifying curfew condition. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release, the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.
- P.3 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a 'whole life order' is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

3.2.3.7.4 Guidance

Criminal Practice Directions 2015 VII Sentencing

- M.1 The purpose of this section is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 ('the Act'). This direction also gives guidance as to the transitional arrangements under section 276 and schedule 22 of the Act. It clarifies the correct approach to looking at the practice of the Secretary of State prior to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan*,

⁴⁹⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

Gibbs, Elener and Elener [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67.

- M.2 Section 269 came into force on 18 December 2003. Under section 269, all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act), or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a 'whole life order').
- M.3 In setting the minimum term, the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence, the court must have regard to the general principles set out in Schedule 21 of the Act as amended and any guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to such guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the starting points given in Schedule 21, the court is under a duty to state its reasons for doing so (section 270(2)(b) of the Act).
- M.4 Schedule 21 states that the first step is to choose one of five starting points: "whole life", 30 years, 25 years, 15 years or 12 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At paragraph 35 of *Sullivan*, the court found it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point, to 15 years.
- M.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a 'whole life order'. (paragraph 4(1) of Schedule 21). The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4 (2) sets out examples of cases where it would normally be appropriate to take the 'whole life order' as the appropriate starting point.
- M.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years. (Paragraph 5(2)(h) of Schedule 21).
- M.7 Where a case is not so serious as to require a 'whole life order' but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence, the appropriate starting point is 30 years (paragraph 5(1) of Schedule 21). Paragraph 5 (2) sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a 'whole life order').
- M.8 Where the offender was aged 18 or over when he committed the offence, took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used it in committing the murder, the offence is normally to be regarded as sufficiently serious for an appropriate starting point of 25 years (paragraph 5A of Schedule 21).
- M.9 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1), 5 (1) or 5A(1) of Schedule 21, the appropriate starting point is 15 years (see paragraph 6).

- M.10 18 to 20 year olds are only the subject of the 30-year, 25-year and 15-year starting points.
- M.11 The appropriate starting point when setting a sentence of detention during Her Majesty's pleasure for offenders aged under 18 when they committed the offence is always 12 years (paragraph 7 of Schedule 21).
- M.12 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in paragraphs 4 (2), 5(2) and 5A) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features, the court may add to or subtract from the starting point to arrive at the appropriate punitive period.
- M.13 The third step is that the court should consider the effect of section 143(2) of the Act in relation to previous convictions; section 143(3) of the Act where the offence was committed whilst the offender was on bail; and section 144 of the Act where the offender has pleaded guilty (paragraph 12 of Schedule 21). The court should then take into account what credit the offender would have received for a remand in custody under section 240 or 240ZA of the Act and/or for a remand on bail subject to a qualifying curfew condition under section 240A, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been thus remanded in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should make any appropriate subtraction from the punitive period it would otherwise impose, in order to reach the minimum term.
- M.14 Following these calculations, the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21 makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

3.2.3.7.5 Appeals

Tariff reviews

R. (Smith) v Secretary of State for the Home Department [2005] UKHL 51; [2006] 1 AC 159

The tariff for a person sentenced to detention during Her Majesty's Pleasure may be reduced on reconsideration if there is clear evidence of exceptional and unforeseen progress.

Appeals against sentence

CJA 2003 s.271⁵⁰⁰: Appeals

s.271(1) - in CAA 1968 s.9 (appeal against sentence following conviction on indictment), after subsection (1) there is inserted:

“(1A) In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of

⁵⁰⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.”.

s.271(2) - [provision dealing with CMAC]

Attorney General’s References

CJA 2003 s.272⁵⁰¹: Review of minimum term on a reference by Attorney General

s.272(1) - in CJA 1988 s.36 (reviews of sentencing) after subsection (3) there is inserted:

“(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.”.

s.272(2) - [provision dealing with armed forces]

s.272(3) - [provision dealing with armed forces]

3.2.3.7.6 Life prisoners transferred to England and Wales

CJA 2003 s.273⁵⁰²: Life prisoners transferred to England and Wales

s.273(1) - the SoS must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.

s.273(2) - in subsection (1) “*transferred life prisoner*” means a person:

- (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and
- (b) who has been transferred to England and Wales after the commencement of this section in pursuance of:
 - (i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or
 - (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),

there to serve his sentence or sentences or the remainder of his sentence or sentences.

s.273(3) - in subsection (1) “*a relevant order*” means:

- (a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and
- (b) in any other case, an order under PCC(S)A 2000 s.82A(2) or (4)

⁵⁰¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰² Commencement: 18 December 2003, CJA 2003 s.336(2).

- s.273(4) - in C(S)A 1997 s.34(1)(meaning of “life prisoner” in Chapter 2 of Part 2 of that Act) at the end there is inserted “and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003”.
- s.273(5) - the reference in subsection (2)(b) above to a person who has been transferred to England and Wales in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in England and Wales in pursuance of a warrant under section 4A of that Act (warrant transferring responsibility for detention and release of defendant).

CJA 2003 s.274⁵⁰³: Life prisoners transferred to England and Wales

- s.274(1) - a reference to the High Court under section 273 is to be determined by a single judge of that court without an oral hearing.
- s.274(2) - in relation to a reference under that section, any reference to “the court” in subsections (2) to (5) of section 269, in Schedule 21 or in section 82A(2) to (4) of the Sentencing Act is to be read as a reference to the High Court.
- s.274(3) - a person in respect of whom a reference has been made under section 273 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the reference.
- s.274(4) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which subsection (3) applies.
- s.274(5) - the jurisdiction conferred on the Court of Appeal by subsection (3) is to be exercised by the criminal division of that court.
- s.274(6) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- s.274(7) - in relation to appeals to the Court of Appeal or the Supreme Court under this section, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

3.2.3.7.7 Supplementary

Place of detention etc.

PCC(S)A 2000 s.92⁵⁰⁴: Detention under sections 90 and 91: place of detention etc.

- s.92(1) - a person sentenced to be detained under section 90 or 91 above shall be liable to be detained in such place and under such conditions—
- (a) as the Secretary of State may direct; or
 - (b) as the Secretary of State may arrange with any person.
- s.92(2) - a person detained pursuant to the directions or arrangements made by the Secretary of State under this section shall be deemed to be in legal custody.

⁵⁰³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Interpretation of Sch.21

CJA 2003 Sch.21 para.1⁵⁰⁵: Determination of minimum term in relation to mandatory life sentence

para.1 - in Sch.21:

“child” means a person under 18 years;

“mandatory life sentence” means a life sentence passed in circumstances where the sentence is fixed by law;

“minimum term”, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under section 269(2);

“whole life order” means an order under subsection (4) of section 269.

CJA 2003 Sch.21 para.2⁵⁰⁶: Determination of minimum term in relation to mandatory life sentence

para.2 - CDA 1998 s.28 (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of sections 29 to 32 of that Act.

CJA 2003 Sch.21 para.3⁵⁰⁷: Determination of minimum term in relation to mandatory life sentence

para.3 - for the purposes of Sch.21:

- (a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);
- (b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);
- (c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).

Lord Chancellor’s power to amend Sch.21

CJA 2003 s.269⁵⁰⁸: Determination of minimum term in relation to mandatory life sentence

s.269(6) - the Lord Chancellor may by order amend Schedule 21.

s.269(7) - before making an order under subsection (6), the Lord Chancellor must consult the Sentencing Council for England and Wales.

Interpretation of CJA 2003 Part 12 Chapter 7

CJA 2003 s.277⁵⁰⁹: Interpretation of Chapter 7

s.277 - in this Chapter:

⁵⁰⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

“court” includes the Court Martial;

“guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales as definitive guidelines under Coroners and Justice Act 2009 s.120 as revised by any subsequent guidelines so issued;

“life sentence” means:

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention during Her Majesty’s pleasure, or
- (c) a sentence of custody for life passed before the commencement of CJCSA 2000 s.61(1) (which abolishes that sentence).

3.2.3.7.8 Transitional cases

Statute

CJA 2003 s.276⁵¹⁰: Mandatory life sentences: Transitional cases

s.276 - Schedule 22 (which relates to the effect in transitional cases of mandatory life sentences) shall have effect.

Interpretation

CJA 2003 Sch.22 para.1⁵¹¹: Mandatory life sentences: Transitional cases

para.1 - in Sch.22:

“the commencement date” means the day on which section 269 comes into force;

“the early release provisions” means the provisions of C(S)A 1997 s.28(5) to (8);

“existing prisoner” means a person serving one or more mandatory life sentences passed before the commencement date (whether or not he is also serving any other sentence);

“life sentence” means a sentence of imprisonment for life or custody for life passed in England and Wales or by a court-martial outside England and Wales;

“mandatory life sentence” means a life sentence passed in circumstances where the sentence was fixed by law.

Existing prisoners notified by Secretary of State

CJA 2003 Sch.22 para.2⁵¹²: Mandatory life sentences: Transitional cases

para.2 - para.3 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has before the commencement date been notified in writing by the Secretary of State (otherwise than in a notice that is expressed to be provisional) either:

- (a) of a minimum period which in the view of the Secretary of State should be served before the prisoner’s release on licence, or
- (b) that the Secretary of State does not intend that the prisoner should ever be released on licence.

⁵¹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹² Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.3⁵¹³: Mandatory life sentences: Transitional cases

para.3(1) - on the application of the existing prisoner, the High Court must, in relation to the mandatory life sentence, either:

- (a) order that the early release provisions are to apply to him as soon as he has served the part of the sentence which is specified in the order, which in a case falling within paragraph 2(a) must not be greater than the notified minimum term, or
- (b) in a case falling within paragraph 2(b), order that the early release provisions are not to apply to the offender.

para.3(2) - in a case falling within paragraph 2(a), no application may be made under this paragraph after the end of the notified minimum term.

para.3(3) - where no application under this paragraph is made in a case falling within paragraph 2(a), the early release provisions apply to the prisoner in respect of the sentence as soon as he has served the notified minimum term (or, if he has served that term before the commencement date but has not been released, from the commencement date).

para.3(4) - in this paragraph “*the notified minimum term*” means the minimum period notified as mentioned in paragraph 2(a), or where the prisoner has been so notified on more than one occasion, the period most recently so notified.

CJA 2003 Sch.22 para.4⁵¹⁴: Mandatory life sentences: Transitional cases

para.4(1) - in dealing with an application under paragraph 3, the High Court must have regard to:

- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it,
- (b) where the court is satisfied that, if the prisoner had been sentenced to a term of imprisonment, the length of his sentence would have been treated by section 67 of the Criminal Justice Act 1967 (c. 80) as being reduced by a particular period, the effect which that section would have had if he had been sentenced to a term of imprisonment, and
- (c) the length of the notified minimum term or, where a notification falling within paragraph 2(b) has been given to the prisoner, to the fact that such a notification has been given.

para.4(2) - in considering under sub-paragraph (1) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, the High Court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

para.4(3) - in this paragraph “*the notified minimum term*” has the same meaning as in paragraph 3.

⁵¹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.5⁵¹⁵: Mandatory life sentences: Transitional cases

para.5 - para.6 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has not before the commencement date been notified as mentioned in paragraph 2(a) or (b) by the Secretary of State.

CJA 2003 Sch.22 para.6⁵¹⁶: Mandatory life sentences: Transitional cases

para.6 - the Secretary of State must refer the prisoner's case to the High Court for the making by the High Court of an order under s.269(2) or (4) in relation to the mandatory life sentence.

CJA 2003 Sch.22 para.7⁵¹⁷: Mandatory life sentences: Transitional cases

para.7(1) - in considering under s.269(3) or (4) the seriousness of an offence (or the combination of an offence and one or more offences associated with it) in a case referred to the High Court under paragraph 6, the High Court must have regard not only to the matters mentioned in subsection (5) of that section but also to any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

CJA 2003 Sch.22 para.8⁵¹⁸: Mandatory life sentences: Transitional cases

para.8(1) - in dealing with a reference under paragraph 6, the High Court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

Sentences passed on or after commencement date in respect of offences committed before that date

CJA 2003 Sch.22 para.9⁵¹⁹: Mandatory life sentences: Transitional cases

para.9 - para.10 applies where:

- (a) on or after the commencement date a court passes a life sentence in circumstances where the sentence is fixed by law, and
- (b) the offence to which the sentence relates was committed before the commencement date.

⁵¹⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.10⁵²⁰: Mandatory life sentences: Transitional cases

para.10 - the court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

CJA 2003 Sch.22 para.11⁵²¹: Mandatory life sentences: Transitional cases

para.11(1) - an application under paragraph 3 or a reference under paragraph 6 is to be determined by a single judge of the High Court without an oral hearing.

para.11(2) - in relation to such an application or reference, any reference to “the court” in s.269(2) to (5) and Sch.21 is to be read as a reference to the High Court.

Giving reasons

CJA 2003 Sch.22 para.12⁵²²: Mandatory life sentences: Transitional cases

para.12(1) - where the High Court makes an order under paragraph 3(1)(a) or (b), it must state in open court, in ordinary language, its reasons for deciding on the order made.

para.12(2) - where the order is an order under paragraph 3(1)(a) specifying a part of the sentence shorter than the notified minimum term the High Court must, in particular, state its reasons for departing from the notified minimum term.

CJA 2003 Sch.22 para.13⁵²³: Mandatory life sentences: Transitional cases

para.13 - where the High Court makes an order under s.269(2) or (4) on a reference under paragraph 6, s.270(2) does not apply.

Right of appeal

CJA 2003 Sch.22 para.14⁵²⁴: Mandatory life sentences: Transitional cases

para.14(1) - a person who has made an application under paragraph 3 or in respect of whom a reference has been made under paragraph 6 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the application or reference.

para.14(2) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1)(a) (exclusion of appeal from High Court to

⁵²⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²² Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which sub-paragraph (1) applies.

para.14(3) - the jurisdiction conferred on the Court of Appeal by this paragraph is to be exercised by the criminal division of that court.

para.14(4) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this paragraph.

para.14(5) - in relation to appeals to the Court of Appeal or the Supreme Court under this paragraph, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Review of minimum term on reference by Attorney General

CJA 2003 Sch.22 para.15⁵²⁵: Mandatory life sentences: Transitional cases

para.15 - CJA 1988 s.36 applies in relation to an order made by the High Court under paragraph 3(1)(a) as it applies in relation to an order made by the Crown Court under section 269(2).

Modification of early release provisions

CJA 2003 Sch.22 para.16⁵²⁶: Mandatory life sentences: Transitional cases

para.16(1) - in relation to an existing prisoner, C(S)A 1997 s.28 has effect subject to the following modifications.

para.16(2) - Any reference to a life prisoner in respect of whom a minimum term order has been made includes a reference to:

- (a) an existing prisoner in respect of whom an order under paragraph 3(1)(a) has been made, and
- (b) an existing prisoner serving a sentence in respect of which paragraph 3(3) applies.

para.16(3) - any reference to the relevant part of the sentence is to be read:

- (a) in relation to a sentence in respect of which an order under paragraph 3(1)(a) has been made, as a reference to the part specified in the order, and
- (b) in relation to a sentence in respect of which paragraph 3(3) applies, as a reference to the notified minimum term as defined by paragraph 3(4).

para.16(4) - in subsection (1B) (life prisoner serving two or more sentences), paragraph (a) is to be read as if it referred to each of the sentences being one:

- (a) in respect of which a minimum term order or an order under paragraph 3(1)(a) has been made, or
- (b) in respect of which paragraph 3(3) applies.

⁵²⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.17⁵²⁷: Mandatory life sentences: Transitional cases

para.17 - in C(S)A 1997 s.34(1) (interpretation of Chapter 2 of that Act), in the definition of “life prisoner”, the reference to a transferred prisoner as defined by section 273 of this Act includes a reference to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of section 33 of that Act.

Transferred life prisoners

CJA 2003 Sch.22 para.18⁵²⁸: Mandatory life sentences: Transitional cases

para.18 - in relation to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of C(S)A 1997 s.33, this Schedule is to be read as if:

- (a) any certificate under subsection (2) of that section were a notification falling within paragraph 2(a) of this Schedule, and
- (b) references to any recommendation of the trial judge or the Lord Chief Justice were omitted.

Guidance

Criminal Practice Directions 2015 VII Sentencing

- N.1 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and Schedule 22 of the Act.
- N.2 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity, by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term, the court must check whether the proposed term is greater than that which the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.
- N.3 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.
- N.4 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out below.
- N.5 The practice of Lord Bingham, as set out in his letter of 10 February 1997, was to take 14 years as the period actually to be served for the ‘average’, ‘normal’ or

⁵²⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

'unexceptional' murder. Examples of factors he outlined as capable, in appropriate cases, of mitigating the normal penalty were:

- (1) Youth;
- (2) Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison);
- (3) [Intellectual disability or mental disorder];
- (4) Provocation (in a non-technical sense), or an excessive response to a personal threat;
- (5) The absence of an intention to kill;
- (6) Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress);
- (7) Mercy killing;
- (8) A plea of guilty, or hard evidence of remorse or contrition.

N.6 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:

- (1) Evidence of planned, professional, revenge or contract killing;
- (2) The killing of a child or a very old or otherwise vulnerable victim;
- (3) Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
- (4) Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.);
- (5) Multiple killings;
- (6) The killing of a witness, or potential witness, to defeat the ends of justice;
- (7) The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc.);
- (8) Terrorist or politically motivated killings;
- (9) The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;
- (10) A substantial record of serious violence;
- (11) Macabre attempts to dismember or conceal the body.

N.7 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a couple, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.

N.8 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives to the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.

- N.9 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paragraphs N.10 to N.20 below.
- N.10 This Statement replaces the previous single normal tariff of 14 years by substituting a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

The normal starting point of 12 years

- N.11 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph N.13. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
- N.12 The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:-
- (a) the case came close to the borderline between murder and manslaughter; or
 - (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or
 - (c) the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or
 - (d) the case involved an over-reaction in self-defence; or
 - (e) the offence was a mercy killing.
- These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

- N.13 The higher starting point will apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:
- (a) the killing was 'professional' or a contract killing;
 - (b) the killing was politically motivated;
 - (c) the killing was done for gain (in the course of a burglary, robbery etc.);
 - (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);
 - (e) the victim was providing a public service;
 - (f) the victim was a child or was otherwise vulnerable;
 - (g) the killing was racially aggravated;
 - (h) the victim was deliberately targeted because of his or her religion or sexual orientation;
 - (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
 - (j) extensive and/or multiple injuries were inflicted on the victim before death;
 - (k) the offender committed multiple murders.

Variation of the starting point

- N.14 Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.
- N.15 Aggravating factors relating to the offence can include:
- (a) the fact that the killing was planned;
 - (b) the use of a firearm;
 - (c) arming with a weapon in advance;
 - (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
 - (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.
- N.16 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.
- N.17 Mitigating factors relating to the offence will include:
- (a) an intention to cause grievous bodily harm, rather than to kill;
 - (b) spontaneity and lack of pre-meditation.
- N.18 Mitigating factors relating to the offender may include:
- (a) the offender's age;
 - (b) clear evidence of remorse or contrition;
 - (c) a timely plea of guilty.

Very serious cases

- N.19 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.
- N.20 Among the categories of case referred to in paragraph N.13, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder, or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.
- N.21 In following this guidance, judges should bear in mind the conclusion of the Court in *Sullivan* that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

3.2.4. Mandatory or required custodial sentences

3.2.4.1. Drug trafficking offences

3.2.4.1.1 Applicability

PCC(S)A 2000 s.110⁵²⁹: Minimum of seven years for third class A drug trafficking offence

s.110(1) - this section applies where:

- (a) a person is convicted of a class A drug trafficking offence committed after 30th September 1997;
- (b) at the time when that offence was committed, he was 18 or over and had 2 relevant drug convictions; and
- (c) one of those other offences was committed after he had been convicted of the other.

3.2.4.1.2 Duty to impose seven-year custodial sentence

PCC(S)A 2000 s.110⁵³⁰: Minimum of seven years for third class A drug trafficking offence

s.110(2) - the court shall impose an appropriate custodial sentence for a term of at least seven years except where the court is of the opinion that there are particular circumstances which:

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

3.2.4.1.3 Guilty plea

CJA 2003 s.144⁵³¹: Reduction in sentence for guilty plea

s.144(2) - in the case of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (3), nothing in [that provision 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 provision.

s.144(3) - the provisions referred to in subsection (2) are:

- section 1A(6)(a) of the Prevention of Crime Act 1953;
- section 110(2) of the Sentencing Act;
- section 111(2) of the Sentencing Act;
- section 139AA(8)(a) of the Criminal Justice Act 1988.

⁵²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

Mode of trial for third offence

PCC(S)A 2000 s.110⁵³²: Minimum of seven years for third class A drug trafficking offence

s.110(4) - where:

- (a) a person is charged with a class A drug trafficking offence (which, apart from this subsection, would be triable either way), and
 - (b) the circumstances are such that, if he were convicted of the offence, he could be sentenced for it under subsection (2) above,
- the offence shall be triable only on indictment.

3.2.4.1.4 Interpretation

PCC(S)A 2000 s.110⁵³³: Minimum of seven years for third class A drug trafficking offence

s.110(2A) - for the purposes of subsection (1):

- (a) a “*relevant drug conviction*” means:
 - (i) a conviction in any part of the United Kingdom of a class A drug trafficking offence, or
 - (ii) a conviction in another member State of an offence which was committed after the relevant date and would, if done in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence; and
- (b) “*the relevant date*” means the date on which this subsection comes into force.

s.110(5) - in this section “*class A drug trafficking offence*” means a drug trafficking offence committed in respect of a class A drug; and for this purpose:

“*class A drug*” has the same meaning as in the Misuse of Drugs Act 1971;

“*drug trafficking offence*” means an offence which is specified in:

- (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
- (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

(6) In this section “*an appropriate custodial sentence*” means:

- (a) in relation to a person who is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment;
- (b) in relation to a person who is under 21 at that time, a sentence of detention in a young offender institution.

3.2.4.1.5 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵³⁴: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:

⁵³² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁴ Commencement: 30 September 1983, MHA 1983 s.149(2)

[...] (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000 , [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.1.6 Appeals

PCC(S)A 2000 s.112⁵³⁵: Appeals where previous convictions set aside

s.112(1) This section applies where:

- (a) a sentence has been imposed on any person under PCC(S)A 2000 ss.110(2) or 111(2); and
- (b) any previous conviction of his without which that section would not have applied has been subsequently set aside on appeal.

- (2) Notwithstanding anything in CAA 1968 s.18, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.

3.2.4.1.7 Certificates of conviction

PCC(S)A 2000 s.113⁵³⁶: Certificates of convictions for purposes of Chapter III

s.113(1) - where:

- (a) on any date after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence, or on any date after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that he was convicted of such an offence on that date.

s.113(1A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the person has been convicted of such an offence on that date, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, the fact that the person has been convicted of such an offence on that date,

⁵³⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the person was convicted of such an offence on that date.

s.113(2) - where:

- (a) after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence or after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(2A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, that the offence was committed on a particular day or over, or at some time during, a particular period,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(3) - in this section:

“proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record;

“class A drug trafficking offence” and *“domestic burglary”* have the same meanings as in sections 110 and 111 respectively ;

“corresponding drug trafficking offence” means an offence within section 110(2A)(a)(ii); *“corresponding domestic burglary offence”* means an offence within section 111(2A)(a)(ii); and

“the relevant section of this Chapter”, in relation to any such offence, shall be construed accordingly.

3.2.4.1.8 Offences committed over two or more days

PCC(S)A 2000 s.115⁵³⁷: Determination of day when offence committed

s.115 - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of sections 110 and 111 to have been committed on the last of those days.

3.2.4.2. Burglary

3.2.4.2.1 Applicability

PCC(S)A 2000 s.111⁵³⁸: Minimum of three years for third domestic burglary

s.111(1) - this section applies where:

- (a) a person is convicted of a domestic burglary committed after 30th November 1999;
- (b) at the time when that burglary was committed, he was 18 or over and had 2 relevant domestic burglary convictions; and
- (c) one of those other burglaries was committed after he had been convicted of the other, and both of them were committed after the relevant date.

Note: people whose homes were narrow boats or caravans should attract the same protection that Parliament had clearly intended to confer on all members of the public by s.111 see R. v Coleman [2013] EWCA Crim 544; [2013] 2 Cr. App. R. (S.) 79 (p.514). Attempted burglary is not a qualifying offence for the purposes of Powers of Criminal Courts (Sentencing) Act 2000 s.111 see R. v McGuire [2002] EWCA Crim 2689; [2003] 2 Cr. App. R. (S.) 10 (p.240)

3.2.4.2.2 Duty to impose three-year custodial sentence

PCC(S)A 2000 s.111⁵³⁹: Minimum of three years for third domestic burglary

s.111(2) - the court shall impose an appropriate custodial sentence for a term of at least three years except where the court is of the opinion that there are particular circumstances which:

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

3.2.4.2.3 Guilty plea

CJA 2003 s.144⁵⁴⁰: Reduction in sentence for guilty plea

s.144(2) - in the case of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (3), nothing in [that provision 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 provision.

⁵³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

- s.144(3) - the provisions referred to in subsection (2) are:
- section 1A(6)(a) of the Prevention of Crime Act 1953;
 - section 110(2) of the Sentencing Act;
 - section 111(2) of the Sentencing Act;
 - section 139AA(8)(a) of the Criminal Justice Act 1988.

3.2.4.2.4 Mode of trial for third burglary offence

PCC(S)A 2000 s.111⁵⁴¹: Minimum of three years for third domestic burglary

s.111(4) - where:

- (a) a person is charged with a domestic burglary which, apart from this subsection, would be triable either way, and
 - (b) the circumstances are such that, if he were convicted of the burglary, he could be sentenced for it under subsection (2) above,
- the burglary shall be triable only on indictment.

3.2.4.2.5 Interpretation

PCC(S)A 2000 s.111⁵⁴²: Minimum of three years for third domestic burglary

s.111(2A) - for the purposes of subsection (1):

- (a) a “*relevant domestic burglary conviction*” means:
 - (i) a conviction in England and Wales of a domestic burglary, or
 - (ii) a conviction in any other part of the United Kingdom or any other member State of an offence which would, if done in England and Wales at the time of the conviction, have constituted domestic burglary;
- (b) “*the relevant date*”, in relation to a relevant domestic burglary conviction, means:
 - (i) in respect of a conviction in England and Wales, 30 November 1999, and
 - (ii) in any other case, the day on which this subsection comes into force.

s.111(5) - in this section “*domestic burglary*” means a burglary committed in respect of a building or part of a building which is a dwelling.

s.111(6) - in this section “*an appropriate custodial sentence*” means:

- (a) in relation to a person who is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment;
- (b) in relation to a person who is under 21 at that time, a sentence of detention in a young offender institution.

⁵⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.4.2.6 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁴³: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:
[...] (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.2.7 Appeals

PCC(S)A 2000 s.112⁵⁴⁴: Appeals where previous convictions set aside

s.112(1) This section applies where:

- (a) a sentence has been imposed on any person under PCC(S)A 2000 ss.110(2) or 111(2); and
- (b) any previous conviction of his without which that section would not have applied has been subsequently set aside on appeal.

(2) Notwithstanding anything in CAA 1968 s.18, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.

3.2.4.2.8 Certificates of conviction

PCC(S)A 2000 s.113⁵⁴⁵: Certificates of convictions for purposes of Chapter III

s.113(1) - where:

- (a) on any date after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence, or on any date after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that he was convicted of such an offence on that date.

s.113(1A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or

⁵⁴³ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁴⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the person has been convicted of such an offence on that date, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, the fact that the person has been convicted of such an offence on that date,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the person was convicted of such an offence on that date.

s.113(2) - where:

- (a) after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence or after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(2A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, that the offence was committed on a particular day or over, or at some time during, a particular period,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(3) - in this section:

“proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record;

“class A drug trafficking offence” and *“domestic burglary”* have the same meanings as in sections 110 and 111 respectively ;

“corresponding drug trafficking offence” means an offence within section 110(2A)(a)(ii); *“corresponding domestic burglary offence”* means an offence within section 111(2A)(a)(ii); and

“the relevant section of this Chapter”, in relation to any such offence, shall be construed accordingly.

3.2.4.2.9 Offences committed over two or more days

PCC(S)A 2000 s.115⁵⁴⁶: Determination of day when offence committed

s.115 - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of sections 110 and 111 to have been committed on the last of those days.

3.2.4.3. Firearms

3.2.4.3.1 Availability

FA 1968 s.51A⁵⁴⁷: Minimum sentence for certain offences under s. 5

s.51A(1) - this section applies where:

- (a) an individual is convicted of:
 - (i) an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) of this Act,
 - (ii) an offence under section 5(1A)(a) of this Act, or
 - (iii) an offence under any of the provisions of this Act listed in subsection (1A) in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of this Act, and
- (b) the offence was committed after the commencement of this section and at a time when he was aged 16 or over.

s.51A(1A) -the provisions are:

- (za) section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);
- (a) section 16 (possession of firearm with intent to injure);
- (b) section 16A (possession of firearm with intent to cause fear of violence);
- (c) section 17 (use of firearm to resist arrest);
- (d) section 18 (carrying firearm with criminal intent);
- (e) section 19 (carrying a firearm in a public place);
- (f) section 20(1) (trespassing in a building with firearm).

3.2.4.3.2 Duty to impose appropriate custodial sentence of at least the required minimum term

FA 1968 s.51A⁵⁴⁸: Minimum sentence for certain offences under s. 5

s.51A(2) - the court shall impose an appropriate custodial sentence (or order for detention) for a term of at least the required minimum term (with or without a fine) unless the court is of

⁵⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴⁷ Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

⁵⁴⁸ Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

s.51A(5) - in this section “*the required minimum term*” means:

- (a) in relation to England and Wales
 - (i) in the case of an offender who was aged 18 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was under 18 at that time, three years, and
- (b) in relation to Scotland:
 - (i) in the case of an offender who was aged 21 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was aged under 21 at that time, three years.

Note: As to the “exceptional circumstances” justifying the imposition of a sentence beneath the required minimum, see R. v Rehman and Wood [2005] EWCA Crim 2056; [2006] 1 Cr. App. R. (S.) 77 (p.404)

3.2.4.3.3 Offenders aged under 18

PCC(S)A 2000 s.91⁵⁴⁹: Offenders under 18 convicted of certain serious offences: power to detain for specified period

s.91(1A) - PCC(S)A 2000 s.91(3) also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence:
 - (i) under FA 1968 s.5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) (prohibited weapons), or
 - (ii) under FA 1968 s.5(1A)(a),
- (b) the offence was committed after the commencement of FA 1968 s.51A and for the purposes of subsection (3) of that section at a time when he was aged 16 or over, and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2) (exceptional circumstances which justify its not imposing required custodial sentence).

s.91(1B) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence under the Firearms Act 1968 that is listed in section 51A(1A)(b), (e) or (f) of that Act and was committed in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of that Act;
- (b) the offence was committed after the commencement of Violent Crime Reduction Act 2006 s.30 and for the purposes of section 51A(3) of the Firearms Act 1968 at a time when he was aged 16 or over; and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2).

s.91(1C) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted of an offence under VCRA 2006 s.28 (using someone to mind a weapon);

⁵⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) VCRA 2006 s.29(3) applies (minimum sentences in certain cases); and
- (c) the court is of the opinion mentioned in VCRA 2006 s.29(6) (exceptional circumstances which justify not imposing the minimum sentence).

s.91(3) - if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

s.91(4) - subsection (3) above is subject to (in particular) CJA 2003 ss.152 and 153

s.91(5) - where:

- (a) FA 1968 s.51A(2), or
- (b) VCRA 2006 s.29(6),

requires the imposition of a sentence of detention under this section for a term of at least the term provided for in that section, the court shall sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.

3.2.4.3.4 Consecutive sentences

Note: There are a number of cases concerning the propriety of imposing consecutive sentences, of note is Attorney General's Reference (No.57 of 2009) (R. v Ralphs) [2009] EWCA Crim 2555; [2010] 2 Cr. App. R. (S.) 30 (p.190): Where a court is considering the imposition of consecutive sentences, the aggregate of the sentences must be appropriate to the offender's criminality and the context of the available mitigation, and consecutive terms should not normally be imposed for offences which arise out of the same incident or transaction.

3.2.4.3.5 Offence committed over two or more days

FA 1968 s.51A⁵⁵⁰: Minimum sentence for certain offences under s. 5

s.51A(3) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

3.2.4.3.6 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁵¹: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed—
[...] (a) under section 51A(2) of the Firearms Act 1968, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

⁵⁵⁰ Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

⁵⁵¹ Commencement: 30 September 1983, MHA 1983 s.149(2)

3.2.4.3.7 Interpretation

FA 1968 s.51A⁵⁵²: Minimum sentence for certain offences under s. 5

s.51A(4) - in this section “*appropriate custodial sentence (or order for detention)*” means:

- (a) in relation to England and Wales:
 - (i) in the case of an offender who is aged 18 or over when convicted, a sentence of imprisonment, and
 - (ii) in the case of an offender who is aged under 18 at that time, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) in relation to Scotland:
 - (i) in the case of an offender who is aged 21 or over when convicted, a sentence of imprisonment,
 - (ii) in the case of an offender who is aged under 21 at that time (not being an offender mentioned in sub-paragraph (iii)), a sentence of detention under section 207 of the Criminal Procedure (Scotland) Act 1995, and
 - (iii) in the case of an offender who is aged under 18 at that time and is subject to a supervision requirement, an order for detention under section 44, or sentence of detention under section 208, of that Act.

s.51A(5) - in this section “*the required minimum term*” means:

- (a) in relation to England and Wales
 - (i) in the case of an offender who was aged 18 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was under 18 at that time, three years, and
- (b) in relation to Scotland:
 - (i) in the case of an offender who was aged 21 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was aged under 21 at that time, three years.

3.2.4.4. Threatening with offensive weapon in public

3.2.4.4.1 Offence

PCA 1953 s.1A⁵⁵³: Offence of threatening with offensive weapon in public

s.1A(1) - a person is guilty of an offence if that person:

- (a) has an offensive weapon with him or her in a public place,
- (b) unlawfully and intentionally threatens another person with the weapon, and
- (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

⁵⁵² Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

⁵⁵³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

- s.1A(2) - for the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
- s.1A(3) - in this section “*public place*” and “*offensive weapon*” have the same meaning as in section 1.

3.2.4.4.2 Maximum sentence

PCA 1953 s.1A⁵⁵⁴: Offence of threatening with offensive weapon in public

- s.1A(4) - a person guilty of an offence under this section is liable:
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- s.1A(8) - in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.
- s.1A(9) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

3.2.4.4.3 Required minimum sentence

PCA 1953 s.1A⁵⁵⁵: Offence of threatening with offensive weapon in public

- s.1A(5) - where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which:
- (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- s.1A(6) - in this section “*appropriate custodial sentence*” means:
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- s.1A(7) - in considering whether it is of the opinion mentioned in subsection (5) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

⁵⁵⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

⁵⁵⁵ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

3.2.4.4.4 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁵⁶: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:
[...] (za) under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.4.5 Alternative offence

PCA 1953 s.1A⁵⁵⁷: Offence of threatening with offensive weapon in public

s.1A(10) - if on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 1, the person may be convicted of the offence under that section.

3.2.4.5. Threatening with bladed article etc. or offensive weapon in school or public place

3.2.4.5.1 Offence

CJA 1988 s.139AA⁵⁵⁸: Offence of threatening with article with blade or point or offensive weapon

s.139AA(1) - a person is guilty of an offence if that person:

- (a) has an article to which this section applies with him or her in a public place or on school premises,
- (b) unlawfully and intentionally threatens another person with the article, and
- (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

s.139AA(2) - in relation to a public place this section applies to an article to which section 139 applies.

s.139AA(3) - in relation to school premises this section applies to each of these:

- (a) an article to which section 139 applies;
- (b) an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.

s.139AA(4) - for the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

s.139AA(5) - in this section:

“public place” has the same meaning as in section 139;

“school premises” has the same meaning as in section 139A.

⁵⁵⁶ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁵⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

⁵⁵⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

3.2.4.5.2 Maximum sentence

CJA 1988 s.139AA⁵⁵⁹: Offence of threatening with article with blade or point or offensive weapon

s.139AA(6) - a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.

s.139AA(10) - in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.

s.139AA(11) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (8)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

3.2.4.5.3 Required minimum sentence

CJA 1988 s.139AA⁵⁶⁰: Offence of threatening with article with blade or point or offensive weapon

s.139AA(7) - where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which:

- (a) relate to the offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

s.139AA(8) - in this section “*appropriate custodial sentence*” means:

- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

s.139AA(9) - in considering whether it is of the opinion mentioned in subsection (7) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

⁵⁵⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

⁵⁶⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

3.2.4.5.4 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁶¹: Powers of courts to order hospital admission or guardianship

- s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:
[...] (aa) under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.5.5 Alternative offence

CJA 1988 s.139AA⁵⁶²: Offence of threatening with article with blade or point or offensive weapon

- s.139AA(12) - if on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 139 or 139A, the person may be convicted of the offence under that section.

3.2.4.6. Using someone to mind a weapon

3.2.4.6.1 Applicability

VCRA 2006 s.29⁵⁶³: Penalties etc. for offence under s. 28

- s.29(1) - this section applies where a person ("the offender") is guilty of an offence under section 28.

3.2.4.6.2 Maximum sentence

VCRA 2006 s.29⁵⁶⁴: Penalties etc. for offence under s. 28

- s.29(2) - where the dangerous weapon in respect of which the offence was committed is a weapon to which section 141 or 141A of the Criminal Justice Act 1988 (specified offensive weapons, knives and bladed weapons) applies, the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- s.29(3) - where:
- (a) at the time of the offence, the offender was aged 16 or over, and
 - (b) the dangerous weapon in respect of which the offence was committed was a firearm mentioned in section 5(1)(a) to (af) or (c) or section 5(1A)(a) of the 1968 Act (firearms possession of which attracts a minimum sentence),
- the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.

⁵⁶¹ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁶² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

⁵⁶³ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁶⁴ Commencement: 6 April 2007, SI 2007/858 art.2(c).

- s.29(10) - in any case not mentioned in subsection (2) or (3), the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

3.2.4.6.3 Required minimum sentence

VCRA 2006 s.29⁵⁶⁵: Penalties etc. for offence under s. 28

- s.29(4) - on a conviction in England and Wales, where:
- (a) subsection (3) applies, and
 - (b) the offender is aged 18 or over at the time of conviction,
- the court must impose (with or without a fine) a term of imprisonment of not less than 5 years, unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.
- s.29(6) - on a conviction in England and Wales, where:
- (a) subsection (3) applies, and
 - (b) the offender is aged under 18 at the time of conviction,
- the court must impose (with or without a fine) a term of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) of not less than 3 years, unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

3.2.4.6.4 Aggravating factor: Minder of weapon was under 18

VCRA 2006 s.29⁵⁶⁶: Penalties etc. for offence under s. 28

- s.29(11) - where:
- (a) a court is considering for the purposes of sentencing the seriousness of an offence under section 28, and
 - (b) at the time of the offence the offender was aged 18 or over and the person used to look after, hide or transport the weapon was not,
- the court must treat the fact that that person was under the age of 18 at that time as an aggravating factor (that is to say, a factor increasing the seriousness of the offence).
- s.29(12) - where a court treats a person's age as an aggravating factor in accordance with subsection (11), it must state in open court that the offence was aggravated as mentioned in that subsection.

3.2.4.6.5 Offences committed over two or more days

VCRA 2006 s.29⁵⁶⁷: Penalties etc. for offence under s. 28

- s.29(13) - where:
- (a) an offence under section 28 of using another person for a particular purpose is found to have involved that other person's having possession of a weapon, or

⁵⁶⁵ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁶⁶ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁶⁷ Commencement: 6 April 2007, SI 2007/858 art.2(c).

being able to make it available, over a period of two or more days, or at some time during a period of two or more days, and

(b) on any day in that period, an age requirement was satisfied,

the question whether subsection (3) applies or (as the case may be) the question whether the offence was aggravated under this section is to be determined as if the offence had been committed on that day.

s.29(14) - in subsection (13) the reference to an age requirement is a reference to either of the following:

(a) the requirement of subsection (3) that the offender was aged 16 or over at the time of the offence;

(b) the requirement of subsection (11) that the offender was aged 18 or over at that time and that the other person was not.

3.2.4.6.6 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁶⁸: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed: [...] (d) under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon), [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.6.7 Modification pertaining to youth custodial sentences

VCRA 2006 s.29⁵⁶⁹: Penalties etc. for offence under s. 28

s.29(5) - in relation to times before the commencement of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), the reference in subsection (4) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

3.2.4.7. Minimum sentence for repeat offenders involving offensive weapons etc.

3.2.4.7.1 Offences under PCA 1953 s.1

PCA 1953 s.1⁵⁷⁰: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

s.1(1) - any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the prescribed sum or both;

⁵⁶⁸ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁶⁹ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁷⁰ Commencement: 6 June 1953, PCA 1953 s.2(2). As amended by, inter alia, SI 2015/1463 art.2(a).

- (b) on conviction on indictment, to imprisonment for a term not exceeding four years or a fine, or both.
- s.1(2) - where any person is convicted of an offence under subsection (1) of this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.
- s.1(2A) - subsection (2B) applies where—
 - (a) a person is convicted of an offence under subsection (1) committed after this subsection is commenced, and
 - (b) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 1ZA).
- s.1(2B) - where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- s.1(2C) - in this section “*appropriate custodial sentence*” means—
 - (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- s.1(2D) - in considering whether it is of the opinion mentioned in subsection (2B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).
- s.1(2E) - where—
 - (a) an appropriate custodial sentence has been imposed on a person under subsection (2B), and
 - (b) a relevant conviction without which subsection (2B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).
- s.1(2F) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- s.1(2G) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (2C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- s.1(4) - in this section “*public place*” includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and “*offensive weapon*” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

PCA 1953 s.1ZA⁵⁷¹: Offence under section 1: previous relevant convictions

s.1ZA(1) - for the purposes of section 1, “*relevant conviction*” means—

- (a) a conviction for an offence under—
 - (i) section 1 or 1A of this Act, or
 - (ii) section 139, 139A or 139AA of the Criminal Justice Act 1988, (a “*relevant offence*”), whenever committed,
- (b) a conviction in Scotland, Northern Ireland or a member State other than the United Kingdom for a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of that conviction,
- (c) a conviction for an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
- (d) a conviction for an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, and
- (e) a conviction for a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.

s.1ZA(2) - in this section—

“*civilian offence*” means an offence other than—

- (a) an offence under an enactment mentioned in subsection (1)(c) or (d), or
- (b) a member State service offence;

“*conviction*” includes—

- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction and
- (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

“*member State service offence*” means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

s.1ZA(3) - for the purposes of subsection (1)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

⁵⁷¹ Commencement: 17 July 2015, as inserted by SI 2015/1463 art.2(a).

3.2.4.7.2 Offences under CJA 1988 s.139 or 139A

CJA 1988 s.139⁵⁷²: Offence of having article with blade or point in public place

- s.139(1) - subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.
- s.139(2) - subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.
- s.139(3) - this section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.
- s.139(4) - it shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.
- s.139(5) - without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—
- (a) for use at work;
 - (b) for religious reasons; or
 - (c) as part of any national costume.
- s.139(6) - a person guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.
- s.139(6A) - subsection (6B) applies where—
- (a) a person is convicted of an offence under subsection (1) by a court in England and Wales,
 - (b) the offence was committed after this subsection is commenced, and
 - (c) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 139AZA).
- s.139(6B) - where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- s.139(6C) - in this section “*appropriate custodial sentence*” means—
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;

⁵⁷² Commencement: 29 September 1988, CJA 1988 s.171(6).

- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

s.139(6D) - in considering whether it is of the opinion mentioned in subsection (6B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).

s.139(6E) - where—

- (a) an appropriate custodial sentence has been imposed on a person under subsection (6B), and
- (b) a relevant conviction without which subsection (6B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).

s.139(6F) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

s.139(6G) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

s.139(7) - in this section “*public place*” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

s.139(8) - this section shall not have effect in relation to anything done before it comes into force.

CJA 1988 s.139A⁵⁷³: Offence of having article with blade or point (or offensive weapon) on school premises

s.139A(1) - any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

s.139A(2) - any person who has an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

s.139A(3) - it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

s.139A(4) - without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—

- (a) for use at work,
- (b) for educational purposes,

⁵⁷³ Commencement: 1 September 1996, as inserted by OWA 1996 s.4(1), SI 1996/2071 art.2, as amended by, inter alia, SI 2015/1463 art.2(a).

- (c) for religious reasons, or
- (d) as part of any national costume.

s.139A(5) - a person guilty of an offence—

- (a) under subsection (1) above shall be liable—
 - (i) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both;
- (b) under subsection (2) above shall be liable—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.

s.139A(5A) - subsection (5B) applies where—

- (a) a person is convicted of an offence under subsection (1) or (2) by a court in England and Wales,
- (b) the offence was committed after this subsection is commenced, and
- (c) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 139AZA).

s.139A(5B) - where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—

- (a) relate to the offence, to the previous offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

s.139A(5C) - in this section “*appropriate custodial sentence*” means—

- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

s.139A(5D) - in considering whether it is of the opinion mentioned in subsection (5B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).

s.139A(5E) - where—

- (a) an appropriate custodial sentence has been imposed on a person under subsection (5B), and
- (b) a relevant conviction without which subsection (5B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).

- s.139A(5F) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- s.139A(5G) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (5C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- s.139A(6) - in this section and section 139B, “*school premises*” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and “*school*” has the meaning given by section 4 of the Education Act 1996.
- s.139A(7) - in the application of this section to Northern Ireland—
- (a) the reference in subsection (2) above to section 1 of the Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the Public Order (Northern Ireland) Order 1987; and
 - (b) the reference in subsection (6) above to section 4 of the Education Act 1996 is to be construed as a reference to Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

CJA 1988 s.139AZA⁵⁷⁴: Offences under sections 139 and 139A: previous relevant convictions

- s.139AZA(1) - for the purposes of sections 139 and 139A, “*relevant conviction*” means—
- (a) a conviction for an offence under—
 - (i) section 1 or 1A of the Prevention of Crime Act 1953, or
 - (ii) section 139, 139A or 139AA of this Act,
 - (a “*relevant offence*”), whenever committed,
 - (b) a conviction in Scotland, Northern Ireland or a member State other than the United Kingdom for a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of that conviction,
 - (c) a conviction for an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
 - (d) a conviction for an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, and
 - (e) a conviction for a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.

s.139AZA(2) - in this section—

⁵⁷⁴ Commencement: 17 July 2015, as inserted by SI 2015/1463 art.2(a).

“civilian offence” means an offence other than—

- (a) an offence under an enactment mentioned in subsection (1)(c) or (d), or
- (b) a member State service offence;

“conviction” includes—

- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction, and
- (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

“member State service offence” means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

s.139AZA(3) - for the purposes of subsection (1)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

3.2.4.7.3 Interaction with other sentencing orders

Hospital orders etc.

Mental Health Act 1983 s.37⁵⁷⁵: Powers of courts to order hospital admission or guardianship

s.37(1A) - in the case of an offence the sentence for which would otherwise fall to be imposed:

[...] (za) under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

(aa) under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.8 Powers of the Secretary of State

CJA 2003 s.291⁵⁷⁶: Power by order to exclude application of minimum sentence to those under 18

s.291(1) - the Secretary of State may by order—

- (a) amend section 51A(1)(b) of the Firearms Act 1968 (c. 27) by substituting for the word “16” the word “18”,
- (aa) amend section 29(3)(a) of the Violent Crime Reduction Act 2006 by substituting for the word “16” the word “18”,
- (b) repeal section 91(1A)(c) and (5) of the Sentencing Act,
- (c) amend subsection (3) of section 49 of the Criminal Procedure (Scotland) Act 1995 by repealing the exception to that subsection,

⁵⁷⁵ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁷⁶ Commencement: 22 January 2004, SI 2004/81 art.3(2)(b).

- (d) repeal section 208(2) of that Act, and
- (e) make such other provision as he considers necessary or expedient in consequence of, or in connection with, the provision made by virtue of paragraphs (a) to (d).

s.291(2) - the provision that may be made by virtue of subsection (1)(e) includes, in particular, provision amending or repealing any provision of an Act (whenever passed), including any provision of this Act.

3.2.5. Committal for contempt

3.2.5.1. General

Procedure

Attorney General v Dallas [2012] EWHC 156 (Admin); [2012] 1 WLR 991

Trials for contempt of court on indictment are obsolete and neither the Attorney General nor an alleged contemnor had any right to seek trial by jury on indictment.

Jurisdiction: Court of Appeal

SCA 1981 s.15⁵⁷⁷: General jurisdiction of Court of Appeal

- s.15(1) - the Court of Appeal shall be a superior court of record.
- s.15(2) - subject to the provisions of this Act, there shall be exercisable by the Court of Appeal:
- (a) all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
 - (b) all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act.
- s.15(3) - for all purposes of or incidental to:
- (a) the hearing and determination of any appeal to the civil division of the Court of Appeal; and
 - (b) the amendment, execution and enforcement of any judgment or order made on such an appeal,
- the Court of Appeal shall have all the authority and jurisdiction of the court or tribunal from which the appeal was brought.
- s.15(4) - it is hereby declared that any provision in this or any other Act which authorises or requires the taking of any steps for the execution or enforcement of a judgment or order of the High Court applies in relation to a judgment or order of the civil division of the Court of Appeal as it applies in relation to a judgment or order of the High Court.

⁵⁷⁷ Commencement: 1 January 1982, SCA 1981 s.153(2).

Jurisdiction: Crown Court

SCA 1981 s.45⁵⁷⁸: General jurisdiction of Crown Court

- s.45(4) - subject to section 8 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (substitution in criminal cases of procedure in that Act for procedure by way of subpoena) and to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority as the High Court.

Jurisdiction: Magistrates' Courts

CCA 1981 s.12⁵⁷⁹: Offences of contempt of magistrates' courts

- s.12(1) - a magistrates' court has jurisdiction under this section to deal with any person who:
- (a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or
 - (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

3.2.5.2. Obstruction/Disruption

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.48.5(1) This rule applies where the court observes, or someone reports to the court—

- (a) in the Court of Appeal or the Crown Court, obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings;
- (b) in the Crown Court, a contravention of—
 - (i) section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (disobeying a witness summons);
 - (ii) section 20 of the Juries Act 1974 (disobeying a jury summons);
 - (iii) section 8 of the Contempt of Court Act 1981 (obtaining details of a jury's deliberations, etc.);
- (c) in a magistrates' court, a contravention of—
 - (i) section 97(4) of the Magistrates' Courts Act 1980 (refusing to give evidence), or
 - (ii) section 12 of the Contempt of Court Act 1981 (insulting or interrupting the court, etc.);
- (d) a contravention of section 9 of the Contempt of Court Act 1981 (without the court's permission, recording the proceedings, etc.);
- (e) any other conduct with which the court can deal as, or as if it were, a criminal contempt of court, except failure to surrender to bail under section 6 of the Bail Act 1976.

⁵⁷⁸ Commencement: 1 January 1982, SCA 1981 s.153(2).

⁵⁷⁹ Commencement: 27 August 1981, CCA 1981 s.21(3).

rule.48.5(2) Unless the respondent's behaviour makes it impracticable to do so, the court must—

- (a) explain, in terms the respondent can understand (with help, if necessary)—
 - (i) the conduct that is in question,
 - (ii) that the court can impose imprisonment, or a fine, or both, for such conduct,
 - (iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,
 - (iv) that the respondent may explain the conduct,
 - (v) that the respondent may apologise, if he or she so wishes, and that this may persuade the court to take no further action, and
 - (vi) that the respondent may take legal advice; and
- (b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.

rule.48.5(3) The court may then—

- (a) take no further action in respect of that conduct;
- (b) enquire into the conduct there and then; or
- (c) postpone that enquiry (if a magistrates' court, only until later the same day).

*Note.*⁵⁸⁰ *The conduct to which this rule applies is sometimes described as 'criminal' contempt of court.*

By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for contempt of court for the conduct listed in paragraph (1)(a), (b), (d) or (e). See also section 14 of the Contempt of Court Act 1981.

Under section 97(4) of the Magistrates' Courts Act 1980, and under sections 12 and 14 of the Contempt of Court Act 1981, a magistrates' court can imprison (for a maximum of 1 month), or fine (to a maximum of £2,500), or both, a respondent who contravenes a provision listed in paragraph (1)(c) or (d). Section 12(1) of the 1981 Act allows the court to deal with any person who—

- (a) *wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or*
- (b) *wilfully interrupts the proceedings of the court or otherwise misbehaves in court.*

Under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000, no respondent who is under 21 may be imprisoned for contempt of court. Under section 108 of that Act, a respondent who is at least 18 but under 21 may be detained if the court is of the opinion that no other method of dealing with him or her is appropriate. Under section 14(2A) of the Contempt of Court Act 1981, a respondent who is under 17 may not be ordered to attend an attendance centre.

Under section 258 of the Criminal Justice Act 2003, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.

⁵⁸⁰ The note is contained within the procedure rules.

Under sections 14, 15 and 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the respondent may receive advice and representation in “proceedings for contempt committed, or alleged to have been committed, by an individual in the face of the court”.

By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power temporarily to detain a respondent, for example to restore order, when dealing with obstructive, disruptive, insulting or intimidating conduct. Under section 12(2) of the Contempt of Court Act 1981, a magistrates’ court can temporarily detain a respondent until later the same day on a contravention of that section.

Part 14 contains rules about bail.

3.2.5.3. Failure to comply with court order etc.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.48.9(1) This rule applies where—

- (a) a party, or other person directly affected, alleges—
 - (i) in the Crown Court, a failure to comply with an order to which applies rule 33.70 (compliance order, restraint order or ancillary order), rule 47.13 (certain investigation orders under the Terrorism Act 2000(1)) or rule 47.22 (certain investigation orders under the Proceeds of Crime Act 2002(2)),
 - (ii) in the Court of Appeal or the Crown Court, any other conduct with which that court can deal as a civil contempt of court, or
 - (iii) in the Crown Court or a magistrates’ court, unauthorised use of disclosed prosecution material under section 17 of the Criminal Procedure and Investigations Act 1996(3);
- (b) the court deals on its own initiative with conduct to which paragraph (1)(a) applies.

rule.48.9(2) Such a party or person must—

- (a) apply in writing and serve the application on the court officer; and
- (b) serve on the respondent—
 - (i) the application, and
 - (ii) notice of where and when the court will consider the allegation (not less than 14 days after service).

rule.48.9(3) The application must—

- (a) identify the respondent;
- (b) explain that it is an application for the respondent to be dealt with for contempt of court;
- (c) contain such particulars of the conduct in question as to make clear what is alleged against the respondent; and
- (d) include a notice warning the respondent that the court—
 - (i) can impose imprisonment, or a fine, or both, for contempt of court, and
 - (ii) may deal with the application in the respondent’s absence, if the respondent does not attend the hearing.

rule.48.9(4) A court which acts on its own initiative under paragraph (1)(b) must—

- (a) arrange for the preparation of a written statement containing the same information as an application; and
- (b) arrange for the service on the respondent of—
 - (i) that written statement, and
 - (ii) notice of where and when the court will consider the allegation (not less than 14 days after service).

*Note.*⁵⁸¹ *The conduct to which this rule applies is sometimes described as ‘civil’ contempt of court.*

By reason of section 45 of the Senior Courts Act 1981(4), the Crown Court has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for conduct in contempt of court by failing to comply with a court order or an undertaking given to the court.

Under section 18 of the Criminal Procedure and Investigations Act 1996(5)—

- (a) *the Crown Court can imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both;*
 - (b) *a magistrates’ court can imprison (for a maximum of 6 months), or fine (to a maximum of £5,000), or both,*
- a person who uses disclosed prosecution material in contravention of section 17 of that Act. See also rule 15.8.*

Under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000, no respondent who is under 21 may be imprisoned for contempt of court. Under section 108 of that Act, a respondent who is at least 18 but under 21 may be detained if the court is of the opinion that no other method of dealing with him or her is appropriate. Under section 14(2A) of the Contempt of Court Act 1981, a respondent who is under 17 may not be ordered to attend an attendance centre.

Under section 258 of the Criminal Justice Act 2003, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.

The Practice Direction sets out a form of application for use in connection with this rule.

The rules in Part 4 require that an application under this rule must be served by handing it to the person accused of contempt of court unless the court otherwise directs.

3.2.5.4. Statutory provisions

Superior courts etc.

CCA 1981 s.14⁵⁸²: Proceedings in England and Wales

- s.14(1) - in any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.

⁵⁸¹ The note is contained within the procedure rules.

⁵⁸² Commencement: 27 August 1981, CCA 1981 s.21(3).

- s.14(2) - in any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine shall not on any occasion exceed £2,500.
- s.14(2A) - in the exercise of jurisdiction to commit for contempt of court or any kindred offence the court shall not deal with the offender by making an order under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000 (an attendance centre order) if it appears to the court, after considering any available evidence, that he is under 17 years of age.
- s.14(2A)⁵⁸³ - a fine imposed under subsection (2) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- s.14(4) - each of the superior courts shall have the like power to make a hospital order or guardianship order under section 37 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental disorder within the meaning of that Act who could otherwise be committed to prison for contempt of court as the Crown Court has under that section in the case of a person convicted of an offence.
- s.14(4A) - each of the superior courts shall have the like power to make an order under section 35 of the said Act of 1983 (remand for report on accused's mental condition) where there is reason to suspect that a person who could be committed to prison for contempt of court is suffering from mental disorder within the meaning of that Act as the Crown Court has under that section in the case of an accused person within the meaning of that section.
- s.14(4A)⁵⁸⁴ - for the purposes of the preceding provisions of this section the county court shall be treated as a superior court and not as an inferior court.
- s.14(4B) - the preceding provisions of this section do not apply to the family court, but:
- (a) this is without prejudice to the operation of section 31E(1)(a) of the Matrimonial and Family Proceedings Act 1984 (family court has High Court's powers) in relation to the powers of the High Court that are limited or conferred by those provisions of this section, and
 - (b) section 31E(1)(b) of that Act (family court has county court's powers) does not apply in relation to the powers of the county court that are limited or conferred by those provisions of this section.

Magistrates' Courts

CCA 1981 s.12⁵⁸⁵: Offences of contempt of magistrates' courts

- s.12(1) - a magistrates' court has jurisdiction under this section to deal with any person who:
- (a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or
 - (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

⁵⁸³ It appears that there are two subsection listed as (2A).

⁵⁸⁴ It appears that there are two subsection listed as (4A).

⁵⁸⁵ Commencement: 27 August 1981, CCA 1981 s.21(3).

- s.12(2) - in any such case the court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding £2,500, or both.
- s.12(2A) - a fine imposed under subsection (2) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- s.12(4) - a magistrates' court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.
- s.12(5) - PCC(S)A 2000 s.135 (limit on fines in respect of young persons) and the following provisions of the Magistrates' Courts Act 1980 apply in relation to an order under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence; and those provisions of the Magistrates' Courts Act 1980 are section 36 (restriction on fines in respect of young persons); sections 75 to 91 (enforcement); section 108 (appeal to Crown Court); section 136 (overnight detention in default of payment); and section 142(1) (power to rectify mistakes).

MCA 1980 s.97⁵⁸⁶: Summons to witness and warrant for his arrest

- s.97(4) - if any person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit him to custody until the expiration of such period not exceeding one month as may be specified in the warrant or until he sooner gives evidence or produces the document or thing or impose on him a fine not exceeding £2,500 or both.
- s.97(5) - a fine imposed under subsection (4) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

Those aged 18-20

PCC(S)A 2000 s.108⁵⁸⁷: Detention of persons aged at least 18 but under 21 for default or contempt

- s.108(1) - in any case where, but for section 89(1) above, a court would have power:
 - (a) to commit a person aged at least 18 but under 21 to prison for default in payment of a fine or any other sum of money, or
 - (b) to make an order fixing a term of imprisonment in the event of such a default by such a person, or
 - (c) to commit such a person to prison for contempt of court or any kindred offence, the court shall have power, subject to subsection (3) below, to commit him to be detained under this section or, as the case may be, to make an order fixing a term of detention under this section in the event of default, for a term not exceeding the term of imprisonment.
- s.108(2) - for the purposes of subsection (1) above, the power of a court to order a person to be imprisoned under section 23 of the Attachment of Earnings Act 1971 shall be taken to be a power to commit him to prison.

⁵⁸⁶ Commencement: 6 July 1981, SI 1981/457 art.2

⁵⁸⁷ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

- s.108(3) - no court shall commit a person to be detained under this section unless it is of the opinion that no other method of dealing with him is appropriate; and in forming any such opinion, the court:
- (a) shall take into account all such information about the circumstances of the default or contempt (including any aggravating or mitigating factors) as is available to it; and
 - (b) may take into account any information about that person which is before it.
- s.108(4) - where a magistrates' court commits a person to be detained under this section, it shall:
- (a) state in open court the reason for its opinion that on other method of dealing with him is appropriate; and
 - (b) cause that reason to be specified in the warrant of commitment and to be entered in the register.
- s.108(5) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), a person in respect of whom an order has been made under this section is to be detained:
- (a) in a remand centre,
 - (b) in a young offender institution, or
 - (c) in any place in which a person aged 21 or over could be imprisoned or detained for default in payment of a fine or any other sum of money,
- as the Secretary of State may from time to time direct.

R. v Byas (1995) 16 Cr. App. R. (S.) 869

There is no power to impose a custodial sentence on an offender under the age of 18 adjudged guilty of contempt of court.

3.2.5.5. Guidance

Criminal Practice Directions 2015 XI Other Proceedings

Contempt in the face of the Magistrates' Court

General

- 48A.1 The procedure to be followed in cases of contempt of court is given in CrimPR Part 48. The magistrates' courts' power to deal with contempt in the face of the court is contained within section 12 of the Contempt of Court Act 1981. Magistrates' courts also have the power to punish a witness who refuses to be sworn or give evidence under section 97(4) of the Magistrates' Courts Act 1980.

Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings

- 48A.2 In the majority of cases, an apology and a promise as to future conduct should be sufficient for the court to order a person's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the court to consider using its powers, under section 12(2) of the Contempt of Court Act 1981, either to fine or to order the person's committal to custody.

Imposing a penalty for contempt

- 48A.3 The court should allow the person a further opportunity to apologise for his or her contempt, and should follow the procedure at CrimPR 48.8(4). The court should consider whether it is appropriate to release the person or whether it must exercise its powers to fine the person or to commit the person to custody under section 12 (2) of the 1981 Act. In deciding how to deal with the person, the court should have regard to the period for which he or she has been detained, whether the conduct was admitted and the seriousness of the contempt. Any period of committal to custody should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.

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3.3 Non-custodial penalties

3.3.1. General powers

3.3.1.1. Fines

3.3.1.1.1 Power to order fines

Crown Court

Power

CJA 2003 s.163⁵⁸⁸: General power of Crown Court to fine offender convicted on indictment

s.163 - where a person is convicted on indictment, for an offence other than one which is fixed by law or a statutory sentence (e.g. PCC(S)A 2000 s.110), the court may impose a fine instead or in addition to dealing with him in any other way, unless prohibited by another enactment

Limit

CLA 1977 s.32⁵⁸⁹: Other provisions as to maximum fines

s.32(1) - on conviction on indictment, there is a power to impose an unlimited fine

Magistrates' Court

Power

MCA 1980 s.32⁵⁹⁰: Penalties on summary conviction for offences triable either way

s.32(1) - on summary conviction of any of the offences triable either way listed in Schedule 1 to this Act a person shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding the prescribed sum or both, except that—

(a) a magistrates' court shall not have power to impose imprisonment for an offence so listed if the Crown Court would not have that power in the case of an adult convicted of it on indictment.

s.32(2) - for any offence triable either way which is not listed in Schedule 1 to this Act, being an offence under a relevant enactment, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the prescribed sum unless the offence is one for which by virtue of an enactment other than this subsection a larger fine may be imposed on summary conviction.

s.32(3) - where, by virtue of any relevant enactment, a person summarily convicted of an offence triable either way would, apart from this section, be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a

⁵⁸⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁵⁸⁹ Commencement: 17 July 1978 SI 1978/712 art.2(2) and Sch.1, but not in relation to Scotland, SI 1978/712 art.1(2). For the Scottish commencement, see SI 1978/900.

⁵⁹⁰ Commencement: 6 July 1981, SI 1981/457 art.2

second or subsequent conviction, subsection (2) above shall apply irrespective of whether the conviction is a first, second or subsequent one.

- s.32(4) - subsection (2) above shall not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event.
- s.32(5) - subsection (2) above shall not apply on summary conviction of any of the following offences:—
- (a) offences under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug;
 - (b) offences under the following provisions of that Act, where the controlled drug in relation to which the offence was committed was a Class C drug, namely—
 - (i) section 4(2) (production, or being concerned in the production, of a controlled drug);
 - (ii) section 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another);
 - (iii) section 5(3) (having possession of a controlled drug with intent to supply it to another);
 - (iv) section 8 (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there);
 - (v) section 12(6) (contravention of direction prohibiting practitioner etc. from possessing, supplying etc. controlled drugs); or
 - (vi) section 13(3) (contravention of direction prohibiting practitioner etc. from prescribing, supplying etc. controlled drugs).
- s.32(6) - where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence—
- (a) subsection (2) above shall not affect that power or override any restriction imposed in the exercise of that power; and
 - (b) the amount to which that fine may be restricted in the exercise of that power shall be any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed.
- s.32(8) - in subsection (5) above “*controlled drug*”, “*Class B drug*” and “*Class C drug*” have the same meaning as in the Misuse of Drugs Act 1971.
- s.32(9) - in this section—
- “*fine*” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;
- “*the prescribed sum*” means £5,000 or such sum as is for the time being substituted in this definition by an order in force under section 143(1) below;
- “*relevant enactment*” means an enactment contained in the Criminal Law Act 1977 or in any Act passed before, or in the same Session as, that Act.
- s.32(10) - section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates’ court) makes provision that affects the application of this section.

LASPOA 2012 s.85⁵⁹¹: Removal of limit on certain fines on conviction by magistrates' court

- s.85(1) - where, on the commencement day, a relevant offence would, apart from this subsection, be punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the offence is punishable on summary conviction on or after that day by a fine of any amount
- s.85(2) where, on the commencement day, a relevant power could, apart from this subsection, be exercised to create an offence punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the power may be exercised on or after that day to create an offence punishable on summary conviction by a fine of any amount.
- s.85(3) - for the purposes of this section:
- (a) an offence is relevant if, immediately before the commencement day, it is a common law offence or it is contained in an Act or an instrument made under an Act (whether or not the offence is in force at that time), and
 - (b) a power is relevant if, immediately before the commencement day, it is contained in an Act or an instrument made under an Act (whether or not the power is in force at that time).
- s.85(4) - nothing in subsection (1) affects:
- (a) fines for offences committed before the commencement day,
 - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
 - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
- and provision made in exercise of a relevant power in reliance on subsection (2) does not affect such fines or the operation of such restrictions.

Note: Section 85(1) does not apply to the offences listed in Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (SI 2015/664) Sch.1. Schedule 2 amends certain provisions those offences to be punishable on summary conviction by a fine or maximum fine of an amount specified or described. Schedule 3 amends provisions in which the level of fine is expressed as a proportion. Schedules 4 and 5 contain consequential amendments.

PCC(S)A 2000 s.135⁵⁹²: Limit on fines imposed by magistrates' courts in respect of young offenders

- s.135(1) - where a person aged under 18 is found guilty by a magistrates' court of an offence for which, apart from this section, the court would have power to impose a fine of an amount exceeding £1,000, the amount of any fine imposed by the court shall not exceed £1,000.
- s.135(2) - in relation to a person aged under 14, subsection (1) above shall have effect as if for "£1,000", in both places where it occurs, there were substituted "£250".

⁵⁹¹ Commencement: Section 85(3), (5)-(13) and (15)-(17) in force 28 May 2014, SI 2014/1291 art.2(a)(i). Section 85(1), (2) and (4) in force 12 March 2015, SI 2015/504 art.2.

⁵⁹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.3.1.1.2 The standard scale***Criminal Justice Act 1982 s.37⁵⁹³: The standard scale of fines for summary offences***

s.37(1) - there is a standard scale of fine for summary offences

s.37(2) - the scale is:

Level on the scale	Amount of fine
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000

Note: See also CJA 1982 s.46 as to the “conversion of references to amounts to references to levels on scale”. Note also that s.47 provides a definition of a fine for the purposes of certain sections of the 1982 Act. See also CJA 1988 ss.51-57 for further provisions about fines, maximum fines and the standard scale.

3.3.1.1.3 Power to alter fines etc.***MCA 1980 s.143⁵⁹⁴: Power to alter sums specified in certain provisions***

s.143(1) - if it appears to the SoS that there has been a change in the value of money, he may by order amend etc. the sums in the provisions mentioned in subsec.(2)

s.143(2)(o) - CJA 1982 s.37(2) (standard scale)

LASPOA 2012 s.86⁵⁹⁵: Power to increase certain other fines on conviction by magistrates’ court

s.86(1) - subsection (2) applies in relation to a relevant offence which, immediately before the commencement day, is punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000.

s.86(2) - the Secretary of State may by regulations make provision for the offence to be punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.

s.86(3) - subsection (4) applies in relation to a relevant power which, immediately before the commencement day, can be exercised to create an offence punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000 but not to create an offence so punishable by a fine or maximum fine of a fixed amount of £5,000 or more.

s.86(4) - the Secretary of State may by regulations make provision for the power to be exercisable to create an offence punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.

⁵⁹³ Commencement: 11 April 1982, SI 1982/1847 Sch.2 para.1

⁵⁹⁴ Commencement: 6 July SI 1981/457 art.2

⁵⁹⁵ Commencement: 28 May 2014, SI 2014/1291 art.2(b)

- s.86(5) - regulations under this section may not specify or describe an amount exceeding whichever is the greater of—
- (a) £5,000, or
 - (b) the sum specified for the time being as level 4 on the standard scale.
- s.86(6) - regulations under this section may not include provision affecting—
- (a) fines for offences committed before the regulations come into force,
 - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
 - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
- and provision made in exercise of a relevant power in reliance on regulations under subsection (4) may not include such provision.
- s.86(7) - regulations under this section—
- (a) may make different provision for different cases or circumstances,
 - (b) may make provision generally or only for specified cases or circumstances, and
 - (c) may make consequential, incidental, supplementary, transitional, transitory or saving provision.
- s.86(8) - regulations under this section may amend, repeal, revoke or otherwise modify any provision which, immediately before the commencement day, is contained in an Act or an instrument made under an Act (whether or not the provision is in force at that time).
- s.86(9) - regulations under this section are to be made by statutory instrument.
- s.86(10) - a statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- s.86(11) - if, immediately before the commencement day, the sum specified as level 5 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) is greater than £5,000, the references in this section to £5,000 have effect as if they were references to that sum.
- s.86(12) - powers under this section—
- (a) may be exercised from time to time, and
 - (b) are without prejudice to other powers to modify fines for relevant offences or fines that may be specified or described when exercising a relevant power.
- s.86(13) - in this section “Act”, “*the commencement day*”, “*relevant offence*” and “*relevant power*”, and references to a provision contained in an Act or instrument, have the same meaning as in section 85.

LASPOA 2012 s.87⁵⁹⁶: Power to amend standard scale of fines for summary offences

- s.87(1) - the Secretary of State may by order substitute for the sums for the time being specified as levels 1 to 4 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) such other sums as the Secretary of State considers appropriate.
- s.87(2) - the power under subsection (1) may not be exercised so as to alter the ratio of one of those levels to another.
- s.87(3) - in section 143 of the Magistrates' Courts Act 1980 (power to alter sums including standard scale of fines for summary offences), in subsection (3)(b), after "subsection (1) above" insert "or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012".
- s.87(4) - in section 37 of the Criminal Justice Act 1982 (standard scale of fines for summary offences), in subsection (3), at the end insert "or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012".
- s.87(5) - an order under this section is to be made by statutory instrument.
- s.87(6) - a statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- s.87(7) - an order under this section does not affect fines for offences committed before the order comes into force.

3.3.1.1.4 Setting the level of the fine

Fixing the fine and enquiring into the offender's circumstances

CJA 2003 s.162⁵⁹⁷: Powers to order statement as to offender's financial circumstances

- s.162(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.
- s.162(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.
- s.162(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 assets and other financial circumstances as the court may require .
- s.162(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.

⁵⁹⁶ Commencement: 28 May 2014, SI 2014/1291 art.2(c)

⁵⁹⁷ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

- s.162(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.
- s.162(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.

CJA 2003 s.164⁵⁹⁸: Fixing of fines

- s.164(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.
- s.164(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.
- s.164(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.
- s.164(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.
- s.164(4A) - in applying subsection (3), a court must not reduce the amount of a fine on account of any surcharge it orders the offender to pay under section 161A, except to the extent that he has insufficient means to pay both.
- s.164(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
 - (aa) an offender has been convicted in the offender's absence in proceedings conducted in accordance with section 16A of the Magistrates' Courts Act 1980 (trial by single justice on the papers),
 - (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,

⁵⁹⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

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.

CJA 2003 s.165: Remission of fines

- s.165(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).
- s.165(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.
- s.165(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.
- s.165(4) - in calculating any reduction required by subsection (3), any fraction of a day is to be ignored.
- s.165(5) - where—
- (a) under this section the court remits the whole or part of a fine, and
 - (b) the offender was ordered under section 161A to pay a surcharge the amount of which was set by reference to the amount of the fine,
- the court must determine how much the surcharge would have been if the fine had not included the amount remitted, and remit the balance of the surcharge.

3.3.1.1.5 Payment by instalments and allowing time for payment

Crown Court: Fines

PCC(S)A 2000 s.139⁵⁹⁹: Powers and duties of Crown Court in relation to fines etc.

- s.139(1) - subject to the provisions of this section, if the Crown Court imposes a fine on any person or forfeits his recognizance, the court may make an order—
- (a) allowing time for the payment of the amount of the fine or the amount due under the recognizance;
 - (b) directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order;
 - (c) in the case of a recognizance, discharging the recognizance or reducing the amount due under it.

⁵⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Crown Court: Costs and Compensation

PCC(S)A 2000 s.141⁶⁰⁰: Power of Crown Court to allow time for payment, or payment by instalments, of costs and compensation

- s.141 - where the Crown Court makes any such order as is mentioned in Administration of Justice Act 1970 Sch.9 Part 1 (orders against accused for the payment of costs or compensation), the court may: (a) allow time for the payment of the sum due under the order; (b) direct payment of that sum by instalments

Magistrates' Court

MCA 1980 s.75⁶⁰¹: Power to dispense with immediate payment

- s.75(1) - a magistrates' court by whose conviction or order a sum is adjudged to be paid may, instead of requiring immediate payment, allow time for payment, or order payment by instalments.
- s.75(2) - where a magistrates' court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments.
- s.75(3) - where a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

3.3.1.1.6 Prison in default term

Note: The court's duty to explain the effect of a sentence (see Part 4) under CJA 2003 s.174 includes a duty to explain the consequences of non-payment of fines.

Crown Court

PCC(S)A 2000 s.139⁶⁰²: Powers and duties of Crown Court in relation to fines etc.

- s.139(2) - subject to the provisions of this section, if the Crown Court imposes a fine on any person or forfeits his recognizance, the court shall make an order fixing a term of imprisonment or of detention under section 108 above (detention of persons aged 18 to 20 for default) which he is to undergo if any sum which he is liable to pay is not duly paid or recovered:
- s.139(3) - no person shall on the occasion when a fine is imposed on him or his recognizance is forfeited by the Crown Court be committed to prison or detained in pursuance of an order under subsection (2) above unless—
- (a) in the case of an offence punishable with imprisonment, he appears to the court to have sufficient means to pay the sum forthwith;
 - (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods; or

⁶⁰⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁰¹ Commencement: 6 July 1981, SI 1981/457 art.2

⁶⁰² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (c) on the occasion when the order is made the court sentences him to immediate imprisonment, custody for life or detention in a young offender institution for that or another offence, or so sentences him for an offence in addition to forfeiting his recognizance, or he is already serving a sentence of custody for life or a term—
- (i) of imprisonment;
 - (ii) of detention in a young offender institution; or
 - (iii) of detention under section 108 above.

s.139(4) - the periods set out in the second column of the following Table shall be the maximum periods of imprisonment or detention under subsection (2) above applicable respectively to the amounts set out opposite them.

Table

Amount of fine	Period
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years

- s.139(5) - where any person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment or detention in a young offender institution or a term of detention under section 108 above, the court may order that any term of imprisonment or detention fixed under subsection (2) above shall not being to run until after the end of the first-mentioned term.
- s.139(6) - the power conferred by this section to discharge a recognizance or reduce the amount due under it shall be in addition to the powers conferred by any other Act relating to the discharge, cancellation, mitigation or reduction of recognizances or sums forfeited under recognizances.
- s.139(7) - subject to subsection (8) below, the powers conferred by this section shall not be taken as restricted by any enactment which authorises the Crown Court to deal with an offender in any way in which a magistrates' court might have dealt with him or could deal with him.
- s.139(8) - any term fixed under subsection (2) above as respects a fine imposed in pursuance of such an enactment, that is to say a fine which the magistrates' court could have imposed, shall not exceed the period applicable to that fine (if imposed by the magistrates' court) under section 149(1) of the Customs and Excise Management Act 1979 (maximum periods of imprisonment in default of payment of certain fines).
- s.139(9) - this section shall not apply to a fine imposed by the Crown Court on appeal against a decision of a magistrates' court, but subsections (2) to (4) above shall apply in relation to a fine imposed or recognizance forfeited by the criminal division of the Court of

Appeal, or by the Supreme Court on appeal from that division, as they apply in relation to a fine imposed or recognizance forfeited by the Crown Court, and the references to the Crown Court in subsections (2) and (3) above shall be construed accordingly.

- s.139(10) - for the purposes of any reference in this section, however expressed, to the term of imprisonment or other detention to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall, unless the context otherwise requires, be treated as a single term.
- s.139(11) - any reference in this section, however expressed, to a previous sentence shall be construed as a reference to a previous sentence passed by a court in Great Britain.

Magistrates' Court

MCA 1980 s.133⁶⁰³: Consecutive terms of imprisonment

- s.133(4) - where a person has been sentenced by a magistrates' court to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine, or for want of sufficient goods to satisfy the fine, shall not be subject to the limitations imposed by the preceding subsections (the limit on imposing six-month and 12-month maximum terms)
- s.133(5) - for the purposes of s.133 a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction or for want of sufficient goods to satisfy such a sum

MCA 1980 s.82⁶⁰⁴: Restriction on power to impose imprisonment for default

- s.82(1) - a magistrates' court shall not on the occasion of convicting an offender of an offence issue a warrant of commitment for a default in paying any sum adjudged to be paid by the conviction unless—
- (a) in the case of an offence punishable with imprisonment, he appears to the court to have sufficient means to pay the sum forthwith;
 - (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods; or
 - (c) on the occasion of that conviction the court sentences him to immediate imprisonment, youth custody or detention in a detention centre for that or another offence or he is already serving a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982 or detention in a detention centre.
- s.82(1A) - a magistrates' court may not issue a warrant of commitment in reliance on subsection (1)(c) for a default in paying—
- (a) a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge), or
 - (b) a surcharge ordered to be paid under section 161A of the Criminal Justice Act 2003.

⁶⁰³ Commencement: 6 July 1981, SI 1981/457 art.2

⁶⁰⁴ Commencement: 6 July 1981, SI 1981/457 art.2

- s.82(2) - a magistrates' court shall not in advance of the issue of a warrant of commitment fix a term of imprisonment which is to be served by an offender in the event of a default in paying a sum adjudged to be paid by a conviction, except where it has power to issue a warrant of commitment forthwith, but postpones issuing the warrant under section 77(2) above.
- s.82(3) - where on the occasion of the offender's conviction a magistrates' court does not issue a warrant of commitment for a default in paying any such sum as aforesaid or fix a term of imprisonment under the said section 77(2) which is to be served by him in the event of any such default, it shall not thereafter issue a warrant of commitment for any such default or for want of sufficient goods to satisfy such a sum unless—
- (a) he is already serving a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982 or detention in a detention centre; or
 - (b) the court has since the conviction inquired into his means in his presence on at least one occasion.
- s.82(4) - where a magistrates' court is required by subsection (3) above to inquire into a person's means, the court may not on the occasion of the inquiry or at any time thereafter issue a warrant of commitment for a default in paying any such sum unless—
- (a) in the case of an offence punishable with imprisonment, the offender appears to the court to have sufficient means to pay the sum forthwith; or
 - (b) the court—
 - (i) is satisfied that the default is due to the offender's wilful refusal or culpable neglect; and
 - (ii) has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.
- s.82(4A) - the methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—
- (a) a warrant of control under section 76 above;
 - (b) an application to the High Court or county court for enforcement under section 87 below;
 - (c) an order under section 88 below;
 - (d) an attachment of earnings order; and
 - (e) if the offender is under the age of 25, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).
- s.82(4B) - the cases in which the offender's default may be regarded for the purposes of subsection (4)(b)(i) as being attributable to his wilful refusal or culpable neglect include any case in which—
- (a) he has refused, otherwise than on reasonable grounds, to consent to a work order proposed to be made under Schedule 6 to the Courts Act 2003 (discharge of fines by unpaid work), or
 - (b) he has without reasonable excuse failed to comply with such an order.
- s.82(5) - after the occasion of an offender's conviction by a magistrates' court, the court shall not, unless—
- (a) the court has previously fixed a term of imprisonment under section 77(2) above which is to be served by the offender in the event of a default in paying a sum adjudged to be paid by the conviction; or

- (b) the offender is serving [a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982] or detention in a detention centre,

issue a warrant of commitment for a default in paying the sum or fix such a term except at a hearing at which the offender is present.

- s.82(5A) - a magistrates' court may not issue a warrant of commitment under subsection (5) above at a hearing at which the offender is not present unless the designated officer for the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends.
- s.82(5B) - where after the occasion of an offender's conviction by a magistrates' court the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it shall consider such information about the offender's means as is available to it unless it has previously—
 - (a) inquired into the offender's means; and
 - (b) postponed the issue of the warrant of commitment under section 77(2) above.
- s.82(5C) - a notice under subsection (5A) above—
 - (a) shall state the time and place appointed for the hearing; and
 - (b) shall inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the court in person or in writing,but the court may exercise its powers in relation to the issue of a warrant whether or not he makes representations.
- s.82(5D) - except as mentioned in subsection (5E) below, the time stated in a notice under subsection (5A) above shall not be earlier than 21 days after the issue of the notice.
- s.82(5E) - where a magistrates' court exercises in relation to an offender the power conferred by section 77(2) above and at the same hearing issues a notice under subsection (5A) above in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed.
- s.82(5F) - a notice under subsection (5A) above to be served on any person shall be deemed to be served on that person if it is sent by registered post or the recorded delivery service addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.
- s.82(6) - where a magistrates' court issues a warrant of commitment on the ground that one of the conditions mentioned in subsection (1) or (4) above is satisfied, it shall state that fact, specifying the ground, in the warrant.

Appeals

R. (Purnell) v Essex Magistrates' Court [2015] EWHC 333 (Admin)

There is no right of appeal against the imposition of a prison in default term under MCA 1980 s.108 as such an order was not "a sentence" for the purposes of s.108(3) because it was not made upon conviction but in consequence of conviction and at a different time and for a different reason.

Release

MCA 1980 s.79⁶⁰⁵: Release from custody and reduction of detention on payment

- s.79(1) - where imprisonment or other detention has been imposed on any person by the order of a magistrates' court in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient goods to satisfy such a sum, then, on the payment of the sum, together with the costs and charges, if any, of the commitment, or (as the case may be) on the payment of the amount outstanding, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.
- s.79(2) - where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient goods to satisfy such a sum, payment is made in accordance with rules of court of part of the sum, the period of detention shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears—
- (a) to the amount outstanding at the time the period of detention was imposed, if the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) had been used for recovering the sum;
 - (b) otherwise, to so much of the sum as was due at that time.
- s.79(3) - in calculating the reduction required under subsection (2) above any fraction of a day shall be left out of account.
- s.79(4) - in this Act, references to want of sufficient goods to satisfy a sum of money are references to circumstances where—
- (a) a warrant of control has been issued for the sum to be recovered from a person, but
 - (b) it appears on the return to the warrant that the person's money and goods are insufficient to pay the amount outstanding.
- s.79(5) - in this section, "*the amount outstanding*" has the meaning given by paragraph 50(3) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

CJA 2003 s.258: Early release of fine defaulters etc.

- s.258(1) - this section applies in relation to a person committed to prison—
- (a) in default of payment of a sum adjudged to be paid by a conviction, or
 - (b) for contempt of court or any kindred offence.
- s.258(2) - as soon as a person to whom this section applies has served one-half of the term for which he was committed, it is the duty of the Secretary of State to release him unconditionally.
- s.258(2A) - subsection (2) is subject to paragraph 35 of Schedule 20B (transitional cases).

⁶⁰⁵ Commencement: 6 July 1981, SI 1981/457 art.2

- s.258(2B) - subsection (2) does not apply to a person within subsection (1)(a) if the sum in question is a sum of more than £10 million ordered to be paid under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002.
- s.258(2C) - the Secretary of State may by order amend the amount for the time being specified in subsection (2B).
- s.258(3) - where a person to whom this section applies is also serving one or more sentences of imprisonment or detention in a young offender institution, nothing in this section or in paragraph 35 of Schedule 20B requires the Secretary of State to release him until he is also required to release him in respect of that sentence or each of those sentences.
- s.258(3A) - the reference in subsection (3) to sentences of imprisonment includes sentences of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act.
- s.258(4) - the Secretary of State may at any time release unconditionally a person to whom this section applies if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds.

Fine defaulters

3.3.1.1.7 Searching persons at the Crown Court

PCC(S)A 2000 s.142⁶⁰⁶: Power of Crown Court to order search of persons before it

s.142(1) - where—

- (za) the Crown Court orders a person to pay a surcharge under section 161A of the Criminal Justice Act 2003,
- (a) the Crown Court imposes a fine on a person or forfeits his recognizance,
- (b) the Crown Court makes against a person any such order as is mentioned in paragraph 3, 4 or 9 of Schedule 9 to the Administration of Justice Act 1970 (orders for the payment of costs),
- (ba) the Crown Court makes an order against a person under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge),
- (c) the Crown Court makes a compensation order against a person,
- (ca) the Crown Court makes an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013 against a person,
- (d) the Crown Court makes against a person an order under section 137 above (order for parent or guardian to pay fine, costs, compensation or surcharge), or
- (e) on the determination of an appeal brought by a person under section 108 of the Magistrates' Courts Act 1980 a sum is payable by him, whether by virtue of an order of the Crown Court or by virtue of a conviction or order of the magistrates' court against whose decision the appeal was brought,

then, if that person is before it, the Crown Court may order him to be searched.

⁶⁰⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

s.142(2) - any money found on a person in a search under this section may be applied, unless the court otherwise directs, towards payment of the fine or other sum payable by him; and the balance, if any, shall be returned to him

3.3.1.1.8 Interaction with other sentencing orders

Compensation orders

PCC(S)A 2000 s.130⁶⁰⁷: Compensation orders against convicted persons

s.130(11) - in determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

Discharges

R. v McClelland (1951) 35 Cr. App. R. 22; R. v Sanck (1990-91) 12 Cr. App. R. (S.) 155

It is wrong to impose a fine and a conditional discharge for the same offence.

If an order of conditional discharge is made you cannot fine, because a fine is a punishment and conditional discharge can only be granted where a Court does not think fit to impose a punishment. (*McClelland*, Lord Chief Justice at p. 23)

Confiscation orders

POCA 2002 s.13⁶⁰⁸: Effect of order on court's other powers

s.13(2) - the court must take account of the confiscation order before: (a) it imposes a fine on a defendant

POA 1985 s.18⁶⁰⁹: Award of costs against accused

s.18(5) - where a person under 18 is convicted before a magistrates' court, the amount of costs ordered to be paid by the defendant may not exceed the amount of any fine imposed upon him

Custodial sentences: Determinate

TICs and Totality Definitive Guideline, Sentencing Council⁶¹⁰

A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:

- the sentence is suspended;
- a confiscation order is not contemplated; and
- there is no obvious victim to whom compensation can be awarded; and
- the offender has, or will have, resources from which a fine can be paid.

⁶⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁰⁸ Commencement: 24 March 2003, SI 2003/333 art.2 and Sch.1 para.1

⁶⁰⁹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

⁶¹⁰ In force from 11 June 2012

Custodial sentences: Fixed by law or required by statute

CJA 2003 s.163⁶¹¹: General power of Crown Court to fine offender convicted on indictment

- s.163 - 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 section 224A, 225(2) or 226(2) 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.

Note: Other required sentences for possession of firearms/knives/bladed articles etc. and the new "offender of particular concern order" have been omitted from this section.

Hospital order/Guardianship order

MHA 1983 s.37⁶¹²: Powers of courts to order hospital admission or guardianship

- s.37(8) - the court may not impose a fine where it imposes a hospital order or guardianship order

Referral orders

PCC(S)A 2000 s.19: Referral order

- s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.
- s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.
- s.19(3) - the court—
- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
 - (b) may not deal with the offender for any such offence in any of the prohibited ways.
- s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—
- [...]
 - (b) ordering him to pay a fine;
 - [...]

Unlawful profit orders

PSHFA 2013 s.4⁶¹³: Unlawful profit order

- s.4(8) - subsection (9) applies where the court considers (a) that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, and (b) that

⁶¹¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁶¹² Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶¹³ Commencement: 15 October 2013, SI 2013/2622 art.2 (England). 5 November 2013, SI 2013/2861 art.2 (Wales).

the offender has insufficient means to pay both: (i) an appropriate sum under an unlawful profit order, and (ii) an appropriate sum under a fine

- s.4(9) - the court must give preference to making an unlawful profit order (though it may impose a fine as well)

3.3.1.1.9 Magistrates' Court Fine Bands

Note: Magistrates' Court Sentencing Guidelines pp.147 et seq. set out guidance on the imposition of fines and the approach to setting the level of a fine.

3.3.1.1.10 Enforcement and collection of fines

PCC(S)A 2000 s.140⁶¹⁴: Enforcement of fines imposed and recognizances forfeited by Crown Court

- s.140(1) - subject to subsec.(5) a fine imposed by the Crown Court shall be treated for the purposes of collection, enforcement and remission of the fine as having been imposed (a) by a magistrates' court specified in an order made by the Crown Court, or (b) if no such order is made, by the magistrates' court by which the defendant was sent to the Crown Court for trial CDA 1998 ss.51 or 51A, and, in the case of a fine, as having been so imposed on conviction by the magistrates' court in question
- s.140(2) - subsec.(3) applies where a magistrates' court issues a warrant of commitment on a default in the payment of (a) a fine imposed by the Crown Court
- s.140(3) - in a case under subsec.(2), the term of imprisonment *or detention under section 108 above* specified in the warrant of commitment as the term which the offender is liable to serve shall be (a) the term fixed by the Crown Court under s.139 or (b) if that term has been reduced under MCA 1980 s.79 (part payment) or s.85 (remission), that term as so reduced, notwithstanding that that term exceeds the period applicable to the case under CEMA 1979 s.149 (maximum periods of imprisonment in default of payment of certain fines)
- s.140(4) - provision dealing with fines imposed by CACD and Supreme Court (treated as if they were imposed by Crown Court), subject to one modification
- s.140(5) - requirement for consent of Crown Court before magistrates' court remits all or part of a fine under MCA 1980 ss.85 or 120
- s.140(6) - any fine which is enforceable by a magistrates' court by virtue of this section shall be treated for the purposes of Justices of the Peace Act 1997 and, in particular, s.60 of that Act (application of fines and fees) as having been imposed by a magistrates' court

3.3.1.1.11 Corporations and public bodies

Note: The Fraud, bribery and money laundering: Corporate offenders Guideline (Sentencing Council) and the Corporate Manslaughter and Health and Safety Offences Causing Death Guideline (Sentencing Guidelines Council) provide some assistance as to the approach taken when imposing fines on corporate offenders. Specifically when dealing with fines, the approach of the courts with regards to means and setting the level of the fine has been similar to dealing with individuals. R v Sellafeld; R v Network Rail [2014] EWCA Crim 49 sets out some of the principles.

⁶¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.2. Bind overs

3.3.1.2.1 Binding over to come up for judgment

3.3.1.2.1.1 Availability

Senior Courts Act 1981 s.79⁶¹⁵: Practice and procedure in connection with indictable offences and appeals

- s.79(1) - all enactments and rules of law relating to procedure in connection with indictable offences shall continue to have effect in relation to proceedings in the Crown Court
- s.79(2) - without prejudice to the generality of subsection (1), that subsection applies in particular to [...] (b) the release, after respite of judgment, of a convicted person on recognizance to come up for judgment if called on, but meanwhile to be of good behaviour;

Note: The power to bind a person over to come up for judgment cannot be exercised by a magistrates' court, since the power has not been granted to it by statute. See also R v Ayu (1959) Cr App R. 31

3.1.2.1.2 Consent

R. v Williams [1982] 1 W.L.R. 1398; (1982) 4 Cr. App. R. (S.) 239

It is a power which can be exercised only if the subject of the order consents to its being made or acknowledges himself to be bound by its terms.

...it may very well be that the only power in the court which it is proper for the court to exercise upon the defendant declining to give his consent is the power to imprison or to impose some custodial sentence. (Lord Lane CJ at p 1403/p 243)

3.3.1.2.1.3 Conditions attached to a bind over to come up for judgment

Criminal Practice Directions 2015 VII Sentencing

- J.17 If the Crown Court is considering binding over an individual to come up for judgment, the court should specify any conditions with which the individual is to comply in the meantime and not specify that the individual is to be of good behaviour.

R. v Hodges (1967) 51 Cr. App. R. 361

It was permissible to include a condition for the defendant to return to his native Ireland and not to return to the United Kingdom for a period of ten years.

R. v Williams [1982] 1 W.L.R. 1398; (1982) 4 Cr. App. R. (S.) 239

Save in exceptional circumstances [the power to keep someone out of the jurisdiction on pain of imprisonment] should be used only to ensure that the defendant goes to a country of which he is a citizen or in which he is habitually resident, or where there are very special circumstances in which the receiving country is prepared to take him for his own well-being.. (Lord Lane CJ, at p 1403/p243)

⁶¹⁵ Commencement: 1 January 1982, SCA 1981 s.153(2)

3.3.1.2.1.4 Duty to explain sentence etc.

Criminal Practice Directions 2015 VII Sentencing

J.18 The Crown Court should, if the individual is unrepresented, explain the consequences of a breach of the binding over order in these circumstances.

3.3.1.2.1.5 Appeals

R. v Williams [1982] 1 W.L.R. 1398; (1982) 4 Cr. App. R. (S.) 239

An order binding over an offender to come up for judgment on conditions is a “sentence” for the purpose of Criminal Appeal Act 1968, s.50.

3.3.1.2.1.6 Breach

R. v David (1940) 27 Cr. App. R. 50

It is not accurate to refer to a decision that there has been a breach of recognisance as a “conviction”.

3.3.1.2.1.7 Interaction with other sentencing orders

R. v Ayu (1959) 43 Cr. App. R. 31

A person who has been sentenced may not be bound over to come up for judgment in respect of the same offence.

3.3.1.2.2 Binding over to keep the peace

3.3.1.2.2.1 Availability

DPP v Speede [1998] 2 Cr. App. R. 108

In addition to the Magistrates’ Court, the Crown Court has the power to impose a bind over and there is no requirement that a complaint be made.

R. v Aubrey-Fletcher ex parte Thompson (1969) 53 Cr. App. R. 380 (LCJ)

The order may be made at any time during the proceedings.

Conlan v Oxford (1983) 5 Cr. App. R. (S.) 237

A court may bind over an offender under the age of 18 who consents to be bound over.

3.3.1.2.2.2 Power

JPA 1361 s.1⁶¹⁶

s.1 - Justices of the Peace [...] shall have Power [...] to take of all them that be not of good Fame, where they shall be found, sufficient Surety and Mainprise of their good Behaviour towards the King and his People

⁶¹⁶ Commencement: 24 January 1361

JPA 1968 s.1⁶¹⁷: Appointment of justices, oaths of office, etc.

s.1(7) - [...] any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring him to enter into his own recognisances or to find sureties or both [...]

Note: A person called to give evidence who is not called as a witness is not a person “before the court” for the purposes of the Act, see R. v Swindon Crown Court ex parte Pawittar Singh (1983) 5 Cr. App. R. (S.) 422.

MCA 1980 s.115⁶¹⁸: Binding over to keep the peace or be of good behaviour

s.115(1) - power of a magistrates’ court to adjudge any other person to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour towards the complainant shall be exercised by order on complaint

DPP v Speede [1998] 2 Cr. App. R. 108

There is authority for the existence of a common law power to use a bind over to “prevent conduct which is contrary to a good way of life”: *Percy v DPP* [1995] All E.R. 124, 129 (Hooper J, at p. 113)

3.3.1.2.2.3 Procedure on complaint

MCA 1980 ss.51-57⁶¹⁹: Jurisdiction to issue summons and deal with complaints and Hearing of complaint

Note: These sections deal with the procedure on the making of a complaint. They have not been detailed as they form the civil jurisdiction of the court as opposed to the criminal.

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J.5 Sections 51 to 57 of the Magistrates’ Courts Act 1980 set out the jurisdiction of the magistrates’ court to hear an application made on complaint and the procedure which is to be followed. This includes a requirement under section 53 to hear evidence and the parties, before making any order. This practice should be applied to all cases in the magistrates’ court and the Crown Court where the court is considering imposing a binding over order. The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.

3.3.1.2.2.4 Power to remand where complaint made under s.115

MCA 1980 s.115⁶²⁰: Binding over to keep the peace or be of good behaviour

s.115(2) - where a complaint is made under this section, the power of the court to remand the defendant under subsection (5) of section 55 above shall not be subject to the restrictions imposed by subsection (6) of that section.

⁶¹⁷ Commencement: 1 February 1969, SI 1968/2035 art.1(1)

⁶¹⁸ Commencement: 6 July 1981, SI 1981/457 art.2

⁶¹⁹ Commencement: 6 July 1981, SI 1981/457 art.2

⁶²⁰ Commencement: 6 July 1981, SI 1981/457 art.2

3.3.1.2.2.5 Procedure etc. in criminal proceedings

DPP v Speede [1998] 2 Cr. App. R. 108

There is no requirement that a complaint be made.

R. v Aubrey Fletcher (1969) 53 Cr. App. R. 380

The order may be made at any time during the proceedings.

R. v Hendon Justices ex parte Gorchein [1973] 1 W.L.R. 1502

Complainants and witnesses should be warned before a bind over is imposed upon them. An acquitted defendant could be bound over without warning.

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- J.5 [...] The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.
- J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

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- J.10 The court must be satisfied on the merits of the case that an order for binding over is appropriate and should announce that decision before considering the amount of the recognisance. If unrepresented, the individual who is made subject to the binding over order should be told he has a right of appeal from the decision.

3.3.1.2.2.6 Making the order

Test to apply

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- J.2 Before imposing a binding over order, the court must be satisfied so that it is sure that a breach of the peace involving violence, or an imminent threat of violence, has occurred or that there is a real risk of violence in the future. Such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct.
- J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

Burden and standard of proof

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- J.8 The court should be satisfied so that it is sure of the matters complained of before a binding over order may be imposed. Where the procedure has been commenced on complaint, the burden of proof rests on the complainant. In all other circumstances, the burden of proof rests upon the prosecution.

Content of bind over

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- J.3 In light of the judgment in *Hashman*, courts should no longer bind an individual over “to be of good behaviour”. Rather than binding an individual over to “keep the peace” in general terms, the court should identify the specific conduct or activity from which the individual must refrain.
- J.4 When making an order binding an individual over to refrain from specified types of conduct or activities, the details of that conduct or those activities should be specified by the court in a written order, served on all relevant parties. [...]

R. v Randall (1986) 8 Cr. App. R. (S.) 433

There is no power to add a condition to a statutory bind over.

Length

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- J.4 The length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months.

R. v South Molden Justices ex parte Ankerson [1989] 1 W.L.R. 40; (1990) 90 Cr. App. R. 158

It is desirable that the bind over should be for a finite period. McCowan J, at p.44, cites Pickford J in *R v. Charles Edgar* (1913) 9 Cr. App. R. 13 as saying (at p.14):

“Objection is taken in this case to the fact that the defendant has been ordered to enter into a recognisance for an indefinite period. It is not necessary to decide whether there is power to order a recognisance to be entered into for life; we do not decide that there is no such power. It seems, however, that in all cases it has been the practice to limit the time for recognisance, and in no case has an indefinite time been inserted in the order. The court thinks it is better, whether there is power to leave the time indefinite or not, that the usual practice should be followed, and a time inserted.”

Setting the amount of recognisance

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- J.11 When fixing the amount of recognisance, courts should have regard to the individual's financial resources and should hear representations from the individual or his legal representatives regarding finances.
- J.12 A recognisance is made in the form of a bond giving rise to a civil debt on breach of the order.

R. v CCC ex parte Boulding (1983) 5 Cr. App. R. (S.) 433

Where a court propose to bind over a person who has been convicted in a substantial recognisance he should be given the opportunity to address the court on the question of the amount.

Giving reasons

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- J.4 The court should state its reasons for the making of the order, its length and the amount of the recognisance.

Refusal to enter into recognisance/Requirement for consent

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- J.13 If there is any possibility that an individual will refuse to enter a recognizance, the court should consider whether there are any appropriate alternatives to a binding over order (for example, continuing with a prosecution). Where there are no appropriate alternatives and the individual continues to refuse to enter into the recognisance, the court may commit the individual to custody. In the magistrates' court, the power to do so will derive from section 1(7) of the Justices of the Peace Act 1968 or, more rarely, from section 115(3) of the Magistrates' Courts Act 1980, and the court should state which power it is acting under; in the Crown Court, this is a common law power.
- J.14 Before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings if the individual so wishes. Public funding should generally be granted to cover representation. In the Crown Court this rests with the Judge who may grant a Representation Order.
- J.15 In the event that the individual does not take the opportunity to seek legal advice, the court shall give the individual a final opportunity to comply with the request and shall explain the consequences of a failure to do so.

JPA 1968 s.1⁶²¹: Appointment of justices, oaths of office, etc.

- s.1(7) - any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to [...] [commit] him to prison if he does not comply

MCA 1980 s.115⁶²²: Binding over to keep the peace or be of good behaviour

- s.115(3) - if any person ordered by a magistrates' court under subsection (1) above to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour fails to comply with the order, the court may commit him to custody for a period not exceeding 6 months or until he sooner complies with the order.

Note: For those aged under 21, see also PCC(S)A 2000 s.60(1)(b) which contains the power to impose an attendance centre order.

⁶²¹ Commencement: 1 February 1969, SI 1968/2035 art.1(1)

⁶²² Commencement: 6 July 1981, SI 1981/457 art.2

PCC(S)A 2000 s.108⁶²³: Detention of persons aged at least 18 but under 21 for default or contempt

s.108(1) - in any case where, but for s.89(1), a court would have power [...] (c) to commit such a person to prison for contempt of court or any kindred offence, the court shall have power, subject to subsection (3) (test to apply) below, to commit him to be detained under this section or, as the case may be, to make an order fixing a term of detention under this section in the event of default, for a term not exceeding the term of imprisonment.

Howley v Oxford (1985) 81 Cr. App. R. 246

A person over 18 but under 21 who refuses to be bound over by a magistrates' court may be detained under PCC(S)A 2000 s.108.

Veater v Glennon [1981] 1 W.L.R. 567; (1981) 3 Cr. App. R. (S.) 52

There is no power to order the detention of a person under the age of 18 years who refuses to be bound over.

PCC(S)A 2000 s.60⁶²⁴: Attendance centre orders

s.60(1) - where a court would have power, but for s.89 (restrictions on imprisonment of young offenders and defaulters), to commit a person aged under 21 to prison [...] for failing to do or abstain from doing anything required to be done or left undone, the court may, if it has been notified by the Secretary of State that an attendance centre is available for the reception of persons of his description, order him to attend at such a centre, to be specified in the order, for such number of hours as may be so specified

Note: See 3.3.1.6, the Attendance Centre Order section for further details of this order.

3.3.1.2.2.7 Interaction with other sentencing orders

PCC(S)A 2000 s.19⁶²⁵: Making of referral orders: effect on court's other sentencing powers

s.19(1) - subsecs.(2) to (5) apply where a court makes a referral order in respect of an offence

s.19(5) - the court may not make, in connection with the conviction of the defendant for the offence or any connected offence an order binding him over to keep the peace or to be of good behaviour

⁶²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶²⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.2.2.8 Appeals

Magistrates' Court to Crown Court

Magistrates' Courts (Appeals from Binding over Orders) Act 1956 s.1⁶²⁶: Right of appeal to quarter sessions

- s.1(1) - where, under Justices of the Peace Act 1361, or otherwise, a person is ordered by a magistrates' court to enter into a recognisance with or without sureties to keep the peace or to be of good behaviour, he may appeal to the Crown Court
- s.1(2) - provisions dealing with procedural requirements/modifications
- s.1(3) - nothing in s.1 applies in relation to any order an appeal from which lies to the Crown Court apart from the provisions of s.1
- s.1(4) - disapplication of s.1 in relation to bind overs made before the expiration of a period of one month before the Act was passed

Shaw v Hamilton [1982] 1 W.L.R. 1308; (1982) 4 Cr. App. R. (S.) 80

[The judge] fell into the error of trying to equate an appeal against a bind over with either an appeal against conviction or an appeal against sentence. It was, in truth, *sui generis*...if the defendant wanted to appeal it was to be by way of rehearing...if the matter was contested, the facts which justified the justices and, as the prosecution would say, which justified the Crown Court had to be strictly proved, just as strictly proved as they had to be in front of the justices. (Donaldson LJ, at p. 1311/p. 82)

Magistrates' Court to Divisional Court

Emohare v Thames Magistrates' Court [2009] EWHC 689 (Admin)

Whilst the Magistrates' Court (Appeals from Bindings Over Orders) Act 1956 s.1 provides an ability to appeal to the Crown Court, it does not preclude an appeal by way of Case Stated instead.

Crown Court to Divisional Court

R. v Randall (1986) 8 Cr. App. R. (S.) 433

The Court of Appeal has no jurisdiction to hear an appeal arising from the imposition of a bind over; an appellant would not have been dealt with for "an offence" as required by the Criminal Appeal Act 1968, s.10(2). The matter did however fall within the power of the High Court by way of judicial review.

3.3.1.2.2.9 Breach

Procedure

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- J.7 Where there is an allegation of breach of a binding over order and this is contested, the court should hear representations and evidence, including oral evidence, from the parties before making a finding. If unrepresented and no opportunity has been given

⁶²⁶ Commencement: 5 July 1956

previously the court should give a reasonable period for the person said to have breached the binding over order to find representation.

MCA 1980 s.116⁶²⁷: Discharge of recognizance to keep the peace or be of good behaviour on complaint of surety

s.116(1) - on complaint being made to a justice of the peace by a surety to a recognizance to keep the peace or to be of good behaviour entered into before a magistrates' court that the person bound by the recognizance as principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognizance, the justice may issue a warrant to arrest the principal and bring him before a magistrates' court or a summons requiring the principal to appear before such a court; but the justice shall not issue a warrant unless the complaint is in writing and substantiated on oath

MCA 1980 s.120⁶²⁸: Forfeiture of recognizance

s.120(1) - this section applies where: (a) a recognizance to keep the peace or to be of good behaviour has been entered into before a magistrates' court or (b) any recognizance is conditioned for the appearance of a person before a magistrates' court, or for his doing any other thing connected with a proceeding before a magistrates' court.

s.120(2) - if, in any other case falling within subsection (1) (see s.120(1A) for the context), the recognizance appears to the magistrates' court to be forfeited, the court may: (a) declare the recognizance to be forfeited; and (b) adjudge each person bound by it, whether as principal or surety, to pay the sum in which he is bound; but in a case falling within subsection (1)(a) above, the court shall not declare the recognizance to be forfeited except by order made on complaint.

s.120(5) - a recognizance such as is mentioned in s.120 shall not be enforced otherwise than in accordance with s.120, and accordingly shall not be transmitted to the Crown Court nor shall its forfeiture be certified to that Court.

Burden and standard of proof

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J.9 Where there is an allegation of breach of a binding over order, the court should be satisfied on the balance of probabilities that the defendant is in breach before making any order for forfeiture of a recognisance. The burden of proof shall rest on the prosecution.

R. v McGarry (1945) 30 Cr. App. R. 187

The breach should be proved just as if the allegation were that the defendant had committed an offence.

⁶²⁷ Commencement: 6 July 1981, SI 1981/457 art. 2

⁶²⁸ Commencement: 6 July 1981, SI 1981/457 art. 2

Powers

MCA 1980 s.116⁶²⁹: Discharge of recognizance to keep the peace or be of good behaviour on complaint of surety

- s.116(2) - the magistrates' court before which the principal appears or is brought in pursuance of such a summons or warrant as aforesaid may, unless it adjudges the recognizance to be forfeited, order the recognizance to be discharged and order the principal to enter into a new recognizance, with or without sureties, to keep the peace or to be of good behaviour.
- s.116(3) - the court which declares the recognizance to be forfeited may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or remit the sum.

Note: There is no power to commit a person to prison for breaking a condition of a recognizance unless he is in default of payment following an order forfeiting the recognisance, R. v Gilbert, unreported, 4 April 1974.

Costs

Note: The Costs Practice Direction [2013] EWCA Crim 1632 para.2.1.1 grants a power to the court to make an order for costs out of central funds to be made in breach of a bind over proceedings. See also SI 1986/1335 reg.14.

⁶²⁹ Commencement: 6 July 1981, SI 1981/457 art. 2

3.3.1.3. Bind over (parents/guardian)

3.3.1.3.1 Availability and types of order

Availability

PCC(S)A 2000 s.150⁶³⁰: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by s.150 shall be exercisable by the court by which he is sentenced for that offence [...]

Discretionary order

PCC(S)A 2000 s.150⁶³¹: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by s.150 shall be exercisable by the court by which he is sentenced for that offence [...] (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences [...]

Mandatory order

PCC(S)A 2000 s.150⁶³²: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by s.150 shall be exercisable by the court by which he is sentenced for that offence, and where the offender is aged under 16 when sentenced it shall be the duty of that court: (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences [...]

Duty to explain why order under s.150 not desirable

PCC(S)A 2000 s.150⁶³³: Bind over of parent or guardian

s.150(1) - (b) if it does not exercise the powers in s.150(1) (see above), it shall state in open court that it is not satisfied as mentioned in paragraph (a) above and why it is not so satisfied

3.3.1.3.2 Power

PCC(S)A 2000 s.150⁶³⁴: Bind over of parent or guardian

s.150(2) - the powers conferred by this section are as follows:

⁶³⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³³ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³⁴ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- (a) with the consent of the defendant's parent or guardian, to order the parent or guardian to enter into a recognizance to take proper care of him and exercise proper control over him [...]

s.150(3) - an order under this section shall not require the parent or guardian to enter into a recognizance for an amount exceeding £1,000

s.150(11) - for the purposes of s.150, taking “care” of a person includes giving him protection and guidance and “control” includes discipline.

3.3.1.3.3 Making the order

Contents of the order

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J.19 Where a court is considering binding over a parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 to enter into a recognizance to take proper care of and exercise proper control over a child or young person, the court should specify the actions which the parent or guardian is to take.

Fixing the amount

PCC(S)A 2000 s.150⁶³⁵: Bind over of parent or guardian

s.150(7) - in fixing the amount of a recognizance, the court shall take into account among other things the means of the parent or guardian so far as they appear or are known to the court; s.150(7) applies whether taking into account the means of the parent or guardian has the effect of increasing or reducing the amount of the recognizance.

Length of the order

PCC(S)A 2000 s.150⁶³⁶: Bind over of parent or guardian

s.150(4) - an order under this section shall not require the parent or guardian to enter into a recognizance:

- (a) for a period exceeding three years; or
- (b) where the defendant will attain the age of 18 in a period shorter than three years, for a period exceeding that shorter period.

3.3.1.3.4 Refusal to enter recognizance

PCC(S)A 2000 s.150⁶³⁷: Bind over of parent or guardian

s.150(2) - the powers conferred by this section are as follows: [...] (b) if the parent or guardian refuses consent and the court considers the refusal unreasonable, to order the parent or guardian to pay a fine not exceeding £1,000 [...]

s.150(6) - a fine imposed under subsection (2)(b) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

⁶³⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³⁶ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³⁷ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.3.5 Interaction with other sentencing orders

Hospital/Guardianship order

MHA 1983 s.37⁶³⁸: Powers of courts to order hospital admission or guardianship

- s.37(8) - where an order is made under s.37 (hospital order and guardianship order), the court shall not: [...] (c) make in respect of the defendant an order under PCC(S)A 2000 s.150 (binding over of parent or guardian)

Referral order

PCC(S)A 2000 ss.16 and 19⁶³⁹: Making of referral orders: effect on court's other sentencing powers

- s.16(1) - this section applies where a youth court or other magistrates' court is dealing with a person aged under 18 for an offence and—
- (a) neither the offence nor any connected offence is one for which the sentence is fixed by law;
 - (b) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order (within the meaning of the Mental Health Act 1983) in his case; and
 - (c) the court is not proposing to discharge him, whether absolutely or conditionally, in respect of the offence.
- s.19(1) - subsections (2) to (5) apply when the court makes a referral order
- s.19(5) - the court may not make, in connection with the conviction of the offender for the offence or any connected offence: [...] (b) an order under section 150 (binding over of parent or guardian)

PCC(S)A 2000 s.150⁶⁴⁰: Bind over of parent or guardian

- s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by this section shall be exercisable by the court by which he is sentenced for that offence, and where the offender is aged under 16 when sentenced it shall be the duty of that court—
- (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences; and
 - (b) if it does not exercise them, to state in open court that it is not satisfied as mentioned in paragraph (a) above and why it is not so satisfied;
- but this subsection has effect subject to section 19(5) above and paragraph 13(5) of Schedule 1 to this Act (cases where referral orders made or extended).

⁶³⁸ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁶⁴⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.3.6 Variation/Revocation

PCC(S)A 2000 s.150⁶⁴¹: Bind over of parent or guardian

s.150(10) - a court may vary or revoke an order made by it under s.150 if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

3.3.1.3.7 Appeals

PCC(S)A 2000 s.150⁶⁴²: Bind over of parent or guardian

s.150(8) - a parent or guardian may appeal to the Crown Court against an order under this section made by a magistrates' court.

s.150(9) - a parent or guardian may appeal to the Court of Appeal against an order under this section made by the Crown Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction.

3.3.1.3.8 Breach: Forfeiture of recognisance

PCC(S)A 2000 s.150⁶⁴³: Bind over of parent or guardian

s.150(5) - Magistrates' Courts Act 1980 s.120 (forfeiture of recognizances) shall apply in relation to a recognizance entered into in pursuance of an order under this section as it applies in relation to a recognizance to keep the peace.

⁶⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶⁴² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶⁴³ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.4. Discharges

3.3.1.4.1 General

PCC(S)A 2000 s.12⁶⁴⁴: Absolute and conditional discharge

- s.12(3) - an order discharging a person subject to such a condition as is mentioned in subsection (1)(b) above is in this Act referred to as an “*order for conditional discharge*”; and the period specified in any such order is in this Act referred to as “*the period of conditional discharge*”.

3.3.1.4.2 Making the order

Availability

PCC(S)A 2000 s.12⁶⁴⁵: Absolute and conditional discharge

- s.12(1) - where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (1A) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—
- (a) discharging him absolutely; or
 - (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.
- s.12(1A) - the provisions referred to in subsection (1) are—
- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
 - (b) section 51A(2) of the Firearms Act 1968;
 - (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
 - (d) section 110(2) or 111(2) of this Act;
 - (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
 - (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.
- s.12(2) - subsection (1)(b) above has effect subject to CDA 1998 s.66ZB(6) (effect of youth cautions)

CDA 1998 s.66ZB⁶⁴⁶: Youth cautions

- s.66ZB(5) - subsection (6) applies if (a) a person who has received two or more youth cautions is convicted of an offence committed within two years beginning with the date of the last of those cautions; or (b) a person who has received a youth conditional caution followed by a youth caution is convicted of an offence committed within two years beginning with the date of the youth caution.

⁶⁴⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁴⁶ Commencement: 8 April 2013, as inserted by LASPOA 2012 s.135(2), SI 2013/453 art.4(d)

s.66ZB(6) - the court by or before which the person is convicted (a) must not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the person that justify it doing so, and (b) where it does so, must state in open court that it is of that opinion and its reasons for that opinion.

Power and test to apply

PCC(S)A 2000 s.12⁶⁴⁷: Absolute and conditional discharge

- s.12(1) - where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (1A) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—
- (a) discharging him absolutely; or
 - (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.
- s.12(1A) - the provisions referred to in subsection (1) are—
- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
 - (b) section 51A(2) of the Firearms Act 1968;
 - (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
 - (d) section 110(2) or 111(2) of this Act;
 - (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
 - (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.
- s.12(2) - subsection (1)(b) above has effect subject to CDA 1998 s.66ZB(6) (effect of youth cautions)

Length of conditional discharge

PCC(S)A 2000 s.12⁶⁴⁸: Absolute and conditional discharge

- s.12(1) - where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (1A) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—
- (a) discharging him absolutely; or
 - (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.

⁶⁴⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁴⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Supplemental

PCC(S)A 2000 s.12⁶⁴⁹: Absolute and conditional discharge

- s.12(6) - on making an order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.

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- J.20 Where a court is imposing a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000, it has the power, under section 12(6) to make an order that a person who consents to do so give security for the good behaviour of the offender. When making such an order, the court should specify the type of conduct from which the offender is to refrain.

3.3.1.4.3 Obligation of offender subject to conditional discharge

PCC(S)A 2000 s.12⁶⁵⁰: Absolute and conditional discharge

- s.12(1) - where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (1A) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—
- (a) discharging him absolutely; or
 - (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.

3.3.1.4.4 Interaction with other sentencing orders

General

PCC(S)A 2000 s.14⁶⁵¹: Effect of discharge

- s.14(3) - without prejudice to subsection (1) and (2) (effect of conviction for which a person is discharged), the conviction of a defendant discharged absolutely or conditionally shall in any event be disregarded for the purposes of an enactment etc. which (a) imposes any disqualification or disability upon convicted persons; or (b) authorises or requires the imposition of any such disqualification or disability.

Costs

PCC(S)A 2000 s.12⁶⁵²: Absolute and conditional discharge

- s.12(7) - nothing prevents a court from imposing in addition to a discharge: an order for costs

⁶⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁶⁵² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Compensation order

PCC(S)A 2000 s.12⁶⁵³: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: a compensation order

Confiscation

R. v Varma [2012] UKSC 42; [2013] 1 Cr. App. R. (S.) 125 (p.650)

The court must proceed under POCA 2002 s.6 if s.6(1) and (2) were satisfied: a court may make a confiscation order with an order for absolute or conditional discharge.

Recommendation for deportation

R. v Akan (1972) 56 Cr. App. R. 716

An order for conditional discharge and a recommendation for deportation could be imposed together as a recommendation for deportation was not to be regarded as a “disqualification or disability”.

Deprivation order

PCC(S)A 2000 s.12⁶⁵⁴: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: a deprivation order

“Any disqualification”

PCC(S)A 2000 s.12⁶⁵⁵: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: any disqualification

Driving: Disqualification and endorsement

RTOA 1988 s.46⁶⁵⁶: Combination of disqualification and endorsement with probation orders and orders for discharge

s.46(1) - notwithstanding anything in PCC(S)A 2000 s.14(3) (conviction of defendant discharged to be disregarded for the purposes of enactments relating to disqualification), a court in England and Wales which on convicting a person of an offence involving obligatory or discretionary disqualification makes: (b) an order discharging him absolutely or conditionally, may on that occasion also exercise any power conferred, and must also discharge any duty imposed, on the court by RTOA 1988 ss.34 (disqualification), 35 (disqualification for repeated offences), 36 (disqualification until test is passed), 44 (endorsement) or 44A (endorsement in accordance with order)

⁶⁵³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁶ Commencement: 15 May 1989, RTOA 1988 s.99(2)

Exclusion order

LP(ECP)A 1980 s.1⁶⁵⁷: Exclusion orders

- s.1(1) - where a court by or before which a person is convicted of an offence committed on licensed premises is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may, subject to subsection (2) below, make an order (in this Act referred to as an “*exclusion order*”) prohibiting him from entering those premises or any other specified premises, without the express consent of the licensee of the premises or his servant or agent.
- s.1(2) - an exclusion order may be made either—
- (a) in addition to any sentence which is imposed in respect of the offence of which the person is convicted; or
 - (b) where the offence was committed in England and Wales, notwithstanding the provisions of section 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (cases in which absolute and conditional discharges may be made, and their effect), in addition to an order discharging him absolutely or conditionally;
 - (c) where the offence was committed in Scotland, notwithstanding the provisions of sections 228, 246(2) and (3) and 247 of the Criminal Procedure (Scotland) Act 1995 (cases in which probation orders and absolute discharges may be made, and their effect), in addition to a probation order or an order discharging him absolutely;
- but not otherwise.

Fine

R. v McClelland (1951) 35 Cr. App. R. 22; R. v Sanck (1990-91) 12 Cr. App. R. (S.) 155

It is wrong to impose a fine and a conditional discharge for the same offence.

If an order of conditional discharge is made you cannot fine, because a fine is a punishment and conditional discharge can only be granted where a Court does not think fit to impose a punishment. (*McClelland*, Lord Chief Justice at p. 23)

Football Banning Order

Football Spectators Act 1989 s.14A⁶⁵⁸: Banning orders made on conviction of an offence

- s.14A(4) - a banning order may be made: (b) in addition to an order discharging a person conditionally
- s.14A(5) - a banning order may be made as mentioned in s.14A(4)(b) in spite of anything in PCC(S)A 2000 s.12 and 14

Notification requirement

R. v Longworth [2006] UKHL 1; [2006] 2 Cr. App. R. (S.) 62 (p.401)

A person who has been conditionally discharged is not subject to notification.

⁶⁵⁷ Commencement: 30 June 1980. Note: The provision will be repealed by the VCRA 2006 Sch.5 para.1, commencement is awaited.

⁶⁵⁸ Commencement: 28 August 2000, F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Referral order

PCC(S)A 2000 s.19⁶⁵⁹: Making of referral orders: effect on court's other sentencing powers

- s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.
- s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.
- s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—
[...]
(d) making an order discharging him conditionally.

Referral order: Connected offence(s)

PCC(S)A 2000 ss.16 and 19⁶⁶⁰: Making of referral orders: effect on court's other sentencing powers

- s.16(1) - this section applies where a youth or other magistrates' court deals with a defendant aged under 18 for an offence and [...] it does not propose to discharge him absolutely or conditionally
- s.19(1) - subsections (2) to (5) apply when the court makes a referral order
- s.19(5) - the court may not make, in connection with the conviction of the offender for the offence or any connected offence: [...] (b) an order under section 150 (binding over of parent or guardian)

Restitution order

PCC(S)A 2000 s.12⁶⁶¹: Absolute and conditional discharge

- s.12(7) - nothing prevents a court from imposing in addition to a discharge: a restitution order

Serious Crime Prevention Order

SCA 2007 ss.19 and 36: Proceedings in the Crown Court

- s.19(7) - a serious crime prevention order must not be made under s.19 except in addition to a sentence imposed in respect of the offence or in addition to an order discharging the person conditionally
- s.36(5) - a serious crime prevention order may be made as mentioned in section 19(7)(b) in spite of anything in PCC(S)A 2000 ss.12 and 14 (orders for discharge and effect of discharge)

⁶⁵⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁶⁶⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁶⁶¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Unlawful profit order

PCC(S)A 2000 s.12⁶⁶²: Absolute and conditional discharge

- s.12(7) - nothing prevents a court from imposing in addition to a discharge: an unlawful profit order

3.3.1.4.5 Appeals

PCC(S)A 2000 s.15⁶⁶³: Discharge: Supplementary

- s.15(2) - provision deeming an order under s.12 made on appeal as having been made by the magistrates' court where the appeal was brought from that court, or from the Crown Court where the appeal was brought from the Crown Court or Court of Appeal

MCA 1980 s.108⁶⁶⁴: Right of appeal to Crown Court

- s.108(1) - a person convicted by a magistrates' court may appeal to the Crown Court against conviction or sentence or against sentence (if he pleaded) guilty
- s.108(1A) - PCC(S)A 2000 s.14 (conviction for which a discharge is imposed is deemed not a conviction for certain purposes) does not prevent an appeal under MCA 1980 s.108

3.3.1.4.6 Breach by commission of further offence

General

PCC(S)A 2000 s.12⁶⁶⁵: Absolute and conditional discharge

- s.12(5) - the order ceases to have effect where the defendant is sentenced for the original offence following a breach of the conditional discharge

Issuing of summons/warrant

PCC(S)A 2000 s.13⁶⁶⁶: Commission of further offence by person conditionally discharged

- s.13(1) - if it appears to the Crown Court, where that court has jurisdiction in accordance with subsection (2) below, or to a justice of the peace having jurisdiction in accordance with that subsection, that a person in whose case an order for conditional discharge has been made—
- (a) has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge, and
 - (b) has been dealt with in respect of that offence,
- that court or justice may, subject to subsection (3) below, issue a summons requiring that person to appear at the place and time specified in it or a warrant for his arrest.

⁶⁶² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶⁴ Commencement: 6 July 1981, SI 1981/457 art.2

⁶⁶⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.13(2) - jurisdiction for the purposes of subsection (1) above may be exercised—
- (a) if the order for conditional discharge was made by the Crown Court, by that court;
 - (b) if the order was made by a magistrates' court, by a justice of the peace.
- s.13(3) - a justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- s.13(4) - a summons or warrant issued under this section shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.

Order made by Magistrates' Court

PCC(S)A 2000 s.13⁶⁶⁷: Commission of further offence by person conditionally discharged

- s.13(6) - where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.
- s.13(7) - if a person in whose case an order for conditional discharge has been made by a magistrates' court—
- (a) is convicted before the Crown Court of an offence committed during the period of conditional discharge, or
 - (b) is dealt with by the Crown Court for any such offence in respect of which he was committed for sentence to the Crown Court,
- the Crown Court may deal with him, for the offence for which the order was made, in any way in which the magistrates' court could deal with him if it had just convicted him of that offence.
- s.13(8) - if a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may, with the consent of the court which made the order, deal with him, for the offence for which the order was made, in any way in which the court could deal with him if it had just convicted him of that offence.
- s.13(10) - the reference in subsection (6) above to a person's having been convicted of an offence committed during the period of conditional discharge is a reference to his having been so convicted by a court in Great Britain.

⁶⁶⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Order made by Crown Court

PCC(S)A 2000 s.13⁶⁶⁸: Commission of further offence by person conditionally discharged

- s.13(5) - if a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—
- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and
 - (b) if it does so, shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the designated officer by whom the register is kept.
- s.13(6) - where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.
- s.13(10) - the reference in subsection (6) above to a person's having been convicted of an offence committed during the period of conditional discharge is a reference to his having been so convicted by a court in Great Britain.

Order made by Magistrates' court: Offender under 18

PCC(S)A 2000 s.13⁶⁶⁹: Commission of further offence by person conditionally discharged

- s.13(9) - where an order for conditional discharge has been made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under subsection (6), (7) or (8) above by that or any other court in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
 - (b) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

Determination of breach

PCC(S)A 2000 s.15⁶⁷⁰: Discharge: Supplementary

- s.15(3) - in proceedings before the Crown Court under section 13 above, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge shall be determined by the court and not by the verdict of a jury.

⁶⁶⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁷⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

Young offender attains age of 18: Youth Court

CYP A 1933 s.48⁶⁷¹: Miscellaneous provisions as to powers of juvenile courts

- s.48(2) - the attainment of the age of eighteen years by a person in whose case an order for conditional discharge has been made, shall not deprive a youth court of jurisdiction to enforce his attendance and deal with him in respect of the commission of a further offence.

3.3.1.4.7 Effect of discharge

PCC(S)A 2000 s.14⁶⁷²: Effect of discharge

- s.14(1) - subject to subsection (2) below, a conviction of an offence for which an order is made under section 12 above discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 13 above.
- s.14(2) - where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently sentenced (under section 13 above) for that offence, subsection (1) above shall cease to apply to the conviction.
- s.14(3) - without prejudice to subsections (1) and (2) above, the conviction of an offender who is discharged absolutely or conditionally under section 12 above shall in any event be disregarded for the purposes of any enactment or instrument which—
- (a) imposes any disqualification or disability upon convicted persons; or
 - (b) authorises or requires the imposition of any such disqualification or disability.
- s.14(4) - subsections (1) to (3) above shall not affect—
- (a) any right of an offender discharged absolutely or conditionally under section 12 above to rely on his conviction in bar of any subsequent proceedings for the same offence;
 - (b) the restoration of any property in consequence of the conviction of any such offender; or
 - (c) the operation, in relation to any such offender, of any enactment or instrument in force on 1st July 1974 which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- s.14(5) - in subsections (3) and (4) above—
“*enactment*” includes an enactment contained in a local Act; and
“*instrument*” means an instrument having effect by virtue of an Act.
- s.14(6) - subsection (1) above has effect subject to section 50(1A) of the Criminal Appeal Act 1968 and section 108(1A) of the Magistrates’ Courts Act 1980 (rights of appeal); and this subsection shall not be taken to prejudice any other enactment that excludes the effect of subsection (1) or (3) above for particular purposes.

⁶⁷¹ Commencement: 1 November 1933, CYP A 1933 s.109(2) (now repealed) and SI 1933/663 art.1

⁶⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- s.14(7) - without prejudice to paragraph 1(3) of Schedule 11 to this Act (references to provisions of this Act to be construed as including references to corresponding old enactments), in this section—
- (a) any reference to an order made under section 12 above discharging an offender absolutely or conditionally includes a reference to an order which was made under any provision of Part I of the Powers of Criminal Courts Act 1973 (whether or not reproduced in this Act) discharging the offender absolutely or conditionally;
 - (b) any reference to an offender who is discharged absolutely or conditionally under section 12 includes a reference to an offender who was discharged absolutely or conditionally under any such provision.

3.3.1.4.8 Powers of Secretary of State to amend maximum period of conditional discharge

PCC(S)A 2000 s.15⁶⁷³: Discharge: Supplementary

- s.15(1) - the Secretary of State may by order direct that subsection (1) of section 12 above shall be amended by substituting, for the maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.

⁶⁷³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

3.3.1.5. Parenting orders/Parental orders

Note: A parenting order under the CDA 1998 is an order requiring a parent to comply with conditions specified in the order. A parental order under the PCC(S)A 2000 is an order requiring a parent to pay a fine or other financial order (see below for the list) on behalf of the child or young person. Orders binding over parents or guardians are listed above in section 3.3.1.3.

3.3.1.5.1 Parenting orders

3.3.1.5.1.1 General

What is a parenting order?

CDA 1998 s.8⁶⁷⁴: Parenting orders

- s.8(4) - a parenting order is an order which requires the parent: (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and (b) subject to subsection (5) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

Definitions etc.

CDA 1998 s.8⁶⁷⁵: Parenting orders

- s.8(8) - in this section and section 9 below “*responsible officer*”, in relation to a parenting order, means one of the following who is specified in the order, namely—
- (a) an officer of a local probation board or an officer of a provider of probation services;
 - (b) a social worker of a local authority; and
 - (bb) a person nominated by [a person appointed as director of children’s services under section 18 of the Children Act 2004 or by a person appointed as chief education officer under section 532 of the Education Act 1996.
 - (c) a member of a youth offending team.

CDA 1998 s.9⁶⁷⁶: Parenting orders: supplemental

- s.9(7A) - in this section “*referral order*” means an order under Powers of Criminal Courts (Sentencing) Act 2000 s.16(2) or (3) (referral of offender to youth offender panel).

3.3.1.5.1.2 Determining whether an order can/should be made

Discretionary order

CDA 1998 s.8⁶⁷⁷: Parenting orders

- s.8(1) - this section applies where, in any court proceedings: (a) a child safety order is made etc.; (aa) a parental compensation order is made in relation to a child’s behaviour; (b)

⁶⁷⁴ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁵ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁶ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁷ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

an injunction is granted under Anti-social Behaviour, Crime and Policing Act 2014 s.1, or a criminal behaviour order is made under s.22 under that Act, or a Sexual Harm Prevention Order is made in respect of a child or young person; (c) a child or young person is convicted of an offence; or (d) a person is convicted of an offence under Education Act 1996 s.443 (failure to comply with school attendance order) or s.444 (failure to secure regular attendance at school of registered pupil)

- s.8(2) - subject to s.8(3) and s.9(1), if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under ss.443 or 444 (*"the parent"*).
- s.8(3) - a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn

Mandatory order

CDA 1998 s.9⁶⁷⁸: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence
- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

Test to apply: the "relevant condition"

CDA 1998 s.8⁶⁷⁹: Parenting orders

- s.8(2) - subject to s.8(3) and s.9(1) below, if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under ss.443 or 444 (*"the parent"*).
- s.8(6) - The relevant condition is that the parenting order would be desirable in the interests of preventing:
- (a) in a case falling within paragraph (a), (aa) or (b) of s.8(1), any repetition of the kind of behaviour which led to the order being made or the injunction granted;
 - (b) in a case falling within paragraph (c), the commission of any further offence by the child or young person;

⁶⁷⁸ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- (c) in a case falling within paragraph (d), the commission of any further offence under Education Act 1996 ss.443 or 444.

Duty to make an order

CDA 1998 s.9⁶⁸⁰: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence
- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

Requirement that arrangements are in place etc.

CDA 1998 s.8⁶⁸¹: Parenting orders

- s.8(3) - a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn

3.3.1.5.1.3 Making the order

Duty to obtain information about family circumstances

CDA 1998 s.9⁶⁸²: Parenting orders: supplemental

- s.9(2) - before making a parenting order:
- (a) in a case falling within s.8(1)(a);
 - (b) in a case falling within s.8(1)(b) or (c), where the person concerned is under the age of 16; or
 - (c) in a case falling within s.8(1)(d), where the person to whom the offence related is under that age,
- a court shall obtain and consider information about the person's family circumstances and the likely effect of the order on those circumstances.

⁶⁸⁰ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸² Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

Referral order: Duty to consider report prepared by YOT etc.

CDA 1998 s.9⁶⁸³: Parenting orders: supplemental

- s.9(2A) - in a case where a court proposes to make both a referral order in respect of a child or young person convicted of an offence and a parenting order, before making the parenting order the court shall obtain and consider a report by an appropriate officer: (a) indicating the requirements proposed by that officer to be included in the parenting order; (b) indicating the reasons why he considers those requirements would be desirable in the interests of preventing the commission of any further offence by the child or young person; and (c) if the child or young person is aged under 16, containing the information required by subsection (2) above.
- s.9(2B) - in subsection (2A) above “an appropriate officer” means: (a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; or (c) a member of a youth offending team.

Duty to explain the order

CDA 1998 s.9⁶⁸⁴: Parenting orders: supplemental

- s.9(3) - before making a parenting order, a court shall explain to the parent in ordinary language:
- (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow (under s.9(7) below) if he fails to comply with any of those requirements; and
 - (c) that the court has power (under s.9(5)) to review the order on the application either of the parent or of the responsible officer.

Contents of the order

CDA 1998 s.8⁶⁸⁵: Parenting orders

- s.8(4) - a parenting order is an order which requires the parent: (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and (b) subject to subsection (5) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.
- s.8(5) - a parenting order may, but need not, include such a requirement as is mentioned in s.8(4)(b) in any case where a parenting order under this section or any other enactment has been made in respect of the parent on a previous occasion.
- s.8(7) - requirements specified under s.8(4)(a) are those which the court considers desirable in the interests of preventing any such repetition or the commission of any such further offence.
- s.8(7A) - a counselling or guidance programme which a parent is required to attend under s.8(4)(b) may include a residential course but only if the court is satisfied: (a) that the

⁶⁸³ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁴ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁵ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

attendance of the parent at a residential course is likely to be more effective than his attendance at a non-residential course in preventing any such repetition/commission of any such further offence, and (b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

CDA 1998 s.9⁶⁸⁶: Parenting orders: supplemental

- s.9(4) - requirements/directions contained in a parenting order shall, as far as practicable, avoid (a) any conflict with the parent's religious beliefs; and (b) any interference with the times, if any, at which he normally works or attends an educational establishment.

3.3.1.5.1.4 Interaction with other sentencing orders

Referral order

CDA 1998 s.9⁶⁸⁷: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence
- s.9(2A) - in a case where a court proposes to make both a referral order in respect of a child or young person convicted of an offence and a parenting order, before making the parenting order the court shall obtain and consider a report by an appropriate officer: (a) indicating the requirements proposed by that officer to be included in the parenting order; (b) indicating the reasons why he considers those requirements would be desirable in the interests of preventing the commission of any further offence by the child or young person; and (c) if the child or young person is aged under 16, containing the information required by subsection (2) above.
- s.9(2B) - in subsection (2A) above "*an appropriate officer*" means: (a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; or (c) a member of a youth offending team.
- s.9(7A) - in this section "*referral order*" means an order under Powers of Criminal Courts (Sentencing) Act 2000 s.16(2) or (3) (referral of offender to youth offender panel).

Criminal behaviour order/ASB Injunction

CDA 1998 s.9⁶⁸⁸: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.

⁶⁸⁶ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁷ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁸ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

3.3.1.5.1.5 Discharging/Varying the order

CDA 1998 s.9⁶⁸⁹: Parenting orders: supplemental

- s.9(5) - if while a parenting order is in force it appears to the court which made it, on the application of the responsible officer or the parent, that it is appropriate to make an order under s.9(5), the court may make an order discharging the parenting order or varying it: (a) by cancelling any provision included in it; or (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.
- s.9(6) - where an application under s.9(5) above for the discharge of a parenting order is dismissed, no further application for its discharge shall be made except with the consent of the court which made the order.

3.3.1.5.1.6 Appeals

Powers etc.

CDA 1998 s.10⁶⁹⁰: Appeals against parenting orders

- s.10(1) - an appeal shall lie: (a) to the county court where the order was made under s.8(1)(a) and (b) to the Crown Court where the order was made under s.8(1)(b)
- s.10(2) - on an appeal under subsection (1), the court (a) may make such orders as may be necessary to give effect to its determination of the appeals; and (b) may also make such incidental or consequential orders as appear to it to be just
- s.10(4) - a person in respect of whom a parenting order is made by virtue of section 8(1)(c) shall have the same right of appeal against the making of the order as if: (a) the offence that led to the making of the order were an offence committed by him; and (b) the order were a sentence passed on him for the offence
- s.10(5) - a person in respect of whom a parenting order is made by virtue of section 8(1)(d) shall have the same right of appeal against the making of the order as if the order were a sentence passed on him for the offence that led to the making of the order.

CDA 1998 s.8⁶⁹¹: Parenting orders

- s.8(1) - application of section:
- (a) a child safety order is made etc.;

⁶⁸⁹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁹⁰ Commencement: Section 10(1)-(5) in force 30 September 1998, SI 1998/2327 art.2(1)(a). Section 10(6) and (7) in force SI 2000/924 art.5.

⁶⁹¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- (aa) a parental compensation order is made in relation to a child's behaviour;
- (b) an injunction is granted under Anti-social Behaviour, Crime and Policing Act 2014 s.1, or a criminal behaviour order is made under s.22 under that Act;
- (c) a child or young person is convicted of an offence; or
- (d) a person is convicted of an offence under Education Act 1996 s.443 (failure to comply with school attendance order) or s.444 (failure to secure regular attendance at school of registered pupil)

Supplementary

CDA 1998 s.10⁶⁹²: Appeals against parenting orders

- s.10(3) - any order the county court or the Crown Court made on an appeal under subsection (1) above shall be treated as though it was made by the court from whence the appeal was brought
- s.10(6) - provision dealing with appeals against decisions concerning the transfer of proceedings concerning a repealed section of the Children Act 1989
- s.10(7) - except to the extent provided for in any order made under s.10(6), no appeal may be made against a decision of the kind mentioned in s.10(6)
- s.10(8) - the Lord Chief Justice may nominate a judicial office holder to exercise his functions under s.10 (see. s.10(6))

3.3.1.5.1.7 Breach: Failure to comply

CDA 1998 s.9⁶⁹³: Parenting orders: supplemental

- s.9(7) - if while a parenting order is in force the parent without reasonable excuse fails to comply with any requirement/directions, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3.3.1.5.2 Parental orders

3.3.1.5.2.1 Power and types of order

Financial circumstances order

PCC(S)A 2000 s.136⁶⁹⁴: Power to order statement as to financial circumstances of parent or guardian

- s.136(1) - before exercising its powers under section 137 below (power to order parent or guardian to pay fine, costs, compensation or surcharge) against the parent or guardian of an individual who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.

⁶⁹² Commencement: Section 10(1)-(5) in force 30 September 1998, SI 1998/2327 art.2(1)(a). Section 10(6) and (7) in force SI 2000/924 art.5.

⁶⁹³ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- (2) In this section “*financial circumstances order*” has the meaning given by subsection (3) of section 162 of the Criminal Justice Act 2003, and subsections (4) to (6) of that section shall apply in relation to a financial circumstances order made under this section as they apply in relation to such an order made under that section.

Mandatory order for those under 16

PCC(S)A 2000 s.137⁶⁹⁵: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(1) - where—

- (a) a child or young person (that is to say, any person aged under 18) is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made, and
- (b) the court is of the opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment,

the court shall order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(1A) - where but for this subsection a court would order a child or young person to pay a surcharge under section 161A of the Criminal Justice Act 2003, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (a) that the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(2) - where but for this subsection a court would impose a fine on a child or young person under—

- (za) paragraph 6(2)(a) or 8(2)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach of youth rehabilitation order),
- (b) paragraph 2(1)(a) of Schedule 5 to this Act (breach of attendance centre order or attendance centre rules),
- (d) paragraph 2(2)(a) of Schedule 8 to this Act (breach of reparation order),
- (e) section 104(3)(b) above (breach of requirements of supervision under a detention and training order), or
- (f) section 4(3)(b) of the Criminal Justice and Public Order Act 1994 (breach of requirements of supervision under a secure training order),

the court shall order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

⁶⁹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, subsections (1) to (2) above shall have effect as if, instead of imposing a duty, they conferred a power to make such an order as is mentioned in those subsections.

Discretionary order for those aged 16 or 17

PCC(S)A 2000 s.137⁶⁹⁶: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(3) - in the case of a young person aged 16 or over, subsections (1) to (2) above shall have effect as if, instead of imposing a duty, they conferred a power to make such an order as is mentioned in those subsections.

3.3.1.5.2.2 Making the order

Fine, costs or compensation

PCC(S)A 2000 s.137⁶⁹⁷: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(1) - where: (a) a child or young person (that is to say, any person aged under 18) is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made, and (b) the court is of the opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment,

the court shall order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied: (i) that the parent or guardian cannot be found; or (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, s.137(1) to (2) have effect as if, instead of imposing a duty, they conferred a power to make such an order.

Fine for breach of order etc.

PCC(S)A 2000 s.137⁶⁹⁸: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(2) - where but for this subsection a court would impose a fine on a child or young person under:

- (za) CJIA 2008 Sch.2 paras.6(2)(a) or 8(2)(a) (breach of youth rehabilitation order),
- (b) PCC(S)A 2000 Sch.5 para.2(1)(a) (breach of attendance centre order or attendance centre rules),

⁶⁹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (d) PCC(S)A 2000 Sch.8 para.2(2)(a) (breach of reparation order),
- (e) PCC(S)A 2000 s.104(3)(b)(breach of requirements of supervision under a detention and training order), or
- (f) CJPOA 1994 s.4(3)(b) (breach of requirements of supervision under a secure training order),

the court shall order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied:

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, s.137(1) to (2) have effect as if, instead of imposing a duty, they conferred a power to make such an order.

Surcharge

PCC(S)A 2000 s.137⁶⁹⁹: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(1A) - where but for this subsection a court would order a child or young person to pay a surcharge under Criminal Justice Act 2003 s.161A, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied:

- (a) that the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, s.137(1) to (2) have effect as if, instead of imposing a duty, they conferred a power to make such an order.

Requirement that parent/guardian must be given opportunity to make representations

PCC(S)A 2000 s.137⁷⁰⁰: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(4) - subject to s.137(5), no order shall be made without giving the parent or guardian an opportunity of being heard

s.137(5) - an order may be made against a parent or guardian who, having been required to attend, failed to do so

⁶⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.5.2.3 Fixing the level of fine etc.

Failure to comply with inquiry into financial circumstances

PCC(S)A 2000 s.138⁷⁰¹: Fixing of fine, compensation or surcharge to be paid by parent or guardian

- s.138(3) - for the purposes of any order under section 137, where the parent or guardian of a defendant who is a child or young person:
- (a) has failed to comply with an order under section 136 above, or
 - (b) 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 parent's or guardian's financial circumstances, it may make such determination as it thinks fit.

Modifications of provisions concerning the fixing of fines etc.

PCC(S)A 2000 s.138⁷⁰²: Fixing of fine, compensation or surcharge to be paid by parent or guardian

- s.138(1) - for the purposes of any order under section 137 made against the parent or guardian of a child or young person:
- (za) CJA 2003 s.161A(3) (surcharges) and s.164(4A) (fixing of fines) have effect as if a reference to the defendant's means were a reference to those of the parent or guardian;
 - (a) CJA 2003 s.164 (fixing of fines) has effect as if a reference in s.164(1)-(4) to the financial circumstances of the defendant were a reference to the financial circumstances of the parent or guardian, and as if s.164(5) was omitted;
 - (b) PCC(S)A 2000 s.130(11) (determination of compensation order) has effect as if a reference to the means of the person against whom the compensation order is made was a reference to the financial circumstances of the parent or guardian; and
 - (c) PCC(S)A 2000 s.130(12) (preference to be given to compensation if insufficient means to pay both compensation and a fine) has effect as if the reference to the defendant was a reference to the parent or guardian;
- but in relation to an order under section 137 made against a local authority, this subsection has effect subject to subsection (2) below.
- s.138(4) - where a court has, in fixing the amount of a fine, determined the financial circumstances of a parent or guardian under s.138(3) CJA 2003, s.165(2)-(4) (remission of fines) have effect as they have effect in the case mentioned in s.165(1), but as if the reference in s.165(2) to the defendant's financial circumstances were a reference to the financial circumstances of the parent or guardian.

⁷⁰¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.1.5.2.4 Orders made against local authorities in respect of a child/young person for whom they have parental responsibility

PCC(S)A 2000 s.137⁷⁰³: Power to order parent or guardian to pay fine, costs, compensation or surcharge

- s.137(8) - in relation to a child or young person 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 functions (in particular those under the Children Act 1989) which [are social services functions within the meaning of] ⁷ the Local Authority Social Services Act 1970,
- references in this section to his parent or guardian shall be construed as references to that authority.
- s.137(9) - in subsection (8) above “*local authority*” and “*parental responsibility*” have the same meanings as in the Children Act 1989.

PCC(S)A 2000 s.138⁷⁰⁴: Fixing of fine, compensation or surcharge to be paid by parent or guardian

- s.138(1) - for the purposes of any order under section 137 made against the parent or guardian of a child or young person:
- (za) CJA 2003 s.161A(3) (surcharges) and s.164(4A) (fixing of fines) have effect as if a reference to the defendant's means were a reference to those of the parent or guardian;
 - (a) CJA 2003 s.164 (fixing of fines) has effect as if a reference in s.164(1)-(4) to the financial circumstances of the defendant were a reference to the financial circumstances of the parent or guardian, and as if s.164(5) was omitted;
 - (b) PCC(S)A 2000 s.130(11) (determination of compensation order) has effect as if a reference to the means of the person against whom the compensation order is made was a reference to the financial circumstances of the parent or guardian; and
 - (c) PCC(S)A 2000 s.130(12) (preference to be given to compensation if insufficient means to pay both compensation and a fine) has effect as if the reference to the defendant was a reference to the parent or guardian;
- but in relation to an order under section 137 made against a local authority, this subsection has effect subject to subsection (2) below.
- s.138(2) - for the purposes of any order under section 137 made against a local authority, CJA 2003 s.164(1) and PCC(S)A 2000 s.130(11) shall not apply.
- s.138(5) - in this section “*local authority*” has the same meaning as in the Children Act 1989

⁷⁰³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.5.2.5 Appeals

PCC(S)A 2000 s.137⁷⁰⁵: Power to order parent or guardian to pay fine, costs, compensation or surcharge

- s.137(6) - a parent or guardian may appeal to the Crown Court against an order made by a magistrates' court.
- s.137(7) - a parent or guardian may appeal to the Court of Appeal against an order made by the Crown Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction

⁷⁰⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.6. Attendance centre orders

3.3.1.6.1 General

Note: As to the commencement, transitional and saving provisions concerning the partial repeal of attendance centre orders, see David Thomas' article for Sentencing News (S. News 2009 (4 (Nov), 7), which sets out the various changes and their effect upon the availability of this sentencing order.

For the purposes of the PCC(S)A 2000, "youth community order" means an attendance centre order, see PCC(S)A 2000 s.33.

PCC(S)A 2000 s.60⁷⁰⁶: Attendance Centre Order

s.60(2) - an order under subsection (1) is to be referred to as an "attendance centre order".

3.3.1.6.2 Power to order and test to apply

PCC(S)A 2000 s.60⁷⁰⁷: Attendance Centre Order

s.60(1) - where:

- (b) a court would have power, but for PCC(S)A 2000 s.89 (restrictions on imprisonment of young offenders and defaulters), to commit a person aged under 21 to prison in default of payment of any sum of money or for failing to do or abstain from doing anything required to be done or left undone, or
- (c) a court has power to commit a person aged at least 21 but under 25 to prison in default of payment of any sum of money,

the court may, if it has been notified by the Secretary of State that an attendance centre is available for the reception of persons of his description, order him to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

3.3.1.6.3 Making the order

Number of hours

PCC(S)A 2000 s.60⁷⁰⁸: Attendance Centre Order

s.60(3) - total number of hours may not be less than 12 except where:

- (a) he is aged under 14; and
- (b) the court is of the opinion that 12 hours would be excessive, having regard to his age or any other circumstances.

s.60(4) total number of hours may not be more than 12 except where the court is of the opinion, having regard to all the circumstances, that 12 hours would be inadequate, and in that case—

- (a) shall not exceed 24 where the person is aged under 16; and

⁷⁰⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) shall not exceed 36 where the person is aged 16 or over but under 21 or (where subsection (1)(c) applies) under 25.

Condition: The centre must be reasonably accessible

PCC(S)A 2000 s.60⁷⁰⁹: Attendance Centre Order

- s.60(6) - an order shall not be made unless the court is satisfied that the attendance centre to be specified in it is reasonably accessible to the person concerned, having regard to his age, the means of access available to him and any other circumstances.

Condition: Attendance at centre to avoid conflict with religious beliefs etc.

PCC(S)A 2000 s.60⁷¹⁰: Attendance Centre Order

- s.60(7) - the times at which a person is required to attend at an attendance centre shall, as for as practicable, be such as to avoid—
 - (a) any conflict with his religious beliefs or with the requirements of any other youth community order; and
 - (b) any interference with the times at which he normally works or attends school or any other educational establishment.

Fixing attendance at an attendance centre order

PCC(S)A 2000 s.60⁷¹¹: Attendance Centre Order

- s.60(8) - the first time at which the person is required to attend at an attendance centre shall be a time at which the centre is available for his attendance in accordance with the notification of the SoS, and shall be specified in the order.
- s.60(9) - the subsequent times shall be fixed by the officer in charge of the centre, having regard to the person's circumstances
- s.60(10) - a person shall not be required to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.

Duty to provide copies of the order

PCC(S)A 2000 s.60⁷¹²: Attendance Centre Order

- s.60(11) - Where a court makes an attendance centre order, the designated officer for the court shall:
 - (a) deliver or send a copy of the order to the officer in charge of the attendance centre specified in it; and
 - (b) deliver a copy of the order to the person in respect of whom it is made or send a copy by registered post or the recorded delivery service addressed to his last or usual place of abode.

⁷⁰⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

3.3.1.6.4 Interaction with other sentencing orders

Attendance Centre Order (existing)

PCC(S)A 2000 s.60⁷¹³: Attendance Centre Order

- s.60(5) - a court may make an order in respect of a person who remains subject to an order, and may determine the number of hours to be specified in the order without regard—
- (a) to the number specified in the previous order; or
 - (b) to the fact that order is still in effect

3.3.1.6.5 Reduction in number of hours for part payment of sum of money

PCC(S)A 2000 s.60⁷¹⁴: Attendance Centre Order

- s.60(12) - where a person (“the defaulter”) has been ordered to attend at an attendance centre in default of the payment of any sum of money—
- (a) on payment of the whole sum to any person authorised to receive it, the attendance centre order shall cease to have effect;
 - (b) on payment of a part of the sum to any such person, the total number of hours for which the defaulter is required to attend at the centre shall be reduced proportionately, that is to say by such number of complete hours as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part bears to the whole sum.

3.3.1.6.6 Breach, revocation and amendment

PCC(S)A 2000 s.61⁷¹⁵: Breach, revocation and amendment of attendance centre orders

- s.61 - PCC(S)A 2000 Sch.5 (which makes provision for dealing with failures to comply with attendance centre orders, for revoking such orders with or without the substitution of other sentences and for amending such orders) shall have effect.

Modifications in relation to Attendance Centre Orders for defaulters etc.

PCC(S)A 2000 Sch.5 para.7⁷¹⁶

- para.7(1) - references in this Schedule to an “*offender*” include a person who has been ordered to attend at an attendance centre for such a default or failure as is mentioned in PCC(S)A 2000 s.60(1)(b) or (c)⁷¹⁷.
- para.7(2) - where a person has been ordered to attend at an attendance centre for such a default or failure:

⁷¹³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁷ Note: Due to the repeal of s.60(1)(a), it appears that the modifications listed by this paragraph apply to all instances where an attendance centre order can be imposed under s.60.

- (a) paras.2(1)(b), 3(1) and 4(3) shall each have effect in relation to the order as if the words “, for the offence in respect of which the order was made,” and “for that offence” were omitted; and
- (b) paras.2(5)(b) and 3(3)(b) (which relate to custodial sentences for offences) do not apply.

Breach: Issuing summons/warrant

PCC(S)A 2000 Sch.5 para.1⁷¹⁸

para.1(1) - where an attendance centre order is in force and it appears on information to a justice that the offender—

- (a) has failed to attend in accordance with the order, or
- (b) while attending has committed a breach of rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 which cannot be adequately dealt with under those rules,

the justice may issue a summons requiring the offender to appear at the place and time specified in the summons or, if the information is in writing and on oath, may issue a warrant for the offender's arrest

para.(2) - any summons or warrant issued under this paragraph shall direct the offender to appear or be brought—

- (a) before a magistrates' court acting for the local justice area in which the offender resides; or
- (b) if it is not known where the offender resides, before a magistrates' court acting for the local justice area in which is situated the attendance centre which the offender is required to attend by the order or by virtue of an order under paragraph 5(1)(b) below.

Breach: Powers/duties of magistrates' court

PCC(S)A 2000 Sch.5 para.2⁷¹⁹

para.2(1) - if it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under paragraph 1 above that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) of that paragraph or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b) of that paragraph, that court may deal with him in any one of the following ways—

- (a) it may impose on him a fine not exceeding £1,000;
- (b) where the attendance centre order was made by a magistrates' court, it may deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or
- (c) where the order was made by the Crown Court, it may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

⁷¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- para.2(2) - any exercise by the court of its power under sub-paragraph (1)(a) above shall be without prejudice to the continuation of the order.
- para.2(3) - a fine imposed under sub-paragraph (1)(a) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- para.2(4) - where a magistrates' court deals with an offender under sub-paragraph (1)(b) above, it shall revoke the attendance centre order if it is still in force.
- para.2(5) - in dealing with an offender under sub-paragraph (1)(b) above, a magistrates' court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the attendance centre order; and
 - (b) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003.
- para.2(5A) - where a magistrates' court dealing with an offender under sub-paragraph (1)(a) above would not otherwise have the power to amend the order under paragraph 5(1)(b) below (substitution of different attendance centre), that paragraph has effect as if references to an appropriate magistrates' court were references to the court dealing with the offender.
- para.2(6) - a person sentenced under sub-paragraph (1)(b) above for an offence may appeal to the Crown Court against the sentence.
- para.2(7) - a magistrates' court which deals with an offender's case under sub-paragraph (1)(c) above shall send to the Crown Court—
- (a) a certificate signed by a justice of the peace giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules which he has committed; and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed shall be admissible as evidence of the failure or the breach before the Crown Court.

Breach: Powers/duties of Crown Court etc.

PCC(S)A 2000 Sch.5 para.3⁷²⁰

- para.3(1) - where by virtue of para.2(1)(c) the defendant appears before the Crown Court and it is proved to the satisfaction of the court:
- (a) that he has failed without reasonable excuse to attend as mentioned in para.1(1)(a), or
 - (b) that he has committed such a breach of rules as is mentioned in para.1(1)(b),
- that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.
- para.3(2) - where the Crown Court deals with a defendant under para.3(1) above, it shall revoke the attendance centre order if it is still in force.

⁷²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

para.3(3) - in dealing with a defendant under para.3(1), the Crown Court:

- (a) shall take into account the extent to which the defendant has complied with the order; and
- (b) in the case of an defendant who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in CJA 2003 s.152(2)

para.3(4) - any question whether there has been a failure to attend or a breach of the rules shall be determined by the court and not by the verdict of a jury (when in the Crown Court)

Revocation

PCC(S)A 2000 Sch.5 para.4⁷²¹

para.4(1) - where an attendance centre order is in force in respect of an offender, an appropriate court may, on an application made by the offender or by the officer in charge of the relevant attendance centre, revoke the order.

para.4(2) - in sub-paragraph (1) above “*an appropriate court*” means—

- (a) where the court which made the order was the Crown Court and there is included in the order a direction that the power to revoke the order is reserved to that court, the Crown Court;
- (b) in any other case, either of the following—
 - (i) a magistrates’ court [acting in the local justice area]¹ in which the relevant attendance centre is situated;
 - (ii) the court which made the order.

para.4(3) - any power conferred by this paragraph—

- (a) on a magistrates’ court to revoke an attendance centre order made by such a court, or
- (b) on the Crown Court to revoke an attendance centre order made by the Crown Court,

includes power to deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.4(4) - a person sentenced by a magistrates’ court under sub-paragraph (3) above for an offence may appeal to the Crown Court against the sentence.

para.4(5) - the proper officer of a court which makes an order under this paragraph revoking an attendance centre order shall—

- (a) deliver a copy of the revoking order to the offender or send a copy by registered post or the recorded delivery service addressed to the offender’s last or usual place of abode; and
- (b) deliver or send a copy to the officer in charge of the relevant attendance centre.

⁷²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

para.4(6) - in this paragraph “*the relevant attendance centre*”, in relation to an attendance centre order, means the attendance centre specified in the order or substituted for the attendance centre so specified by an order made by virtue of paragraph 5(1)(b) below.

para.4(7) - in this paragraph “*proper officer*” means—

- (a) in relation to a magistrates’ court, the designated officer for the court; and
- (b) in relation to the Crown Court, the appropriate officer.

Amendment

PCC(S)A 2000 Sch.5 para.5⁷²²

para.5(1) - where an attendance centre order is in force, an appropriate magistrates’ court may, on an application made by the offender or by the officer in charge of the relevant attendance centre: (a) vary the day or hour specified in the order for the defendant’s first attendance at the relevant attendance centre; or

- (b) substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.

para.5(2) - in sub-paragraph (1) above “an appropriate magistrates’ court” means:

- (a) a magistrates’ court acting in the local justice area in which the relevant attendance centre is situated; or
- (b) (except where the attendance centre order was made by the Crown Court) the magistrates’ court which made the order

para.5(3) - the designated officer for the court shall:

- (a) deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender’s last or usual place of abode; and
- (b) deliver or send a copy:
 - (i) if the order is made under para.5(1)(a), to the officer in charge of the relevant attendance centre; and
 - (ii) if the order is made under para.5(1)(b), to the officer in charge of the attendance centre which the order as amended will require the defendant to attend

para.5(4) - in this paragraph “*the relevant attendance centre*” has the meaning given by paragraph 4(6) above.

Orders made on appeal

PCC(S)A 2000 Sch.5 para.6⁷²³

para.6(1) - where an attendance centre order has been made on appeal, for the purposes of this Schedule it shall be deemed—

- (a) if it was made on an appeal brought from a magistrates’ court, to have been made by that magistrates’ court;

⁷²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.

para.6(2) - in relation to an attendance centre order made on appeal, paragraphs 2(1)(b) and 4(3) above shall each have effect as if the words “if the order had not been made” were omitted and paragraph 3(1) above shall have effect as if the words “if it had not made the order” were omitted.

3.3.2. Adults

3.3.2.1. Community order

CJA 2003 s.147⁷²⁴: Meaning of “community sentence”

s.147(1) - in this part, “community sentence” means a sentence which consists of or includes (a) a community order (as defined by s.177) or (c) a YRO

CJA 2003 s.196⁷²⁵: Meaning of “relevant order”

s.196(1) - in this Chapter “relevant order” means—

- (a) a community order, or
- (c) a suspended sentence order.

s.196(1A) - in this Chapter “suspended sentence order” means a suspended sentence order that imposes one or more community requirements.

CJA 2003 s.197⁷²⁶: Meaning of “responsible officer”

s.197(1) - for the purposes of this Part, “the responsible officer”, in relation to an offender to whom a relevant order relates, means the person who is for the time being responsible for discharging the functions conferred by this Part on the responsible officer in accordance with arrangements made by the Secretary of State.

s.197(2) - the responsible officer must be—

- (a) an officer of a provider of probation services, or
- (b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the relevant order.

3.3.2.1.1 Availability and power to impose the order

Availability

CJA 2003 s.150⁷²⁷: When a community order is not available

s.150(1) - the power to make a community order or youth rehabilitation 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),

⁷²⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

⁷²⁵ Commencement: Section 196(1)(a) and (c) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.11. Section 196(1A) was inserted by LASPOA 2012 Sch.9 para.7(3), in force 3 December 2012, SI 2012/2906 art.2(g).

⁷²⁶ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.12 otherwise.

⁷²⁷ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

- (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),
 - (ca) falls to be imposed under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (required custodial sentence in certain cases of using someone to mind a weapon),
 - (cb) falls to be imposed under section 224A of this Act (life sentence for second listed offence for certain dangerous offenders), or
 - (d) falls to be imposed under section 225(2) or 226(2) of this Act (requirement to impose sentence of imprisonment for life or detention for life).
- s.150(2) - the power to make a community order is not exercisable in respect of an offence for which the sentence—
- (a) falls to be imposed under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons), or
 - (b) falls to be imposed under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon).

CJA 2003 s.150A⁷²⁸: Offence must carry imprisonment

- s.150A(1) - the power to make a community order is only exercisable in respect of an offence if—
- (a) the offence is punishable with imprisonment; or
 - (b) in any other case, section 151(2) confers power to make such an order.
- s.150A(2) - for the purposes of this section and section 151 an offence triable either way that was tried summarily is to be regarded as punishable with imprisonment only if it is so punishable by the sentencing court (and for this purpose section 148(1) is to be disregarded).

CJA 2003 s.177⁷²⁹: Power to impose community order

- s.177(1) - where a person aged 18 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a “community order”) imposing on him any one or more of the following requirements—
- (a) an unpaid work requirement (as defined by section 199),
 - (aa) a rehabilitation activity requirement (as defined by section 200A),
 - (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),

⁷²⁸ Commencement: 14 July 2008, as inserted by CJA 2008 s.11(1). Section 11(1) was commenced by SI 2008/1586 art.2(1) and Sch.1 para.2. The insertion of s.150A is of no effect in relation to any person who is sentenced to a community order within the meaning of section 177 of the 2003 Act before 14 July 2008, SI 2008/1586 art.2(3) and Sch.2 para.1.

⁷²⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.8. Amendments were made to the SI but they have since been repealed. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

- (g) a residence requirement (as defined by section 206),
- (ga) a foreign travel prohibition requirement (as defined by section 206A),
- (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),
- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

s.177(2) - subsection (1) has effect subject to sections 150 and 218 and to the following provisions of Chapter 4 relating to particular requirements—

- (a) section 199(3) (unpaid work 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).

s.177(2A) - where the court makes a community order, the court must—

- (a) include in the order at least one requirement imposed for the purpose of punishment, or
- (b) impose a fine for the offence in respect of which the community order is made, or
- (c) comply with both of paragraphs (a) and (b).

s.177(2B) - subsection (2A) does not apply where there are exceptional circumstances which—

- (a) relate to the offence or to the offender,
- (b) would make it unjust in all the circumstances for the court to comply with subsection (2A)(a) in the particular case, and
- (c) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.

s.177(3) - where the court makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement (as defined by section 215) unless—

- (a) it 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.

s.177(4) - where the court makes a community order imposing an unpaid work requirement, a rehabilitation activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a foreign travel prohibition requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented from doing so by section 215(2) or 218(4).

s.177(5) - a community order must specify a date (“the end date”), not more than three years after the date of the order, by which all the requirements in it must have been complied with.

s.177(5A) - if a community order imposes two or more different requirements falling within subsection (1), the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.

s.177(5B) - subject to section 200(3) (duration of community order imposing unpaid work requirement), a community order ceases to be in force on the end date.

s.177(6) - before making a community 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.

Note: In relation to the south London justice area, there is an additional requirement available. See CJA 2003 s.177(1)(ja) and 212A, LASPOA 2012 s.76(1), and SI 2014/1777 for details of the pilot. This pilot was extended to a total period of 18 months to run from 31 July 2014, by SI 2015/1480 with a consequential amendment made by SI 2015/1482.

MHA 1983 s.37⁷³⁰: Power to impose hospital order or guardianship order

s.37(8) - when imposing a hospital order or a guardianship order, the court may not also impose a community order

CJA 2003 s.189⁷³¹: Power to impose a suspended sentence order

s.189(5) - a court which passes a suspended sentence on any person for an offence may not impose a community sentence

Test to apply before imposing an order

CJA 2003 s.148⁷³²: Restrictions on imposing community sentences

s.148(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.

s.148(2) - where a court passes a community sentence —

- (a) the particular requirement or requirements forming part of the community order, or, as the case may be, youth rehabilitation order, comprised in 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 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.

⁷³⁰ Commencement: 30 September 1983, MHA 1983 s.149(2). Section 37(8) had been extensively amended; CJA 2003 Sch.32 para.38(b) inserted the reference to community orders, effective 4 April 2005, SI 2005/950 art.2 and Sch.1 para 42(18)

⁷³¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.9. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

⁷³² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

s.148(2A) - subsection (2) is subject to section 177(2A) (community orders: punitive elements) and to paragraph 3(4) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance).

s.148(4) - subsections (1) and (2)(b) have effect subject to section 151(2).

s.148(5) - the fact that by virtue of any provision of this section—

- (a) a community sentence may be passed in relation to an offence; or
- (b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,

does not require a court to pass such a sentence or to impose those restrictions.

CJA 2003 s.156⁷³³: Pre-sentence reports and other requirements

s.156(1) - in forming any such opinion as is mentioned in section 148(1) or (2)(b), section 152(2) or section 153(2), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering), 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.

s.156(2) - in forming any such opinion as is mentioned in section 148(2)(a), the court may take into account any information about the offender which is before it.

Discount for remand in custody

CJA 2003 s.149⁷³⁴: Imposing a community order on defendant remanded in custody

s.149(1) - in determining the restrictions on liberty to be imposed by a community order or youth rehabilitation 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.

s.149(2) - in subsection (1) “*remanded in custody*” has the meaning given by section 242(2).

3.3.2.1.2 Requirements which may be included as part of a community order

CJA 2003 s.177⁷³⁵: Power to impose community order with requirements

s.177(1) - Where a person aged 18 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a “community order”) imposing on him any one or more of the following requirements—

- (a) an unpaid work requirement (as defined by section 199),
- (aa) a rehabilitation activity requirement (as defined by section 200A),
- (d) a prohibited activity requirement (as defined by section 203),

⁷³³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

⁷³⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

⁷³⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.8. Amendments were made to the SI but they have since been repealed. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

- (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),
- (ga) a foreign travel prohibition requirement (as defined by section 206A),
- (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),
- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

CJA 2003 s.199⁷³⁶: Unpaid work requirement

- s.199(1) - in this Part “*unpaid work requirement*”, in relation to a relevant order, means a requirement that the offender must perform unpaid work in accordance with section 200.
- s.199(2) - the number of hours which a person may be required to work under an unpaid work requirement must be specified in the relevant order and must be in the aggregate—
- (a) not less than 40, and
 - (b) not more than 300.
- s.199(3) - a court may not impose an unpaid work requirement in respect of an offender unless after hearing (if the courts thinks necessary) an officer of a local probation board or an officer of a provider of probation services, the court is satisfied that the offender is a suitable person to perform work under such a requirement.
- s.199(5) - where the court makes relevant orders in respect of two or more offences of which the offender has been convicted on the same occasion and includes unpaid work requirements in each of them, the court may direct that the hours of work specified in any of those requirements is to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent does not exceed the maximum specified in subsection (2)(b).

CJA 2003 s.200A⁷³⁷: Rehabilitation activity requirement

- s.200A(1) - in this Part “*rehabilitation activity requirement*”, in relation to a relevant order, means a requirement that, during the relevant period, the offender must comply with any instructions given by the responsible officer to attend appointments or participate in activities or both.
- s.200A(2) - a relevant order imposing a rehabilitation activity requirement must specify the maximum number of days for which the offender may be instructed to participate in activities.

⁷³⁶ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

⁷³⁷ Commencement: 1 February 2015, as inserted by ORA 2014 s.15(3). The insertion has no effect in relation to orders made in respect of an offence committed before 1 February 2015, ORA 2014 s.21 and Sch.7 para.7.

- s.200A(3) - any instructions given by the responsible officer must be given with a view to promoting the offender's rehabilitation; but this does not prevent the responsible officer giving instructions with a view to other purposes in addition to rehabilitation.
- s.200A(4) - the responsible officer may instruct the offender to attend appointments with the responsible officer or with someone else.
- s.200A(5) - the responsible officer, when instructing the offender to participate in activities, may require the offender to—
- (a) participate in specified activities and, while doing so, comply with instructions given by the person in charge of the activities, or
 - (b) go to a specified place and, while there, comply with any instructions given by the person in charge of the place.
- s.200A(6) - the references in subsection (5)(a) and (b) to instructions given by a person include instructions given by anyone acting under the person's authority.
- s.200A(7) - the activities that responsible officers may instruct offenders to participate in include—
- (a) activities forming an accredited programme (see section 202(2));
 - (b) activities whose purpose is reparative, such as restorative justice activities.
- s.200A(8) - for the purposes of subsection (7)(b) an activity is a restorative justice activity if—
- (a) the participants consist of, or include, the offender and one or more of the victims,
 - (b) the aim of the activity is to maximise the offender's awareness of the impact of the offending concerned on the victims, and
 - (c) the activity gives a victim or victims an opportunity to talk about, or by other means express experience of, the offending and its impact.
- s.200A(9) - in subsection (8) "*victim*" means a victim of, or other person affected by, the offending concerned.
- s.200A(10) - where compliance with an instruction would require the co-operation of a person other than the offender, the responsible officer may give the instruction only if that person agrees.
- s.200A(11) - in this section "*the relevant period*" means—
- (a) in relation to a community order, the period for which the community order remains in force, and
 - (b) in relation to a suspended sentence order, the supervision period as defined by section 189(1A).

CJA 2003 s.201 [repealed on 1 February 2015]: Activity requirement

Note: This requirement was repealed on 1 February 2015 subject to saving provisions specified in ORA 2014 s.21 and Sch.7 para.7 which preserve the requirement for offences committed prior to the commencement date.

CJA 2003 s.202⁷³⁸: Programme requirement

- s.202(1) - in this Part “*programme requirement*”, in relation to a relevant order, means a requirement that the offender must participate in accordance with this section in an accredited programme on the number of days specified in the order
- s.202(2) - in this Part “*accredited programme*” means a programme that is for the time being accredited by the Secretary of State for the purposes of this section.
- s.202(3) - in this section—
- (a) “*programme*” means a systematic set of activities, and
- s.202(6) A programme requirement operates to require the offender—
- (a) in accordance with instructions given by the responsible officer, to participate in the accredited programme that is from time to time specified by the responsible officer at the place that is so specified on the number of days specified in the order, and
 - (b) while at that place, to comply with instructions given by, or under the authority of, the person in charge of the programme.

CJA 2003 s.203⁷³⁹: Prohibited activity requirement

- s.203(1) - in this Part “*prohibited activity requirement*”, in relation to a relevant order, means a requirement that the offender must refrain from participating in activities specified in the order—
- (a) on a day or days so specified, or
 - (b) during a period so specified.
- s.203(2) - a court may not include a prohibited activity requirement in a relevant order unless it has consulted an officer of a local probation board or an officer of a provider of probation services.
- s.203(3) - the requirements that may by virtue of this section be included in a relevant order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27).

⁷³⁸ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

⁷³⁹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

CJA 2003 s.204⁷⁴⁰: Curfew requirement

- s.204(1) - in this Part “*curfew requirement*”, in relation to a relevant order, means a requirement that the offender must remain, for periods specified in the relevant order, at a place so specified.
- s.204(2) - a relevant order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than sixteen hours in any day.
- s.204(3) - a community order or suspended sentence order which imposes a curfew requirement may not specify periods which fall outside the period of twelve months beginning with the day on which it is made.
- s.204(6) - before making a relevant order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

CJA 2003 s.205⁷⁴¹: Exclusion requirement

- s.205(1) - in this Part “*exclusion requirement*”, in relation to a relevant order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified.
- s.205(2) - where the relevant order is a community order, the period specified must not be more than two years.
- s.205(3) - an exclusion requirement—
 - (a) may provide for the prohibition to operate only during the periods specified in the order, and
 - (b) may specify different places for different periods or days.
- s.205(4) - in this section “*place*” includes an area.

⁷⁴⁰ Commencement: Section 204(1), (2), (5) and (6) on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 to the extent that it was not in force. Section 204(3) on 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. Section 204(5) on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, not in force otherwise. Section 204(4) and (5) were repealed by LASPOA 2012 Sch.10 para.17 on 3 December 2012, SI 2012/2906 art.2(h). LASPOA 2012 amended s.204(2) and (3) in respect of the maximum number of hours and the maximum length of the requirement. This amendment is of no effect in relation to offences committed prior to the commencement date, SI 2012/2906 art.3.

⁷⁴¹ Commencement: Section 205(1) and (3)-(4) on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise. Section 205(2) on 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

CJA 2003 s.206⁷⁴²: Residence requirement

- s.206(1) - in this Part, “*residence requirement*”, in relation to a community order or a suspended sentence order, means a requirement that, during a period specified in the relevant order, the offender must reside at a place specified in the order.
- s.206(2) - if the order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.
- s.206(3) - before making a community order or suspended sentence order containing a residence requirement, the court must consider the home surroundings of the offender.
- s.206(4) - a court may not specify a hostel or other institution as the place where an offender must reside, except on the recommendation of an officer of a local probation board or an officer of a provider of probation services.

CJA 2003 s.206A⁷⁴³: Foreign travel prohibition requirement

- s.206A(1) - in this Part “*foreign travel prohibition requirement*”, in relation to a relevant order, means a requirement prohibiting the offender from travelling, on a day or days specified in the order, or for a period so specified—
- (a) to any country or territory outside the British Islands specified or described in the order,
 - (b) to any country or territory outside the British Islands other than a country or territory specified or described in the order, or
 - (c) to any country or territory outside the British Islands.
- s.206A(2) - a day specified under subsection (1) may not fall outside the period of 12 months beginning with the day on which the relevant order is made.
- s.206A(3) - a period specified under that subsection may not exceed 12 months beginning with the day on which the relevant order is made.

CJA 2003 s.207⁷⁴⁴: Mental health treatment requirement

- s.207(1) - in this Part, “*mental health treatment requirement*”, in relation to a community order or suspended sentence order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition .
- s.207(2) - the treatment required must be such one of the following kinds of treatment as may be specified in the relevant order—
- (a) treatment as a resident patient in a care home within the meaning of the Care Standards Act 2000 (c. 14), an independent hospital or a hospital within the

⁷⁴² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

⁷⁴³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.72(5), SI 2012/2906 art.2. The insertion is of no effect in respect of offences committed prior to the commencement date, SI 2012/2906 art.3

⁷⁴⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. LASPOA 2012 s.73(3) repealed s.207(5) on 3 December 2012.

meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;

- (b) treatment as a non-resident patient at such institution or place as may be specified in the order;
- (c) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified;

but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a), (b) or (c).

s.207(3) - a court may not by virtue of this section include a mental health treatment requirement in a relevant order unless—

- (a) the court is satisfied that the mental condition of the offender—
 - (i) is such as requires and may be susceptible to treatment, but
 - (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of the Mental Health Act 1983;
- (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient); and
- (c) the offender has expressed his willingness to comply with such a requirement.

s.207(4) - while the offender is under treatment as a resident patient in pursuance of a mental health requirement of a relevant order, his responsible officer shall carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

s.207(4A) - in subsection (2) “*independent hospital*”—

- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; and
- (b) in relation to Wales, has the same meaning as in the Care Standards Act 2000.

s.207(6) - in this section and section 208, “*registered psychologist*” means a person registered in the part of the register maintained under the Health and Social Work Professions Order 2001 which relates to practitioner psychologists.

CJA 2003 s.208⁷⁴⁵: Mental health treatment at place other than that specified in order

s.208(1) - where the medical practitioner or registered psychologist by whom or under whose direction an offender is being treated for his mental condition in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

- (a) is not specified in the relevant order, and
- (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or registered psychologist,

⁷⁴⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

he may, with the consent of the offender, make arrangements for him to be treated accordingly.

- s.208(2) - such arrangements as are mentioned in subsection (1) may provide for the offender to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the relevant order.
- s.208(3) - where any such arrangements as are mentioned in subsection (1) are made for the treatment of an offender—
- (a) the medical practitioner or registered psychologist by whom the arrangements are made shall give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out; and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the relevant order.

CJA 2003 s.209⁷⁴⁶: Drug rehabilitation requirement

- s.209(1) - in this Part "*drug rehabilitation requirement*", in relation to a community order or suspended sentence order, means a requirement that during a period specified in the order ("the treatment and testing period") the offender—
- (a) must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs, and
 - (b) for the purpose of ascertaining whether he has any drug in his body during that period, must provide samples of such description as may be so determined, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the responsible officer or by the person specified as the person by or under whose direction the treatment is to be provided.
- s.209(2) - a court may not impose a drug rehabilitation requirement unless—
- (a) it is satisfied—
 - (i) that the offender is dependent on, or has a propensity to misuse, drugs, and
 - (ii) that his dependency or propensity is such as requires and may be susceptible to treatment,
 - (b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident),
 - (c) the requirement has been recommended to the court as being suitable or the offender by an officer of a local probation board or an officer of a provider of probation services, and
 - (d) the offender expresses his willingness to comply with the requirement.

⁷⁴⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

- s.209(4) - the required treatment for any particular period must be—
- (a) treatment as a resident in such institution or place as may be specified in the order, or
 - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;
- but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a) or (b) above.
- s.209(5) - the function of making a determination as to the provision of samples under provision included in the community order or suspended sentence order by virtue of subsection (1)(b) is to be exercised in accordance with guidance given from time to time by the Secretary of State.
- s.209(6) - a community order or suspended sentence order imposing a drug rehabilitation requirement must provide that the results of tests carried out on any samples provided by the offender in pursuance of the requirement to a person other than the responsible officer are to be communicated to the responsible officer.
- s.209(7) - in this section “*drug*” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

CJA 2003 s.210⁷⁴⁷: Drug rehabilitation requirement: provision for review by court

- s.210(1) - a community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months)—
- (a) provide for the requirement to be reviewed periodically at intervals of not less than one month,
 - (b) provide for each review of the requirement to be made, subject to section 211(6), 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,
 - (d) provide for [an officer of a provider of probation services]¹ to make to the court responsible for the order, before each review, a report in writing on the offender’s progress under the requirement, and
 - (e) provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender.
- s.210(2) - in this section references to the court responsible for a community order or suspended sentence order imposing a drug rehabilitation requirement are references—
- (a) where a court is specified in the order in accordance with subsection (3), to that court;
 - (b) in any other case, to the court by which the order is made.
- s.210(3) - where the area specified in a community order or suspended sentence order which is made by a magistrates’ court and imposes a drug rehabilitation requirement is not the area for which the court acts, the court may, if it thinks fit, include in the order provision

⁷⁴⁷ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

specifying for the purposes of subsection (2) a magistrates' court which acts for the area specified in the order.

- s.210(4) - where a community order or suspended sentence order imposing a drug rehabilitation requirement has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, for the purposes of subsection (2)(b) it shall be taken to have been made by the Crown Court.

CJA 2003 s.211⁷⁴⁸: Periodic review of drug rehabilitation requirement

- s.211(1) - at a review hearing (within the meaning given by subsection (1) of section 210) the court may, after considering the officer's report referred to in that subsection ("the review officer's report"), amend the community order or suspended sentence order, so far as it relates to the drug rehabilitation requirement.
- s.211(2) - the court—
- (a) may not amend the drug rehabilitation requirement unless the offender expresses his willingness to comply with the requirement as amended, and
 - (c) except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending.
- s.211(3) - if the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may—
- (a) revoke the community order, or the suspended sentence order and the suspended sentence to which it relates, and
 - (b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- s.211(4) - in dealing with the offender under subsection (3)(b), the court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the order, and
 - (b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).
- s.211(6) - if at a review hearing (as defined by section 210(1)(b)) the court, after considering the review officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.
- s.211(7) - if at a review without a hearing the court, after considering the review officer's report, is of the opinion that the offender's progress under the requirement is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

⁷⁴⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. As amended by ORA 2014 Sch.4 para.5(3).

- s.211(8) - at that hearing the court, after considering that report, may—
- (a) exercise the powers conferred by this section as if the hearing were a review hearing, and
 - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.
- s.211(9) - 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;
 - (b) in the case of a magistrates' court, as a reference to a justice of the peace

CJA 2003 s.212⁷⁴⁹: Alcohol treatment requirement

- s.212(1) - in this Part "*alcohol treatment requirement*", in relation to a community order or suspended sentence order, means a requirement that the offender must submit during a period specified in the order to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol.
- s.212(2) - a court may not impose an alcohol treatment requirement in respect of an offender unless it is satisfied—
- (a) that he is dependent on alcohol,
 - (b) that his dependency is such as requires and may be susceptible to treatment, and
 - (c) that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).
- s.212(3) - a court may not impose an alcohol treatment requirement unless the offender expresses his willingness to comply with its requirements.
- s.212(5) - the treatment required by an alcohol treatment requirement for any particular period must be—
- (a) treatment as a resident in such institution or place as may be specified in the order,
 - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified, or
 - (c) treatment by or under the direction of such person having the necessary qualification or experience as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c) above.

⁷⁴⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. LASPOA 2012 s.75(1) repealed s.212(4), in force 3 December 2012, SI 2012/2906 art.2a.

CJA 2003 s.212A⁷⁵⁰: Alcohol abstinence and monitoring requirement

Note: This is a pilot and is not in force for England and Wales. It is in force for the south London justice area only. See CJA 2003 s.177(1)(ja) and 212A, LASPOA 2012 s.76(1), and SI 2014/1777 for details of the pilot. This pilot was extended to a total period of 18 months to run from 31 July 2014, by SI 2015/1480 with a consequential amendment made by SI 2015/1482.

- s.212A(1) - in this Part “*alcohol abstinence and monitoring requirement*”, in relation to a relevant order, means a requirement—
- (a) that, subject to such exceptions (if any) as are specified—
 - (i) the offender must abstain from consuming alcohol throughout a specified period, or
 - (ii) the offender must not consume alcohol so that at any time during a specified period there is more than a specified level of alcohol in the offender’s body, and
 - (b) that the offender must, for the purpose of ascertaining whether the offender is complying with provision under paragraph (a), submit during the specified period to monitoring in accordance with specified arrangements.
- s.212A(2) - a period specified under subsection (1)(a) must not exceed 120 days.
- s.212A(3) - if the Secretary of State by order prescribes a minimum period for the purposes of subsection (1)(a), a period specified under that provision must be at least as long as the period prescribed.
- s.212A(4) - the level of alcohol specified under subsection (1)(a)(ii) must be that prescribed by the Secretary of State by order for the purposes of that provision (and a requirement under that provision may not be imposed unless such an order is in force).
- s.212A(5) - an order under subsection (4) may prescribe a level—
- (a) by reference to the proportion of alcohol in any one or more of an offender’s breath, blood, urine or sweat, or
 - (b) by some other means.
- s.212A(6) - the arrangements for monitoring specified under subsection (1)(b) must be consistent with those prescribed by the Secretary of State by order (and an alcohol abstinence and monitoring requirement may not be imposed unless such an order is in force).
- s.212A(7) - an order under subsection (6) may in particular prescribe—
- (a) arrangements for monitoring by electronic means;
 - (b) arrangements for monitoring by other means of testing.
- s.212A(8) - a court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met.
- s.212A(9) - the first condition is that—
- (a) the consumption of alcohol by the offender is an element of the offence for which the order is to be imposed or an associated offence, or

⁷⁵⁰ Commencement: 31 July 2014, in relation to the south London local justice area only, for a period of 12 months from the commencement date, SI 2014/1777 art.2, 3 and 4, and LASPOA 2012 s.76.

- (b) the court is satisfied that the consumption of alcohol by the offender was a factor that contributed to the commission of that offence or an associated offence.

s.212A(10) - the second condition is that the court is satisfied that the offender is not dependent on alcohol.

s.212A(11) - the third condition is that the court does not include an alcohol treatment requirement in the order.

s.212A(12) - the fourth condition is that the court has been notified by the Secretary of State that arrangements for monitoring of the kind to be specified are available in the local justice area to be specified.

s.212A(13) - in this section—

“alcohol” includes anything containing alcohol;

“specified”, in relation to a relevant order, means specified in the order.

Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription of Arrangement for Monitoring) Order 2014 (SI 2014/1787)

art.2(b) - the method for the purposes of s.212A(6) is transdermal electronic tag

CJA 2003 s.213 [repealed on 1 February 2015]: Supervision requirement

Note: This requirement was repealed on 1 February 2015 subject to saving provisions specified in ORA 2014 s.21 and Sch.7 para.7 which preserve the requirement for offences committed prior to the commencement date.

CJA 2003 s.214⁷⁵¹: Attendance centre requirement

Note: This section was amended by the ORA 2014. The amendments are of no effect in relation to offences committed prior to the commencement date. See ORA 2014 s.21 and Sch.7 para.7 for details.

s.214(1) - in this Part “attendance centre requirement”, in relation to a relevant order, means a requirement that the offender must attend at an attendance centre for such number of hours as may be specified in the relevant order.

s.214(2) - the aggregate number of hours for which the offender may be required to attend at an attendance centre must not be less than 12 or more than 36.

s.214(3) - the court may not impose an attendance centre requirement unless the court is satisfied that an attendance centre which is available for persons of the offender’s description is reasonably accessible to the offender concerned, having regard to the means of access available to him and any other circumstances.

s.214(3A) - the attendance centre at which the offender is required to attend is to be notified to the offender by the responsible officer from time to time.

s.214(3B) - when choosing an attendance centre, the responsible officer must consider—

⁷⁵¹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.14 otherwise.

- (a) the accessibility of the attendance centre to the offender, having regard to the means of access available to the offender and any other circumstances, and
 - (b) the description of persons for whom it is available.
- s.214(4) - the first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.
- s.214(5) - the subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances.
- s.214(6) - an offender may not be required under this section to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.
- s.214(7) - a requirement to attend at an attendance centre for any period on any occasion operates as a requirement, during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere.

CJA 2003 s.215⁷⁵²: Electronic monitoring requirement

Note: There is a pilot being conducted in the south London justice area concerning alcohol abstinence (see s.212A above). LASPOA 2012 s.76 inserted s.212A for that purpose and with it made a number of consequential amendments. See CJA 2003 s.177(1)(ja) and 212A, LASPOA 2012 s.76(1), and SI 2014/1777 for details of the pilot. This pilot was extended to a total period of 18 months to run from 31 July 2014, by SI 2015/1480 with a consequential amendment made by SI 2015/1482.

- s.215(1) - in this Part “*electronic monitoring requirement*”, in relation to a relevant order, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period specified in the order, or determined by the responsible officer in accordance with the relevant order.
- s.215(2) - where—
 - (a) it is proposed to include in a relevant order a requirement for securing electronic monitoring in accordance with this section, but
 - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,the requirement may not be included in the order without that person's consent.
- s.215(3) - a relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State.

⁷⁵² Commencement: Section 215(1)-(2)(b) and (4)-(4)(c) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.15 otherwise. Section 215(3) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 7 March 2005, SI2005/373 art.2(2)(g) otherwise.

- s.215(4) - where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify—
- (a) the offender,
 - (b) the person responsible for the monitoring, and
 - (c) any person falling within subsection (2)(b),
- of the time when the period is to begin.

3.3.2.1.3 Obligations of responsible officer/offender/court under a community order

Responsible officer

CJA 2003 s.198⁷⁵³: Duties of the responsible officer

- s.198(1) - where a relevant order has effect, it is the duty of the responsible officer—
- (a) to make any arrangements that are necessary in connection with the requirements imposed by the order, and
 - (b) to promote the offender's compliance with those requirements

Defendant

CJA 2003 s.200⁷⁵⁴: Obligations of person subject to unpaid work requirement

- s.200(1) - an offender in respect of whom an unpaid work requirement of a relevant order is in force must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer.
- s.200(2) - subject to paragraph 20 of Schedule 8 and paragraph 18 of Schedule 12 (power to extend order), the work required to be performed under an unpaid work requirement of a community order or a suspended sentence order must be performed during a period of twelve months.
- s.200(3) - unless revoked, a community order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.
- s.200(4) - where an unpaid work requirement is imposed by a suspended sentence order, the supervision period as defined by section 189(1A) continues until the offender has worked under the order for the number of hours specified in the order, but does not continue beyond the end of the operational period as defined by section 189(1)(a).

⁷⁵³ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.12 otherwise.

⁷⁵⁴ Commencement: Section 200(1) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. Section 200(2)-(4) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

Court

CJA 2003 s.216⁷⁵⁵: Requirement to specify local justice area in order

s.216(1) - a community order or suspended sentence order must specify the local justice area in which the offender resides or will reside.

CJA 2003 s.217⁷⁵⁶: Requirement to avoid conflict with religious beliefs etc.

s.217(1) - the court must ensure, as far as practicable, that any requirement imposed by a relevant order is such as to avoid—

- (a) any conflict with the offender's religious beliefs or with the requirements of any other relevant order to which he may be subject; and
- (b) any interference with the times, if any, at which he normally works or attends any educational establishment.

s.217(2) - the responsible officer in relation to an offender to whom a relevant order relates must ensure, as far as practicable, that any instruction given or requirement imposed by him in pursuance of the order is such as to avoid the conflict or interference mentioned in subsection (1).

s.217(3) - the Secretary of State may by order provide that subsection (1) or (2) is to have effect with such additional restrictions as may be specified in the order.

CJA 2003 s.218⁷⁵⁷: Availability of arrangements in local area

s.218(1) - a court may not include an unpaid work requirement in a relevant order unless the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which he resides or will reside.

s.218(3) - a court may not include an attendance centre requirement in a relevant order in respect of an offender unless the court has been notified by the Secretary of State that an attendance centre is available for persons of his description.

s.218(4) - a court may not include an electronic monitoring requirement in a relevant order in respect of an offender unless the court—

- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant area (see subsections (5) to (7)), and
- (b) is satisfied that the necessary provision can be made under those arrangements.

⁷⁵⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16. The section was amended and subsection (2) repealed.

⁷⁵⁶ Commencement: Section 217(1) and (2) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16 otherwise. Section 217(3) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 7 March 2005, SI 2005/373 art.2(2)(h) otherwise.

⁷⁵⁷ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16 otherwise.

- s.218(5) - in the case of a relevant order containing a curfew requirement or an exclusion requirement, the relevant area for the purposes of subsection (4) is the area in which the place proposed to be specified in the order is situated.
- s.218(6) - in the case of a relevant order containing an attendance centre requirement, the relevant area for the purposes of subsection (4) is an area in which there is an attendance centre which is available for persons of the offender's description and which the court is satisfied is reasonably accessible to the offender.
- s.218(7) - in the case of any other relevant order, the relevant area for the purposes of subsection (4) is the local justice area proposed to be specified in the order.
- s.218(8) - in subsection (5) "*place*", in relation to an exclusion requirement, has the same meaning as in section 205.

CJA 2003 s.219⁷⁵⁸: Provision of copies of relevant orders

- s.219(1) - the court by which any relevant order is made must forthwith provide copies of the order—
 - (a) to the offender,
 - (b) to the responsible officer,
 - (c) to an officer who is acting at the court and is an officer of a provider of probation services that is a public sector provider, and
 - (d) where the court specifies a local justice area in which the court making the order does not act, to a provider of probation services that is a public sector provider and is acting in that area.
- s.219(2) - where a relevant order imposes any requirement specified in the first column of Schedule 14, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Schedule with a copy of so much of the order as relates to that requirement.
- s.219(3) - where a relevant order specifies a local justice area in which the court making the order does not act, the court making the order must provide to the magistrates's court acting in that area—
 - (a) a copy of the order, and
 - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.
- s.219(4) - in subsection (1)(c) and (d), "*public sector provider*" means—
 - (a) a probation trust or other public body, or
 - (b) the Secretary of State.

⁷⁵⁸ Commencement: Section 219(1)(a), (b) and (d), (2) and (3) in force on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16 otherwise. Section 219(1)(c) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16. Section 219(4) was inserted on 1 June 2014 by ORA 2014 Sch.4 para.12(3), SI 2014/1287 art.2(d).

CJA 2003 Sch.14⁷⁵⁹: Persons to whom copies of requirements to be provided in particular cases

The requirement	The person to whom a copy must be provided
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected.
A residence requirement relating to residence in an institution.	The person in charge of the institution.
A mental health treatment requirement.	The person specified under section 207(2)(c) or the person in charge of the institution or place specified under section 207(2)(a) or (b).
A drug rehabilitation requirement.	The person in charge of the institution or place specified under section 209(4)(a) or (b).
An alcohol treatment requirement.	The person specified under section 212(5)(c) or the person in charge of the institution or place specified under section 212(5)(a) or (b).
An electronic monitoring requirement.	Any person who by virtue of section 215(3) will be responsible for the electronic monitoring.
	Any person by virtue of whose consent the requirement is included in the order.

CJA 2003 s.220⁷⁶⁰: Duty of offender to keep in touch with responsible officer

Note: This section was amended by ORA 2014 s.18(3). The amendment repealed the requirement that the defendant had to notify the officer of any change of address which was consequent on the insertion of s.220A (below). The repeal does not apply to offences committed prior to 1 February 2015, see ORA 2014 s.21 and Sch.7 para.7.

- s.220(1) - an offender in respect of whom a community order or a suspended sentence order is in force—
- (a) must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer.
- s.220(2) - the obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the order.

⁷⁵⁹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.36 otherwise. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 Sch.2 para.5.

⁷⁶⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16

CJA 2003 s.220A⁷⁶¹: Duty to obtain permission prior to change of address

- s.220A(1) - an offender in respect of whom a relevant order is in force must not change residence without permission given in accordance with this section by—
- (a) the responsible officer, or
 - (b) a court.
- s.220A(2) - the appropriate court may, on an application by the offender, give permission in a case in which the responsible officer has refused.
- s.220A(3) - a court may also give permission in any proceedings before it under Schedule 8 or 12 (breach or amendment of orders etc).
- s.220A(4) - the grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
- (a) is likely to prevent the offender complying with a requirement imposed by the relevant order, or
 - (b) would hinder the offender's rehabilitation.
- s.220A(5) - the obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the relevant order.
- s.220A(6) - this section does not apply if the relevant order includes a residence requirement imposed under section 206.
- s.220A(7) - for cases in which a relevant order has to be amended because of permission given under this section, see paragraph 16 of Schedule 8 and paragraph 14 of Schedule 12 (amendment to reflect change in local justice area).
- s.220A(8) - in this section "*the appropriate court*" has the same meaning as in paragraph 16 of Schedule 8 or paragraph 14 of Schedule 12.

3.3.2.1.4 Reviews of community orders

Note: See also the section above dealing with reviews of drug rehabilitation requirements in the "Requirements" section.

CJA 2003 s.178⁷⁶²: Power to provide for review of community orders

- s.178(1) - the Secretary of State may by order—
- (a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,
 - (b) enable a court to amend a community order so as to include or remove a provision for review by a court, and
 - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.

⁷⁶¹ Commencement: 1 February 2015, ORA 2014 s.18(2), SI 2015/40. The insertion is of no effect in relation to offences committed prior to the commencement date, ORA 2014 s.21 and Sch.7 para.7.

⁷⁶² Commencement: 7 March 2005, SI 2005/373 art.2(2)(d)

s.178(2) - an order under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 191 and 192 in relation to suspended sentence orders.

s.178(3) - an order under this section may repeal or amend any provision of this Part.

Note: Community Order (Review by Specified Courts in Liverpool and Salford) Order 2006 (SI 2006/1006): Made provision for the review of community orders in the above justice area. This SI has since been revoked, see SI 2007/2162 art.5.

Community Order (Review by Specified Courts) Order 2007 (SI 2007/2162)⁷⁶³

art.2(1) - subject to paragraph (3) a court specified in paragraph (2) may—

- (a) when making a community order provide for that order to be reviewed periodically by that or another court specified in paragraph (2);
- (b) amend a community order so as to include or remove a provision for review by that or another court specified in paragraph (2).

art.2(2) - the courts referred to in paragraph (1) are—

- (a) a magistrates' court sitting at Birmingham Magistrates' Court, Victoria Law Courts, Corporation Street, Birmingham, B4 6QA,
- (b) a magistrates' court sitting at Bradford Magistrates' Court, The Tyrls, Bradford, BD1 1JL,
- (c) a magistrates' court sitting at the City of Salford Magistrates' Court, Bexley Square, Salford, M3 6DJ,
- (d) a magistrates' court sitting at Enfield Magistrates' Court, The Court House, Lordship Lane, Tottenham, London, N17 6RT,
- (e) a magistrates' court sitting at Haringey Magistrates' Court, Highgate Court House, Bishops Road, Archway Road, Highgate, London N6 4HS,
- (f) a magistrates' court sitting at Kingston-upon-Hull Magistrates' Court, The Law Courts, Market Place, Kingston-upon-Hull, HU1 2AD,
- (g) a magistrates' court sitting at Leicester Magistrates' Court, 15 Pocklington Walk, Leicester, LE1 6BT,
- (h) a magistrates' court sitting at Merthyr Tydfil Magistrates' Court, Law Courts, Merthyr Tydfil, CF47 8BU,
- (i) a magistrates' court sitting at North Liverpool Community Justice Centre, Boundary Street, Liverpool, L5 2QD, or the Crown Court sitting at that address,
- (j) a magistrates' court sitting at Nottingham Magistrates' Court, Carrington Street, Nottingham, NG2 1EE,
- (k) a magistrates' court sitting at Plymouth Magistrates' Court, St. Andrews Street, Plymouth, PL1 2DP,
- (l) a magistrates' court sitting at South Western Magistrates' Court, 176a Lavender Hill, Battersea, London, SW11 1JU,
- (m) a magistrates' court sitting at Stratford Magistrates' Court, The Court House, 389-397 High Street, Stratford, London, E15 4SB, and

⁷⁶³ Commencement: 22 July 2007, SI 2007/2162 art.art.1(1)

- (n) a magistrates' court sitting at Teesside Magistrates' Court, Teesside Law Courts, Victoria Square, Middlesbrough, TS1 2AS.
- art.2(3) - nothing in this article shall enable a magistrates' court to include provision for review by the Crown Court when making a community order.
- art.3(1) - subject to paragraph (2) a community order providing for review by a court may—
- (a) provide for the order to be reviewed periodically at specified intervals;
 - (b) provide for each review to be made, subject to article 4(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 requirements of the order.
- art.3(2) - where a community order imposes a drug rehabilitation requirement under section 177(1) (i) of the 2003 Act, provision for review of that requirement shall be made in accordance with section 210 of the 2003 Act.
- art.3(3) - in this article references to the court responsible for the order are references to the court specified in the community order as responsible for reviewing the order.
- art.4(1) - At a review hearing (within the meaning of article 3(1)) the court may, after considering any responsible officer's report prepared pursuant to that paragraph, amend the requirements of the community order, or any provision of the order which relates to those requirements.
- art.4(2) - the court—
- (a) may not amend 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 the order so as to make a requirement more onerous unless the offender expresses his willingness to comply with the requirement as amended;
 - (c) may not amend a mental health treatment requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended;
 - (d) may, subject to sub-paragraph (b), extend the duration of a particular requirement (subject to any limit imposed by Chapter 4 of Part 12 of the 2003 Act) but may not extend the date specified under section 177(5) of the 2003 Act by which all the requirements in the order must have been complied with; and
 - (e) except with the consent of the offender, may not amend the order while an appeal against that order is pending.
- art.4(3) - for the purposes of paragraph (2)(a)—
- (a) a requirement falling within any paragraph of section 177(1) of the 2003 Act is of the same kind as any other requirement falling within that paragraph; and
 - (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 177(1) to which it relates.
- art.4(4) - if before a review hearing is held at any review the court, after considering any responsible officer's report prepared pursuant to article 3(1), is of the opinion that the offender's progress in complying with the 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 any such report, is of that opinion, it may amend the community order so as to provide for each subsequent review to be held without a hearing.

- art.4(5) - if at a review held without a hearing the court, after considering any responsible officer's report prepared pursuant to article 3(1), 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.
- art.4(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 requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 9 or 10 of Schedule 8 to the 2003 Act.
- art.4(7) - at a review hearing the court may amend the community order so as to vary the intervals specified under article 3(1)(a).
- art.4(8) - in this article, 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.
- art.5 - the Community Order (Review by Specified Courts in Liverpool and Salford) Order 2006 SI 2006/1006 is hereby revoked

3.3.2.1.5 Breach, revocation and amendment

General

CJA 2003 s.179⁷⁶⁴: Breach, revocation and amendment of community orders

- s.179 - Schedule 8 (which relates to failures to comply with the requirements of community orders and to the revocation or amendment of such orders) shall have effect

CJA 2003 Sch.8⁷⁶⁵: Breach, revocation and amendment of community orders

- para.1 - in this Schedule—

"the offender", in relation to a community order, means the person in respect of whom the order is made;

"the local justice area concerned", in relation to a community order, means the local justice area for the time being specified in the order ;

"the responsible officer" has the meaning given by section 197.

⁷⁶⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.8. The commencement has no effect in relation to offences committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

⁷⁶⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect in relation to an offence committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

para.1A - in this Schedule “*enforcement officer*” means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

para.1A(2) - an enforcement officer must be an officer of a provider of probation services that is a public sector provider.

para.1A(3) - in sub-paragraph (2) “*public sector provider*” means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

para.2 - in this Schedule—

- (a) references to a drug rehabilitation requirement of a community order being subject to review are references to that requirement being subject to review in accordance with section 210(1)(b);
- (b) references to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review are to be construed in accordance with section 210(2).

para.3 - for the purposes of this Schedule—

- (a) a requirement falling within any paragraph of section 177(1) is of the same kind as any other requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 177(1) to which it relates.

para.4 - where a community order has been made on appeal, it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

Breach

para.5(1) - if the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the requirements of a community order, the officer must give him a warning under this paragraph unless—

- (a) the offender has within the previous twelve months been given a warning under this paragraph in relation to a failure to comply with any of the requirements of the order, or
- (b) the officer refers the matter to an enforcement officer (see paragraph 6A).

para.5(2) - a warning under this paragraph must—

- (a) describe the circumstances of the failure,
- (b) state that the failure is unacceptable, and
- (c) inform the offender that, if within the next twelve months he again fails to comply with any requirement of the order, he will be liable to be brought before a court.

para.5(3) - the responsible officer must, as soon as practicable after the warning has been given, record that fact.

para.5(4) - in relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates’ court, the reference in sub-paragraph (1)(b) to a justice of the peace is to be read as a reference to the Crown Court.

para.6(1) - if—

- (a) the responsible officer has given a warning under paragraph 5 to the offender in respect of a community order, and
- (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the requirements of the order,

the officer must refer the matter to an enforcement officer (see paragraph 6A).

para.6(2) - in relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

para.6A⁷⁶⁶(1) - where a matter is referred to an enforcement officer under paragraph 5(1)(b) or 6(1), it is the duty of the enforcement officer to consider the case and, where appropriate, to cause an information to be laid before a justice of the peace in respect of the offender's failure to comply with the requirement.

para.6A(2) - in relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

para.7(1) - this paragraph applies to—

- (a) a community order made by a magistrates' court, or
- (b) any community order which was made by the Crown Court and includes a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court.

para.7(2) - if at any time while a community order to which this paragraph applies is in force it appears on information to a justice of the peace that the offender has failed to comply with any of the requirements of the order, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
- (b) if the information is in writing and on oath, issue a warrant for his arrest.

para.7(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

- (a) in the case of a community order imposing a drug rehabilitation requirement which is subject to review, before the magistrates' court responsible for the order, or
- (b) in any other case, before a magistrates' court acting in the local justice area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned.

⁷⁶⁶ Inserted by ORA 2014 Sch.4 para.6, in force 1 June 2014.

- para.7(4) - where a summons issued under sub-paragraph (2)(a) requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender.
- para.8(1) - this paragraph applies to a community order made by the Crown Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court.
- para.8(2) - if at any time while a community order to which this paragraph applies is in force it appears on information to the Crown Court that the offender has failed to comply with any of the requirements of the order, the Crown Court may—
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- para.8(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.
- para.8(4) - where a summons issued under sub-paragraph (2)(a) requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender.
- para.9(1) - If it is proved to the satisfaction of a magistrates' court before which an offender appears or is brought under paragraph 7 that he has failed without reasonable excuse to comply with any of the requirements of the community order, the court must deal with him in respect of the failure in any one of the following ways—
- (a) by amending the terms of the community order so as to impose more onerous requirements which the court could include if it were then making the order;
 - (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
 - (b) where the community order was made by a magistrates' court, by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence;
 - (c) where—
 - (i) the community order was made by a magistrates' court,
 - (ii) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (iii) the offender is aged 18 or over, and
 - (iv) the offender has wilfully and persistently failed to comply with the requirements of the order,by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months
- para.9(2) - in dealing with an offender under sub-paragraph (1), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order.
- para.9(3) - in dealing with an offender under sub-paragraph (1)(a), the court may extend the duration of particular requirements (subject to any limit imposed by Chapter 4 of Part 12 of this Act) [but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB).

para.9(3ZA) - a date substituted under sub-paragraph (3)—

- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
- (b) subject to that, may fall more than three years after the date of the order.

para.9(3ZB) - the power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power in paragraph 10(3) to substitute a date has previously been exercised in relation to that order.

para.9(3ZC) - a date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section 177(5).

para.9(3A) - where—

- (a) the court is dealing with the offender under sub-paragraph (1)(a), and
- (b) the community order does not contain an unpaid work requirement,

section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.9(3B) - a fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.9(4) - in dealing with an offender under sub-paragraph (1)(b), the court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the community order, impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

para.9(5) - where a magistrates’ court deals with an offender under sub-paragraph (1)(b) or (c), it must revoke the community order if it is still in force.

para.9(6) - where a community order was made by the Crown Court and a magistrates’ court would (apart from this sub-paragraph) be required to deal with the offender under subparagraph (1)(a), (aa), (b) or (c), it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.9(7) - a magistrates’ court which deals with an offender’s case under subparagraph (6) must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of the community order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

para.9(8) - a person sentenced under sub-paragraph (1)(b) or (c) for an offence may appeal to the Crown Court against—

- (a) the sentence, and
- (b) an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when imposing that sentence.

para.10(1) - where under paragraph 8 or by virtue of paragraph 9(6) an offender appears or is brought before the Crown Court and it is proved to the satisfaction of that court that he

has failed without reasonable excuse to comply with any of the requirements of the community order, the Crown Court must deal with him in respect of the failure in any one of the following ways—

- (a) by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could impose if it were then making the order;
- (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
- (b) by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (c) where—
 - (i) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (ii) the offender is aged 18 or over,
 - (iii) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months.

para.10(2) - in dealing with an offender under sub-paragraph (1), the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order.

para.10(3) - in dealing with an offender under sub-paragraph (1)(a), the court may extend the duration of particular requirements (subject to any limit imposed by Chapter 4 of Part 12 of this Act) [but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB).

para.10(3ZA) - a date substituted under sub-paragraph (3)—

- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
- (b) subject to that, may fall more than three years after the date of the order.

para.10(3ZB) - the power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power under paragraph 9(3) to substitute a date has previously been exercised in relation to that order.

(3ZC) - A date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section section 177(5).

para.10(3A) - where—

- (a) the court is dealing with the offender under sub-paragraph (1)(a), and
- (b) the community order does not contain an unpaid work requirement,

section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.10(3B) - a fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

- para.10(4) - in dealing with an offender under sub-paragraph (1)(b), the Crown Court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the community order, impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).
- para.10(5) - where the Crown Court deals with an offender under sub-paragraph (1)(b) or (c), it must revoke the community order if it is still in force.
- para.10(6) - in proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the requirements of the community order is to be determined by the court and not by the verdict of a jury.
- para.11(1) - an offender who is required by any of the following requirements of a community order—
- (a) a mental health treatment requirement,
 - (b) a drug rehabilitation requirement, or
 - (c) an alcohol treatment requirement,
- to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for the purposes of paragraph 9 or 10 as having failed to comply with that requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- para.11(2) - a court may not under paragraph 9(1)(a) or 10(1)(a) 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.
- para.11A(1) - the Secretary of State may by order amend any sum for the time being specified in paragraph 9(1)(aa) or 10(1)(aa).
- para.11A(2) - the power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- para.11A(3) - in sub-paragraph (2), “*the relevant date*” means—
- (a) if the sum specified in paragraph 9(1)(aa) or 10(1)(aa) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
 - (b) otherwise, the date on which section 67 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.
- para.11A(4) - an order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any community order made in respect of an offence committed before the fine amendment order comes into force.

Note: The “offence” mentioned in para.11A(4) must mean the original offence for which the community order was imposed.

Revocation of orders

- para.13(1) - this paragraph applies where a community order, other than an order made by the Crown Court and falling within paragraph 14(1)(a), is in force and on the application of

the offender or an officer of a provider of probation services it appears to the appropriate magistrates' court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) for the order to be revoked, or
- (b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.

para.13(2) - the appropriate magistrates' court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.

para.13(3) - the circumstances in which a community order may be revoked under subparagraph (2) include the offender's making good progress or his responding satisfactorily to supervision or treatment (as the case requires).

para.13(4) - in dealing with an offender under sub-paragraph (2)(b), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order.

para.13(5) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

para.13(6) - where a magistrates' court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

para.13(7) - in this paragraph "*the appropriate magistrates' court*" means—

- (a) in the case of an order imposing a drug rehabilitation requirement which is subject to review, the magistrates' court responsible for the order, and
- (b) in the case of any other community order, a magistrates' court acting in the local justice area concerned.

para.14(1) - this paragraph applies where—

- (a) there is in force a community order made by the Crown Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, and
- (b) the offender or an officer of a provider of probation services applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made.

para.14(2) - if it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and

- (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.14(3) - the circumstances in which a community order may be revoked under sub-paragraph (2) include the offender's making good progress or his responding satisfactorily to supervision or treatment (as the case requires).

para.14(4) - in dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the requirements of the order.

para.14(5) - where the Crown Court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

Amendment of the order

para.16(1) - this paragraph applies where at any time while a community order is in force in respect of an offender—

- (a) the offender is given permission under section 220A to change residence, and
- (b) the local justice area in which the new residence is situated ("the new local justice area") is different from the local justice area specified in the order.

para.16(2) - if the permission is given by a court, the court must amend the order to specify the new local justice area.

para.16(3) - the court may not under this paragraph amend a community order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area concerned unless, in accordance with paragraph 17, it either—

- (a) cancels those requirements, or
- (b) substitutes for those requirements other requirements which can be complied with if the offender ceases to reside in that area.

para.16(4) - in this paragraph "*the appropriate court*" means—

- (a) in relation to a community order imposing a drug rehabilitation requirement which is subject to review, the court responsible for the order,
- (b) in relation to a community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the Crown Court, and
- (c) in relation to any other community order, a magistrates' court acting in the local justice area specified in the order.

para.16A(1) - this paragraph applies where at any time while a community order is in force in respect of an offender—

- (a) a court amends the order,
- (b) the order as amended includes a residence requirement requiring the offender to reside at a specified place, and
- (c) the local justice area in which that place is situated ("the new local justice area") is different from the local justice area specified in the order.

para.16A(2) - the court must amend the order to specify the new local justice area.

para.17(1) - the appropriate court may, on the application of the offender or an officer of a provider of probation services, by order amend a community order—

- (a) by cancelling any of the requirements of the order, or
- (b) by replacing any of those requirements with a requirement of the same kind, which the court could include if it were then making the order.

para.17(2) - the court may not under this paragraph 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.

para.17(3) - if the offender fails to express his willingness to comply with a mental health treatment requirement, drug rehabilitation requirement or alcohol treatment requirement as proposed to be amended by the court under this paragraph, the court may—

- (a) revoke the community order, and
- (b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.17(4) - in dealing with the offender under sub-paragraph (3)(b), the court—

- (a) must take into account the extent to which the offender has complied with the requirements of the order, and
- (b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

para.17(6) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 16.

para.18(1) - where the medical practitioner or other person by whom or under whose direction an offender is, in pursuance of any requirement to which this subparagraph applies, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol—

- (a) is of the opinion mentioned in sub-paragraph (3), or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he must make a report in writing to that effect to the responsible officer and that officer must [cause an application to be made] under paragraph 17 to the appropriate court for the variation or cancellation of the requirement.

para.18(2) - the requirements to which sub-paragraph (1) applies are—

- (a) a mental health treatment requirement,
- (b) a drug rehabilitation requirement, and
- (c) an alcohol treatment requirement.

para.18(3) - the opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order,
- (b) that the offender needs different treatment,
- (c) that the offender is not susceptible to treatment, or

(d) that the offender does not require further treatment.

para.18(4) - in this paragraph "*the appropriate court*" has the same meaning as in paragraph 16.

para.19 - where an officer of a provider of probation services is of the opinion that a community order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each subsequent periodic review (required by section 211) to be made without a hearing instead of at a review hearing, or vice versa, he must apply under paragraph 17 to the court responsible for the order for the variation of the order.

para.19A(1) - the appropriate court may, on the application of the offender or an officer of a provider of probation services, amend a community order by substituting a later date for that specified under section 177(5).

para.19(2) - a date substituted under sub-paragraph (1)—

- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
- (b) subject to that, may fall more than three years after the date of the order.

para.19(3) - the power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.

para.19(4) - a date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under section 177(5).

para.19(5) - in this paragraph "*the appropriate court*" has the same meaning as in paragraph 16.

para.20(1) - where—

- (a) a community order imposing an unpaid work requirement is in force in respect of any offender, and
- (b) on the application of the offender or an officer of a provider of probation services, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may, in relation to the order, extend the period of twelve months specified in section 200(2).

para.20(2) - in this paragraph "*the appropriate court*" has the same meaning as in paragraph 16.

Powers of courts following subsequent conviction: Magistrates' Court

para.21(1) - this paragraph applies where—

- (a) an offender in respect of whom a community order made by a magistrates' court is in force is convicted of an offence by a magistrates' court, and
- (b) it appears to the court that it would be in the interests of justice to exercise its powers under this paragraph, having regard to circumstances which have arisen since the community order was made.

para.21(2) - the magistrates' court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and

- (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.21(3) - in dealing with an offender under sub-paragraph (2)(b), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order.

para.21(4) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

para.22(1) - where an offender in respect of whom a community order made by the Crown Court is in force is convicted of an offence by a magistrates' court, the magistrates' court may commit the offender in custody or release him on bail until he can be brought before the Crown Court.

para.22(2) - where the magistrates' court deals with an offender's case under subparagraph (1), it must send to the Crown Court such particulars of the case as may be desirable.

Powers of courts following subsequent conviction: Crown' Court

para.23(1) - this paragraph applies where—

- (a) an offender in respect of whom a community order is in force—
 - (i) is convicted of an offence by the Crown Court, or
 - (ii) is brought or appears before the Crown Court by virtue of paragraph 22 or having been committed by the magistrates' court to the Crown Court for sentence, and
- (b) it appears to the Crown Court that it would be in the interests of justice to exercise its powers under this paragraph, having regard to circumstances which have arisen since the community order was made.

para.23(2) - the Crown Court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.23(3) - in dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order.

Note: See also Criminal Appeal Act 1968 s.10⁷⁶⁷ (2) which provides a right of appeal against sentence where an offender is dealt with by the Crown Court, otherwise than on appeal from the magistrates' court, for a summary conviction having been made the subject of a community order and is subsequently brought before the Crown Court to be further dealt with for the offence.

⁷⁶⁷ As amended by CJA 2003 Sch.32 para.8, 4 April 2005. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 Sch.2 para.5.

Supplementary

para.24(1) - No application may be made under paragraph 13, 17 or 20, while an appeal against the community order is pending.

para.24(2) - sub-paragraph (1) does not apply to an application under paragraph 17 which—

- (a) relates to a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement, and
- (b) is made by an officer of a provider of probation services with the consent of the offender.

para.25(1) - subject to sub-paragraph (2), where a court proposes to exercise its powers under Part 4 or 5 of this Schedule, otherwise than on the application of the offender, the court—

- (a) must summon him to appear before the court, and
- (b) if he does not appear in answer to the summons, may issue a warrant for his arrest.

para.25(2) - this paragraph does not apply to an order cancelling a requirement of a community order or reducing the period of any requirement, or substituting a new local justice area or a new place for the one specified in the order.

para.25A(1) - This paragraph applies to any hearing relating to an offender held by a magistrates' court in any proceedings under this Schedule.

para.25A(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.25A(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.25A(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, it must not resume the hearing unless it is satisfied that the offender and any officer of a provider of probation services who the court thinks has an interest in the proceedings have had adequate notice of the time and place for the resumed hearing.

para.25A(5) - the powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

para.25A(6) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

para.26 - Paragraphs 9(1)(a), 10(1)(a) and 17(1)(b) have effect subject to the provisions mentioned in subsection (2) of section 177, and to subsections (3) and (6) of that section.

para.27(1) - on the making under this Schedule of an order revoking or amending a community order, the proper officer of the court must—

- (a) provide copies of the revoking or amending order to the offender and the responsible officer,
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to—
 - (i) a provider of probation services that is a public sector provider operating in that area, and
 - (ii) the magistrates' court acting in that area,
- (c) in the case of an amending order which imposes or amends a requirement specified in the first column of Schedule 14, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Schedule, and
- (d) where the court acts in a local justice area other than the one specified in the order prior to the revocation or amendment, provide a copy of the revoking or amending order to a magistrates' court acting in the area so specified.

para.27(2) - where under sub-paragraph (1)(b) the proper officer of the court provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

para.27(3) - in this paragraph "*proper officer*" means—

- (a) in relation to a magistrates' court, the designated officer for the court; and
- (b) in relation to the Crown Court, the appropriate officer.

para.27(4) - in this paragraph "*public sector provider*" means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

3.3.2.1.6 Powers of the Secretary of State

CJA 2003 s.221⁷⁶⁸: Provision of attendance centres

s.221(1) - the Secretary of State may continue to provide attendance centres.

para.221(2) - in this Part "*attendance centre*" means a place at which offenders aged under 25 may be required to attend and be given under supervision appropriate occupation or instruction in pursuance of—

- (a) attendance centre requirements of relevant orders, or

⁷⁶⁸ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.17 otherwise.

- (aa) attendance centre requirements of youth rehabilitation orders, within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008,
- (b) attendance centre orders under section 60 of the Sentencing Act,
- (c) default orders under section 300 of this Act, or
- (d) youth default orders under section 39 of the Criminal Justice and Immigration Act 2008.

s.221(3) - for the purpose of providing attendance centres, the Secretary of State may make arrangements with any local authority or local policing body for the use of premises of that authority or body

CJA 2003 s.222⁷⁶⁹: Rules

s.222(1) - the Secretary of State may make rules for regulating—

- (a) the supervision of persons who are subject to relevant orders,
- (b) without prejudice to the generality of paragraph (a), the functions of responsible officers in relation to offenders subject to relevant orders,
- (c) the arrangements to be made by local probation boards or providers of probation services for persons subject to unpaid work requirements to perform work and the performance of such work,
- (d) the provision and carrying on of attendance centres,
- (e) the attendance of persons subject to rehabilitation activity requirements or attendance centre requirements, or to attendance centre requirements imposed by youth rehabilitation orders under Part 1 of the Criminal Justice and Immigration Act 2008, at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records,
- (f) electronic monitoring in pursuance of an electronic monitoring requirement, and
- (g) without prejudice to the generality of paragraph (f), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.

para.222(2) - rules under subsection (1)(c) may, in particular, make provision—

- (a) limiting the number of hours of work to be done by a person on any one day,
- (b) as to the reckoning of hours worked and the keeping of work records, and
- (c) for the payment of travelling and other expenses in connection with the performance of work.

⁷⁶⁹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 7 March 2005, SI 2005/373 art.2(2)(i) otherwise.

CJA 2003 s.223⁷⁷⁰: Power to amend limits

Note: There is a pilot being conducted in the south London justice area concerning alcohol abstinence (see s.212A above). LASPOA 2012 s.76 inserted s.212A for that purpose and with it made a number of consequential amendments. See s.76(7) for the amendments to s.223 in relation to the south London justice area only for a period of 12 months. See SI 2014/1777 art.4(1).

s.223(1) - the Secretary of State may by order amend—

- (a) subsection (2) of section 199 (unpaid work requirement), or
- (b) subsection (2) of section 204 (curfew requirement),

by substituting, for the maximum number of hours for the time being specified in that subsection, such other number of hours as may be specified in the order.

s.223(2) - the Secretary of State may by order amend any of the provisions mentioned in subsection (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.

s.223(3) - those provisions are—

- (a) section 204(3) (curfew requirement);
- (b) section 205(2) (exclusion requirement)

3.3.2.1.7 Transfer of community orders to Scotland or Northern Ireland

Note: CJA 2003 s.180 and Sch.9 deals with the situation where a court is considering making a community order but is satisfied that the offender resides in Scotland or Northern Ireland. The schedule makes modifications to the provisions of the CJA 2003 in relation to community orders

3.3.2.1.8 Miscellaneous provisions

Firearms

FA 1968 s.21⁷⁷¹: Possession of firearms by persons previously convicted of crime

s.21(3) - a person who—

- (a) is the holder of a licence issued under section 53 of the Children and Young Persons Act 1933 or section 57 of the Children and Young Persons (Scotland) Act 1937 (which sections provide for the detention of children and young persons convicted of serious crime, but enable them to be discharged on licence by the Secretary of State); or
- (b) is subject to a recognizance to keep the peace or to be of good behaviour, a condition of which is that he shall not possess, use or carry a firearm, or is subject to a [community order]¹³ containing a requirement that he shall not possess, use or carry a firearm; or

⁷⁷⁰ Commencement: Section 223(1)-(3)(b) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. Section 223(3)(c)-(d) were in force 7 March 2005, SI 2005/373 art.2(2)(j) but have since been repealed, see LASPOA 2012 s.74(3) and 75(2).

⁷⁷¹ Commencement: Section 21(3) and (3ZA) were amended/inserted by CJA 2003 Sch.32 para.12(4), in force 4 April 2005. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

- (c) has, in Scotland, been ordained to find caution a condition of which is that he shall not possess, use or carry a firearm;

shall not, at any time during which he holds the licence or is so subject or has been so ordained, have a firearm or ammunition in his possession.

s.21(3ZA) - in subsection (3)(b) above, “community order” means—

- (a) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, made in England and Wales, or
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).

s.21(3A) - where by section 19 of the Firearms Act (Northern Ireland) 1969, or by any other enactment for the time being in force in Northern Ireland and corresponding to this section, a person is prohibited in Northern Ireland from having a firearm or ammunition in his possession, he shall also be so prohibited in Great Britain at any time when to have it in his possession in Northern Ireland would be a contravention of the said section 19 or corresponding enactment;

s.21(4) - it is an offence for a person to contravene any of the foregoing provisions of this section.

FA 1968 s.52⁷⁷²: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(1) - where a person—

- (a) is convicted of an offence under this Act (other than an offence under section 22(3) or an offence relating specifically to air weapons) or is convicted of a crime for which he is sentenced to imprisonment, or detention in a detention centre or in a young offenders’ institution in Scotland [or is subject to a detention and training order; or
- (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour, a condition of which is that he shall not possess, use or carry a firearm; or
- (c) is subject to a community order containing a requirement that he shall not possess, use or carry a firearm; or
- (d) has, in Scotland, been ordained to find caution a condition of which is that he shall not possess, use or carry a firearm,

the court by or before which he is convicted, or by which the order is made, may make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm certificate or shot gun certificate held by him.

s.52(1A) - in subsection (1)(c) “community order” means—

⁷⁷² Commencement: Section 52(1) and (1A) were amended/inserted by CJA 2003 Sch.32 para.13. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

- (a) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, made in England and Wales, or
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).

Release

CJA 2003 s.246⁷⁷³: Power to release prisoners on licence before required to do so

s.246(1) - subject to subsections (2) to (4), the Secretary of State may—

- (a) release on licence under this section a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period

s.246(4)(d) - subsec.(1) does not apply where (d) the sentence was imposed by virtue of paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 in a case where the prisoner has failed to comply with a curfew requirement of a community order.

Consequential amendments etc.

Note: Schedule 32 contains many consequential amendments relating to community orders.

⁷⁷³ Commencement: Section 246(1) and (4) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19 otherwise.

3.3.3. Youths

3.3.3.1. Youth Rehabilitation Order

3.3.3.1.1 General

Interpretation

CJIA 2008 s.7⁷⁷⁴: YROs: Interpretation

s.7(1) - in this Part, except where the contrary intention appears—

“accommodation provided by or on behalf of a local authority” has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 105 of that Act;

“activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 6 of Schedule 1;

“associated”, in relation to offences, is to be read in accordance with section 161(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

“attendance centre” has the meaning given by section 221(2) of the Criminal Justice Act 2003 (c. 44);

“attendance centre requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 12 of Schedule 1;

“curfew requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 14 of Schedule 1;

“custodial sentence” has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;

“detention and training order” has the same meaning as it has in that Act by virtue of section 163 of that Act;

“drug treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 22 of Schedule 1;

“drug testing requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 23 of Schedule 1;

“education requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 25 of Schedule 1;

“electronic monitoring requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 26 of Schedule 1;

“exclusion requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 15 of Schedule 1;

“extended activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 3 of Schedule 1;

“fostering requirement”, in relation to a youth rehabilitation order with fostering, has the meaning given by paragraph 18 of Schedule 1;

“guardian” has the same meaning as in the Children and Young Persons Act 1933 (c.12);

⁷⁷⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(g)

“intoxicating substance treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 24 of Schedule 1;

“local authority” means—

(a) in relation to England—

- (i) a county council,
- (ii) a district council whose district does not form part of an area that has a county council,
- (iii) a London borough council, or
- (iv) the Common Council of the City of London in its capacity as a local authority, and

(b) in relation to Wales—

- (i) a county council, or
- (ii) a county borough council;

“local authority residence requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 17 of Schedule 1;

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

“mental health treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 20 of Schedule 1;

“programme requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 11 of Schedule 1;

“prohibited activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 13 of Schedule 1;

“residence requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 16 of Schedule 1;

“the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, has the meaning given by section 4;

“supervision requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 9 of Schedule 1;

“unpaid work requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 10 of Schedule 1;

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37);

“youth rehabilitation order” has the meaning given by section 1;

“youth rehabilitation order with fostering” has the meaning given by paragraph 4 of Schedule 1;

“youth rehabilitation order with intensive supervision and surveillance” has the meaning given by paragraph 3 of Schedule 1.

s.7(2) - for the purposes of any provision of this Part which requires the determination of the age of a person by the court, the Secretary of State or a local authority, the person’s age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State or a local authority to be after considering any available evidence.

s.7(3) - any reference in this Part to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders.

- s.7(4) - if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, any reference in this Part (except in paragraphs 4 and 25 of Schedule 1) to the offender's parent or guardian is to be read as a reference to that authority.
- s.7(5) - in subsection (4)—
“*parental responsibility*” has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 3 of that Act, and
“*social services functions*” has the same meaning as it has in the Local Authority Social Services Act 1970 (c. 42) by virtue of section 1A of that Act.

CJIA 2008 s.4⁷⁷⁵: Meaning of “the responsible officer”

- s.4(1) - for the purposes of this Part, “*the responsible officer*”, in relation to an offender to whom a youth rehabilitation order relates, means—
- (a) in a case where the order—
 - (i) imposes a curfew requirement or an exclusion requirement but no other requirement mentioned in section 1(1), and
 - (ii) imposes an electronic monitoring requirement,the person who under paragraph 26(4) of Schedule 1 is responsible for the electronic monitoring required by the order;
 - (b) in a case where the only requirement imposed by the order is an attendance centre requirement, the officer in charge of the attendance centre in question;
 - (c) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Part on the responsible officer.
- s.4(2) - in this section “*qualifying officer*”, in relation to a youth rehabilitation order, means—
- (a) a member of a youth offending team established by a local authority for the time being specified in the order for the purposes of this section, or
 - (b) an officer of a local probation board appointed for or assigned to the local justice area for the time being so specified or (as the case may be) an officer of a provider of probation services acting in the local justice area for the time being so specified.
- s.4(3) - the Secretary of State may by order—
- (a) amend subsections (1) and (2), and
 - (b) make any other amendments of—
 - (i) this Part, or
 - (ii) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) (general provisions about sentencing),that appear to be necessary or expedient in consequence of any amendment made by virtue of paragraph (a).

⁷⁷⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(d)

- s.4(4) - an order under subsection (3) may, in particular, provide for the court to determine which of two or more descriptions of responsible officer is to apply in relation to any youth rehabilitation order.

CJIA 2008 s.8⁷⁷⁶: Isles of Scilly

- s.8 - this Part has effect in relation to the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may by order specify.

Revocation of other youth orders

CJIA 2008 s.6⁷⁷⁷: Abolition of certain youth orders and related amendments

- s.6(1) - Chapters 1, 2, 4 and 5 of Part 4 of (and Schedules 3 and 5 to 7 to) the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (curfew orders, exclusion orders, attendance centre orders, supervision orders and action plan orders) cease to have effect.
- s.6(2) - Part 1 of Schedule 4 makes amendments consequential on provisions of this Part.
- s.6(3) - Part 2 of Schedule 4 makes minor amendments regarding other community orders which are related to the consequential amendments in Part 1 of that Schedule.

When does the order take effect?

CJIA 2008 Sch.1 para.30⁷⁷⁸: Date order is effective etc.

para.30(1) - subject to sub-paragraphs (1A) and (2), a youth rehabilitation order takes effect on the day on which the order is made.

para.30(1A) - a court making a youth rehabilitation order may order that it is to take effect instead on a later date.

para.30(2) - in particular, if a detention and training order is in force in respect of an offender, a court making a youth rehabilitation order in respect of the offender may order that it is to take effect instead—

- (a) when the period of supervision begins in relation to the detention and training order in accordance with section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
- (b) on the expiry of the term of the detention and training order.

para.30(3) - in sub-paragraph (2)—

- (a) the references to a detention and training order include an order made under section 211 of the Armed Forces Act 2006 (c. 52) (detention and training orders made by service courts); and

⁷⁷⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(h)

⁷⁷⁷ Commencement: Pursuant to CJIA 2008 s.153(7): 30 November 2009, section 6(1) save to the extent it abolishes attendance centre orders and section 6(2) and (3) to the extent they relate to the provisions specified in art.2(p), SI 2009/3074 art.2(f). See CJIA 2008 Sch.27 para.1 for transitional provisions. Otherwise not in force.

⁷⁷⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) the reference to section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 includes that provision as applied by section 213(1) of the Armed Forces Act 2006.

para.30(4) - a court must not make a youth rehabilitation order in respect of an offender at a time when—

- (a) another youth rehabilitation order, or
- (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),

is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

para.30(5) - where the earlier order is revoked under sub-paragraph (4), paragraph 24 of Schedule 2 (provision of copies of orders) applies to the revocation as it applies to the revocation of a youth rehabilitation order.

Concurrent and consecutive orders

CJIA 2008 Sch.1 para.31⁷⁷⁹: Concurrent and consecutive orders

para.31(1) - this paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.

para.31(2) - if, in respect of one of the offences, the court makes an order of any of the following kinds—

- (a) a youth rehabilitation order with intensive supervision and surveillance,
- (b) a youth rehabilitation order with fostering, or
- (c) any other youth rehabilitation order,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.

para.31(3) - if the court makes two or more youth rehabilitation orders with intensive supervision and surveillance, or with fostering, both or all of the orders must take effect at the same time (in accordance with paragraph 30(1) or (2)).

para.31(4) - where the court includes requirements of the same kind in two or more youth rehabilitation orders, it must direct, in relation to each requirement of that kind, whether—

- (a) it is to be concurrent with the other requirement or requirements of that kind, or any of them, or
- (b) it and the other requirement or requirements of that kind, or any of them, are to be consecutive.

para.31(5) - but the court may not direct that two or more fostering requirements are to be consecutive.

para.31(6) - where the court directs that two or more requirements of the same kind are to be consecutive—

⁷⁷⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (a) the number of hours, days or months specified in relation to one of them is additional to the number of hours, days, or months specified in relation to the other or others, but
- (b) the aggregate number of hours, days or months specified in relation to both or all of them must not exceed the maximum number which may be specified in relation to any one of them.

para.31(7) - for the purposes of sub-paragraphs (4) and (6), requirements are of the same kind if they fall within the same paragraph of Part 2 of this Schedule.

3.3.3.1.2 Availability and power to order

Youth rehabilitation orders

CJIA 2008 s.1⁷⁸⁰: Youth Rehabilitation Orders

- s.1(1) - where a person aged under 18 is convicted of an offence, the court by or before which the person is convicted may in accordance with Schedule 1 make an order (in this Part referred to as a “*youth rehabilitation order*”) imposing on the person any one or more of the following requirements—
- (a) an activity requirement (see paragraphs 6 to 8 of Schedule 1),
 - (b) a supervision requirement (see paragraph 9 of that Schedule),
 - (c) in a case where the offender is aged 16 or 17 at the time of the conviction, an unpaid work requirement (see paragraph 10 of that Schedule),
 - (d) a programme requirement (see paragraph 11 of that Schedule),
 - (e) an attendance centre requirement (see paragraph 12 of that Schedule),
 - (f) a prohibited activity requirement (see paragraph 13 of that Schedule),
 - (g) a curfew requirement (see paragraph 14 of that Schedule),
 - (h) an exclusion requirement (see paragraph 15 of that Schedule),
 - (i) a residence requirement (see paragraph 16 of that Schedule),
 - (j) a local authority residence requirement (see paragraph 17 of that Schedule),
 - (k) a mental health treatment requirement (see paragraph 20 of that Schedule),
 - (l) a drug treatment requirement (see paragraph 22 of that Schedule),
 - (m) a drug testing requirement (see paragraph 23 of that Schedule),
 - (n) an intoxicating substance treatment requirement (see paragraph 24 of that Schedule), and
 - (o) an education requirement (see paragraph 25 of that Schedule).
- s.1(2) - a youth rehabilitation order—
- (a) may also impose an electronic monitoring requirement (see paragraph 26 of Schedule 1), and

⁷⁸⁰ Commencement: Section 1(5) in force 1 April 2009, SI 2009/860 art.2(1)(a) in so far as it relates to paragraphs 26(5) and 35 of Schedule 1 (Further provision about youth rehabilitation orders). Section 1 in force 30 November 2009, CJIA 2008 s.153(7) and SI 2009/3074 art.2(a) otherwise. The commencement has no effect in relation to offences committed prior to the commencement date, CJIA 2008 Sch.27 para.1(1).

- (b) must do so if paragraph 2 of that Schedule so requires.
- s.1(3) - a youth rehabilitation order may be—
 - (a) a youth rehabilitation order with intensive supervision and surveillance (see paragraph 3 of Schedule 1), or
 - (b) a youth rehabilitation order with fostering (see paragraph 4 of that Schedule).
- s.1(4) - but a court may only make an order mentioned in subsection (3)(a) or (b) if—
 - (a) the court is dealing with the offender for an offence which is punishable with imprisonment,
 - (b) the court 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, but for paragraph 3 or 4 of Schedule 1, a custodial sentence would be appropriate (or, if the offender was aged under 12 at the time of conviction, would be appropriate if the offender had been aged 12), and
 - (c) if the offender was aged under 15 at the time of conviction, the court is of the opinion that the offender is a persistent offender.
- s.1(5) - Schedule 1 makes further provision about youth rehabilitation orders.
- s.1(6) - this section is subject to—
 - (a) sections 148 and 150 of the Criminal Justice Act 2003 (c. 44) (restrictions on community sentences etc.), and
 - (b) the provisions of Parts 1 and 3 of Schedule 1.

CJA 2003 s.156⁷⁸¹: Pre-sentence reports and other requirements

- s.156(1) - in forming any such opinion as is mentioned in section 148(1) or (2)(b), section 152(2) or section 153(2), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering), 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.

Youth rehabilitation orders with intensive supervision and surveillance

CJIA 2008 Sch.1 para.3⁷⁸²: YRO with intensive supervision and surveillance

- para.3(1) - this paragraph applies where paragraphs (a) to (c) of section 1(4) are satisfied.
- para.3(2) - the court, if it makes a youth rehabilitation order which imposes an activity requirement, may specify in relation to that requirement a number of days which is more than 90 but not more than 180.
- para.3(3) - such an activity requirement is referred to in this Part of this Act as “an extended activity requirement”.

⁷⁸¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

⁷⁸² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.3(4) - a youth rehabilitation order which imposes an extended activity requirement must also impose—

- (a) a supervision requirement, and
- (b) a curfew requirement (and, accordingly, if so required by paragraph 2, an electronic monitoring requirement).

para.3(5) - a youth rehabilitation order which imposes an extended activity requirement (and other requirements in accordance with sub-paragraph (4)) is referred to in this Part of this Act as “a *youth rehabilitation order with intensive supervision and surveillance*” (whether or not it also imposes any other requirement mentioned in section 1(1)).

CJA 2008 Sch.1 para.5⁷⁸³: Intensive supervision and surveillance and fostering: further provisions

para.5(1) - a youth rehabilitation order with intensive supervision and surveillance may not impose a fostering requirement.

para.5(2) - nothing in—

- (a) section 1(4)(b), or
- (b) section 148(1) or (2)(b) of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences),

prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender if the offender fails to comply with an order under section 161(2) of the Criminal Justice Act 2003 (pre-sentence drug testing).

CJA 2008 Sch.1 para.2⁷⁸⁴: Electronic monitoring requirement

para.2(1) - sub-paragraph (2) applies to a youth rehabilitation order which—

- (a) imposes a curfew requirement (whether by virtue of paragraph 3(4)(b) or otherwise), or
- (b) imposes an exclusion requirement.

para.2(2) - the order must also impose an electronic monitoring requirement unless—

- (a) in the particular circumstances of the case, the court considers it inappropriate for the order to do so, or
- (b) the court is prevented by paragraph 26(3) or (6) from including such a requirement in the order.

para.2(3) - Subsection (2)(a) of section 1 has effect subject to paragraph 26(3) and (6).

CJA 2008 Sch.1 para.26⁷⁸⁵: Electronic monitoring requirement

para.26(3) - where—

- (a) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order, but

⁷⁸³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁸⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁸⁵ Commencement: Para.26(5) in force 1 April 2009, SI 2009/860 art.2(1)(g). Para.26(1)-(4) and (6)-(7) in force 30 November 2009, SI 2009/3074 art.2(m).

- (b) there is a person (other than the offender) without whose cooperation it will not be practicable to secure that the monitoring takes place,
the requirement may not be included in the order without that person's consent.

para.26(6) - a court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court—

- (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available—
 - (i) in the local justice area proposed to be specified in the order, and
 - (ii) for each requirement mentioned in the first column of the Table in subparagraph (7) which the court proposes to include in the order, in the area in which the relevant place is situated, and
- (b) is satisfied that the necessary provision can be made under the arrangements currently available.

CJA 2003 s.174⁷⁸⁶: Duty to give reasons etc.

s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—

- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
- (b) section 152(2) of this Act (discretionary custodial sentence),
the court must state why it is of that opinion.

Youth rehabilitation orders with fostering

CJIA 2008 Sch.1 para.4⁷⁸⁷: YRO with fostering

para.4(1) - this paragraph applies where paragraphs (a) to (c) of section 1(4) are satisfied.

para.4(2) - if the court is satisfied—

- (a) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and
- (b) that the imposition of a fostering requirement (see paragraph 18) would assist in the offender's rehabilitation,

it may make a youth rehabilitation order in accordance with section 1 which imposes a fostering requirement.

para.4(3) - but a court may not impose a fostering requirement unless—

- (a) it has consulted the offender's parents or guardians (unless it is impracticable to do so), and
- (b) it has consulted the local authority which is to place the offender with a local authority foster parent.

⁷⁸⁶ Commencement: LASPOA 2012 s.64(2) inserted a new CJA 2003 s.174, in force 3 December 2012, SI 2012/2906 art.2(a).

⁷⁸⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.4(4) - youth rehabilitation order which imposes a fostering requirement must also impose a supervision requirement.

para.4(5) - this paragraph has effect subject to paragraphs 18(7) and 19 (pre-conditions to imposing fostering requirement).

para.4(6) - a youth rehabilitation order which imposes a fostering requirement is referred to in this Part of this Act as “a *youth rehabilitation order with fostering*” (whatever other requirements mentioned in section 1(1) or (2) it imposes).

CJIA 2008 Sch.1 para.18⁷⁸⁸: Fostering requirement

para.18(7) - a court may not include a fostering requirement in a youth rehabilitation order unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent.

Note: para.18 has two versions, one for England and one for Wales, however the difference between the two pertains to the para.18(3) and so is not relevant for YROs with fostering.

CJIA 2008 Sch.1 para.19⁷⁸⁹: Pre-conditions to imposing local authority residence requirement or fostering requirement

para.19(1) - a court may not include a local authority residence requirement or a fostering requirement in a youth rehabilitation order in respect of an offender unless—

- (a) the offender was legally represented at the relevant time in court, or
- (b) either of the conditions in sub-paragraph (2) is satisfied.

para.19(2) - those conditions are—

- (a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender’s conduct, or
- (b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply.

para.19(3) - in this paragraph—

“*the proceedings*” means—

- (a) the whole proceedings, or
- (b) the part of the proceedings relating to the imposition of the local authority residence requirement or the fostering requirement;

“*the relevant time*” means the time when the court is considering whether to impose that requirement.

⁷⁸⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁸⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

CJIA 2008 Sch.1 para.5⁷⁹⁰: Intensive supervision and surveillance and fostering: further provisions

para.5(1) - a youth rehabilitation order with intensive supervision and surveillance may not impose a fostering requirement.

para.5(2) - nothing in—

- (a) section 1(4)(b), or
- (b) section 148(1) or (2)(b) of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences),

prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender if the offender fails to comply with an order under section 161(2) of the Criminal Justice Act 2003 (pre-sentence drug testing).

CJIA 2008 Sch.1 para.32: Date for compliance with requirements to be specified in order

para.32(3) - in the case of a youth rehabilitation order with intensive supervision and surveillance, the date specified for the purposes of sub-paragraph (1) must not be earlier than 6 months after the date on which the order takes effect.

CJA 2003 s.174⁷⁹¹: Duty to give reasons etc.

s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—

- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
 - (b) section 152(2) of this Act (discretionary custodial sentence),
- the court must state why it is of that opinion.

Offender previously fined

3.3.3.1.3 Requirements that may be imposed as part of the order

Requirements which may be imposed as part of the order

CJIA 2008 Sch.1 para.1: The imposition of requirements

para.1(1) - Subsection (1) of section 1 has effect subject to the following provisions of Part 2 of this Schedule which relate to particular requirements—

- (a) paragraph 8(3) and (4) (activity requirement),
- (b) paragraph 10(3) (unpaid work requirement),
- (c) paragraph 11(3) and (4) (programme requirement),
- (d) paragraph 12(3) (attendance centre requirement),
- (e) paragraph 13(2) (prohibited activity requirement),

⁷⁹⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁹¹ Commencement: LASPOA 2012 s.64(2) inserted a new CJA 2003 s.174, in force 3 December 2012, SI 2012/2906 art.2(a).

- (f) paragraph 16(2), (4) and (7) (residence requirement),
- (g) paragraphs 17(3) and (4) and 19 (local authority residence requirement),
- (h) paragraph 20(3) (mental health treatment requirement),
- (i) paragraph 22(2) and (4) (drug treatment requirement),
- (j) paragraph 23(3) (drug testing requirement),
- (k) paragraph 24(2) and (4) (intoxicating substance treatment requirement), and
- (l) paragraph 25(4) (education requirement).

CJIA 2008 Sch.1 para.6⁷⁹²: Activity requirement

para.6(1) - In this Part of this Act “*activity requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must do any or all of the following—

- (a) participate, on such number of days as may be specified in the order, in activities at a place, or places, so specified;
- (b) participate in an activity, or activities, specified in the order on such number of days as may be so specified;
- (c) participate in one or more residential exercises for a continuous period or periods comprising such number or numbers of days as may be specified in the order;
- (d) in accordance with paragraph 7, engage in activities in accordance with instructions of the responsible officer on such number of days as may be specified in the order.

para.6(2) - subject to paragraph 3(2), the number of days specified in the order under sub-paragraph (1) must not, in aggregate, be more than 90.

para.6(3) - a requirement such as is mentioned in sub-paragraph (1)(a) or (b) operates to require the offender, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement—

- (a) in the case of a requirement such as is mentioned in sub-paragraph (1)(a), to present himself or herself at a place specified in the order to a person of a description so specified, or
- (b) in the case of a requirement such as is mentioned in sub-paragraph (1)(b), to participate in an activity specified in the order,

and, on each such day, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).

para.6(4) - where the order requires the offender to participate in a residential exercise, it must specify, in relation to the exercise—

- (a) a place, or
- (b) an activity.

para.6(5) - a requirement to participate in a residential exercise operates to require the offender, in accordance with instructions given by the responsible officer—

- (a) if a place is specified under sub-paragraph (4)(a)—

⁷⁹² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (i) to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place so specified to a person of a description specified in the instructions, and
- (ii) to reside there for that period,
- (b) if an activity is specified under sub-paragraph (4)(b), to participate, for the period specified in the order in relation to the exercise, in the activity so specified, and, during that period, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).

CJIA 2008 Sch.1 para.7⁷⁹³: Activity requirement: instructions of responsible officer under paragraph 6(1)(d)

para.7(1) - subject to sub-paragraph (3), instructions under paragraph 6(1)(d) relating to any day must require the offender to do either of the following—

- (a) present himself or herself to a person or persons of a description specified in the instructions at a place so specified;
- (b) participate in an activity specified in the instructions.

para.7(2) - any such instructions operate to require the offender, on that day or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or, as the case may be, the activity.

para.7(3) - if the order so provides, instructions under paragraph 6(1)(d) may require the offender to participate in a residential exercise for a period comprising not more than 7 days, and, for that purpose—

- (a) to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place so specified and to reside there for that period, or
- (b) to participate for that period in an activity specified in the instructions.

para.7(4) - instructions such as are mentioned in sub-paragraph (3)—

- (a) may not be given except with the consent of a parent or guardian of the offender, and
- (b) operate to require the offender, during the period specified under that sub-paragraph, to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified under sub-paragraph (3)(a) or (b) (as the case may be).

CJIA 2008 Sch.1 para.8⁷⁹⁴: Activity requirement: further provisions

para.8(1) - instructions given by, or under the authority of, a person in charge of any place under any of the following provisions—

- (a) paragraph 6(3),
- (b) paragraph 6(5),
- (c) paragraph 7(2), or

⁷⁹³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁹⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (d) paragraph 7(4)(b),
may require the offender to engage in activities otherwise than at that place.

para.8(2) - an activity specified—

- (a) in an order under paragraph 6(1)(b), or
- (b) in instructions given under paragraph 6(1)(d),

may consist of or include an activity whose purpose is that of reparation, such as an activity involving contact between an offender and persons affected by the offences in respect of which the order was made.

para.8(3) - a court may not include an activity requirement in a youth rehabilitation order unless—

- (a) it has consulted a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services,
- (b) it is satisfied that it is feasible to secure compliance with the requirement, and
- (c) it is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the local justice area in which the offender resides or is to reside.

para.8(4) - a court may not include an activity requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion.

CJA 2008 Sch.1 para.9⁷⁹⁵: Supervision requirement

para.9 - in this Part of this Act “*supervision requirement*”, in relation to a youth rehabilitation order, means a requirement that, during the period for which the order remains in force, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such times and places as may be determined by the responsible officer.

CJA 2008 Sch.1 para.10⁷⁹⁶: Unpaid work (offender is aged 16 or 17 at conviction)

para.10(1) - in this Part of this Act “*unpaid work requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must perform unpaid work in accordance with this paragraph.

para.10(2) - the number of hours which a person may be required to work under an unpaid work requirement must be specified in the youth rehabilitation order and must be, in aggregate—

- (a) not less than 40, and
- (b) not more than 240.

⁷⁹⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁹⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.10(3) - a court may not impose an unpaid work requirement in respect of an offender unless—

- (a) after hearing (if the court thinks necessary) an appropriate officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement, and
- (b) the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which the offender resides or is to reside.

para.10(4) - in sub-paragraph (3)(a) “*an appropriate officer*” means a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services.

para.10(5) - an offender in respect of whom an unpaid work requirement of a youth rehabilitation order is in force must perform for the number of hours specified in the order such work at such times as the responsible officer may specify in instructions.

para.10(6) - subject to paragraph 17 of Schedule 2, the work required to be performed under an unpaid work requirement of a youth rehabilitation order must be performed during the period of 12 months beginning with the day on which the order takes effect.

para.10(7) - unless revoked, a youth rehabilitation order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.

CJIA 2008 Sch.1 para.11⁷⁹⁷: Programme requirement

para.11(1) - in this Part of this Act “*programme requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must participate in a systematic set of activities (“a programme”) specified in the order at a place or places so specified on such number of days as may be so specified.

para.11(2) - a programme requirement may require the offender to reside at any place specified in the order under sub-paragraph (1) for any period so specified if it is necessary for the offender to reside there for that period in order to participate in the programme.

para.11(3) - a court may not include a programme requirement in a youth rehabilitation order unless—

- (a) the programme which the court proposes to specify in the order has been recommended to the court by—
 - (i) a member of a youth offending team,
 - (ii) an officer of a local probation board, or
 - (iii) an officer of a provider of probation services,

as being suitable for the offender, and

- (b) the court is satisfied that the programme is available at the place or places proposed to be specified.

⁷⁹⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.11(4) - a court may not include a programme requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.

para.11(5) - a requirement to participate in a programme operates to require the offender—

- (a) in accordance with instructions given by the responsible officer to participate in the programme at the place or places specified in the order on the number of days so specified, and
- (b) while at any of those places, to comply with instructions given by, or under the authority of, the person in charge of the programme.

CJIA 2008 Sch.1 para.12⁷⁹⁸: Attendance centre requirement

para.12(1) - in this Part of this Act "*attendance centre requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must attend at an attendance centre specified in the order for such number of hours as may be so specified.

para.12(2) - the aggregate number of hours for which the offender may be required to attend at an attendance centre—

- (a) if the offender is aged 16 or over at the time of conviction, must be—
 - (i) not less than 12, and
 - (ii) not more than 36;
- (b) if the offender is aged 14 or over but under 16 at the time of conviction, must be—
 - (i) not less than 12, and
 - (ii) not more than 24;
- (c) if the offender is aged under 14 at the time of conviction, must not be more than 12.

para.12(3) - a court may not include an attendance centre requirement in a youth rehabilitation order unless it—

- (a) has been notified by the Secretary of State that—
 - (i) an attendance centre is available for persons of the offender's description, and
 - (ii) provision can be made at the centre for the offender, and
- (b) is satisfied that the attendance centre proposed to be specified is reasonably accessible to the offender, having regard to the means of access available to the offender and any other circumstances.

para.12(4) - the first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.

para.12(5) - the subsequent hours are to be fixed by the officer in charge of the centre—

- (a) in accordance with arrangements made by the responsible officer, and

⁷⁹⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) having regard to the offender's circumstances.

para.12(6) - an offender may not be required under this paragraph to attend at an attendance centre—

- (a) on more than one occasion on any day, or
- (b) for more than three hours on any occasion.

para.12(7) - a requirement to attend at an attendance centre for any period on any occasion operates as a requirement—

- (a) to attend at the centre at the beginning of the period, and
- (b) during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere.

CJIA 2008 Sch.1 para.13⁷⁹⁹: Prohibited activity requirement

para.13(1) - in this Part of this Act "*prohibited activity requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must refrain from participating in activities specified in the order—

- (a) on a day or days so specified, or
- (b) during a period so specified.

para.13(2) - a court may not include a prohibited activity requirement in a youth rehabilitation order unless it has consulted—

- (a) a member of a youth offending team,
- (b) an officer of a local probation board, or
- (c) an officer of a provider of probation services.

para.13(3) - the requirements that may by virtue of this paragraph be included in a youth rehabilitation order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27).

CJIA 2008 Sch.1 para.14⁸⁰⁰: Curfew requirement

para.14(1) - in this Part of this Act "*curfew requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must remain, for periods specified in the order, at a place so specified.

para.14(2) - a youth rehabilitation order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than 2 hours or more than 16 hours in any day.

para.14(3) - a youth rehabilitation order imposing a curfew requirement may not specify periods which fall outside the period of 12 months beginning with the day on which the requirement first takes effect.

⁷⁹⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.14(4) - before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

CJIA 2008 Sch.1 para.15⁸⁰¹: Exclusion requirement

para.15(1) - in this Part of this Act “*exclusion requirement*”, in relation to a youth rehabilitation order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified.

para.15(2) - the period specified must not be more than 3 months.

para.15(3) - an exclusion requirement—

- (a) may provide for the prohibition to operate only during the periods specified in the order, and
- (b) may specify different places for different periods or days.

para.15(4) - in this paragraph “*place*” includes an area.

CJIA 2008 Sch.1 para.16⁸⁰²: Residence requirement

para.16(1) - in this Part of this Act, “*residence requirement*”, in relation to a youth rehabilitation order, means a requirement that, during the period specified in the order, the offender must reside—

- (a) with an individual specified in the order, or
- (b) at a place specified in the order.

para.16(2) - a court may not by virtue of sub-paragraph (1)(a) include in a youth rehabilitation order a requirement that the offender reside with an individual unless that individual has consented to the requirement.

para.16(3) - in this paragraph, a residence requirement falling within sub-paragraph (1)(b) is referred to as “*a place of residence requirement*”.

para.16(4) - a court may not include a place of residence requirement in a youth rehabilitation order unless the offender was aged 16 or over at the time of conviction.

para.16(5) - if the order so provides, a place of residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.

para.16(6) - before making a youth rehabilitation order containing a place of residence requirement, the court must consider the home surroundings of the offender.

para.16(7) - a court may not specify a hostel or other institution as the place where an offender must reside for the purposes of a place of residence requirement except on the recommendation of—

- (a) a member of a youth offending team,

⁸⁰¹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) an officer of a local probation board,
- (c) an officer of a provider of probation services, or
- (d) a social worker of a local authority.

CJIA 2008 Sch.1 para.17⁸⁰³: Local authority residence requirement

- para.17(1) - in this Part of this Act, “*local authority residence requirement*”, in relation to a youth rehabilitation order, means a requirement that, during the period specified in the order, the offender must reside in accommodation provided by or on behalf of a local authority specified in the order for the purposes of the requirement.
- para.17(2) - a youth rehabilitation order which imposes a local authority residence requirement may also stipulate that the offender is not to reside with a person specified in the order.
- para.17(3) - a court may not include a local authority residence requirement in a youth rehabilitation order made in respect of an offence unless it is satisfied—
- (a) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and
 - (b) that the imposition of that requirement will assist in the offender’s rehabilitation.
- para.17(4) - a court may not include a local authority residence requirement in a youth rehabilitation order unless it has consulted—
- (a) a parent or guardian of the offender (unless it is impracticable to consult such a person), and
 - (b) the local authority which is to receive the offender.
- para.17(5) - a youth rehabilitation order which imposes a local authority residence requirement must specify, as the local authority which is to receive the offender, the local authority in whose area the offender resides or is to reside.
- para.17(6) - any period specified in a youth rehabilitation order as a period for which the offender must reside in accommodation provided by or on behalf of a local authority must—
- (a) not be longer than 6 months, and
 - (b) not include any period after the offender has reached the age of 18.

CJIA 2008 Sch.1 para.18⁸⁰⁴: Fostering requirement

- para.18(1) - in this Part of this Act “*fostering requirement*”, in relation to a youth rehabilitation order, means a requirement that, for a period specified in the order, the offender must reside with a local authority foster parent.
- para.18(2) - a period specified in a youth rehabilitation order as a period for which the offender must reside with a local authority foster parent must—
- (a) end no later than the end of the period of 12 months beginning with the date on which the requirement first has effect (but subject to paragraphs 6(9), 8(9) and 16(2) of Schedule 2), and
 - (b) not include any period after the offender has reached the age of 18.

⁸⁰³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.18(3) - a youth rehabilitation order which imposes a fostering requirement must specify the local authority which is to place the offender with a local authority foster parent under section 22C of the Children Act 1989 (c. 41).

para.18(4) - the authority so specified must be the local authority in whose area the offender resides or is to reside.

para.18(5) - if at any time during the period specified under sub-paragraph (1), the responsible officer notifies the offender—

(a) that no suitable local authority foster parent is available, and

(b) that the responsible officer has applied or proposes to apply under Part 3 or 4 of Schedule 2 for the revocation or amendment of the order,

the fostering requirement is, until the determination of the application, to be taken to require the offender to reside in accommodation provided by or on behalf of a local authority.

para.18(6) - this paragraph does not affect the power of a local authority to place with a local authority foster parent an offender in respect of whom a local authority residence requirement is imposed.

para.18(7) - a court may not include a fostering requirement in a youth rehabilitation order unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent.

para.18(8) - in this paragraph, “*local authority foster parent*” has the same meaning as it has in the Children Act 1989.

Note: para.18 has two versions, one for England and one for Wales; the difference between the two pertains to the para.18(3) and the section under the Children Act 1989 under which the LA is going to place the offender with a local authority foster parent.

CJIA 2008 Sch.1 para.19⁸⁰⁵: Pre-conditions to imposing local authority residence requirement or fostering requirement

para.19(1) - a court may not include a local authority residence requirement or a fostering requirement in a youth rehabilitation order in respect of an offender unless—

(a) the offender was legally represented at the relevant time in court, or

(b) either of the conditions in sub-paragraph (2) is satisfied.

para.19(2) - those conditions are—

(a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender’s conduct, or

(b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply.

⁸⁰⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.19(3) - in this paragraph—

“the proceedings” means—

- (a) the whole proceedings, or
- (b) the part of the proceedings relating to the imposition of the local authority residence requirement or the fostering requirement;

“the relevant time” means the time when the court is considering whether to impose that requirement.

CJIA 2008 Sch.1 para.20⁸⁰⁶: Mental health treatment requirement

para.20(1) - in this Part of this Act “*mental health treatment requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition .

para.20(2) - the treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order—

- (a) treatment as a resident patient in a care home within the meaning of the Care Standards Act 2000 (c. 14) , an independent hospital or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;
- (b) treatment as a non-resident patient at such institution or place as may be specified in the order;
- (c) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified;

but the order must not otherwise specify the nature of the treatment.

para.20(3) - a court may not include a mental health treatment requirement in a youth rehabilitation order unless—

- (a) the court is satisfied that the mental condition of the offender—
 - (i) is such as requires and may be susceptible to treatment, but
 - (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of the Mental Health Act 1983,
- (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident patient, arrangements for the reception of the offender), and
- (c) the offender has expressed willingness to comply with the requirement.

para.20(4) - while the offender is under treatment as a resident patient in pursuance of a mental health treatment requirement of a youth rehabilitation order, the responsible officer is to carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

⁸⁰⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.20(4A) - in sub-paragraph (2) “*independent hospital*”—

- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; and
- (b) in relation to Wales, has the same meaning as in the Care Standards Act 2000.

para.20(6) - in this paragraph and paragraph 21, “*registered psychologist*” means a person for the time being registered in the part of the register maintained under the Health Professions Order 2001 which relates to practitioner psychologists.

CJIA 2008 Sch.1 para.21⁸⁰⁷: Mental health treatment at place other than specified in the order

para.21(1) - where the registered medical practitioner or [registered psychologist]¹ by whom or under whose direction an offender is being treated in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

- (a) is not specified in the youth rehabilitation order, and
- (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or registered psychologist,

the medical practitioner or psychologist may make arrangements for the offender to be treated accordingly.

para.21(2) - such arrangements as are mentioned in sub-paragraph (1) may only be made if the offender has expressed willingness for the treatment to be given as mentioned in that sub-paragraph.

para.21(3) - such arrangements as are mentioned in sub-paragraph (1) may provide for part of the treatment to be provided to the offender as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the youth rehabilitation order.

para.21(4) - where any such arrangements as are mentioned in sub-paragraph (1) are made for the treatment of an offender—

- (a) the registered medical practitioner or registered psychologist by whom the arrangements are made must give notice in writing to the offender’s responsible officer, specifying the institution or place in or at which the treatment is to be carried out, and
- (b) the treatment provided for by the arrangements is deemed to be treatment to which the offender is required to submit in pursuance of the youth rehabilitation order.

CJIA 2008 Sch.1 para.22⁸⁰⁸: Drug treatment requirement

para.22(1) - in this Part of this Act, “*drug treatment requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience (“the treatment provider”), with a

⁸⁰⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

view to the reduction or elimination of the offender's dependency on, or propensity to misuse, drugs.

para.22(2) - a court may not include a drug treatment requirement in a youth rehabilitation order unless it is satisfied—

- (a) that the offender is dependent on, or has a propensity to misuse, drugs, and
- (b) that the offender's dependency or propensity is such as requires and may be susceptible to treatment.

para.22(3) - the treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order—

- (a) treatment as a resident in such institution or place as may be specified in the order, or
- (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified,

but the order must not otherwise specify the nature of the treatment.

para.22(4) - a court may not include a drug treatment requirement in a youth rehabilitation order unless—

- (a) the court has been notified by the Secretary of State that arrangements for implementing drug treatment requirements are in force in the local justice area in which the offender resides or is to reside,
- (b) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender),
- (c) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services, and
- (d) the offender has expressed willingness to comply with the requirement.

para.22(5) - in this paragraph "*drug*" means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

CJIA 2008 Sch.1 para.23⁸⁰⁹: Drug testing requirement

para.23(1) - in this Part of this Act, "*drug testing requirement*", in relation to a youth rehabilitation order, means a requirement that, for the purpose of ascertaining whether there is any drug in the offender's body during any treatment period, the offender must, during that period, provide samples in accordance with instructions given by the responsible officer or the treatment provider.

para.23(2) - in sub-paragraph (1)—

"*drug*" has the same meaning as in paragraph 22,

⁸⁰⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

“treatment period” means a period specified in the youth rehabilitation order as a period during which the offender must submit to treatment as mentioned in sub-paragraph (1) of that paragraph, and

“the treatment provider” has the meaning given by that sub-paragraph.

para.23(3) - a court may not include a drug testing requirement in a youth rehabilitation order unless—

- (a) the court has been notified by the Secretary of State that arrangements for implementing drug testing requirements are in force in the local justice area in which the offender resides or is to reside,
- (b) the order also imposes a drug treatment requirement, and
- (c) the offender has expressed willingness to comply with the requirement.

para.23(4) - a youth rehabilitation order which imposes a drug testing requirement—

- (a) must specify for each month the minimum number of occasions on which samples are to be provided, and
- (b) may specify—
 - (i) times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided, and
 - (ii) descriptions of the samples which may be so required.

para.23(5) - a youth rehabilitation order which imposes a drug testing requirement must provide for the results of tests carried out otherwise than by the responsible officer on samples provided by the offender in pursuance of the requirement to be communicated to the responsible officer.

CJIA 2008 Sch.1 para.24⁸¹⁰: Intoxicating substance treatment requirement

para.24(1) - in this Part of this Act, *“intoxicating substance treatment requirement”*, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience, with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse intoxicating substances.

para.24(2) - a court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless it is satisfied—

- (a) that the offender is dependent on, or has a propensity to misuse, intoxicating substances, and
- (b) that the offender’s dependency or propensity is such as requires and may be susceptible to treatment.

para.24(3) - the treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order—

- (a) treatment as a resident in such institution or place as may be specified in the order, or

⁸¹⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified,

but the order must not otherwise specify the nature of the treatment.

para.24(4) - a court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless—

- (a) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender),
- (b) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services, and
- (c) the offender has expressed willingness to comply with the requirement.

para.24(5) - in this paragraph “*intoxicating substance*” means—

- (a) alcohol, or
- (b) any other substance or product (other than a drug) which is, or the fumes of which are, capable of being inhaled or otherwise used for the purpose of causing intoxication.

para.24(6) - in sub-paragraph (5)(b) “*drug*” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

CJIA 2008 Sch.1 para.25⁸¹¹: Education requirement

para.25(1) - in this Part of this Act “*education requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must comply, during a period or periods specified in the order, with approved education arrangements.

para.25(2) - for this purpose, “*approved education arrangements*” means arrangements for the offender’s education—

- (a) made for the time being by the offender’s parent or guardian, and
- (b) approved by the local authority specified in the order.

para.25(3) - the local authority so specified must be the local authority for the area in which the offender resides or is to reside.

para.25(4) - a court may not include an education requirement in a youth rehabilitation order unless—

- (a) it has consulted the local authority proposed to be specified in the order with regard to the proposal to include the requirement, and
- (b) it is satisfied—
 - (i) that, in the view of that local authority, arrangements exist for the offender to receive efficient fulltime education suitable to the offender’s age, ability, aptitude and special educational needs (if any), and

⁸¹¹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (ii) that, having regard to the circumstances of the case, the inclusion of the education requirement is necessary for securing the good conduct of the offender or for preventing the commission of further offences.

para.25(5) - any period specified in a youth rehabilitation order as a period during which an offender must comply with approved education arrangements must not include any period after the offender has ceased to be of compulsory school age.

para.25(6) - in this paragraph, “*local authority*” and “*parent*” have the same meanings as in the Education Act 1996 (c. 56).

CJIA 2008 Sch.1 para.26⁸¹²: Electronic monitoring requirement

para.26(1) - in this Part of this Act “*electronic monitoring requirement*”, in relation to a youth rehabilitation order, means a requirement for securing the electronic monitoring of the offender’s compliance with other requirements imposed by the order during a period specified in the order or determined by the responsible officer in accordance with the order.

para.26(2) - where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the youth rehabilitation order, the responsible officer must, before the beginning of that period, notify—

- (a) the offender,
 - (b) the person responsible for the monitoring, and
 - (c) any person falling within sub-paragraph (3)(b),
- of the time when the period is to begin.

para.26(3) - where—

- (a) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order, but
 - (b) there is a person (other than the offender) without whose cooperation it will not be practicable to secure that the monitoring takes place,
- the requirement may not be included in the order without that person’s consent.

para.26(4) - a youth rehabilitation order which imposes an electronic monitoring requirement must include provision for making a person responsible for the monitoring.

para.26(5) - the person who is made responsible for the monitoring must be of a description specified in an order made by the Secretary of State.

para.26(6) - a court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court—

- (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available—
 - (i) in the local justice area proposed to be specified in the order, and

⁸¹² Commencement: Para.26(5) in force 1 April 2009, SI 2009/860 art.2(1)(g). Para.26(1)-(4) and (6)-(7) in force 30 November 2009, SI 2009/3074 art.2(m).

- (ii) for each requirement mentioned in the first column of the Table in sub-paragraph (7) which the court proposes to include in the order, in the area in which the relevant place is situated, and
- (b) is satisfied that the necessary provision can be made under the arrangements currently available.

para.26(7) - for the purposes of sub-paragraph (6), “*relevant place*”, in relation to a requirement mentioned in the first column of the following Table which the court proposes to include in the order, means the place mentioned in relation to it in the second column of the Table.

Proposed requirement of youth rehabilitation order	Relevant place
Curfew requirement.	The place which the court proposes to specify in the order for the purposes of that requirement.
Exclusion requirement.	The place (within the meaning of paragraph 15) which the court proposes to specify in the order.
Attendance centre requirement.	The attendance centre which the court proposes to specify in the order.

Power to amend limits in requirements

CJIA 2008 Sch.1 para.27⁸¹³: SoS has power to amend limits of certain requirements

para.27(1) - the Secretary of State may by order amend—

- (a) paragraph 10(2) (unpaid work requirement), or
- (b) paragraph 14(2) (curfew requirement),

by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order.

para.27(2) - the Secretary of State may by order amend any of the provisions mentioned in sub-paragraph (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.

para.27(3) - those provisions are—

- (a) paragraph 14(3) (curfew requirement);
- (b) paragraph 15(2) (exclusion requirement);
- (c) paragraph 17(6) (local authority residence requirement);
- (d) paragraph 18(2) (fostering requirement).

para.27(4) - an order under this paragraph which amends paragraph 18(2) may also make consequential amendments of paragraphs 6(9), 8(9) and 16(2) of Schedule 2.

⁸¹³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

3.3.3.1.4 Duties when making an order

Duties of the court

CJIA 2008 Sch.1 para.28⁸¹⁴: Family circumstances

para.28 - before making a youth rehabilitation order, the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances.

CJIA 2008 Sch.1 para.29⁸¹⁵: Compatibility of requirements

para.29(1) - before making—

- (a) a youth rehabilitation order imposing two or more requirements, or
 - (b) two or more youth rehabilitation orders in respect of associated offences,
- the court must consider whether, in the circumstances of the case, the requirements to be imposed by the order or orders are compatible with each other.

para.29(2) - sub-paragraph (1) is subject to paragraphs 2, 3(4) and 4(4).

para.29(3) - the court must ensure, as far as practicable, that any requirement imposed by a youth rehabilitation order is such as to avoid—

- (a) any conflict with the offender's religious beliefs,
- (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
- (c) any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject.

para.29(4) - the Secretary of State may by order provide that sub-paragraph (3) is to have effect with such additional restrictions as may be specified in the order.

CJIA 2008 Sch.1 para.33⁸¹⁶: Requirement to specify local justice area

para.33 - a YRO must specify the local justice area in which the offender resides or will reside

CJIA 2008 Sch.1 para.34⁸¹⁷: Copies of the order

para.34(1) - the court by which any youth rehabilitation order is made must forthwith provide copies of the order—

- (a) to the offender,
- (b) if the offender is aged under 14, to the offender's parent or guardian, and
- (c) to a member of a youth offending team assigned to the court, to an officer of a local probation board assigned to the court or to an officer of a provider of probation services.

⁸¹⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸¹⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸¹⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸¹⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.34(2) - sub-paragraph (3) applies where a youth rehabilitation order—

- (a) is made by the Crown Court, or
- (b) is made by a magistrates' court which does not act in the local justice area specified in the order.

para.34(3) - the court making the order must—

- (a) provide to the magistrates' court acting in the local justice area specified in the order—
 - (i) a copy of the order, and
 - (ii) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order, and
- (b) provide a copy of the order to the local probation board acting for that area or (as the case may be) a provider of probation services operating in that area.

para.34(4) - where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement.

Requirement	Person to whom copy of requirement is to be given
An activity requirement specifying a place under paragraph 6(1)(a).	The person in charge of that place.
An activity requirement specifying an activity under paragraph 6(1)(b).	The person in charge of that activity.
An activity requirement specifying a residential exercise under paragraph 6(1)(c).	The person in charge of the place or activity specified under paragraph 6(4) in relation to that residential exercise.
An attendance centre requirement.	The officer in charge of the attendance centre specified under paragraph 12(1).
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected.
A residence requirement requiring residence with an individual.	The individual specified under paragraph 16(1)(a).
A place of residence requirement (within the meaning of paragraph 16) relating to residence in an institution.	The person in charge of the institution.
A local authority residence requirement.	The local authority specified under paragraph 17(1).
A mental health treatment requirement.	The person in charge of the institution or place specified under sub-paragraph (2)(a) or (b) of paragraph 20, or the person specified under sub-paragraph (2)(c) of that paragraph.

Requirement	Person to whom copy of requirement is to be given
A drug treatment requirement.	The treatment provider specified under paragraph 22(1).
A drug testing requirement.	The treatment provider specified under paragraph 22(1).
An intoxicating substance treatment requirement	The person specified under paragraph 24(1).
An education requirement.	The local authority specified under paragraph 25(2).
An electronic monitoring requirement.	Any person who by virtue of paragraph 26(4) will be responsible for the electronic monitoring.
	Any person without whose consent the requirement could not have been included in the order.

CJA 2003 s.174⁸¹⁸: Duty to give reasons etc.

- s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—
- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
 - (b) section 152(2) of this Act (discretionary custodial sentence),
- the court must state why it is of that opinion.

Duties of the responsible officer

CJIA 2008 s.5⁸¹⁹: Responsible officer and offender: duties in relation to the other

- s.5(1) - where a youth rehabilitation order has effect, it is the duty of the responsible officer—
- (a) to make any arrangements that are necessary in connection with the requirements imposed by the order,
 - (b) to promote the offender's compliance with those requirements, and
 - (c) where appropriate, to take steps to enforce those requirements.
- s.5(2) - in subsection (1) "*responsible officer*" does not include a person falling within section 4(1)(a).

⁸¹⁸ Commencement: LASPOA 2012 s.64(2) inserted a new CJA 2003 s.174, in force 3 December 2012, SI 2012/2906 art.2(a).

⁸¹⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(e)

- s.5(3) - in giving instructions in pursuance of a youth rehabilitation order relating to an offender, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid—
- (a) any conflict with the offender's religious beliefs,
 - (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
 - (c) any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject.
- s.5(4) - the Secretary of State may by order provide that subsection (3) is to have effect with such additional restrictions as may be specified in the order.
- s.5(5) - an offender in respect of whom a youth rehabilitation order is in force—
- (a) must keep in touch with the responsible officer in accordance with such instructions as the offender may from time to time be given by that officer, and
 - (b) must notify the responsible officer of any change of address.
- s.5(6) - the obligation imposed by subsection (5) is enforceable as if it were a requirement imposed by the order.

3.3.3.1.5 Power to provide for review

CJIA 2008 Sch.1 para.35⁸²⁰: Power to provide for court review of orders

- para.35(1) - the Secretary of State may by order—
- (a) enable or require a court making a youth rehabilitation order to provide for the order to be reviewed periodically by that or another court,
 - (b) enable a court to amend a youth rehabilitation order so as to include or remove a provision for review by a court, and
 - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- para.35(2) - an order under this paragraph may, in particular, make provision in relation to youth rehabilitation orders corresponding to any provision made by sections 191 and 192 of the Criminal Justice Act 2003 (c. 44) (reviews of suspended sentence orders) in relation to suspended sentence orders.
- para.35(3) - an order under this paragraph may repeal or amend any provision of—
- (a) this Part of this Act, or
 - (b) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (general provisions about sentencing).

⁸²⁰ Commencement: 1 April 2009, SI 2009/860 art.2(g)

3.3.3.1.6 Date for compliance with requirements to be specified in order

CJIA 2008 Sch.1 para.32⁸²¹: Date for compliance with requirements to be specified in order

para.32(1) - a youth rehabilitation order must specify a date (“the end date”), not more than 3 years after the date on which the order takes effect, by which all the requirements in it must have been complied with.

para.32(2) - if a youth rehabilitation order imposes two or more different requirements falling within Part 2 of this Schedule, the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.

para.32(3) - in the case of a youth rehabilitation order with intensive supervision and surveillance, the date specified for the purposes of sub-paragraph (1) must not be earlier than 6 months after the date on which the order takes effect.

para.32(4) - subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order ceases to be in force on the end date.

3.3.3.1.7 Further proceedings (Crown Court)

CJIA 2008 Sch.1 para.36⁸²²: Order made by Crown Court: direction in relation to further proceedings

para.36(1) - where the Crown Court makes a youth rehabilitation order, it may include in the order a direction that further proceedings relating to the order be in a youth court or other magistrates’ court (subject to paragraph 7 of Schedule 2).

para.36(2) - in sub-paragraph (1), “*further proceedings*”, in relation to a youth rehabilitation order, means proceedings—

- (a) for any failure to comply with the order within the meaning given by paragraph 1(2)(b) of Schedule 2, or
- (b) on any application for amendment or revocation of the order under Part 3 or 4 of that Schedule.

3.3.3.1.8 Credit for remand time

CJA 2003 s.149⁸²³: Imposing a youth rehabilitation order on offender remanded in custody

s.149(1) - in determining the restrictions on liberty to be imposed by a community order or youth rehabilitation 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.

s.149(2) - in subsection (1) “*remanded in custody*” has the meaning given by section 242(2).

⁸²¹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

3.3.3.1.9 Interaction with other sentencing orders

Youth-specific orders

CJIA 2008 Sch.1 para.30⁸²⁴: YRO with a DTO

para.30(2) - subject to [sub-paragraphs (1A) and (2)], a youth rehabilitation order takes effect on the day on which the order is made.

para.30(2) - in particular, if a detention and training order is in force in respect of an offender, a court making a youth rehabilitation order in respect of the offender may order that it is to take effect instead—

- (a) when the period of supervision begins in relation to the detention and training order in accordance with section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
- (b) on the expiry of the term of the detention and training order.

PCC(S)A 2000 s.19⁸²⁵: YRO with a referral order

s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.

s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.

s.19(3) - the court—

- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
- (b) may not deal with the offender for any such offence in any of the prohibited ways.

s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—

- (a) imposing a sentence which consists of or includes a youth rehabilitation order on the offender [...]

CJIA 2008 Sch.1 para.30⁸²⁶: YRO with a reparation order

para.30(4)(b) - a court must not make a youth rehabilitation order in respect of an offender at a time when—

- (a) another youth rehabilitation order, or
- (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),

is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

⁸²⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁸²⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

PCC(S)A 2000 s.73⁸²⁷: Reparation order

s.73(4) - the court may not make a reparation order if it proposes to impose a custodial sentence, a YRO or a referral order

CJIA 2008 Sch.1 para.30⁸²⁸: YRO where another YRO is in force at the time

para.30(4) - the court shall not make a reparation order in respect of the offender if it proposes—

- (a) to pass on him a custodial sentence; or
- (b) to make in respect of him a youth rehabilitation order or a referral order.

CJIA 2008 Sch.1 para.31⁸²⁹: YRO with another YRO (multiple offences)

para.31(1) - this paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.

para.31(2) - if, in respect of one of the offences, the court makes an order of any of the following kinds—

- (a) a youth rehabilitation order with intensive supervision and surveillance,
- (b) a youth rehabilitation order with fostering, or
- (c) any other youth rehabilitation order,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.

CJIA 2008 Sch.1 para.31⁸³⁰: YRO with a YRO (ISS or Fostering)

para.31(1) - this paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.

para.31(2) - if, in respect of one of the offences, the court makes an order of any of the following kinds—

- (a) a youth rehabilitation order with intensive supervision and surveillance,
- (b) a youth rehabilitation order with fostering, or
- (c) any other youth rehabilitation order,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.

General orders

MHA 1983 s.37⁸³¹: Hospital and Guardianship orders

s.37(8) - where the court imposes a hospital or guardianship order, it may not impose a YRO

⁸²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸²⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸³⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸³¹ Commencement: 30 September 1983, MHA 1983 s.149(2)

3.3.3.1.10 Breach/Revocation/Amendment

CJIA 2008 s.2⁸³²: Breach, revocation or amendment of youth rehabilitation orders

s.2 - Schedule 2 makes provision about failures to comply with the requirements of youth rehabilitation orders and about the revocation or amendment of such orders.

General

CJIA 2008 Sch.2 para.1⁸³³: Interpretation for the purposes of Schedule 2

para.1(1) - in this Schedule, “*the offender*”, in relation to a youth rehabilitation order, means the person in respect of whom the order is made.

para.1(2) - in this Schedule—

- (a) any reference (however expressed) to an offender’s compliance with a youth rehabilitation order is a reference to the offender’s compliance with—
 - (i) the requirement or requirements imposed by the order, and
 - (ii) if the order imposes an attendance centre requirement, rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 (c. 44) (“attendance centre rules”), and
- (b) any reference (however expressed) to the offender’s failure to comply with the order is a reference to any failure of the offender to comply—
 - (i) with a requirement imposed by the order, or
 - (ii) if the order imposes an attendance centre requirement, with attendance centre rules.

para.1(3) - for the purposes of this Schedule—

- (a) a requirement falling within any paragraph of Part 2 of Schedule 1 is of the same kind as any other requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within Part 2 of Schedule 1 to which it relates.

CJIA 2008 Sch.2 para.2⁸³⁴: Orders made on appeal

para.2 - where a youth rehabilitation order has been made on appeal, for the purposes of this Schedule it is to be treated—

- (a) if it was made on an appeal from a magistrates’ court, as having been made by a magistrates’ court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, as having been made by the Crown Court.

⁸³² Commencement: 30 November 2009, SI 2009/3074 art.2(b)

⁸³³ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸³⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

CJIA 2008 Sch.2 para.23⁸³⁵: Restrictions on imposition of intensive supervision and surveillance or fostering

para.23 - Subsection (4), and the provisions mentioned in subsection (6), of section 1 apply in relation to a power conferred by paragraph 6(2)(b), 8(2)(b), 13(4)(b) or 14(4)(b) to impose a requirement as they apply in relation to any power conferred by section 1 or Part 1 of Schedule 1 to make a youth rehabilitation order which includes such a requirement.

Breach: Failure to comply

CJIA 2008 Sch.2 para.3⁸³⁶: Duty to give warning

para.3(1) - If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, the responsible officer must give the offender a warning under this paragraph unless under paragraph 4(1) or (3) the responsible officer causes an information to be laid before a justice of the peace in respect of the failure.

para.3(2) - a warning under this paragraph must—

- (a) describe the circumstances of the failure,
- (b) state that the failure is unacceptable, and
- (c) state that the offender will be liable to be brought before a court—
 - (i) in a case where the warning is given during the warned period relating to a previous warning under this paragraph, if during that period the offender again fails to comply with the order, or
 - (ii) in any other case, if during the warned period relating to the warning, the offender fails on more than one occasion to comply with the order.

para.3(3) - the responsible officer must, as soon as practicable after the warning has been given, record that fact.

para.3(4) - in this paragraph, “*warned period*”, in relation to a warning under this paragraph, means the period of 12 months beginning with the date on which the warning was given.

CJIA 2003 Sch.2 para.4⁸³⁷: Breach

para.4(1) - if the responsible officer—

- (a) has given a warning (“the first warning”) under paragraph 3 to the offender in respect of a youth rehabilitation order,
- (b) during the warned period relating to the first warning, has given another warning under that paragraph to the offender in respect of a failure to comply with the order, and
- (c) is of the opinion that, during the warned period relating to the first warning, the offender has again failed without reasonable excuse to comply with the order,

⁸³⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸³⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸³⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

the responsible officer must cause an information to be laid before a justice of the peace in respect of the failure mentioned in paragraph (c).

para.4(2) - but sub-paragraph (1) does not apply if the responsible officer is of the opinion that there are exceptional circumstances which justify not causing an information to be so laid.

para.4(3) - if—

- (a) the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, and
- (b) sub-paragraph (1) does not apply (in a case not within subparagraph (2)), the responsible officer may cause an information to be laid before a justice of the peace in respect of that failure.

para.4(4) - in this paragraph, “*warned period*” has the same meaning as in paragraph 3.

CJIA 2008 Sch.2 para.5⁸³⁸: Issue of summons or warrant by JP

para.5(1) - if at any time while a youth rehabilitation order is in force it appears on information to a justice of the peace that an offender has failed to comply with a youth rehabilitation order, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
- (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

para.5(2) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

- (a) if the youth rehabilitation order was made by the Crown Court and does not include a direction under paragraph 36 of Schedule 1, before the Crown Court, and
- (b) in any other case, before the appropriate court.

para.5(3) - in sub-paragraph (2), “*appropriate court*” means—

- (a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and
- (b) if the offender is aged 18 or over, a magistrates’ court (other than a youth court) acting in that local justice area.

para.5(4) - in sub-paragraph (3), “*relevant local justice area*” means—

- (a) the local justice area in which the offender resides, or
- (b) if it is not known where the offender resides, the local justice area specified in the youth rehabilitation order.

para.5(5) - sub-paragraphs (6) and (7) apply where the offender does not appear in answer to a summons issued under this paragraph.

⁸³⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.5(6) - if the summons required the offender to appear before the Crown Court, the Crown Court may—

- (a) unless the summons was issued under this sub-paragraph, issue a further summons requiring the offender to appear at the place and time specified in it, or
- (b) in any case, issue a warrant for the arrest of the offender.

para.5(7) - if the summons required the offender to appear before a magistrates' court, the magistrates' court may issue a warrant for the arrest of the offender.

CJA 2008 Sch.2 para.6⁸³⁹: Powers of magistrates' court

para.6(1) - this paragraph applies where—

- (a) an offender appears or is brought before a youth court or other magistrates' court under paragraph 5, and
- (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.

para.6(2) - the court may deal with the offender in respect of that failure in any one of the following ways—

- (a) by ordering the offender to pay a fine of an amount not exceeding £2,500.
- (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—
 - (i) in addition to, or
 - (ii) in substitution for,any requirement or requirements already imposed by the order;
- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).

para.6(3) - sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).

para.6(4) - in dealing with the offender under sub-paragraph (2), the court must take into account the extent to which the offender has complied with the youth rehabilitation order.

para.6(5) - a fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.6(6) - subject to sub-paragraph (6A), any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.

para.6(6A) - when imposing a requirement under sub-paragraph (2)(b), the court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.

para.6(6B) - a date substituted under sub-paragraph (6A)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;

⁸³⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- (b) subject to that, may fall more than three years after the date on which the order took effect.

para.6(6C) - the power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 8(6A) has previously been exercised in relation to that order.

para.6(6D) - a date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.

para.6(7) - where—

- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
- (b) the youth rehabilitation order does not contain an unpaid work requirement,

paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.6(8) - the court may not under sub-paragraph (2)(b) impose—

- (a) an extended activity requirement, or
- (b) a fostering requirement,

if the order does not already impose such a requirement.

para.6(9) - where—

- (a) the order imposes a fostering requirement (the “original requirement”), and
- (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,

paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.

para.6(10) - where—

- (a) the court deals with the offender under sub-paragraph (2)(b), and
- (b) it would not otherwise have the power to amend the youth rehabilitation order under paragraph 13 (amendment by reason of change of residence),

that paragraph has effect as if references in it to the appropriate court were references to the court which is dealing with the offender.

para.6(11) - where the court deals with the offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.

para.6(12) - sub-paragraphs (13) to (15) apply where—

- (a) the court is dealing with the offender under sub-paragraph (2)(c), and
- (b) the offender has wilfully and persistently failed to comply with a youth rehabilitation order.

para.6(13) - the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).

para.6(14) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and

- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,

the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).

para.6(15) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of sub-paragraph (13) or paragraph 8(12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,

for the purposes of dealing with the offender under sub-paragraph (2)(c), the court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

para.6(16) - an offender may appeal to the Crown Court against a sentence imposed under sub-paragraph (2)(c).

CJIA 2008 Sch.2 para.7⁸⁴⁰: Power of magistrates' court to refer offender to Crown Court

para.7(1) - sub-paragraph (2) applies if—

- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (b) a youth court or other magistrates' court would (apart from that subparagraph) be required, or has the power, to deal with the offender in one of the ways mentioned in paragraph 6(2).

para.7(2) - the court may instead—

- (a) commit the offender in custody, or
 - (b) release the offender on bail,
- until the offender can be brought or appear before the Crown Court.

para.7(3) - where a court deals with the offender's case under sub-paragraph (2) it must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

⁸⁴⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

CJIA 2008 Sch.2 para.8⁸⁴¹: Powers of Crown Court

para.8(1) - this paragraph applies where—

- (a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 7(2), and
- (b) it is proved to the satisfaction of that court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.

para.8(2) - the Crown Court may deal with the offender in respect of that failure in any one of the following ways—

- (a) by ordering the offender to pay a fine of an amount not exceeding £2,500,
- (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—
 - (i) in addition to, or
 - (ii) in substitution for,any requirement or requirements already imposed by the order;
- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.

para.8(3) - sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).

para.8(4) - in dealing with the offender under sub-paragraph (2), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order.

para.8(5) - a fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.8(6) - subject to sub-paragraph (6A), any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.

para.8(6A) - when imposing a requirement under sub-paragraph (2)(b), the Crown Court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.

para.8(6B) - a date substituted under sub-paragraph (6A)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
- (b) subject to that, may fall more than three years after the date on which the order took effect.

para.8(6C) - the power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 6(6A) has previously been exercised in relation to that order.

⁸⁴¹ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.8(6D) - a date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.

para.8(7) - where—

- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
- (b) the youth rehabilitation order does not contain an unpaid work requirement,

paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.8(8) - the court may not under sub-paragraph (2)(b) impose—

- (a) an extended activity requirement, or
 - (b) a fostering requirement,
- if the order does not already impose such a requirement.

para.8(9) - where—

- (a) the order imposes a fostering requirement (the “original requirement”), and
- (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,

paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.

para.8(10) - where the Crown Court deals with an offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.

para.8(11) - sub-paragraphs (12) to (14) apply where—

- (a) an offender has wilfully and persistently failed to comply with a youth rehabilitation order; and
- (b) the Crown Court is dealing with the offender under sub-paragraph (2)(c).

para.8(12) - the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).

para.8(13) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,

the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).

para.8(14) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of paragraph 6(13) or sub-paragraph (12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,

for the purposes of dealing with the offender under sub-paragraph (2)(c), the Crown Court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

para.8(15) - in proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the youth rehabilitation order is to be determined by the court and not by the verdict of a jury.

CJIA 2008 Sch.2 para.9⁸⁴²: Restriction of court's powers where treatment is required

para.9(1) - sub-paragraph (2) applies where a youth rehabilitation order imposes any of the following requirements in respect of an offender—

- (a) a mental health treatment requirement;
- (b) a drug treatment requirement;
- (c) an intoxicating substance treatment requirement.

para.9(2) - the offender is not to be treated for the purposes of paragraph 6 or 8 as having failed to comply with the order on the ground only that the offender had refused to undergo any surgical, electrical or other treatment required by that requirement if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

Revocation

CJIA 2008 Sch.2 para.11⁸⁴³: Revocation: powers of appropriate court

para.11(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of any offender,
- (b) the order—
 - (i) was made by a youth court or other magistrates' court, or
 - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (c) the offender or the responsible officer makes an application to the appropriate court under this sub-paragraph.

para.11(2) - if it appears to the appropriate court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the appropriate court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the appropriate court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).

⁸⁴² Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁴³ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- para.11(3) - the circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (2) include the offender's making good progress or responding satisfactorily to supervision or treatment (as the case requires).
- para.11(4) - in dealing with an offender under sub-paragraph (2)(b), the appropriate court must take into account the extent to which the offender has complied with the requirements of the youth rehabilitation order.
- para.11(5) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.
- para.11(6) - no application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.
- para.11(7) - if an application under sub-paragraph (1) relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the appropriate court.
- para.11(8) - in this paragraph, "*the appropriate court*" means—
- (a) if the offender is aged under 18 when the application under subparagraph (1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
 - (b) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area.

CJIA 2008 Sch.2 para.12⁸⁴⁴: Revocation: powers of Crown Court

- para.12(1) - this paragraph applies where—
- (a) a youth rehabilitation order is in force in respect of an offender,
 - (b) the order—
 - (i) was made by the Crown Court, and
 - (ii) does not contain a direction under paragraph 36 of Schedule 1, and
 - (c) the offender or the responsible officer makes an application to the Crown Court under this sub-paragraph.
- para.12(2) - if it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made, the Crown Court may—
- (a) revoke the order, or
 - (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.

⁸⁴⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.12(3) - the circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (2) include the offender's making good progress or responding satisfactorily to supervision or treatment (as the case requires).

para.12(4) - in dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order.

para.12(5) - no application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.

para.12(6) - if an application under sub-paragraph (1) relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the Crown Court.

Amendment

CJIA 2008 Sch.2 para.13⁸⁴⁵: Amendment by appropriate court

para.13(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender,
- (b) the order—
 - (i) was made by a youth court or other magistrates' court, or
 - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (c) an application for the amendment of the order is made to the appropriate court by the offender or the responsible officer.

para.13(2) - if the appropriate court is satisfied that the offender proposes to reside, or is residing, in a local justice area ("the new local justice area") other than the local justice area for the time being specified in the order, the court—

- (a) must, if the application under sub-paragraph (1)(c) was made by the responsible officer, or
- (b) may, in any other case,
amend the youth rehabilitation order by substituting the new local justice area for the area specified in the order.

para.13(3) - sub-paragraph (2) is subject to paragraph 15.

para.13(4) - the appropriate court may by order amend the youth rehabilitation order—

- (a) by cancelling any of the requirements of the order, or
- (b) by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.

para.13(5) - sub-paragraph (4) is subject to paragraph 16.

⁸⁴⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.13(6) - in this paragraph, “*the appropriate court*” means—

- (a) if the offender is aged under 18 when the application under sub-paragraph (1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
- (b) if the offender is aged 18 or over at that time, a magistrates’ court (other than a youth court) acting in that local justice area.

CJIA 2008 Sch.2 para.14⁸⁴⁶: Amendment by Crown Court

para.14(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender,
- (b) the order—
 - (i) was made by the Crown Court, and
 - (ii) does not contain a direction under paragraph 36 of Schedule 1, and
- (c) an application for the amendment of the order is made to the Crown Court by the offender or the responsible officer.

para.14(2) - if the Crown Court is satisfied that the offender proposes to reside, or is residing, in a local justice area (“the new local justice area”) other than the local justice area for the time being specified in the order, the court—

- (a) must, if the application under sub-paragraph (1)(c) was made by the responsible officer, or
- (b) may, in any other case,
amend the youth rehabilitation order by substituting the new local justice area for the area specified in the order.

para.14(3) - sub-paragraph (2) is subject to paragraph 15.

para.14(4) - the Crown Court may by order amend the youth rehabilitation order—

- (a) by cancelling any of the requirements of the order, or
- (b) by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.

para.14(5) - sub-paragraph (4) is subject to paragraph 16.

CJIA 2008 Sch.2 para.15⁸⁴⁷: Exercise of powers under paragraph 13(2) or 14(2): further provisions

para.15(1) - in sub-paragraphs (2) and (3), “*specific area requirement*”, in relation to a youth rehabilitation order, means a requirement contained in the order which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area specified in the youth rehabilitation order.

para.15(2) - a court may not under paragraph 13(2) or 14(2) amend a youth rehabilitation order which contains specific area requirements unless, in accordance with paragraph 13(4) or, as the case may be, 14(4), it either—

⁸⁴⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁴⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- (a) cancels those requirements, or
- (b) substitutes for those requirements other requirements which can be complied with if the offender resides in the new local justice area mentioned in paragraph 13(2) or (as the case may be) 14(2).

para.15(3) - if—

- (a) the application under paragraph 13(1)(c) or 14(1)(c) was made by the responsible officer, and
- (b) the youth rehabilitation order contains specific area requirements,
the court must, unless it considers it inappropriate to do so, so exercise its powers under paragraph 13(4) or, as the case may be, 14(4) that it is not prevented by sub-paragraph (2) from amending the order under paragraph 13(2) or, as the case may be, 14(2).

para.15(4) - the court may not under paragraph 13(2) or, as the case may be, 14(2) amend a youth rehabilitation order imposing a programme requirement unless the court is satisfied that a programme which—

- (a) corresponds as nearly as practicable to the programme specified in the order for the purposes of that requirement, and
- (b) is suitable for the offender,
is available in the new local justice area.

CJIA 2008 Sch.2 para.16⁸⁴⁸: Exercise of powers under paragraph 13(4) or 14(4): further provisions

para.16(1) - subject to paragraph 16A, any requirement imposed under paragraph 13(4)(b) or 14(4)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.

para.16(2) - where—

- (a) a youth rehabilitation order imposes a fostering requirement (the “original requirement”), and
- (b) under paragraph 13(4)(b) or 14(4)(b) a court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,

paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.

para.16(3) - the court may not under paragraph 13(4) or 14(4) impose—

- (a) a mental health treatment requirement,
- (b) a drug treatment requirement, or
- (c) a drug testing requirement,
unless the offender has expressed willingness to comply with the requirement.

⁸⁴⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.16(4) - if an offender fails to express willingness to comply with a mental health treatment requirement, a drug treatment requirement or a drug testing requirement which the court proposes to impose under paragraph 13(4) or 14(4), the court may—

- (a) revoke the youth rehabilitation order, and
- (b) deal with the offender, for the offence in respect of which the order was made, in any way in which that court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).

para.16(5) - in dealing with the offender under sub-paragraph (4)(b), the court must take into account the extent to which the offender has complied with the order.

CJIA 2008 Sch.2 para.16A⁸⁴⁹: Extension of order

para.16A(1) - the appropriate court may, on the application of the offender or the responsible officer, amend a youth rehabilitation order by substituting a later date for that specified under paragraph 32(1) of Schedule 1.

para.16A(2) - a date substituted under sub-paragraph (1)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
- (b) subject to that, may fall more than three years after the date on which the order took effect.

para.16A(3) - the power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.

para.16A(4) - a date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.

para.16A(5) - in this paragraph “*the appropriate court*” means—

- (a) if the order was made by a youth court or other magistrates’ court, or was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, the court determined under sub-paragraph (6), and
- (b) if the order was made by the Crown Court and does not contain a direction under paragraph 36 of Schedule 1, the Crown Court.

para.16A(6) - the court referred to in sub-paragraph (5)(a) is—

- (a) if the offender is aged under 18 when the application is made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
- (b) if the offender is aged 18 or over at that time, a magistrates’ court (other than a youth court) acting in that local justice area.

⁸⁴⁹ Commencement: 3 December 2012, inserted by LASPOA 2012 s.83(5), SI 2012/2906 art.2(a), the insertion is of no effect in relation to a YRO imposed before the commencement date, SI 2012/2906 art.5(2).

CJIA 2008 Sch.2 para.17⁸⁵⁰: Extension of unpaid work requirement

para.17 - where—

- (a) a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender, and
 - (b) on the application of the offender or the responsible officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,
- the court may, in relation to the order, extend the period of 12 months specified in paragraph 10(6) of Schedule 1.

Breach: Subsequent conviction

CJIA 2008 Sch.2 para.18⁸⁵¹: Powers of magistrates' court following subsequent conviction

para.18(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender, and
- (b) the offender is convicted of an offence (the “further offence”) by a youth court or other magistrates’ court (“the convicting court”).

para.18(2) - sub-paragraphs (3) and (4) apply where—

- (a) the youth rehabilitation order—
 - (i) was made by a youth court or other magistrates’ court, or
 - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (b) the convicting court is dealing with the offender for the further offence.

para.18(3) - the convicting court may revoke the order.

para.18(4) - where the convicting court revokes the order under sub-paragraph (3), it may deal with the offender, for the offence in respect of which the order was made, in any way in which it could have dealt with the offender for that offence (had the offender been before that court to be dealt with for the offence).

para.18(5) - the convicting court may not exercise its powers under sub-paragraph (3) or (4) unless it considers that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made.

para.18(6) - in dealing with an offender under sub-paragraph (4), the sentencing court must take into account the extent to which the offender has complied with the order.

para.18(7) - a person sentenced under sub-paragraph (4) for an offence may appeal to the Crown Court against the sentence.

para.18(8) - sub-paragraph (9) applies where—

- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and

⁸⁵⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵¹ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- (b) the convicting court would, but for that sub-paragraph, deal with the offender for the further offence.

para.18(9) - the convicting court may, instead of proceeding under sub-paragraph (3)—

- (a) commit the offender in custody, or
 - (b) release the offender on bail,
- until the offender can be brought before the Crown Court.

para.18(10) - sub-paragraph (11) applies if the youth rehabilitation order was made by the Crown court and does not contain a direction under paragraph 36 of Schedule 1.

para.18(11) - the convicting court may—

- (a) commit the offender in custody, or
 - (b) release the offender on bail,
- until the offender can be brought or appear before the Crown Court.

para.18(12) - where the convicting court deals with an offender's case under sub-paragraph (9) or (11), it must send to the Crown Court such particulars of the case as may be desirable.

CJIA 2008 Sch.2 para.19⁸⁵²: Powers of Crown Court following subsequent conviction

para.19(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender, and
- (b) the offender—
 - (i) is convicted by the Crown Court of an offence, or
 - (ii) is brought or appears before the Crown Court by virtue of paragraph 18(9) or (11) or having been committed by the magistrates' court to the Crown Court for sentence.

para.19(2) - the Crown Court may revoke the order.

para.19(3) - where the Crown Court revokes the order under sub-paragraph (2), the Crown Court may deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could have dealt with the offender for that offence.

para.19(4) - the Crown Court must not exercise its powers under sub-paragraph (2) or (3) unless it considers that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made.

para.19(5) - in dealing with an offender under sub-paragraph (3), the Crown Court must take into account the extent to which the offender has complied with the order.

para.19(6) - if the offender is brought or appears before the Crown Court by virtue of paragraph 18(9) or (11), the Crown Court may deal with the offender for the further offence in any way which the convicting court could have dealt with the offender for that offence.

⁸⁵² Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.19(7) - in sub-paragraph (6), “*further offence*” and “*the convicting court*” have the same meanings as in paragraph 18.

Provisions dealing with procedure etc.

CJIA 2008 Sch.2 para.20⁸⁵³: Appearance of offender before the court

para.20(1) - subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court—

- (a) must summon the offender to appear before the court, and
- (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender’s arrest.

para.20(2) - sub-paragraph (1) does not apply where a court proposes to make an order—

- (a) revoking a youth rehabilitation order,
- (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or
- (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.

CJIA 2008 Sch.2 para.21⁸⁵⁴: Warrants

para.21(1) - sub-paragraph (2) applies where an offender is arrested in pursuance of a warrant issued by virtue of this Schedule and cannot be brought immediately before the court before which the warrant directs the offender to be brought (“the relevant court”).

para.21(2) - the person in whose custody the offender is—

- (a) may make arrangements for the offender’s detention in a place of safety for a period of not more than 72 hours from the time of the arrest, and
- (b) must within that period bring the offender before a magistrates’ court.

para.21(3) - in the case of a warrant issued by the Crown Court, section 81(5) of the Supreme Court Act 1981 (c. 54) (duty to bring person before magistrates’ court) does not apply.

para.21(4) - a person who is detained under arrangements made under sub-paragraph (2)(a) is deemed to be in legal custody.

para.21(5) - in sub-paragraph (2)(a) “*place of safety*” has the same meaning as in the Children and Young Persons Act 1933.

para.21(6) - sub-paragraphs (7) to (10) apply where, under sub-paragraph (2), the offender is brought before a court (“the alternative court”) which is not the relevant court.

para.21(7) - if the relevant court is a magistrates’ court—

- (a) the alternative court may—
 - (i) direct that the offender be released forthwith, or

⁸⁵³ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

(ii) remand the offender, and

- (b) for the purposes of paragraph (a), section 128 of the Magistrates' Courts Act 1980 (c. 43) (remand in custody or on bail) has effect as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the relevant court.

para.21(8) - if the relevant court is the Crown Court, section 43A of that Act (functions of magistrates' court where a person in custody is brought before it with a view to appearance before the Crown Court) applies as if, in subsection (1)—

- (a) the words "issued by the Crown Court" were omitted, and
(b) the reference to section 81(5) of the Supreme Court Act 1981 were a reference to sub-paragraph (2)(b).

para.21(9) - any power to remand the offender in custody which is conferred by section 43A or 128 of the Magistrates' Courts Act 1980 is to be taken to be a power—

- (a) if the offender is aged under 18, to remand the offender to accommodation provided by or on behalf of a local authority, and
(b) in any other case, to remand the offender to a prison.

para.21(10) - where the court remands the offender to accommodation provided by or on behalf of a local authority, the court must designate, as the authority which is to receive the offender, the local authority for the area in which it appears to the court that the offender resides.

CJIA 2008 Sch.2 para.22⁸⁵⁵: Adjournment of proceedings

para.22(1) - this paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in any proceedings under this Schedule.

para.22(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
(b) remand the offender.

para.22(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
(b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.22(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
(b) if it does not do so, must not resume the hearing unless it is satisfied that the offender, the responsible officer and, if the offender is aged under 14, a parent or guardian of the offender have had adequate notice of the time and place of the resumed hearing.

⁸⁵⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.22(5) - the powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980 (c. 43).

para.22(6) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

CJIA 2008 Sch.2 para.24⁸⁵⁶: Provision of copies of the order

para.24(1) - where a court makes an order under this Schedule revoking or amending a youth rehabilitation order, the proper officer of the court must forthwith—

- (a) provide copies of the revoking or amending order to the offender and, if the offender is aged under 14, to the offender's parent or guardian,
- (b) provide a copy of the revoking or amending order to the responsible officer,
- (c) in the case of an amending order which substitutes a new local justice area, provide copies of the amending order to—
 - (i) the local probation board acting for that area or (as the case may be) a provider of probation services operating in that area, and
 - (ii) the magistrates' court acting in that area,
- (d) in the case of an amending order which imposes or cancels a requirement specified in the first column of the Table in paragraph 34(4) of Schedule 1, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Table,
- (e) in the case of an order which revokes a requirement specified in the first column of that Table, provide a copy of the revoking order to the person specified in relation to that requirement in the second column of that Table, and
- (f) if the court is a magistrates' court acting in a local justice area other than the area specified in the youth rehabilitation order, provide a copy of the revoking or amending order to a magistrates' court acting in the local justice area specified in the order.

para.24(2) - where under sub-paragraph (1)(c) the proper officer of the court provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court such documents and information relating to the case as appear likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

para.24(3) - in this paragraph "*proper officer*" means—

- (a) in relation to a magistrates' court, the designated officer for the court, and
- (b) in relation to the Crown Court, the appropriate officer.

⁸⁵⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

Powers of the Secretary of State

CJA 2008 Sch.2 para.10⁸⁵⁷: SoS power to amend amounts of fines

para.10(1) - the Secretary of State may by order amend any sum for the time being specified in paragraph 6(2)(a) or 8(2)(a).

para.10(2) - the power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.

para.10(3) - in sub-paragraph (2), “the relevant date” means—

- (a) if the sum specified in paragraph 6(2)(a) or 8(2)(a) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
- (b) otherwise, the date on which section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force.

para.10(4) - an order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any youth rehabilitation order made in respect of an offence committed before the fine amendment order comes into force.

CJIA 2008 Sch.2 para.25⁸⁵⁸: Power to amend maximum period of fostering requirement

para.25 - the Secretary of State may by order amend paragraph 6(9), 8(9) or 16(2) by substituting, for—

- (a) the period of 18 months specified in the provision, or
- (b) any other period which may be so specified by virtue of a previous order under this paragraph,

such other period as may be specified in the order.

3.3.3.1.11 Transfer of orders to NI

CJIA 2008 s.3⁸⁵⁹: Transfer of youth rehabilitation orders to Northern Ireland

s.3 - Schedule 3 makes provision about the transfer of youth rehabilitation orders to Northern Ireland.

CJIA 2008 Sch.3

Note: This schedule deals with the situation where a court is considering making a youth rehabilitation order but is satisfied that the offender resides or will reside in Northern Ireland. The schedule makes modifications to the provisions of the CJIA 2008 in relation to youth rehabilitation orders.

⁸⁵⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(c)

3.3.3.1.12 Consequential amendments

CJIA 2008 Sch.4

Note: This schedule sets out consequential amendments to other Acts contingent upon the enactment of the provisions of the CJIA 2008.

3.3.3.2. Referral Order

3.3.3.2.1 Availability and power/duty to order

PCC(S)A 2000 s.16⁸⁶⁰: Duty and power to refer certain young offenders to youth offender panels

- s.16(1) - this section applies where a youth court or other magistrates' court is dealing with a person aged under 18 for an offence and—
- (a) neither the offence nor any connected offence is one for which the sentence is fixed by law;
 - (b) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order (within the meaning of the Mental Health Act 1983) in his case; and
 - (c) the court is not proposing to discharge him, whether absolutely or conditionally, in respect of the offence.
- s.16(2) - if—
- (a) the compulsory referral conditions are satisfied in accordance with section 17 below, and
 - (b) referral is available to the court,
- the court shall sentence the offender for the offence by ordering him to be referred to a youth offender panel.
- s.16(3) - if—
- (a) the discretionary referral conditions are satisfied in accordance with section 17 below, and
 - (b) referral is available to the court,
- the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel.
- s.16(4) - for the purposes of this Part an offence is connected with another if the offender falls to be dealt with for it at the same time as he is dealt with for the other offence (whether or not he is convicted of the offences at the same time or by or before the same court).
- s.16(5) - for the purposes of this section referral is available to a court if—
- (a) the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside; and
 - (b) the notice has not been withdrawn.
- s.16(6) - an order under subsection (2) or (3) above is in this Act referred to as a “referral order”.
- s.16(7) - no referral order may be made in respect of any offence committed before the commencement of section 1 of the Youth Justice and Criminal Evidence Act 1999.

⁸⁶⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.2.2 The referral conditions

PCC(S)A 2000 s.17⁸⁶¹: Referral conditions

- s.17(1) - for the purposes of section 16(2) above [and subsection (2) below] ¹ the compulsory referral conditions are satisfied in relation to an offence if [the offence is an offence punishable with imprisonment and] ² the offender—
- (a) pleaded guilty to the offence and to any connected offence; and
 - (b) has never been—
 - (i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or
 - (ii) convicted by or before a court in another member State of any offence.
- s.17(2) - for the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if—
- (a) the compulsory referral conditions are not satisfied in relation to the offence; and
 - (b) the offender pleaded guilty—
 - (i) to the offence; or
 - (ii) if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences.
- s.17(3) - the Secretary of State may by regulations make such amendments of this section as he considers appropriate for altering in any way the descriptions of offenders in the case of which the compulsory referral conditions or the discretionary referral conditions fall to be satisfied for the purposes of section 16(2) or (3) above (as the case may be).
- s.17(4) - any description of offender having effect for those purposes by virtue of such regulations may be framed by reference to such matters as the Secretary of State considers appropriate, including (in particular) one or more of the following—
- (a) the offender's age;
 - (b) how the offender has pleaded;
 - (c) the offence (or offences) of which the offender has been convicted;
 - (d) the offender's previous convictions (if any);
 - (e) how (if at all) the offender has been previously punished or otherwise dealt with by any court; and
 - (f) any characteristics or behaviour of, or circumstances relating to, any person who has at any time been charged in the same proceedings as the offender (whether or not in respect of the same offence).

⁸⁶¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.2.3 Making the order/Contents of the order

PCC(S)A 2000 s.18⁸⁶²: Making of referral orders: general

- s.18(1) - a referral order shall—
- (a) specify the youth offending team responsible for implementing the order;
 - (b) require the offender to attend each of the meetings of a youth offender panel to be established by the team for the offender; and
 - (c) specify the period for which any youth offender contract taking effect between the offender and the panel under section 23 below is to have effect (which must not be less than three nor more than twelve months).
- s.18(2) - the youth offending team specified under subsection (1)(a) above shall be the team having the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.
- s.18(3) - on making a referral order the court shall explain to the offender in ordinary language—
- (a) the effect of the order; and
 - (b) the consequences which may follow—
 - (i) if no youth offender contract takes effect between the offender and the panel under section 23 below; or
 - (ii) if the offender breaches any of the terms of any such contract.
- s.18(3A) - where a court makes a referral order in respect of an offender who is subject to an earlier referral order, the court may direct that any youth offender contract under the later order is not to take effect under section 23 until the earlier order is revoked or discharged.

3.3.3.2.4 Orders made in respect of two or more offences

PCC(S)A 2000 s.18⁸⁶³: Making of referral orders: general

- s.18(4) - subsections (5) to (7) below apply where, in dealing with an offender for two or more connected offences, a court makes a referral order in respect of each, or each of two or more, of the offences.
- s.18(5) - the orders shall have the effect of referring the offender to a single youth offender panel; and the provision made by them under subsection (1) above shall accordingly be the same in each case, except that the periods specified under subsection (1)(c) may be different.
- s.18(6) - the court may direct that the period so specified in either or any of the orders is to run concurrently with or be additional to that specified in the other or any of the others; but in exercising its power under this subsection the court must ensure that the total period for which such a contract as is mentioned in subsection (1)(c) above is to have effect does not exceed twelve months.

⁸⁶² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁶³ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.18(7) - each of the orders mentioned in subsection (4) above shall, for the purposes of this Part, be treated as associated with the other or each of the others.

3.3.3.2.5 Parental orders (to attend meetings)

PCC(S)A 2000 s.20⁸⁶⁴: Making of referral orders: attendance of parents etc.

- s.20(1) - a court making a referral order may make an order requiring—
- (a) the appropriate person, or
 - (b) in a case where there are two or more appropriate persons, any one or more of them,
- to attend the meetings of the youth offender panel.
- s.20(2) - where an offender is aged under 16 when a court makes a referral order in his case—
- (a) the court shall exercise its power under subsection (1) above so as to require at least one appropriate person to attend meetings of the youth offender panel; and
 - (b) if the offender falls within subsection (6) below, the person or persons so required to attend those meetings shall be or include a representative of the local authority mentioned in that subsection.
- s.20(3) - the court shall not under this section make an order requiring a person to attend meetings of the youth offender panel—
- (a) if the court is satisfied that it would be unreasonable to do so; or
 - (b) to an extent which the court is satisfied would be unreasonable.
- s.20(4) - except where the offender falls within subsection (6) below, each person who is a parent or guardian of the offender is an “appropriate person” for the purposes of this section.
- s.20(5) - where the offender falls within subsection (6) below, each of the following is an “appropriate person” for the purposes of this section—
- (a) a representative of the local authority mentioned in that subsection; and
 - (b) each person who is a parent or guardian of the offender with whom the offender is allowed to live.
- s.20(6) - an offender falls within this subsection if he is (within the meaning of the Children Act 1989) a child who is looked after by a local authority.
- s.20(7) - if, at the time when a court makes an order under this section—
- (a) a person who is required by the order to attend meetings of a youth offender panel is not present in court, or
 - (b) a local authority whose representative is so required to attend such meetings is not represented in court,
- the court must send him or (as the case may be) the authority a copy of the order forthwith.

⁸⁶⁴ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.2.6 Youth Offender Panels, the Youth Offending Team and the Youth Offender Contract

PCC(S)A 2000 s.29⁸⁶⁵: Functions of YOTs

- s.29(1) - the functions of a youth offending team responsible for implementing a referral order include, in particular, arranging for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel established in pursuance of the order.
- s.29(2) - during the period for which a youth offender contract between a youth offender panel and an offender has effect—
- (a) the specified team shall make arrangements for supervising the offender's compliance with the terms of the contract; and
 - (b) the person who is the member of the panel referred to in section 21(3)(a) above shall ensure that records are kept of the offender's compliance (or non-compliance) with those terms.
- s.29(3) - in implementing referral orders a youth offending team shall have regard to any guidance given from time to time by the Secretary of State.

PCC(S)A 2000 s.21⁸⁶⁶: Establishment of panels

- s.21(1) - where a referral order has been made in respect of an offender (or two or more associated referral orders have been so made), it is the duty of the youth offending team specified in the order (or orders)—
- (a) to establish a youth offender panel for the offender;
 - (b) to arrange for the first meeting of the panel to be held for the purposes of section 23 below; and
 - (c) subsequently to arrange for the holding of any further meetings of the panel required by virtue of section 25 below (in addition to those required by virtue of any other provision of this Part).
- s.21(2) - a youth offender panel shall—
- (a) be constituted,
 - (b) conduct its proceedings, and
 - (c) discharge its functions under this Part (and in particular those arising under section 23 below),
- in accordance with guidance given from time to time by the Secretary of State.
- s.21(3) - at each of its meetings a panel shall, however, consist of at least—
- (a) one member appointed by the youth offending team from among its members; and
 - (b) two members so appointed who are not members of the team.

⁸⁶⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁶⁶ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.21(4) - the Secretary of State may by regulations make provision requiring persons appointed as members of a youth offender panel to have such qualifications, or satisfy such other criteria, as are specified in the regulations.
- s.21(5) - where it appears to the court which made a referral order that, by reason of either a change or a prospective change in the offender's place or intended place of residence, the youth offending team for the time being specified in the order ("the current team") either does not or will not have the function of implementing referral orders in the area in which the offender resides or will reside, the court may amend the order so that it instead specifies the team which has the function of implementing such orders in that area ("the new team").
- s.21(6) - where a court so amends a referral order—
- (a) subsection (1)(a) above shall apply to the new team in any event;
 - (b) subsection (1)(b) above shall apply to the new team if no youth offender contract has (or has under paragraph (c) below been treated as having) taken effect under section 23 below between the offender and a youth offender panel established by the current team;
 - (c) if such a contract has (or has previously under this paragraph been treated as having) so taken effect, it shall (after the amendment) be treated as if it were a contract which had taken effect under section 23 below between the offender and the panel being established for the offender by the new team.
- s.21(7) - references in this Part to the meetings of a youth offender panel (or any such meeting) are to the following meetings of the panel (or any of them)—
- (a) the first meeting held in pursuance of subsection (1)(b) above;
 - (b) any further meetings held in pursuance of section 25 below;
 - (c) any progress meeting held under section 26 below; and
 - (d) the final meeting held under section 27 below.

PCC(S)A 2000 s.22⁸⁶⁷: Attendance at panel meetings

- s.22(1) - the specified team shall, in the case of each meeting of the panel established for the offender, notify—
- (a) the offender, and
 - (b) any person to whom an order under section 20 above applies, of the time and place at which he is required to attend that meeting.
- s.22(2) - if the offender fails to attend any part of such a meeting the panel may—
- (a) adjourn the meeting to such time and place as it may specify; or
 - (b) end the meeting and refer the offender back to the appropriate court;
- and subsection (1) above shall apply in relation to any such adjourned meeting.
- s.22(2A) - if—
- (a) a parent or guardian of the offender fails to comply with an order under section 20 above (requirement to attend the meetings of the panel), and

⁸⁶⁷ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- (b) the offender is aged under 18 at the time of the failure,
the panel may refer that parent or guardian to a youth court [acting in the local justice area in which it appears to the panel that the offender resides or will reside.
- s.22(3) - one person aged 18 or over chosen by the offender, with the agreement of the panel, shall be entitled to accompany the offender to any meeting of the panel (and it need not be the same person who accompanies him to every meeting).
- s.22(4) - the panel may allow to attend any such meeting—
 - (a) any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, in respect of which the offender was referred to the panel;
 - (b) any person who appears to the panel to be someone capable of having a good influence on the offender.
- s.22(5) - where the panel allows any such person as is mentioned in subsection (4)(a) above (“the victim”) to attend a meeting of the panel, the panel may allow the victim to be accompanied to the meeting by one person chosen by the victim with the agreement of the panel.

PCC(S)A 2000 s.23⁸⁶⁸: First meeting: Agreement of youth offender contract

- s.23(1) - at the first meeting of the youth offender panel established for an offender the panel shall seek to reach agreement with the offender on a programme of behaviour the aim (or principal aim) of which is the prevention of re-offending by the offender.
- s.23(2) - the terms of the programme may, in particular, include provision for any of the following—
 - (a) the offender to make financial or other reparation to any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, for which the offender was referred to the panel;
 - (b) the offender to attend mediation sessions with any such victim or other person;
 - (c) the offender to carry out unpaid work or service in or for the community;
 - (d) the offender to be at home at times specified in or determined under the programme;
 - (e) attendance by the offender at a school or other educational establishment or at a place of work;
 - (f) the offender to participate in specified activities (such as those designed to address offending behaviour, those offering education or training or those assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);
 - (g) the offender to present himself to specified persons at times and places specified in or determined under the programme;
 - (h) the offender to stay away from specified places or persons (or both);
 - (i) enabling the offender’s compliance with the programme to be supervised and recorded.

⁸⁶⁸ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.23(3) - the programme may not, however, provide—
- (a) for the electronic monitoring of the offender's whereabouts; or
 - (b) for the offender to have imposed on him any physical restriction on his movements.
- s.23(4) - no term which provides for anything to be done to or with any such victim or other affected person as is mentioned in subsection (2)(a) above may be included in the programme without the consent of that person.
- s.23(5) - where a programme is agreed between the offender and the panel, the panel shall cause a written record of the programme to be produced forthwith—
- (a) in language capable of being readily understood by, or explained to, the offender; and
 - (b) for signature by him.
- s.23(6) - once the record has been signed—
- (a) by the offender, and
 - (b) by a member of the panel on behalf of the panel,
- the terms of the programme, as set out in the record, take effect as the terms of a "youth offender contract" between the offender and the panel; and the panel shall cause a copy of the record to be given or sent to the offender.

PCC(S)A 2000 s.24⁸⁶⁹: First meeting: Duration of contract

- s.24(1) - this section applies where a youth offender contract has taken effect under section 23 above between an offender and a youth offender panel.
- s.24(2) - the day on which the contract so takes effect shall be the first day of the period for which it has effect.
- s.24(3) - where the panel was established in pursuance of a single referral order, the length of the period for which the contract has effect shall be that of the period specified under section 18(1)(c) above in the referral order.
- s.24(4) - where the panel was established in pursuance of two or more associated referral orders, the length of the period for which the contract has effect shall be that resulting from the court's directions under section 18(6) above.
- s.24(5) - subsections (3) and (4) above have effect subject to—
- (a) any order under paragraph 9ZD, 11 or 12 of Schedule 1 to this Act extending the length of the period for which the contract has effect; and
 - (b) subsection (6) below.
- s.24(6) - if the referral order, or each of the associated referral orders, is revoked (whether under paragraph 5(2) of Schedule 1 to this Act or by virtue of paragraph 14(2) of that Schedule), the period for which the contract has effect expires at the time when the order or orders is or are revoked unless it has already expired.

⁸⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

PCC(S)A 2000 s.25⁸⁷⁰: First meeting: Failure to agree contract

- s.25(1) - where it appears to a youth offender panel to be appropriate to do so, the panel may—
- (a) end the first meeting (or any further meeting held in pursuance of paragraph (b) below) without having reached agreement with the offender on a programme of behaviour of the kind mentioned in section 23(1) above; and
 - (b) resume consideration of the offender's case at a further meeting of the panel.
- s.25(2) - if, however, it appears to the panel at the first meeting or any such further meeting that there is no prospect of agreement being reached with the offender within a reasonable period after the making of the referral order (or orders)—
- (a) subsection (1)(b) above shall not apply; and
 - (b) instead the panel shall refer the offender back to the appropriate court.
- s.25(3) - if at a meeting of the panel—
- (a) agreement is reached with the offender but he does not sign the record produced in pursuance of section 23(5) above, and
 - (b) his failure to do so appears to the panel to be unreasonable,
- the panel shall end the meeting and refer the offender back to the appropriate court.

PCC(S)A 2000 s.26⁸⁷¹: Progress meetings

- s.26(1) - at any time—
- (a) after a youth offender contract has taken effect under section 23 above, but
 - (b) before the end of the period for which the contract has effect,
- the specified team shall, if so requested by the panel, arrange for the holding of a meeting of the panel under this section ("a progress meeting").
- s.26(2) - the panel may make a request under subsection (1) above if it appears to the panel to be expedient to review—
- (a) the offender's progress in implementing the programme of behaviour contained in the contract; or
 - (b) any other matter arising in connection with the contract.
- s.26(3) - the panel shall make such a request if—
- (a) the offender has notified the panel that—
 - (i) he wishes to seek the panel's agreement to a variation in the terms of the contract; or
 - (ii) he wishes the panel to refer him back to the appropriate court with a view to the referral order (or orders) being revoked on account of a significant change in his circumstances (such as his being taken to live abroad) making compliance with any youth offender contract impractical; or
 - (b) it appears to the panel that the offender is in breach of any of the terms of the contract.

⁸⁷⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁷¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.26(4) - at a progress meeting the panel shall do such one or more of the following things as it considers appropriate in the circumstances, namely—
- (a) review the offender's progress or any such other matter as is mentioned in subsection (2) above;
 - (b) discuss with the offender any breach of the terms of the contract which it appears to the panel that he has committed;
 - (c) consider any variation in the terms of the contract sought by the offender or which it appears to the panel to be expedient to make in the light of any such review or discussion;
 - (d) consider whether to accede to any request by the offender that he be referred back to the appropriate court.
- s.26(5) - where the panel has discussed with the offender such a breach as is mentioned in subsection (4)(b) above—
- (a) the panel and the offender may agree that the offender is to continue to be required to comply with the contract (either in its original form or with any agreed variation in its terms) without being referred back to the appropriate court; or
 - (b) the panel may decide to end the meeting and refer the offender back to that court.
- s.26(6) - where a variation in the terms of the contract is agreed between the offender and the panel, the panel shall cause a written record of the variation to be produced forthwith—
- (a) in language capable of being readily understood by, or explained to, the offender; and
 - (b) for signature by him.
- s.26(7) - any such variation shall take effect once the record has been signed—
- (a) by the offender; and
 - (b) by a member of the panel on behalf of the panel;
- and the panel shall cause a copy of the record to be given or sent to the offender.
- s.26(8) - if at a progress meeting—
- (a) any such variation is agreed but the offender does not sign the record produced in pursuance of subsection (6) above, and
 - (b) his failure to do so appears to the panel to be unreasonable,
- the panel may end the meeting and refer the offender back to the appropriate court.
- s.26(9) - Section 23(2) to (4) above shall apply in connection with what may be provided for by the terms of the contract as varied under this section as they apply in connection with what may be provided for by the terms of a programme of behaviour of the kind mentioned in section 23(1).
- s.26(10) - where the panel has discussed with the offender such a request as is mentioned in subsection (4)(d) above, the panel may, if it is satisfied that there is (or is soon to be) such a change in circumstances as is mentioned in subsection (3)(a)(ii) above, decide to end the meeting and refer the offender back to the appropriate court.

PCC(S)A 2000 s.27⁸⁷²: Final meeting

- s.27(1) - where the compliance period in the case of a youth offender contract is due to expire, the specified team shall arrange for the holding, before the end of that period, of a meeting of the panel under this section (“the final meeting”).
- s.27(2) - at the final meeting the panel shall—
- (a) review the extent of the offender’s compliance to date with the terms of the contract; and
 - (b) decide, in the light of that review, whether his compliance with those terms has been such as to justify the conclusion that, by the time the compliance period expires, he will have satisfactorily completed the contract;
- and the panel shall give the offender written confirmation of its decision.
- s.27(3) - where the panel decides that the offender’s compliance with the terms of the contract has been such as to justify that conclusion, the panel’s decision shall have the effect of discharging the referral order (or orders) as from the end of the compliance period.
- s.27(4) - otherwise the panel shall refer the offender back to the appropriate court.
- s.27(5) - nothing in section 22(2) above prevents the panel from making the decision mentioned in subsection (3) above in the offender’s absence if it appears to the panel to be appropriate to do that instead of exercising either of its powers under section 22(2).
- s.27(6) - Section 22(2)(a) above does not permit the final meeting to be adjourned (or re-adjourned) to a time falling after the end of the compliance period.
- s.27(7) - in this section “*the compliance period*”, in relation to a youth offender contract, means the period for which the contract has effect in accordance with section 24 above.

3.3.3.2.7 Revocation/Amendment/Extension

Revocation for good progress

PCC(S)A 2000 s.27A⁸⁷³: Revocation of referral order where offender making good progress etc.

- s.27A(1) - this section applies where, having regard to circumstances which have arisen since a youth offender contract took effect under section 23 above, it appears to the youth offender panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.
- s.27A(2) - the panel may refer the offender back to the appropriate court requesting it—
- (a) to exercise only the power conferred by sub-paragraph (2) of paragraph 5 of Schedule 1 to this Act to revoke the order (or each of the orders); or
 - (b) to exercise both—
 - (i) the power conferred by that sub-paragraph to revoke the order (or each of the orders); and

⁸⁷² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁷³ Commencement: 27 April 2009, as inserted by CJA 2008 s.36(2), SI 2009/860 art.2(2)(b).

- (ii) the power conferred by sub-paragraph (4) of that paragraph to deal with the offender for the offence in respect of which the revoked order was made.

s.27A(3) - the circumstances in which the panel may make a referral under subsection (2) above include the offender's making good progress under the contract.

s.27A(4) - where—

- (a) the panel makes a referral under subsection (2) above in relation to any offender and any youth offender contract, and
- (b) the appropriate court decides not to exercise the power conferred by paragraph 5(2) of Schedule 1 to this Act in consequence of that referral,

the panel may not make a further referral under that subsection in relation to that offender and contract during the relevant period except with the consent of the appropriate court.

s.27A(5) - in subsection (4) above "*the relevant period*" means the period of 3 months beginning with the date on which the appropriate court made the decision mentioned in paragraph (b) of that subsection.

Extension of contract

PCC(S)A 2000 s.27B⁸⁷⁴: Extension of period for which young offender contract has effect

s.27B(1) - this section applies where at any time—

- (a) a youth offender contract has taken effect under section 23 above for a period which is less than twelve months;
- (b) that period has not ended; and
- (c) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of that period to be extended.

s.27B(2) - the panel may refer the offender back to the appropriate court requesting it to extend the length of that period.

s.27B(3) - the requested period of extension must not exceed three months

PCC(S)A 2000 Sch.1 para.9ZB⁸⁷⁵: Introductory

para.9ZB(1) - this Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 27B of this Act with a view to the court extending the period for which the offender's youth offender contract has effect.

para.9ZB(2) - for the purposes of this Part of this Schedule and that section the appropriate court is—

- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) the offender first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and

⁸⁷⁴ Commencement: 27 April 2009, as inserted by CJIA 2008 s.37(2), SI 2009/860 art.2(2)(c).

⁸⁷⁵ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

- (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

PCC(S)A 2000 Sch.1 para.9ZC⁸⁷⁶: Mode of referral back to court

para.9ZC - the panel shall make the referral by sending a report to the appropriate court explaining why the defendant is being referred

PCC(S)A 2000 Sch.1 para.9ZD⁸⁷⁷: Power of court

para.9ZD(1) - if it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the contract took effect, the court may make an order extending the length of the period for which the contract has effect.

para.9ZD(2) - an order under sub-paragraph (1) above—

- (a) must not extend that period by more than three months; and
- (b) must not so extend that period as to cause it to exceed twelve months.

para.9ZD(3) - in deciding whether to make an order under sub-paragraph (1) above, the court shall have regard to the extent of the offender's compliance with the terms of the contract.

para.9ZD(4) - the court may not make an order under sub-paragraph (1) above unless—

- (a) the offender is present before it; and
- (b) the contract has effect at the time of the order.

PCC(S)A 2000 Sch.1 para.9ZE⁸⁷⁸: Supplementary

para.9ZE - the following paragraphs of Part 1 of this Schedule apply for the purposes of this Part of this Schedule as they apply for the purposes of that Part—

- (a) paragraph 3 (bringing the offender before the court);
- (b) paragraph 4 (detention and remand of arrested offender); and
- (c) paragraph 9ZA (power to adjourn hearing and remand offender).

Amending order

PCC(S)A 2000 s.21⁸⁷⁹: Amending order because of change of residence

s.21(5) - where it appears to the court which made a referral order that, by reason of either a change or a prospective change in the offender's place or intended place of residence, the youth offending team for the time being specified in the order ("the current team") either does not or will not have the function of implementing referral orders in the area in which the offender resides or will reside, the court may amend the order so that it instead specifies the team which has the function of implementing such orders in that area ("the new team").

⁸⁷⁶ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

⁸⁷⁷ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

⁸⁷⁸ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

⁸⁷⁹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

s.21(6) - where a court so amends a referral order—

- (a) subsection (1)(a) above shall apply to the new team in any event;
- (b) subsection (1)(b) above shall apply to the new team if no youth offender contract has (or has under paragraph (c) below been treated as having) taken effect under section 23 below between the offender and a youth offender panel established by the current team;
- (c) if such a contract has (or has previously under this paragraph been treated as having) so taken effect, it shall (after the amendment) be treated as if it were a contract which had taken effect under section 23 below between the offender and the panel being established for the offender by the new team.

3.3.3.2.8 Referral back to court for failure to comply or subsequent conviction

PCC(S)A 2000 s.28⁸⁸⁰: Offender or parent referred to court: Offender convicted while subject to referral order

s.28 - Schedule 1 to this Act, which—

- (a) in Parts 1 and 1ZA makes provision for what is to happen when a youth offender panel refers an offender back to the appropriate court; and
 - (aa) in Part 1A makes provision for what is to happen when a youth offender panel refers a parent or guardian to the court under section 22(2A) above, and
 - (b) in Part II makes provision for what is to happen when an offender is convicted of further offences while for the time being subject to a referral order,
- shall have effect.

Referral back to court due to failure to comply etc.

PCC(S)A 2000 Sch.1 para.1⁸⁸¹: Introductory

para.1(1) - this Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under [section 22(2), 25(2) or (3), 26(5), (8) or (10), 27(4) or 27A(2)] of this Act.

para.1(2) - for the purposes of this Part of this Schedule and the provisions mentioned in subparagraph (1) above the appropriate court is—

- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) he first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and
- (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

PCC(S)A 2000 Sch.1 para.2⁸⁸²: Mode of referral back to court

para.2 - the panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

⁸⁸⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁸¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁸² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

PCC(S)A 2000 Sch.1 para.3⁸⁸³: Bringing the offender before the court

para.3(1) - where the appropriate court receives such a report, the court shall cause the offender to appear before it.

para.3(2) - for the purpose of securing the attendance of the offender before the court, a justice acting in the local justice area in which the court acts may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it; or
- (b) if the report is substantiated on oath, issue a warrant for the offender's arrest.

para.3(3) - any summons or warrant issued under sub-paragraph (2) above shall direct the offender to appear or be brought before the appropriate court.

PCC(S)A 2000 Sch.1 para.4⁸⁸⁴: Detention and remand of offender

para.4(1) - where the offender is arrested in pursuance of a warrant under paragraph 3(2) above and cannot be brought immediately before the appropriate court—

- (a) the person in whose custody he is may make arrangements for his detention in a place of safety (within the meaning given by section 107(1) of the Children and Young Persons Act 1933) for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and
- (b) that person shall within that period bring him before a court which—
 - (i) if he is under the age of 18 when he is brought before the court, shall be a youth court; and
 - (ii) if he has then attained that age, shall be a magistrates' court other than a youth court.

para.4(2) - sub-paragraphs (3) to (5) below apply where the court before which the offender is brought under sub-paragraph (1)(b) above ("the alternative court") is not the appropriate court.

para.4(3) - the alternative court may direct that he is to be released forthwith or remand him.

para.4(4) - Section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) shall have effect where the alternative court has power under sub-paragraph (3) above to remand the offender as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.

para.4(5) - that section shall have effect where the alternative court has power so to remand him, or the appropriate court has (by virtue of sub-paragraph (4) above) power to further remand him, as if in subsection (1) there were inserted after paragraph (c)

"or

(d) if he is aged under 18, remand him to accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989) and, if it does so, shall

⁸⁸³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁸⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

designate as the authority who are to receive him the local authority for the area in which it appears to the court that he resides or will reside;”.

PCC(S)A 2000 Sch.1 para.5⁸⁸⁵: Power of court where it upholds the panel’s decision

para.5(1) - if it is proved to the satisfaction of the appropriate court as regards any decision of the panel which resulted in the offender being referred back to the court—

- (a) that, so far as the decision relied on any finding of fact by the panel, the panel was entitled to make that finding in the circumstances, and
- (b) that, so far as the decision involved any exercise of discretion by the panel, the panel reasonably exercised that discretion in the circumstances,

the court may exercise the power conferred by sub-paragraph (2) below.

para.5(2) - that power is a power to revoke the referral order (or each of the referral orders).

para.5(3) - the revocation under sub-paragraph (2) above of a referral order has the effect of revoking any related order under paragraphs 9ZD or 10 below.

para.5(4) - where any order is revoked under sub-paragraph (2) above or by virtue of sub-paragraph (3) above, the appropriate court may deal with the offender in accordance with sub-paragraph (5) below for the offence in respect of which the revoked order was made.

para.5(5) - in so dealing with the offender for such an offence, the appropriate court—

- (a) may deal with him in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order; and
- (b) shall have regard to—
 - (i) the circumstances of his referral back to the court; and
 - (ii) where a contract has taken effect under section 23 of this Act between the offender and the panel, the extent of his compliance with the terms of the contract.

para.5(6) - the appropriate court may not exercise the powers conferred by sub-paragraph (2) or (4) above unless the offender is present before it; but those powers are exercisable even if, in a case where a contract has taken effect under section 23, the period for which the contract has effect has expired (whether before or after the referral of the offender back to the court).

PCC(S)A 2000 Sch.1 para.6⁸⁸⁶: Appeal

para.6 - where the court in exercise of the power conferred by paragraph 5(4) above deals with the offender for an offence, the offender may appeal to the Crown Court against the sentence.

⁸⁸⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁸⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

PCC(S)A 2000 Sch.1 para.6A⁸⁸⁷: Power of court to impose fine or extend period for which contract has effect

para.6A(1) - this paragraph applies where—

- (a) an offender has been referred back to the appropriate court under section 22(2), 26(5) or 27(4), and
- (b) it is proved to the satisfaction of the court that the offender has failed, without reasonable excuse, to comply with the terms of a contract under section 23.

para.6A(2) - if the court does not revoke the order under paragraph 5 it may—

- (a) order the offender to pay a fine of an amount not exceeding £2,500, or
- (b) make an order extending the length of the period for which the contract under section 23 has effect.

para.6A(3) - the court may not extend the length of the period for which the contract has effect so that it becomes longer than 12 months.

para.6A(4) - if the period for which the contract has effect has expired (whether before or after the referral of the offender back to court) the court—

- (a) may make an order under sub-paragraph (2)(a), but
- (b) may not make an order under sub-paragraph (2)(b).

para.6A(5) - the court may not exercise a power under sub-paragraph (2) unless the offender is present before it.

para.6A(6) - a fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.6A(7) - the Secretary of State may by order amend any sum for the time being specified in sub-paragraph (2)(a).

PCC(S)A 2000 Sch.1 para.7⁸⁸⁸: Court not revoking referral order(s)

para.7(1) - this paragraph applies—

- (a) where the appropriate court decides that the matters mentioned in paragraphs (a) and (b) of paragraph 5(1) above have not been proved to its satisfaction; or
- (b) where, although by virtue of paragraph 5(1) above the appropriate court—
 - (i) is able to exercise the power conferred by paragraph 5(2) above, or
 - (ii) would be able to do so if the offender were present before it,the court (for any reason) decides not to exercise that power.

para.7(2) - if either—

- (a) no contract has taken effect under section 23 of this Act between the offender and the panel, or

⁸⁸⁷ Commencement: 13 April 2015, as inserted by CJCA 2015 s.43, SI 2015/778 art.3 and Sch.1 para.34.

⁸⁸⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) a contract has taken effect under that section but the period for which it has effect has not expired,

the offender shall continue to remain subject to the referral order (or orders) in all respects as if he had not been referred back to the court (subject to any order under paragraph 6A(2)(b)).

para.7(3) - if—

- (a) a contract had taken effect under section 23 of this Act, but
- (b) the period for which it has effect has expired (otherwise than by virtue of section 24(6)),

the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

PCC(S)A 2000 Sch.1 para.8⁸⁸⁹: Exception where court is satisfied as to completion of contract

para.8 - if, in a case where the offender is referred back to the court under section 27(4) of this Act, the court decides (contrary to the decision of the panel) that the offender's compliance with the terms of the contract has, or will have, been such as to justify the conclusion that he has satisfactorily completed the contract, the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

PCC(S)A 2000 Sch.1 para.9⁸⁹⁰: Discharge of extension orders

para.9 - the discharge under paragraph 7(3) or 8 above of a referral order has the effect of discharging any related order under paragraphs 9ZD or 10 below.

PCC(S)A 2000 Sch.1 para.9ZA⁸⁹¹: Power to adjourn hearing and remand offender

para.9ZA(1) - this paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in proceedings under this Part of this Schedule.

para.9ZA(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.9ZA(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.9ZA(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but

⁸⁸⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁹⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁹¹ Commencement: 30 November 2009, inserted by CJA 2008 Sch.4 para.107, SI 2009/3074 art.2(p)(xv)

- (b) if it does not do so, it must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph (5) have had adequate notice of the time and place for the resumed hearing.

para.9ZA(5) - the persons referred to in sub-paragraph (4)(b) are—

- (a) the offender,
- (b) if the offender is aged under 14, a parent or guardian of the offender, and
- (c) a member of the youth offending team specified under section 18(1)(a) as responsible for implementing the order.

para.9ZA(6) - if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority.

para.9ZA(7) - in sub-paragraph (6)—

“local authority” has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,

“parental responsibility” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and

“social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.

para.9ZA(8) - the powers of a magistrates’ court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980.

para.9ZA(9) - this paragraph—

- (a) applies to any hearing in proceedings under this Part of this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

Referral of parent or guardian for breach of section 20 order: Sch.1 Part 1A

PCC(S)A 2000 Sch.1 para.9A⁸⁹²: Introductory

para.9A(1) - this Part of this Schedule applies where, under section 22(2A) of this Act, a youth offender panel refers an offender’s parent or guardian to a youth court.

para.9A(2) - in this Part of this Schedule—

- (a) *“the offender”* means the offender whose parent or guardian is referred under section 22(2A);
- (b) *“the parent”* means the parent or guardian so referred; and
- (c) *“the youth court”* means a youth court as mentioned in section 22(2A).

⁸⁹² Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

PCC(S)A 2000 Sch.1 para.9B⁸⁹³: Mode of referral to court

para.9B - the panel shall make the referral by sending a report to the youth court explaining why the parent is being referred to it.

PCC(S)A 2000 Sch.1 para.9C⁸⁹⁴: Bringing the parent before the court

para.9C(1) - where the youth court receives such a report it shall cause the parent to appear before it.

para.9C(2) - for the purpose of securing the attendance of the parent before the court, a justice acting in the local justice area in which the court acts may—

- (a) issue a summons requiring the parent to appear at the place and time specified in it; or
- (b) if the report is substantiated on oath, issue a warrant for the parent's arrest.

para.9C(3) - any summons or warrant issued under sub-paragraph (2) above shall direct the parent to appear or be brought before the youth court.

PCC(S)A 2000 Sch.1 para.9D⁸⁹⁵: Power of the court to make a parenting order: Application of supplemental provisions

para.9D(1) - where the parent appears or is brought before the youth court under paragraph 9C above, the court may make a parenting order in respect of the parent if—

- (a) it is proved to the satisfaction of the court that the parent has failed without reasonable excuse to comply with the order under section 20 of this Act; and
- (b) the court is satisfied that the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender.

para.9D(2) - a parenting order is an order which requires the parent—

- (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and
- (b) subject to sub-paragraph (4) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

para.9D(3) - the requirements that may be specified under sub-paragraph (2)(a) above are those which the court considers desirable in the interests of preventing the commission of any further offence by the offender.

para.9D(4) - a parenting order under this paragraph may, but need not, include a requirement mentioned in subsection (2)(b) above in any case where a parenting order under this paragraph or any other enactment has been made in respect of the parent on a previous occasion.

⁸⁹³ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁴ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁵ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

para.9D(5) - a counselling or guidance programme which a parent is required to attend by virtue of subsection (2)(b) above may be or include a residential course but only if the court is satisfied—

- (a) that the attendance of the parent at a residential course is likely to be more effective than his attendance at a nonresidential course in preventing the commission of any further offence by the offender, and
- (b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

para.9D(6) - before making a parenting order under this paragraph where the offender is aged under 16, the court shall obtain and consider information about his family circumstances and the likely effect of the order on those circumstances.

para.9D(7) - Sections 8(3) and (8), 9(3) to (7) and 18(3) and (4) of the Crime and Disorder Act 1998 apply in relation to a parenting order made under this paragraph as they apply in relation to any other parenting order.

PCC(S)A 2000 Sch.1 para.9E⁸⁹⁶: Appeals

para.9E(1) - an appeal shall lie to the Crown Court against the making of a parenting order under paragraph 9D above.

para.9E(2) - Subsections (2) and (3) of section 10 of the Crime and Disorder Act 1998 (appeals against parenting orders) apply in relation to an appeal under this paragraph as they apply in relation to an appeal under subsection (1)(b) of that section.

PCC(S)A 2000 Sch.1 para.9F⁸⁹⁷: Effect on section 20 order

para.9F(1) - the making of a parenting order under paragraph 9D above is without prejudice to the continuance of the order under section 20 of this Act.

para.9F(2) - Section 63(1) to (4) of the Magistrates' Courts Act 1980 (power of magistrates' court to deal with person for breach of order, etc) apply (as well as section 22(2A) of this Act and this Part of this Schedule) in relation to an order under section 20 of this Act.

Referral back to court due to further convictions whilst subject to a referral

PCC(S)A 2000 Sch.1 para.10⁸⁹⁸: Extension of referral for further offences

para.10(1) - this paragraph applies where—

- (a) an offender aged under 18 is subject to referral, and
- (b) a relevant court is dealing with the offender for an offence in relation to which paragraphs (a) to (c) of section 16(1) apply.

para.10(2) - the relevant court may sentence the offender for the offence by making an order extending any compliance period.

⁸⁹⁶ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁷ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

para.10(3) - the relevant court may not extend the length of a compliance period so that it becomes longer than 12 months.

para.10(4) - in this paragraph and paragraph 13 “*relevant court*” means a youth court or other magistrates’ court.

PCC(S)A 2000 Sch.1 para.13⁸⁹⁹: Paras 11 and 12: Supplementary

para.13(2) - sub-paragraphs (3) to (5) below apply where the relevant court makes an order under paragraph 10 in respect of an offence; but sub-paragraphs (3) to (5) do not affect the exercise of any power to deal with the offender conferred by paragraph 5 or 14 of this Schedule.

para.13(3) - the relevant court may not deal with the offender for that offence in any of the prohibited ways specified in section 19(4) of this Act.

para.13(4) - the relevant court—

- (a) shall, in respect of any connected offence, either—
 - (i) sentence the offender by making an order under the same paragraph; or
 - (ii) make an order discharging him absolutely; and
- (b) may not deal with the offender for any connected offence in any of those prohibited ways.

para.13(5) - the relevant court may not, in connection with the conviction of the offender for the offence or any connected offence, make any such order as is mentioned in section 19(5) of this Act.

para.13(8) - the Secretary of State may by regulations make such amendments of paragraph 10 above and this paragraph as he considers appropriate for altering in any way the descriptions of offenders in the case of which an order extending the compliance period may be made; and subsection (4) of section 17 of this Act shall apply in relation to regulations under this sub-paragraph as it applies in relation to regulations under subsection (3) of that section.

PCC(S)A 2000 Sch.1 para.14⁹⁰⁰: Further convictions which lead to revocation of referral

para.14(1) - this paragraph applies where, at a time when an offender is subject to referral, a court in England and Wales deals with him for an offence (whether committed before or after he was referred to the panel) by making an order other than—

- (a) an order under paragraph 10 above; or
- (b) an order discharging him, whether absolutely or conditionally.

para.14(2) - the court may revoke the referral order (or any one or more of the referral orders) if it appears to the court to be in the interests of justice to do so.

para.14(2A) - the revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph 9ZD or 10.

⁸⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

para.14(3) - where any order is revoked by virtue of sub-paragraph (2) above, the court may, if appears to the court that it would be in the interests of justice to do so, deal with the offender for the offence in respect of which the revoked order was made in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order.

para.14(4) - when dealing with the offender under sub-paragraph (3) above the court shall, where a contract has taken effect between the offender and the panel under section 23 of this Act, have regard to the extent of his compliance with the terms of the contract.

PCC(S)A 2000 Sch.1 para.15⁹⁰¹: Interpretation

para.15(1) - for the purposes of this Part of this Schedule an offender is for the time being subject to referral if—

- (a) a referral order has been made in respect of him and that order has not, or
- (b) two or more referral orders have been made in respect of him and any of those orders has not,

been discharged (whether by virtue of section 27(3) of this Act or under paragraph 7(3) or 8 above) or revoked (whether under paragraph 5(2) above or by virtue of paragraph 14(2) above).

para.15(2) - in this Part of this Schedule “*compliance period*”, in relation to an offender who is for the time being subject to referral, means the period for which (in accordance with section 24 of this Act) any youth offender contract taking effect in his case under section 23 of this Act has (or would have) effect.

3.3.3.2.9 Interaction with other sentencing orders

PCC(S)A 2000 s.19⁹⁰²: Making of referral orders: effect on court’s other sentencing powers

s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.

s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.

s.19(3) - the court—

- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
- (b) may not deal with the offender for any such offence in any of the prohibited ways.

s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—

- (a) imposing a sentence which consists of or includes a youth rehabilitation order on the offender;
- (b) ordering him to pay a fine;
- (ba) making an order under section 1(2A) of the Street Offences Act 1959 in respect of the offender;
- (c) making a reparation order in respect of him; and

⁹⁰¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- (d) making an order discharging him conditionally.
- s.19(5) - the court may not make, in connection with the conviction of the offender for the offence or any connected offence—
 - (a) an order binding him over to keep the peace or to be of good behaviour;
 - (b) an order under section 150 below (binding over of parent or guardian).
- s.19(6) - subsections (2), (3) and (5) above do not affect the exercise of any power to deal with the offender conferred by paragraph 5 (offender referred back to court by panel) or paragraph 14 (powers of a court where offender convicted while subject to referral) of Schedule 1 to this Act.
- s.19(7) - where section 16(2) above requires a court to make a referral order, the court may not under section 1 above defer passing sentence on him, but section 16(2) and subsection (3)(a) above do not affect any power or duty of a magistrates' court under—
 - (a) section 8 above (remission to youth court, or another such court, for sentence);
 - (b) section 10(3) of the Magistrates' Courts Act 1980 (adjournment for inquiries); or
 - (c) section 35, 38, 43 or 44 of the Mental Health Act 1983 (remand for reports, *interim* hospital orders and committal to Crown Court for restriction order).

MHA 1983 s.37⁹⁰³: Hospital and guardianship orders

- s.37(8) - when imposing a hospital order the court shall not impose a referral order

CDA 1998 s.9: Parenting orders: Supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court by or before which he is so convicted—
 - (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and
 - (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence.

3.3.3.2.10 Procedural, interpretation and supplementary provisions

PCC(S)A 2000 s.30⁹⁰⁴: Regulations under Part 3

- s.30(1) - any power of the Secretary of State to make regulations under section 17(3) or 21(4) above or paragraph 13(8) of Schedule 1 to this Act shall be exercisable by statutory instrument.
- s.30(2) - a statutory instrument containing any regulations under section 21(4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.30(3) - no regulations shall be made under—
 - (a) section 17(3), or

⁹⁰³ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁹⁰⁴ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

(b) paragraph 13(8) of Schedule 1,

unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

- s.30(4) - any regulations made by the Secretary of State under section 17(3) or 21(4) or paragraph 13(8) of Schedule 1 may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

PCC(S)A 2000 s.31⁹⁰⁵: Rules of court

- s.31 - Criminal Procedure Rules may make such provision as appears to the Criminal Procedure Rule Committee to be necessary or expedient for the purposes of this Part (and nothing in this section shall be taken to affect the generality of any enactment conferring power to make such rules).

PCC(S)A 2000 s.32⁹⁰⁶: Definitions

- s.32 - in this Part—

“the appropriate court” shall be construed in accordance with paragraph 1(2) of Schedule 1 to this Act;

“associated”, in relation to referral orders, shall be construed in accordance with section 18(7) above;

“connected”, in relation to offences, shall be construed in accordance with section 16(4) above;

“meeting”, in relation to a youth offender panel, shall be construed in accordance with section 21(7) above;

“the specified team”, in relation to an offender to whom a referral order applies (or two or more associated referral orders apply), means the youth offending team for the time being specified in the order (or orders).

⁹⁰⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁹⁰⁶ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.3. **Reparation Order**

3.3.3.3.1 **General**

Definitions etc.

PCC(S)A 2000 s.73⁹⁰⁷: Reparation orders

- s.73(2) - an order under subsection (1) above is in this Act referred to as a “*reparation order*”.
- s.73(3) - in this section and section 74 below “*make reparation*”, in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation; and the requirements that may be specified in a reparation order are subject to section 74(1) to (3).

PCC(S)A 2000 s.74⁹⁰⁸: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(5) - in this Act “*responsible officer*”, in relation to an offender subject to a reparation order, means one of the following who is specified in the order, namely—
- (a) an officer of a local probation board or an officer of a provider of probation services (as the case may be);
 - (b) a social worker of a local authority;
 - (c) a member of a youth offending team.
- s.74(6) - where a reparation order specifies an officer of a local probation board under subsection (5) above, the officer specified must be an officer appointed for or assigned to the local justice area named in the order.
- s.74(6A) - where a reparation order specifies an officer of a provider of probation services under subsection (5) above, the officer specified must be an officer acting in the local justice area named in the order.
- s.74(7) - where a reparation order specifies under that subsection—
- (a) a social worker of a local authority, or
 - (b) a member of a youth offending team,
- the social worker or member specified must be a social worker of, or a member of a youth offending team established by, the local authority within whose area it appears to the court that the offender resides or will reside.

Reparation to be supervised

PCC(S)A 2000 s.74⁹⁰⁹: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(8) - any reparation required by a reparation order—
- (a) shall be made under the supervision of the responsible officer; and

⁹⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) shall be made within a period of three months from the date of the making of the order.

3.3.3.3.2 Power and availability

Discretionary power upon conviction

PCC(S)A 2000 s.73⁹¹⁰: Reparation orders

- s.73(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence other than one for which the sentence is fixed by law, the court by or before which he is convicted may make an order requiring him to make reparation specified in the order—
- (a) to a person or persons so specified; or
 - (b) to the community at large;
- and any person so specified must be a person identified by the court as a victim of the offence or a person otherwise affected by it.

Need for consent of victim etc.

PCC(S)A 2000 s.74⁹¹¹: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(1) - a reparation order shall not require the offender—
- (a) to work for more than 24 hours in aggregate; or
 - (b) to make reparation to any person without the consent of that person.

3.3.3.3.3 Making the order

Length of the order

PCC(S)A 2000 s.74⁹¹²: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(1) - a reparation order shall not require the offender—
- (a) to work for more than 24 hours in aggregate; or
 - (b) to make reparation to any person without the consent of that person.
- s.74(8) - any reparation required by a reparation order—
- (a) shall be made under the supervision of the responsible officer; and
 - (b) shall be made within a period of three months from the date of the making of the order.

⁹¹⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Requirements specified under the order

PCC(S)A 2000 s.74⁹¹³: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(2) - subject to subsection (1) above, requirements specified in a reparation order shall 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.
- s.74(3) - requirements so specified shall, as far as practicable, be such as to avoid—
- (a) any conflict with the offender's religious beliefs or with the requirements of any youth community order to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

Duty to consider written report by YOT etc.

PCC(S)A 2000 s.73⁹¹⁴: Reparation orders

- s.73(5) - before making a reparation order, a court shall obtain and consider a written report by [an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team indicating—
- (a) the type of work that is suitable for the offender; and
 - (b) the attitude of the victim or victims to the requirements proposed to be included in the order.

Arrangements must be in place

PCC(S)A 2000 s.73⁹¹⁵: Reparation orders

- s.73(6) - the court shall not make a reparation 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 named in the order under section 74(4) below and the notice has not been withdrawn.

Duty to give reasons where not making an order

PCC(S)A 2000 s.73⁹¹⁶: Reparation orders

- s.73(8) - the court shall give reasons if it does not make a reparation order in a case where it has power to do so.

⁹¹³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Order must specify local justice area

PCC(S)A 2000 s.74⁹¹⁷: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(4) - a reparation order shall name the local justice area in which it appears to the court making the order (or to the court amending under Schedule 8 to this Act any provision included in the order in pursuance of this subsection) that the offender resides or will reside.

3.3.3.3.4 Interaction with other sentencing orders

Custodial sentences

PCC(S)A 2000 s.73⁹¹⁸: Reparation orders

- s.73(4) - the court shall not make a reparation order in respect of the offender if it proposes—
- (a) to pass on him a custodial sentence; or
 - (b) to make in respect of him a youth rehabilitation order or a referral order.

Referral orders

PCC(S)A 2000 s.19⁹¹⁹: Referral orders

- s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.
- s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.
- s.19(3) - the court—
- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
 - (b) may not deal with the offender for any such offence in any of the prohibited ways.
- s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—
- [...]
- (c) making a reparation order in respect of him [...]

PCC(S)A 2000 s.73⁹²⁰: Reparation orders

- s.73(4) - the court shall not make a reparation order in respect of the offender if it proposes—
- (a) to pass on him a custodial sentence; or
 - (b) to make in respect of him a youth rehabilitation order or a referral order.

⁹¹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁹²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Youth Rehabilitation Orders

PCC(S)A 2000 s.73⁹²¹: Reparation orders

- s.73(4) - the court shall not make a reparation order in respect of the offender if it proposes—
- (a) to pass on him a custodial sentence; or
 - (b) to make in respect of him a youth rehabilitation order or a referral order.

CJIA 2008 Sch.1 para.30⁹²²: Date of taking effect and other existing orders

- para.30(4) - a court must not make a youth rehabilitation order in respect of an offender at a time when—
- (a) another youth rehabilitation order, or
 - (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),
- is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

Youth Rehabilitation Orders (in force)

PCC(S)A 2000 s.73⁹²³: Reparation orders

- s.73(4A) - the court shall not make a reparation order in respect of the offender at a time when a youth rehabilitation order is in force in respect of him unless when it makes the reparation order it revokes the youth rehabilitation order.
- s.73(4B) - where a youth rehabilitation order is revoked under subsection (4A), paragraph 24 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation order) applies to the revocation.

3.3.3.3.5 Breach, revocation or amendment

PCC(S)A 2000 s.75⁹²⁴: Breach, revocation and amendment of reparation orders

- s.75 - Schedule 8 to this Act (which makes provision for dealing with failures to comply with reparation orders and for revoking and amending such orders) shall have effect

General provisions concerning orders under Sch.8

PCC(S)A 2000 Sch.8 para.6⁹²⁵: Presence of offender in court, remands etc.

- para.6(1) - where the responsible officer makes an application under paragraph 2(1) or 5(1) above to a court he may bring the offender before the court; and, subject to sub-paragraph (9) below, a court shall not make an order under paragraph 2 or 5(1) above unless the offender is present before the court.

⁹²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹²² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁹²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- para.6(2) - without prejudice to any power to issue a summons or warrant apart from this sub-paragraph, the court to which an application under paragraph 2(1) or 5(1) above is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it.
- para.6(3) - Subsections (3) and (4) of section 55 of the Magistrates' Courts Act 1980 (which among other things restrict the circumstances in which a warrant may be issued) shall apply with the necessary modifications to a warrant under sub-paragraph (2) above as they apply to a warrant under that section, but as if in subsection (3) after the word "summons" there were inserted the words "cannot be served or".
- para.6(4) - where the offender is arrested in pursuance of a warrant issued by virtue of sub-paragraph (2) above and cannot be brought immediately before [the court before which the warrant directs the offender to be brought ("the relevant court"), the person in whose custody he is—
- (a) may make arrangements for his detention in a place of safety for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and
 - (b) shall within that period bring him before a youth court;
- and in paragraph (a) above "*place of safety*" has the same meaning as in the Children and Young Persons Act 1933.
- para.6(5) - where an offender is under sub-paragraph (4)(b) above brought before a youth court other than the relevant court, the youth court may—
- (a) direct that he be released forthwith; or
 - (b) subject to sub-paragraph (7) below, remand him to local authority accommodation.
- para.6(6) - subject to sub-paragraph (7) below, where an application is made to a court under paragraph 5(1) above, the court may remand (or further remand) the offender to local authority accommodation if—
- (a) a warrant has been issued under sub-paragraph (2) above for the purpose of securing the attendance of the offender before the court; or
 - (b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under paragraph 5(1) above.
- para.6(7) - where the offender is aged 18 or over at the time when he is brought before a youth court other than the relevant court under sub-paragraph (4)(b) above, or is aged 18 or over at a time when (apart from this sub-paragraph) the relevant court could exercise its powers under sub-paragraph (6) above in respect of him, he shall not be remanded to local authority accommodation but may instead be remanded—
- (a) to a remand centre, if the court has been notified that such a centre is available for the reception of persons under this sub-paragraph; or
 - (b) to a prison, if it has not been so notified.
- para.6(8) - a court remanding an offender to local authority accommodation under this paragraph shall designate, as the authority who are to receive him, the local authority for the area in which the offender resides or, where it appears to the court that he does not reside in the area of a local authority, the local authority—
- (a) specified by the court; and
 - (b) in whose area the offence or an offence associated with it was committed.

para.6(9) - a court may make an order under paragraph 5(1) above in the absence of the offender if the effect of the order is confined to one or more of the following, that is to say—

- (a) revoking the reparation order;
- (b) cancelling a requirement included in the reparation order;
- (c) altering in the reparation order the name of any area;
- (d) changing the responsible officer.

Breach of requirement

PCC(S)A 2000 Sch.8 para.2⁹²⁶: Breach of requirement of reparation order

para.2(1) - this paragraph applies if while a reparation order is in force in respect of an offender it is proved to the satisfaction of

- (a) a youth court acting in the local justice area in which the offender resides, or
- (b) if it is not known where the offender resides, a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act,

on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order.

para.2(2) - where this paragraph applies, the court—

- (a) whether or not it also makes an order under paragraph 5(1) below (revocation or amendment of order)—
 - (i) may order the offender to pay a fine of an amount not exceeding £1,000; or
- (b) if the reparation order was made by a magistrates' court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or
- (c) if the reparation order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court.

para.2(3) - where a court deals with an offender under sub-paragraph (2)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving—

- (a) particulars of the offender's failure to comply with the requirement in question; and
- (b) such other particulars of the case as may be desirable;

and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.

para.2(4) - where—

- (a) by virtue of sub-paragraph (2)(c) above the offender is brought or appears before the Crown Court, and
- (b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question,

⁹²⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.

para.2(5) - where the Crown Court deals with an offender under sub-paragraph (4) above, it shall revoke the reparation order if it is still in force.

para.2(6) - a fine imposed under this paragraph shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

para.2(7) - in dealing with an offender under this paragraph, a court shall take into account the extent to which he has complied with the requirements of the reparation order.

para.2(8) - where a reparation order has been made on appeal, for the purposes of this paragraph it shall be deemed—

(a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;

(b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court;

and, in relation to a reparation order made on appeal, sub-paragraph (2)(b) above shall have effect as if the words "if the order had not been made" were omitted and sub-paragraph (4) above shall have effect as if the words "if it had not made the order" were omitted.

para.2(9) - this paragraph has effect subject to paragraph 6 below

Revocation or amendment

PCC(S)A 2000 Sch.8 para.5⁹²⁷: Revocation or amendment of reparation order

para.5(1) - if while a reparation order is in force in respect of an offender it appears to the [relevant court, on the application of the responsible officer or the offender, that it is appropriate to make an order under this sub-paragraph, the court may—

(a) make an order revoking the reparation order; or

(b) make an order amending it—

(i) by cancelling any provision included in it; or

(ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.

para.5(2) - sub-paragraph (1) above has effect subject to paragraph 6 below.

para.5(3) - where an application under sub-paragraph (1) above for the revocation of a reparation order is dismissed, no further application for its revocation shall be made under that sub-paragraph by any person except with the consent of the relevant court.

para.5(4) - in this paragraph, "*the relevant court*" means—

(a) a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act, or

⁹²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) in the case of an application made both under this paragraph and under paragraph 2(1), the court mentioned in paragraph 2(1).

Power to adjourn hearings

PCC(S)A 2000 Sch.8 para.6A⁹²⁸: Power to adjourn hearing and remand offender

para.6A(1) - this paragraph applies to any hearing relating to an offender held by a youth court in any proceedings under this Schedule.

para.6A(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.6A(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.6A(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, it must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph (5) have had adequate notice of the time and place for the resumed hearing.

para.6A(5) - the persons referred to in sub-paragraph (4)(b) are—

- (a) the offender,
- (b) if the offender is aged under 14, a parent or guardian of the offender, and
- (c) the responsible officer.

para.6A(6) - if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority.

para.6A(7) - in sub-paragraph (6)—

“local authority” has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,

“parental responsibility” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and

“social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.

para.6A(8) - the powers of a youth court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980.

⁹²⁸ Commencement: 30 November 2009, as inserted by CJIA 2008 Sch.4 para.108(6), SI 2009/3074 art.2(p)(xv)

para.6A(9) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

Appeals

PCC(S)A 2000 Sch.8 para.7⁹²⁹: Appeals

para.7 - the offender may appeal to the Crown Court against—

- (a) any order made under paragraph 2(2) or 5(1) above except an order made or which could have been made in his absence (by virtue of paragraph 6(9) above);
- (b) the dismissal of an application under paragraph 5(1) above to revoke a reparation order.

⁹²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

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3.4 Behaviour Orders

3.4.1. Criminal Behaviour Orders

3.4.1.1. General

Note: Saving and transitional provisions are contained in ASBCPA 2014 s.33, setting out the transitional arrangements for the repeal of, amongst others, the ASBO. For the purposes of the CBO, the relevant date is the date the proceedings were begun; prior to the commencement date (20 October 2014) the power to make an ASBO is preserved and a CBO is not available.

What is a CBO?

ASBCPA 2014 s.22⁹³⁰: Power to make orders

- s.22(5) - a criminal behaviour order is an order which, for the purpose of preventing the offender from engaging in such behaviour:
- (a) prohibits the offender from doing anything described in the order;
 - (b) requires the offender to do anything described in the order.

Offenders aged under 18

ASBCPA 2014 s.23⁹³¹: Proceedings on an application for an order

- s.23(7) - subsection (8) applies in relation to proceedings in which a criminal behaviour order is made against an offender who is under the age of 18.
- s.23(8) - in so far as the proceedings relate to the making of the order:
- (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the offender;
 - (b) section 39 of that Act (power to prohibit publication of certain matters) does so apply.

Definitions

ASBCPA 2014 s.22⁹³²: Power to make orders

- s.22(10) - in this section “local youth offending team” means:
- (a) the youth offending team in whose area it appears to the prosecution that the offender lives, or
 - (b) if it appears to the prosecution that the offender lives in more than one such area, whichever one or more of the relevant youth offending teams the prosecution thinks appropriate.

⁹³⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³¹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

Special measures for witnesses

ASBCPA 2014 s.31⁹³³: Special measures for witnesses

- s.31(1) - chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to criminal behaviour order proceedings as it applies to criminal proceedings, but with:
- (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
 - (b) any other necessary modifications.
- s.31(2) - the provisions are:
- (a) section 17(4) to (7);
 - (b) section 21(4C)(e);
 - (c) section 22A;
 - (d) section 27(10);
 - (e) section 32.
- s.31(3) - rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to criminal behaviour order proceedings:
- (a) to the extent provided by rules of court, and
 - (b) subject to any modifications provided by rules of court.
- s.31(4) - section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications:
- (a) to a direction under section 19 of that Act as applied by this section;
 - (b) to a direction discharging or varying such a direction.
- Sections 49 and 51 of that Act (offences) apply accordingly.
- s.31(5) - in this section “*criminal behaviour order proceedings*” means proceedings in a magistrates’ court or the Crown Court so far as relating to the issue whether to make a criminal behaviour order.

Power to issue guidance

ASBCPA 2014 s.32⁹³⁴: Guidance

- s.32(1) - the Secretary of State may issue guidance to:
- (a) chief officers of police, and
 - (b) the councils mentioned in section 29(2),
- about the exercise of their functions under this Part.
- s.32(2) - the Secretary of State may revise any guidance issued under this section.

⁹³³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

- s.32(3) - the Secretary of State must arrange for any guidance issued or revised under this section to be published.

3.4.1.2. Availability and power to order

Availability

ASBCPA 2014 s.22⁹³⁵: Power to make orders

- s.22(1) - this section applies where a person (“the offender”) is convicted of an offence.
- s.22(6) - the court may make a criminal behaviour order against the offender only if it is made in addition to:
- (a) a sentence imposed in respect of the offence, or
 - (b) an order discharging the offender conditionally.
- s.22(7) - the court may make a criminal behaviour order against the offender only on the application of the prosecution.

Test to apply

ASBCPA 2014 s.22⁹³⁶: Power to make orders

- s.22(2) - the court may make a criminal behaviour order against the offender if two conditions are met.
- s.22(3) - the first condition is that the court is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person.
- s.22(4) - the second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour.

3.4.1.3. The application for the order

Prosecution must make an application

ASBCPA 2014 s.22⁹³⁷: Power to make orders

- s.22(7) - the court may make a criminal behaviour order against the offender only on the application of the prosecution.
- s.22(8) - the prosecution must find out the views of the local youth offending team before applying for a criminal behaviour order to be made if the offender will be under the age of 18 when the application is made.

⁹³⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁷ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

Power to adjourn

ASBCPA 2014 s.23⁹³⁸: Proceedings on an application for an order

- s.23(3) - the court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.
- s.23(4) - if the offender does not appear for any adjourned proceedings the court may:
 - (a) further adjourn the proceedings,
 - (b) issue a warrant for the offender's arrest, or
 - (c) hear the proceedings in the offender's absence.
- s.23(5) - the court may not act under paragraph (b) of subsection (4) unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings.
- s.23(6) - the court may not act under paragraph (c) of subsection (4) unless it is satisfied that the offender:
 - (a) has had adequate notice of the time and place of the adjourned proceedings, and
 - (b) has been informed that if the offender does not appear for those proceedings the court may hear the proceedings in his or her absence.

Evidence

ASBCPA 2014 s.23⁹³⁹: Proceedings on an application for an order

- s.23(1) - for the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the offender.
- s.23(2) - it does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.

3.4.1.4. Length of the order

ASBCPA 2014 s.25⁹⁴⁰: Duration of order etc.

- s.25(3) - a criminal behaviour order must specify the period ("the order period") for which it has effect.
- s.25(4) - in the case of a criminal behaviour order made before the offender has reached the age of 18, the order period must be a fixed period of:
 - (a) not less than 1 year, and
 - (b) not more than 3 years.
- s.25(5) - in the case of a criminal behaviour order made after the offender has reached the age of 18, the order period must be:
 - (a) a fixed period of not less than 2 years, or

⁹³⁸ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹³⁹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

- (b) an indefinite period (so that the order has effect until further order).

3.4.1.5. Requirements and prohibitions

Duty to avoid conflict etc.

ASBCPA 2014 s.22⁹⁴¹: Power to make orders

- s.22(9) - prohibitions and requirements in a criminal behaviour order must, so far as practicable, be such as to avoid:
- (a) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment;
 - (b) any conflict with the requirements of any other court order or injunction to which the offender may be subject.

ASBCPA 2014 s.24⁹⁴²: Requirements included in orders

- s.24(3) - before including two or more requirements, the court must consider their compatibility with each other.

Must specify person responsible for supervising compliance

ASBCPA 2014 s.24⁹⁴³: Requirements included in orders

- s.24(1) - a criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.

Duty to receive evidence as to suitability of proposed requirement

ASBCPA 2014 s.24⁹⁴⁴: Requirements included in orders

- s.24(2) - before including a requirement, the court must receive evidence about its suitability and enforceability from:
- (a) the individual to be specified under subsection (1), if an individual is to be specified;
 - (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

ASBCPA 2014 s.25⁹⁴⁵: Duration of order etc.

- s.25(6) - a criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

⁹⁴¹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.6. Effect of the order

When does the order take effect?

ASBCPA 2014 s.25⁹⁴⁶: Duration of order etc.

- s.25(1) - a criminal behaviour order takes effect on the day it is made, subject to subsection (2).
- s.25(2) - if on the day a criminal behaviour order (“the new order”) is made the offender is subject to another criminal behaviour order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect. Duties of responsible officer etc.

ASBCPA 2014 s.24⁹⁴⁷: Requirements included in orders

- s.24(4) - it is the duty of a person specified under subsection (1):
- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
 - (b) to promote the offender's compliance with the relevant requirements;
 - (c) if the person considers that the offender:
 - (i) has complied with all the relevant requirements, or
 - (ii) has failed to comply with a relevant requirement,to inform the prosecution and the appropriate chief officer of police.
- s.24(5) - in subsection (4)(c) “the appropriate chief officer of police” means:
- (a) the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender lives, or
 - (b) if it appears to that person that the offender lives in more than one police area, whichever of the relevant chief officers of police that person thinks it most appropriate to inform.

Duties of the offender

ASBCPA 2014 s.24⁹⁴⁸: Requirements included in orders

- s.24(6) - an offender subject to a requirement in a criminal behaviour order must:
- (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
 - (b) notify the person of any change of address.
- These obligations have effect as requirements of the order.

⁹⁴⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁷ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁴⁸ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.7. Interaction with other sentencing orders

Can only be made in conjunction with “a sentence”

ASBCPA 2014 s.22⁹⁴⁹: Power to make orders

- s.22(6) - the court may make a criminal behaviour order against the offender only if it is made in addition to:
- (a) a sentence imposed in respect of the offence, or
 - (b) an order discharging the offender conditionally.

Conditional discharges

ASBCPA 2014 s.22⁹⁵⁰: Power to make orders

- s.22(6) - the court may make a criminal behaviour order against the offender only if it is made in addition to:
- (a) a sentence imposed in respect of the offence, or
 - (b) an order discharging the offender conditionally.

Imprisonment

Magistrates’ Courts Sentencing Guidelines, Sentencing Guidelines Council

[...] [W]here a custodial sentence of 12 months or more is imposed and the offender is liable to be released on licence and thus subject to recall, an order will not generally be necessary. There might be cases where geographical restraints could supplement licence conditions.

Note: The excerpt from the guidelines concerns ASBOs, not CBOs, however it is likely the guidance would be considered to apply to CBOs due to the similarity in the nature of the two orders.

Parenting orders

CDA 1998 s.9⁹⁵¹: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

⁹⁴⁹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

3.4.1.8. Variation or discharge of orders

General

ASBCPA 2014 s.27⁹⁵²: Variation or discharge of orders

- s.27(6) - in the case of a criminal behaviour order made by a magistrates' court, the references in this section to the court which made the order include a reference to any magistrates' court acting in the same local justice area as that court.

Power

ASBCPA 2014 s.27⁹⁵³: Variation or discharge of orders

- s.27(1) - a criminal behaviour order may be varied or discharged by the court which made it on the application of:
- (a) the offender, or
 - (b) the prosecution.

Extent of power

ASBCPA 2014 s.27⁹⁵⁴: Variation or discharge of orders

- s.27(4) - the power to vary an order includes power to include an additional prohibition or requirement in the order or to extend the period for which a prohibition or requirement has effect.
- s.27(5) - Section 24 (requirements) applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.

No further application after dismissal of previous application

ASBCPA 2014 s.27⁹⁵⁵: Variation or discharge of orders

- s.27(2) - if an application by the offender under this section is dismissed, the offender may make no further application under this section without:
- (a) the consent of the court which made the order, or
 - (b) the agreement of the prosecution.
- s.27(3) - if an application by the prosecution under this section is dismissed, the prosecution may make no further application under this section without:
- (a) the consent of the court which made the order, or
 - (b) the agreement of the offender.

⁹⁵² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.9. Reviews of orders

ASBCPA 2014 s.28⁹⁵⁶: Review of orders

Applicability

s.28(1) - if:

- (a) a person subject to a criminal behaviour order will be under the age of 18 at the end of a review period (see subsection (2)),
- (b) the term of the order runs until the end of that period or beyond, and
- (c) the order is not discharged before the end of that period,

a review of the operation of the order must be carried out before the end of that period.

Review periods

ASBCPA 2014 s.28⁹⁵⁷: Review of orders

s.28(2) - the “review periods” are:

- (a) the period of 12 months beginning with:
 - (i) the day on which the criminal behaviour order takes effect, or
 - (ii) if during that period the order is varied under section 27, the day on which it is varied (or most recently varied, if the order is varied more than once);
- (b) a period of 12 months beginning with:
 - (i) the day after the end of the previous review period, or
 - (ii) if during that period of 12 months the order is varied under section 27, the day on which it is varied (or most recently varied, if the order is varied more than once).

Contents of review

ASBCPA 2014 s.28⁹⁵⁸: Review of orders

s.28(3) - a review under this section must include consideration of:

- (a) the extent to which the offender has complied with the order;
- (b) the adequacy of any support available to the offender to help him or her comply with it;
- (c) any matters relevant to the question whether an application should be made for the order to be varied or discharged.

⁹⁵⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁷ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁵⁸ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

Carrying out reviews

ASBCPA 2014 s.29⁹⁵⁹: Carrying out and participating in reviews

- s.29(1) - a review under section 28 is to be carried out by the chief officer of police of the police force maintained for the police area in which the offender lives or appears to be living.
- s.29(2) - the chief officer, in carrying out a review under section 28, must act in co-operation with the council for the local government area in which the offender lives or appears to be living; and the council must co-operate in the carrying out of the review.
- s.29(3) - the chief officer may invite the participation in the review of any other person or body.
- s.29(4) - in this section “local government area” means:
 - (a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
 - (b) in relation to Wales, a county or a county borough.For the purposes of this section, the council for the Inner and Middle Temples is the Common Council of the City of London.

Guidance

ASBCPA 2014 s.28⁹⁶⁰: Review of orders

- s.28(4) - those carrying out or participating in a review under this section must have regard to any relevant guidance issued by the Secretary of State under section 32 when considering:
 - (a) how the review should be carried out;
 - (b) what particular matters the review should deal with;
 - (c) what action (if any) it would be appropriate to take as a result of the findings of the review.

3.4.1.10. Interim orders

ASBCPA 2014 s.26⁹⁶¹: Interim orders

- s.26(1) - this section applies where a court adjourns the hearing of an application for a criminal behaviour order.
- s.26(2) - the court may make a criminal behaviour order that lasts until the final hearing of the application or until further order (“an interim order”) if the court thinks it just to do so.
- s.26(3) - Section 22(6) to (8) and section 25(3) to (5) do not apply in relation to the making of an interim order.
- s.26(4) - subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

⁹⁵⁹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁰ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶¹ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

3.4.1.11. Breach

Offence

ASBCPA 2014 s.30⁹⁶²: Breach of order

- s.30(1) - a person who without reasonable excuse:
- (a) does anything he or she is prohibited from doing by a criminal behaviour order, or
 - (b) fails to do anything he or she is required to do by a criminal behaviour order, commits an offence.

Penalty

ASBCPA 2014 s.30⁹⁶³: Breach of order

- s.30(2) - a person guilty of an offence under this section is liable:
- (a) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine, or to both;
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 5 years or to a fine, or to both.

Restriction on imposing absolute or conditional discharge

ASBCPA 2014 s.30⁹⁶⁴: Breach of order

- s.30(3) - if a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make an order under subsection (1)(b) of section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge).

Procedural requirements

ASBCPA 2014 s.30⁹⁶⁵: Breach of order

- s.30(4) - in proceedings for an offence under this section, a copy of the original criminal behaviour order, certified by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

Reporting restrictions

ASBCPA 2014 s.30⁹⁶⁶: Breach of order

- s.30(5) - in relation to any proceedings for an offence under this section that are brought against a person under the age of 18:

⁹⁶² Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶³ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁴ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁵ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

⁹⁶⁶ Commencement: 20 October 2014, SI 2014/2590 art.3(a).

- (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the person;
- (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.

s.30(6) - if, in relation to any proceedings mentioned in subsection (5), the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.

3.4.2. Disqualification from being the director of a company

3.4.2.1. General

Note: There are a number of civil powers under the 1986 Act, for obvious reasons, these are not included in this document. Below are details of the orders a court can make upon a conviction for a relevant offence and, for context, the provision setting out a disqualification undertaking.

Taking account of matters other than criminal convictions

Company Directors Disqualification Act 1986 s.1⁹⁶⁷: Disqualification orders: general

- s.1(4) - a disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

3.4.2.2. Effect

What is a disqualification order?

Company Directors Disqualification Act 1986 s.1⁹⁶⁸: Disqualification orders: general

- s.1(1) - in the circumstances specified below in this Act a court may, and under sections 6 and 9A shall, make against a person a disqualification order, that is to say an order that for a period specified in the order:
- (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court, and
 - (b) he shall not act as an insolvency practitioner.

R. v Cole 1998 BCC 87

A judge cannot pick and choose which disqualification applies; the legislation envisages one disqualification with a number of consequences, not five different types of disqualification.

Note: The Act has been amended since this decision but there is no reason to suspect that the position is any different now.

R. v Ward [2001] EWCA Crim 1648

There is no power to limit the disqualification; the disqualification applies to all categories listed in section 1.

When does the disqualification begin?

Company Directors Disqualification Act 1986 s.1⁹⁶⁹: Disqualification orders: general

- s.1(2) - in each section of this Act which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in section 6, the minimum) period of disqualification which may or (as the case

⁹⁶⁷ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁶⁸ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁶⁹ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

may be) must be imposed by means of the order and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.

3.4.2.3. Disqualification following conviction for indictable offence

Discretionary power

Company Directors Disqualification Act 1986 s.2⁹⁷⁰: Disqualification on conviction of indictable offence

s.2(1) - the court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company with the receivership of a company's property or with his being an administrative receiver of a company.

Maximum length

Company Directors Disqualification Act 1986 s.2⁹⁷¹: Disqualification on conviction of indictable offence

s.2(3) The maximum period of disqualification under this section is:

- (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
- (b) in any other case, 15 years.

Interpretation

Company Directors Disqualification Act 1986 s.2⁹⁷²: Disqualification on conviction of indictable offence

s.2(2) - "The court" for this purpose means:

- (a) any court having jurisdiction to wind up the company in relation to which the offence was committed, or
- (b) the court by or before which the person is convicted of the offence, or
- (c) in the case of a summary conviction in England and Wales, any other magistrates' court acting in the same local justice area;

and for the purposes of this section the definition of "indictable offence" in Schedule 1 to the Interpretation Act 1978 applies for Scotland as it does for England and Wales.

⁹⁷⁰ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷¹ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷² Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

3.4.2.4. Disqualification following conviction for a summary offence

Availability

Company Directors Disqualification Act 1986 s.5⁹⁷³: Disqualification on summary conviction

- s.5(1) - an offence counting for the purposes of this section is one of which a person is convicted (either on indictment or summarily) in consequence of a contravention of, or failure to comply with, any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies (whether the contravention or failure is on the person's own part or on the part of any company).

Power

Company Directors Disqualification Act 1986 s.5⁹⁷⁴: Disqualification on summary conviction

- s.5(2) - where a person is convicted of a summary offence counting for those purposes, the court by which he is convicted (or, in England and Wales, any other magistrates' court acting in the same local justice area) may make a disqualification order against him if the circumstances specified in the next subsection are present.
- s.5(3) - those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this section; and those offences may include that of which he is convicted as mentioned in subsection (2) and any other offence of which he is convicted on the same occasion.

Maximum length

Company Directors Disqualification Act 1986 s.5⁹⁷⁵: Disqualification on summary conviction

- s.5(5) - the maximum period of disqualification under this section is 5 years.

Interpretation

Company Directors Disqualification Act 1986 s.5⁹⁷⁶: Disqualification on summary conviction

- s.5(4) - for the purposes of this section:
- (a) the definition of “summary offence” in Schedule 1 to the Interpretation Act 1978 applies for Scotland as for England and Wales, and
 - (b) “default order” means the same as in section 3(3)(b).
- s.5(4A) - in this section “the companies legislation” means the Companies Acts and Parts 1 to 7 of the Insolvency Act 1986 (company insolvency and winding up).

⁹⁷³ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷⁴ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷⁵ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁷⁶ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

3.4.2.5. Disqualification undertakings

Company Directors Disqualification Act 1986 s.1A⁹⁷⁷: Disqualification undertakings: general

- s.1A(1) - in the circumstances specified in sections 7 and 8 the Secretary of State may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person:
- (a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of a court, and
 - (b) will not act as an insolvency practitioner.
- s.1A(2) - the maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under section 7 is two years.
- s.1A(3) - where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.
- s.1A(4) - in determining whether to accept a disqualification undertaking by any person, the Secretary of State may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters.

3.4.2.6. Interaction with other sentencing orders

Compensation orders

R. v Holmes (1992) 13 Cr. App. R. (S.) 29

A sentencer who imposes a compensation order should be careful not to reduce or inhibit the defendant's means to pay the order. When a compensation order is made it is generally wrong in principle to inhibit a defendant from freely engaging in business activities which must have been contemplated as necessary for the purposes of fulfilling his obligations under the compensation order, by disqualifying him from acting as a director of a company.

Discharges

PCC(S)A 2000 s.12⁹⁷⁸: Absolute and conditional discharge

- s.12(7) - nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from [...] imposing any disqualification on him [...]

⁹⁷⁷ Commencement: 2 April 2001, as inserted by IA 2000 s.6(2), SI 2001/766 art.2(1)(a).

⁹⁷⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Disqualification undertakings

Company Directors Disqualification Act 1986 s.1⁹⁷⁹: Disqualification orders: general

- s.1(3) - where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking shall run concurrently.

3.4.2.7. Breach

Company Directors Disqualification Act 1986 s.13⁹⁸⁰: Criminal penalties

- s.13 - if a person acts in contravention of a disqualification order or disqualification undertaking or in contravention of section 12(2), 12A or 12B, or is guilty of an offence under section 11, he is liable:
- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
 - (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

⁹⁷⁹ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

⁹⁸⁰ Commencement: 29 December 1986, CDDA 1986 s.25, IA 1986 s.443 and SI 1986/1924 art.3.

3.4.3. Exclusion Orders

3.4.3.1. Power to order and availability

Power

LP(ECP)A 1980 s.1⁹⁸¹: Exclusion orders

- s.1(1) - where a court by or before which a person is convicted of an offence committed on licensed premises is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may, subject to subsection (2) below, make an order (in this Act referred to as an “*exclusion order*”) prohibiting him from entering those premises or any other specified premises, without the express consent of the licensee of the premises or his servant or agent.

Availability

LP(ECP)A 1980 s.1⁹⁸²: Exclusion orders

- s.1(2) - an exclusion order may be made either:
- (a) in addition to any sentence which is imposed in respect of the offence of which the person is convicted; or
 - (b) where the offence was committed in England and Wales, notwithstanding the provisions of section 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (cases in which absolute and conditional discharges may be made, and their effect), in addition to an order discharging him absolutely or conditionally;
 - (c) where the offence was committed in Scotland, notwithstanding the provisions of [sections 228,246(2) and (3) and 247 of the Criminal Procedure (Scotland) Act 1995 (cases in which probation orders and absolute discharges may be made, and their effect), in addition to a probation order or an order discharging him absolutely;
- but not otherwise.

Length of the order

LP(ECP)A 1980 s.1⁹⁸³: Exclusion orders

- s.1(3) - an exclusion order shall have effect for such period, not less than three months or more than two years, as is specified in the order, unless it is terminated under section 2(2) below.

⁹⁸¹ Commencement: 30 June 1980. entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

⁹⁸² Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

⁹⁸³ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

3.4.3.2. Power to expel individuals from premises where licensee believes they are in breach of an exclusion order

LP(ECP)A 1980 s.3⁹⁸⁴: Power to expel person from licensed premises

- s.3 - without prejudice to any other right to expel a person from premises, the licensee of licensed premises or his servant or agent may expel from those premises any person who has entered or whom he reasonably suspects of having entered the premises in breach of an exclusion order; and a constable shall on the demand of the licensee or his servant or agent help to expel from licensed premises any person whom the constable reasonably suspects of having entered in breach of an exclusion order.

3.4.3.3. Interpretation

LP(ECP)A 1980 s.4⁹⁸⁵: Supplemental

- s.4(1) - in this Act:
- “*licensed premises*”, in relation to England and Wales, means premises in respect of which there is in force a premises licence under the Licensing Act 2003 authorising the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises and, in relation to Scotland, means premises in respect of which a licence under the Licensing (Scotland) Act 1976, other than an off-sales licence or a licence under Part III of that Act (licences for seamen's canteens), is in force; and
- “*licensee*” in relation to any licensed premises means the holder of the licence granted in respect of those premises; and
- “*specified premises*”, in relation to an exclusion order, means any licensed premises which the court may specify by name and address in the order.
- s.4(2) - in the application of section 1 above to Scotland, the reference in subsection (1) of that section to a person's being convicted of an offence shall, in relation to proceedings in a court of summary jurisdiction in which the court, without proceeding to conviction, discharges him absolutely under section 383 of the Criminal Procedure (Scotland) Act 1975 or makes a probation order under section 384 of that Act, shall be construed as a reference to the court's being satisfied that he committed the offence.
- s.4(3) - where a court makes an exclusion order or an order terminating or varying an exclusion order, the proper officer of the court shall send a copy of the order to the licensee of the premises to which the order relates.
- s.4(4) - for the purposes of subsection (3) above:
- (a) the proper officer of a magistrates' court in England and Wales is the designated officer for the court;
 - (b) the proper officer of the Crown Court is the appropriate officer; and
 - (c) the proper officer of a court in Scotland is the clerk of the court.

⁹⁸⁴ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

⁹⁸⁵ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

3.4.3.4. Breach

LP(ECP)A 1980 s.2⁹⁸⁶: Penalty for non-compliance with exclusion order

- s.2(1) - a person who enters any premises in breach of an exclusion order shall be guilty of an offence and shall be liable on summary conviction or, in Scotland, on conviction in a court of summary jurisdiction to a fine not exceeding [level 4 on the standard scale]¹ or to imprisonment for a term not exceeding one month or both.
- s.2(2) - the court by which a person is convicted of an offence under subsection (1) above shall consider whether or not the exclusion order should continue in force, and may, if it thinks fit, by order terminate the exclusion order or vary it by deleting the name of any specified premises, but an exclusion order shall not otherwise be affected by a person's conviction for such an offence.

⁹⁸⁶ Commencement: 30 June 1980. The entirety of the 1980 Act is repealed by VCRA 2006 Sch.5, however the provision has not yet been commenced for that purpose.

3.4.4. Football Banning Orders

3.4.4.1. General

Definitions

F(S)A 1989 s.14⁹⁸⁷: Main definitions

- s.14(1) - this section applies for the purposes of this Part.
- s.14(2) - “*Regulated football match*” means an association football match (whether in the United Kingdom or elsewhere) which is a prescribed match or a match of a prescribed description .
- s.14(3) - “*External tournament*” means a football competition which includes regulated football matches outside the United Kingdom.
- s.14(4) - “*Banning order*” means an order made by the court under this Part which:
- (a) in relation to regulated football matches in [the United Kingdom, prohibits the person who is subject to the order from entering any premises for the purpose of attending such matches, and
 - (b) in relation to regulated football matches outside [the United Kingdom, requires that person to report at a police station in accordance with this Part.
- s.14(5) - “*Control period*”, in relation to a regulated football match outside the United Kingdom, means the period:
- (a) beginning five days before the day of the match, and
 - (b) ending when the match is finished or cancelled.
- s.14(6) - “*Control period*”, in relation to an external tournament, means any period described in an order made by the Secretary of State:
- (a) beginning five days before the day of the first football match outside the United Kingdom which is included in the tournament, and
 - (b) ending when the last football match outside the United Kingdom which is included in the tournament is finished or cancelled,
- but, for the purposes of paragraph (a), any football match included in the qualifying or pre-qualifying stages of the tournament is to be left out of account.
- s.14(7) - references to football matches are to football matches played or intended to be played.
- s.14(8) - “*Relevant offence*” means an offence to which Schedule 1 to this Act applies.

F(S)A 1989 s.14C⁹⁸⁸: Banning orders supplementary

- s.14C(1) - in this Part, “*violence*” means violence against persons or property and includes threatening violence and doing anything which endangers the life of any person.

⁹⁸⁷ Commencement: 22 March 1990, SI 1990/690 art.2

⁹⁸⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

s.14C(2) - in this Part, “disorder” includes:

- (a) stirring up hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, or against an individual as a member of such a group,
- (b) using threatening, abusive or insulting words or behaviour or disorderly behaviour,
- (c) displaying any writing or other thing which is threatening, abusive or insulting.

s.14C(3) - in this Part, “violence” and “disorder” are not limited to violence or disorder in connection with football.

Photographs

POA 1986 s.35⁹⁸⁹: Photographs

s.35(1) - the court by which a banning order is made may make an order which—

- (a) requires a constable to take a photograph of the person to whom the banning order relates or to cause such a photograph to be taken, and
- (b) requires that person to go to a specified police station not later than 7 clear days after the day on which the order under this section is made, and at a specified time of day or between specified times of day, in order to have his photograph taken.

s.35(2) - in subsection (1) “specified” means specified in the order made under this section and “banning order” has the same meaning as in Part II of the football spectators act 1989.

s.35(3) - no order may be made under this section unless an application to make it is made to the court by or on behalf of the person who is the prosecutor in respect of the offence leading to the banning order or (in the case of a banning order made under section 14B of the Football Spectators Act 1989) the complainant.

s.35(4) - if the person to whom the banning order relates fails to comply with an order under this section a constable may arrest him without warrant in order that his photograph may be taken.

Note: There is a power under POA 1986 s.37 to extend s.35 to other sporting events.

3.4.4.2. Banning orders made on conviction

3.4.4.2.1 Availability

F(S)A 1989 s.14A⁹⁹⁰: Banning orders made on conviction of an offence

s.14A(1) - this section applies where a person (the “offender”) is convicted of a relevant offence.

s.14A(4) - a banning order may only be made under this section:

- (a) in addition to a sentence imposed in respect of the relevant offence, or
- (b) in addition to an order discharging him conditionally.

⁹⁸⁹ Commencement: 1 August 1987, SI 1987/852 art.2 and Sch.1

⁹⁹⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- s.14A(5) - a banning order may be made as mentioned in subsection (4)(b) above in spite of anything in sections 12 and 14 of the Powers of the Criminal Courts (Sentencing) Act 2000 (which relate to orders discharging a person absolutely or conditionally and their effect).

F(S)A 1989 s.14⁹⁹¹: Main definitions

- s.14(8) - “*Relevant offence*” means an offence to which Schedule 1 to this Act applies.

3.4.4.2.2 Declarations of relevance

What is a declaration of relevance?

F(S)A 1989 s.23⁹⁹²: Further provision about, and appeals against, declarations of relevance

- s.23(5) - in this section “*declaration of relevance*” means a declaration by a court for the purposes of Schedule 1 to this Act that an offence related to football matches, or that it related to one or more particular football matches.

F(S)A 1989 Sch.1⁹⁹³

Note: The schedule lists the relevant offences for the purposes of football banning orders. The schedule has not been reproduced here.

Making a declaration of relevance

F(S)A 1989 s.23⁹⁹⁴: Further provision about, and appeals against, declarations of relevance

- s.23(1) - subject to subsection (2) below, a court may not make a declaration of relevance as respects any offence unless it is satisfied that the prosecutor gave notice to the defendant, at least five days before the first day of the trial, that it was proposed to show that the offence related to football matches, to a particular football match or to particular football matches (as the case may be).
- s.23(2) - a court may, in any particular case, make a declaration of relevance notwithstanding that notice to the defendant as required by subsection (1) above has not been given if he consents to waive the giving of full notice or the court is satisfied that the interests of justice do not require more notice to be given.

Appeals

F(S)A 1989 s.23⁹⁹⁵: Further provision about, and appeals against, declarations of relevance

- s.23(3) - a person convicted of an offence as respects which the court makes a declaration of relevance may appeal against the making of the declaration of relevance as if the declaration were included in any sentence passed on him for the offence, and accordingly:

⁹⁹¹ Commencement: 22 March 1990, SI 1990/690 art.2

⁹⁹² Commencement: 24 April 1990, SI 1990/690 art.3.

⁹⁹³ Commencement: 24 April 1990, SI 1990/690 art.2.

⁹⁹⁴ Commencement: 24 April 1990, SI 1990/690 art.3.

⁹⁹⁵ Commencement: 24 April 1990, SI 1990/690 art.3.

- (a) in section 10(3) of the Criminal Appeal Act 1968 (appeals against sentence by Crown Court), in paragraph (c), after the sub-paragraph (iv) inserted by section 15(7) above there shall be inserted
“or
(v) a declaration of relevance under the Football Spectators Act 1989”;;
- (b) in section 50(1) of that Act (meaning of “sentence”), at the end there shall be inserted the words “and a declaration of relevance under the Football Spectators Act 1989”; and
- (c) in section 108(3) of the Magistrates’ Courts Act 1980 (right of appeal to the Crown Court), at the end there shall be inserted the words “and also includes a declaration of relevance under the Football Spectators Act 1989”

Convictions quashed on appeals

F(S)A 1989 s.23⁹⁹⁶: Further provision about, and appeals against, declarations of relevance

- s.23(4) - a banning order made upon a person's conviction of a relevant offence shall be quashed if the making of a declaration of relevance as respects that offence is reversed on appeal.

3.4.4.2.3 Making the order

Test to apply

F(S)A 1989 s.14A⁹⁹⁷: Banning orders made on conviction of an offence

- s.14A(2) - if the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches, it must make such an order in respect of the offender.

R. v Hughes [2005] EWCA Crim 2537; [2006] 1 Cr. App. R. (S.) 107 (p.632)

“[Under section 14A] the first element—the conviction of a relevant offence—will already have been established to the criminal standard. [...] [T]he legislature expected, in a normal case, that the conviction itself would be sufficient to satisfy the court under subs.(2) , but that if there were something in the particular case that meant that the judge was not so satisfied then he should explain what it was in open court. There is clearly no requirement under s.14A for either repetition or propensity.” (HHJ Gordon at [13])

Evidence and standard of proof

F(S)A 1989 s.14A⁹⁹⁸: Banning orders made on conviction of an offence

- s.14A(3A) -for the purpose of deciding whether to make an order under this section the court may consider evidence led by the prosecution and the defence.
- s.14A(3B) -it is immaterial whether evidence led in pursuance of subsection (3A) would have been admissible in the proceedings in which the offender was convicted.

⁹⁹⁶ Commencement: 24 April 1990, SI 1990/690 art.3.

⁹⁹⁷ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

⁹⁹⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Duty to give reasons where test not satisfied

F(S)A 1989 s.14A⁹⁹⁹: Banning orders made on conviction of an offence

s.14A(3) - if the court is not so satisfied, it must in open court state that fact and give its reasons.

Power to adjourn

F(S)A 1989 s.14A¹⁰⁰⁰: Banning orders made on conviction of an offence

s.14A(4A) - the court may adjourn any proceedings in relation to an order under this section even after sentencing the offender.

s.14A(4B) - if the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest.

s.14A(4BA) - if the court adjourns or further adjourns any proceedings under subsection (4A) or (4B), the court may remand the offender.

s.14A(4BB) - a person who, by virtue of subsection (4BA), is remanded on bail may be required by the conditions of his bail:

- (a) not to leave England and Wales before his appearance before the court, and
- (b) if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his passport to a police constable, if he has not already done so.

s.14A(4C) - the court may not issue a warrant under subsection (4B) above for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings.

Length of orders

F(S)A 1989 s.14F¹⁰⁰¹: Period of banning orders.

s.14F(1) - subject to the following provisions of this Part, a banning order has effect for a period beginning with the day on which the order is made.

s.14F(2) - the period must not be longer than the maximum or shorter than the minimum.

s.14F(3) - where the order is made under section 14A above in addition to a sentence of imprisonment taking immediate effect, the maximum is ten years and the minimum is six years; and in this subsection "*imprisonment*" includes any form of detention.

s.14F(4) - in any other case where the order is made under section 14A above, the maximum is five years and the minimum is three years.

⁹⁹⁹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Power to make additional requirements

F(S)A 1989 s.14G¹⁰⁰²: Additional requirements of orders

s.14G(1) - a banning order may, if the court making the order thinks fit, impose additional requirements on the person subject to the order in relation to any regulated football matches.

Duty to explain the order

F(S)A 1989 s.14E¹⁰⁰³: Banning orders: general

s.14E(1) - on making a banning order, a court must in ordinary language explain its effect to the person subject to the order.

Duty of the court when making an order

F(S)A 1989 s.18¹⁰⁰⁴: Information

- s.18(1) - where a court makes a banning order, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of it to the person to whom it relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person;
 - (c) shall (as soon as reasonably practicable) send a copy of it to the police station (addressed to the officer responsible for the police station) at which the person subject to the order is to report initially; and
 - (d) in a case where the person subject to the order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of it to the person in whose custody he is detained.

Obligations under the order

F(S)A 1989 s.14E¹⁰⁰⁵: Banning orders: general

- s.14E(2) - a banning order must require the person subject to the order to report initially at a police station specified in the order within the period of five days beginning with the day on which the order is made.
- s.14E(2A) - a banning order must require the person subject to the order to give notification of the events mentioned in subsection (2B) to the enforcing authority.
- s.14E(2B) - the events are:
- (a) a change of any of his names;
 - (b) the first use by him after the making of the order of a name for himself that was not disclosed by him at the time of the making of the order;

¹⁰⁰² Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰³ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰⁴ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰⁰⁵ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- (c) a change of his home address;
- (d) his acquisition of a temporary address;
- (e) a change of his temporary address or his ceasing to have one;
- (f) his becoming aware of the loss of his passport;
- (g) receipt by him of a new passport;
- (h) an appeal made by him in relation to the order;
- (i) an application made by him under section 14H(2) for termination of the order;
- (j) an appeal made by him under section 23(3) against the making of a declaration of relevance in respect of an offence of which he has been convicted.

s.14E(2C) - a notification required by a banning order by virtue of subsection (2A) must be given before the end of the period of seven days beginning with the day on which the event in question occurs and–

- (a) in the case of a change of a name or address or the acquisition of a temporary address, must specify the new name or address;
- (b) in the case of a first use of a previously undisclosed name, must specify that name; and
- (c) in the case of a receipt of a new passport, must give details of that passport.

s.14E(3) - a banning order must impose a requirement as to the surrender in accordance with this Part, in connection with regulated football matches outside the United Kingdom, of the passport of the person subject to the order.

s.14E(5) - in the case of a person detained in legal custody:

- (a) the requirement under this section to report at a police station, and
 - (b) any requirement imposed under section 19 below,
- is suspended until his release from custody.

s.14E(6) - if:

- (a) he is released from custody more than five days before the expiry of the period for which the order has effect, and
 - (b) he was precluded by his being in custody from reporting initially,
- the order is to have effect as if it required him to report initially at the police station specified in the order within the period of five days beginning with the date of his release.

F(S)A 1989 s.20¹⁰⁰⁶: Exemptions from requirement to report as respects a match

s.20(1) - a person who is subject to a banning order may:

- (a) as respects a particular regulated football match, or
- (b) as respects regulated football matches played during a period,

¹⁰⁰⁶ Commencement: 24 April 1990, SI 1990/690 art.3.

apply to the authority empowered to grant exemptions under this section (“the exempting authority”;) to be exempt from the requirements imposed by or under this Part, or any of them as respects that match or matches played during that period.

- s.20(2) - the enforcing authority may grant exemptions under this section in all cases; but where the application is made during the control period in relation to any match to which the application applies, the officer responsible for a police station may grant the exemption as respects that match, subject to subsection (3) below.
- s.20(3) - the officer responsible for a police station shall not grant an exemption without referring the question of exemption to the enforcing authority, unless he considers that it is not reasonably practicable to do so.
- s.20(4) - the exempting authority shall exempt the applicant from the requirements imposed by or under this Part, or any of them, as respects any match or matches to which the application relates if he shows to the authority's satisfaction:
 - (a) that there are special circumstances which justify his being so exempted; and
 - (b) that, because of those circumstances, he would not attend the match or matches if he were so exempted.
- s.20(5) - the exempting authority shall, in taking any decision under subsection (4) above, have regard to any guidance issued by the Secretary of State under section 21 below.
- s.20(6) - where an exemption is granted by the exempting authority to a person under subsection (4) above the banning order is to have effect subject to the exemption and, accordingly, no requirement is to be imposed under section 19 which is inconsistent with the exemption.
- s.20(7) - a person who is aggrieved by the refusal of the exempting authority to grant him an exemption under subsection (4) above may, after giving the authority notice in writing of his intention to do so, appeal to a magistrates' court.
- s.20(8) - on any appeal under subsection (7) above the court may make such order as it thinks fit.
- s.20(9) - the court may order the appellant to pay all or any part of the costs of an appeal under subsection (7) above.
- s.20(10) - any person commits an offence who, in connection with an application under this section to be exempted from the requirements imposed by or under this Part, or any of them:
 - (a) makes a statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular, or
 - (b) produces, furnishes, signs or otherwise makes use of a document which he knows to be false or misleading in a material particular or recklessly produces, furnishes, signs or otherwise makes use of a document which is false or misleading in a material particular.
- s.20(11) - a person guilty of an offence under subsection (10) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

F(S)A 1989 s.18¹⁰⁰⁷: Information

- s.18(3) - where a person subject to a banning order is released from custody and, in the case of a person who has not reported initially to a police station, is released more than five days before the expiry of the banning order, the person in whose custody he is shall (as soon as reasonably practicable) give notice of his release to the enforcing authority.

3.4.4.2.4 Power to vary the order

F(S)A 1989 s.14G¹⁰⁰⁸: Additional requirements of orders

- s.14G(2) - the court by which a banning order was made may, on an application made by:
- (a) the person subject to the order, or
 - (b) the person who applied for the order or who was the prosecutor in relation to the order,
- vary the order so as to impose, replace or omit any such requirements.
- s.14G(3) - in the case of a banning order made by a magistrates' court, the reference in subsection (2) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

3.4.4.2.5 Termination of orders

F(S)A 1989 s.14H¹⁰⁰⁹: Termination of orders

- s.14H(1) - if a banning order has had effect for at least two-thirds of the period determined under section 14F above, the person subject to the order may apply to the court by which it was made to terminate it.
- s.14H(2) - on the application, the court may by order terminate the banning order as from a specified date or refuse the application.
- s.14H(3) - in exercising its powers under subsection (2) above, the court must have regard to the person's character, his conduct since the banning order was made, the nature of the offence or conduct which led to it and any other circumstances which appear to it to be relevant.
- s.14H(4) - where an application under subsection (1) above in respect of a banning order is refused, no further application in respect of the order may be made within the period of six months beginning with the day of the refusal.
- s.14H(5) - the court may order the applicant to pay all or any part of the costs of an application under this section.
- s.14H(6) - in the case of a banning order made by a magistrates' court, the reference in subsection (1) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

¹⁰⁰⁷ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰⁰⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰⁰⁹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Duty of the court when terminating the order

F(S)A 1989 s.18¹⁰¹⁰: Information

- s.18(2) - where a court terminates a banning order under section 14H above, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of the terminating order to the person to whom the banning order relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person; and
 - (c) in a case where the person subject to the banning order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of the terminating order to the person in whose custody he is detained.

3.4.4.2.6 Appeals

F(S)A 1989 s.14A¹⁰¹¹: Banning orders made on conviction of an offence

- s.14A(5A) - the prosecution has a right of appeal against a failure by the court to make a banning order under this section:
- (a) where the failure is by a magistrates' court, to the Crown Court; and
 - (b) where it is by the Crown Court, to the Court of Appeal.
- s.14A(5B) - an appeal under subsection (5A)(b) may be brought only if the Court of Appeal gives permission or the judge who decided not to make an order grants a certificate that his decision is fit for appeal.
- s.14A(5C) - an order made on appeal under this section (other than one directing that an application be re-heard by the court from which the appeal was brought) is to be treated for the purposes of this Part as if it were an order of the court from which the appeal was brought.

3.4.4.2.7 Definitions

F(S)A 1989 s.14A¹⁰¹²: Banning orders made on conviction of an offence

- s.14A(6) - in this section, "*the court*" in relation to an offender means:
- (a) the court by or before which he is convicted of the relevant offence, or
 - (b) if he is committed to the Crown Court to be dealt with for that offence, the Crown Court.

¹⁰¹⁰ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰¹¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹² Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

F(S)A 1989 s.14E¹⁰¹³: Banning orders: general

s.14E(8) - in this section:

“*declaration of relevance*” has the same meaning as in section 23;

“*home address*”, in relation to any person, means the address of his sole or main residence;

“*loss*” includes theft or destruction;

“*new*” includes replacement;

“*temporary address*”, in relation to any person, means the address (other than his home address) of a place at which he intends to reside, or has resided, for a period of at least four weeks.

3.4.4.3. Banning orders made on complaint

3.4.4.3.1 Applications

Making an application

F(S)A 1989 s.14B¹⁰¹⁴: Banning orders made on a complaint

s.14B(3) - the application is to be made by complaint to a magistrates' court.

Who may make an application?

F(S)A 1989 s.14B¹⁰¹⁵: Banning orders made on a complaint

s.14B(1) - an application for a banning order in respect of any person may be made by:

- (a) the relevant chief officer, or
- (b) the Director of Public Prosecutions,

if it appears to him that the condition in subsection (2) is met.

s.14B(1A) - in subsection (1) “*the relevant chief officer*” means:

- (a) the chief officer of police of any police force maintained for a police area; or
- (b) the chief constable of the British Transport Police Force.

s.14B(2) - that condition is that the respondent has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere.

¹⁰¹³ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁴ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁵ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

3.4.4.3.2 Making the order

Test to apply

F(S)A 1989 s.14B¹⁰¹⁶: Banning orders made on a complaint

s.14B(4) - if:

- (a) it is proved on the application that the condition in subsection (2) above is met, and
- (b) the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches,

the court must make a banning order in respect of the respondent.

What evidence etc. can magistrates consider?

F(S)A 1989 s.14C¹⁰¹⁷: Banning orders supplementary

s.14C(4) - the magistrates' court may take into account the following matters (among others), so far as they consider it appropriate to do so, in determining whether to make an order under section 14B above:

- (a) any decision of a court or tribunal outside the United Kingdom,
- (b) deportation or exclusion from a country outside the United Kingdom,
- (c) removal or exclusion from premises used for playing football matches, whether in the United Kingdom or elsewhere,
- (d) conduct recorded on video or by any other means.

s.14C(5) - in determining whether to make such an order:

- (a) the magistrates' court may not take into account anything done by the respondent before the beginning of the period of ten years ending with the application under section 14B(1) above, except circumstances ancillary to a conviction,
- (b) before taking into account any conviction for a relevant offence, where a court made a statement under section 14A(3) above (or section 15(2A) below or section 30(3) of the Public Order Act 1986), the magistrates' court must consider the reasons given in the statement,

and in this subsection "*circumstances ancillary to a conviction*" has the same meaning as it has for the purposes of section 4 of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation).

s.14C(6) - subsection (5) does not prejudice anything in the Rehabilitation of Offenders Act 1974.

¹⁰¹⁶ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁷ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Power to adjourn

F(S)A 1989 s.14B¹⁰¹⁸: Banning orders made on a complaint

- s.14B(5) - if the magistrates' court adjourns proceedings on an application under this section, the court may remand the person in respect of whom the application is made.
- s.14B(6) - a person who, by virtue of subsection (5) above, is remanded on bail under section 128 of the Magistrates' Courts Act 1980 may be required by the conditions of his bail:
- (a) not to leave England and Wales before his appearance before the court, and
 - (b) if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his passport to a police constable, if he has not already done so.

Length of orders

F(S)A 1989 s.14F¹⁰¹⁹: Period of banning orders.

- s.14F(1) - subject to the following provisions of this Part, a banning order has effect for a period beginning with the day on which the order is made.
- s.14F(2) - the period must not be longer than the maximum or shorter than the minimum.
- s.14F(5) - where the order is made under section 14B above, the maximum is five years and the minimum is three years.

Power to make additional requirements

F(S)A 1989 s.14G¹⁰²⁰: Additional requirements of orders

- s.14G(1) - a banning order may, if the court making the order thinks fit, impose additional requirements on the person subject to the order in relation to any regulated football matches.

Duty to explain the order

F(S)A 1989 s.14E¹⁰²¹: Banning orders: general

- s.14E(1) - on making a banning order, a court must in ordinary language explain its effect to the person subject to the order.

¹⁰¹⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰¹⁹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Duty of the court when making an order

F(S)A 1989 s.18¹⁰²²: Information

- s.18(1) - where a court makes a banning order, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of it to the person to whom it relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person;
 - (c) shall (as soon as reasonably practicable) send a copy of it to the police station (addressed to the officer responsible for the police station) at which the person subject to the order is to report initially; and
 - (d) in a case where the person subject to the order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of it to the person in whose custody he is detained.

Obligations under the order

F(S)A 1989 s.14E¹⁰²³: Banning orders: general

- s.14E(2) - a banning order must require the person subject to the order to report initially at a police station specified in the order within the period of five days beginning with the day on which the order is made.
- s.14E(2A) - a banning order must require the person subject to the order to give notification of the events mentioned in subsection (2B) to the enforcing authority.
- s.14E(2B) - the events are:
- (a) a change of any of his names;
 - (b) the first use by him after the making of the order of a name for himself that was not disclosed by him at the time of the making of the order;
 - (c) a change of his home address;
 - (d) his acquisition of a temporary address;
 - (e) a change of his temporary address or his ceasing to have one;
 - (f) his becoming aware of the loss of his passport;
 - (g) receipt by him of a new passport;
 - (h) an appeal made by him in relation to the order;
 - (i) an application made by him under section 14H(2) for termination of the order;
 - (j) an appeal made by him under section 23(3) against the making of a declaration of relevance in respect of an offence of which he has been convicted.

¹⁰²² Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰²³ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- s.14E(2C) - a notification required by a banning order by virtue of subsection (2A) must be given before the end of the period of seven days beginning with the day on which the event in question occurs and–
- (a) in the case of a change of a name or address or the acquisition of a temporary address, must specify the new name or address;
 - (b) in the case of a first use of a previously undisclosed name, must specify that name; and
 - (c) in the case of a receipt of a new passport, must give details of that passport.
- s.14E(3) - a banning order must impose a requirement as to the surrender in accordance with this Part, in connection with regulated football matches outside the United Kingdom, of the passport of the person subject to the order.
- s.14E(5) - in the case of a person detained in legal custody:
- (a) the requirement under this section to report at a police station, and
 - (b) any requirement imposed under section 19 below,
- is suspended until his release from custody.
- s.14E(6) - if:
- (a) he is released from custody more than five days before the expiry of the period for which the order has effect, and
 - (b) he was precluded by his being in custody from reporting initially,
- the order is to have effect as if it required him to report initially at the police station specified in the order within the period of five days beginning with the date of his release.

F(S)A 1989 s.20¹⁰²⁴: Exemptions from requirement to report as respects a match

- s.20(1) - a person who is subject to a banning order may:
- (a) as respects a particular regulated football match, or
 - (b) as respects regulated football matches played during a period,
- apply to the authority empowered to grant exemptions under this section (“the exempting authority”;) to be exempt from the requirements imposed by or under this Part, or any of them as respects that match or matches played during that period.
- s.20(2) - the enforcing authority may grant exemptions under this section in all cases; but where the application is made during the control period in relation to any match to which the application applies, the officer responsible for a police station may grant the exemption as respects that match, subject to subsection (3) below.
- s.20(3) - the officer responsible for a police station shall not grant an exemption without referring the question of exemption to the enforcing authority, unless he considers that it is not reasonably practicable to do so.
- s.20(4) - the exempting authority shall exempt the applicant from the requirements imposed by or under this Part, or any of them, as respects any match or matches to which the application relates if he shows to the authority's satisfaction:

¹⁰²⁴ Commencement: 24 April 1990, SI 1990/690 art.3.

- (a) that there are special circumstances which justify his being so exempted; and
 - (b) that, because of those circumstances, he would not attend the match or matches if he were so exempted.
- s.20(5) - the exempting authority shall, in taking any decision under subsection (4) above, have regard to any guidance issued by the Secretary of State under section 21 below.
- s.20(6) - where an exemption is granted by the exempting authority to a person under subsection (4) above the banning order is to have effect subject to the exemption and, accordingly, no requirement is to be imposed under section 19 which is inconsistent with the exemption.
- s.20(7) - a person who is aggrieved by the refusal of the exempting authority to grant him an exemption under subsection (4) above may, after giving the authority notice in writing of his intention to do so, appeal to a magistrates' court.
- s.20(8) - on any appeal under subsection (7) above the court may make such order as it thinks fit.
- s.20(9) - the court may order the appellant to pay all or any part of the costs of an appeal under subsection (7) above.
- s.20(10) - any person commits an offence who, in connection with an application under this section to be exempted from the requirements imposed by or under this Part, or any of them:
 - (a) makes a statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular, or
 - (b) produces, furnishes, signs or otherwise makes use of a document which he knows to be false or misleading in a material particular or recklessly produces, furnishes, signs or otherwise makes use of a document which is false or misleading in a material particular.
- s.20(11) - a person guilty of an offence under subsection (10) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

F(S)A 1989 s.18¹⁰²⁵: Information

- s.18(3) - where a person subject to a banning order is released from custody and, in the case of a person who has not reported initially to a police station, is released more than five days before the expiry of the banning order, the person in whose custody he is shall (as soon as reasonably practicable) give notice of his release to the enforcing authority.

¹⁰²⁵ Commencement: 24 April 1990, SI 1990/690 art.3.

3.4.4.3.3 Definitions

F(S)A 1989 s.14E¹⁰²⁶: Banning orders: general

s.14E(8) - in this section:

“*declaration of relevance*” has the same meaning as in section 23;

“*home address*”, in relation to any person, means the address of his sole or main residence;

“*loss*” includes theft or destruction;

“*new*” includes replacement;

“*temporary address*”, in relation to any person, means the address (other than his home address) of a place at which he intends to reside, or has resided, for a period of at least four weeks.

3.4.4.3.4 Power to vary the order

F(S)A 1989 s.14G¹⁰²⁷: Additional requirements of orders

s.14G(2) - the court by which a banning order was made may, on an application made by:

(a) the person subject to the order, or

(b) the person who applied for the order or who was the prosecutor in relation to the order,

vary the order so as to impose, replace or omit any such requirements.

s.14G(3) - in the case of a banning order made by a magistrates' court, the reference in subsection (2) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

3.4.4.3.5 Termination of orders

F(S)A 1989 s.14H¹⁰²⁸: Termination of orders

s.14H(1) - if a banning order has had effect for at least two-thirds of the period determined under section 14F above, the person subject to the order may apply to the court by which it was made to terminate it.

s.14H(2) - on the application, the court may by order terminate the banning order as from a specified date or refuse the application.

s.14H(3) - in exercising its powers under subsection (2) above, the court must have regard to the person's character, his conduct since the banning order was made, the nature of the offence or conduct which led to it and any other circumstances which appear to it to be relevant.

s.14H(4) - where an application under subsection (1) above in respect of a banning order is refused, no further application in respect of the order may be made within the period of six months beginning with the day of the refusal.

¹⁰²⁶ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²⁷ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰²⁸ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

- s.14H(5) - the court may order the applicant to pay all or any part of the costs of an application under this section.
- s.14H(6) - in the case of a banning order made by a magistrates' court, the reference in subsection (1) above to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court.

Duty of the court when terminating the order

F(S)A 1989 s.18¹⁰²⁹: Information

- s.18(2) - where a court terminates a banning order under section 14H above, the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court):
- (a) shall give a copy of the terminating order to the person to whom the banning order relates;
 - (b) shall (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person; and
 - (c) in a case where the person subject to the banning order is detained in legal custody, shall (as soon as reasonably practicable) send a copy of the terminating order to the person in whose custody he is detained.

3.4.4.3.6 Appeals

F(S)A 1989 s.14D¹⁰³⁰: Banning orders made on a complaint: appeals

- s.14D(1) - an appeal lies to the Crown Court against the making by a magistrates' court of a banning order under section 14B above.
- s.14D(1A) - an appeal lies to the Crown Court against the dismissal by a magistrates' court of an application for the making of a banning order under section 14B above.
- s.14D(2) - on an appeal under this section the Crown Court:
- (a) may make any orders necessary to give effect to its determination of the appeal, and
 - (b) may also make any incidental or consequential orders which appear to it to be just.
- s.14D(3) - an order of the Crown Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) is to be treated for the purposes of this Part as if it were an order of the magistrates' court from which the appeal was brought.

¹⁰²⁹ Commencement: 24 April 1990, SI 1990/690 art.3.

¹⁰³⁰ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

3.4.4.4. Breach

F(S)A 1989 s.14J¹⁰³¹: Offences

- s.14J(1) - a person subject to a banning order who fails to comply with:
- (a) any requirement imposed by the order, or
 - (b) any requirement imposed under section 19(2B) or (2C) below (Functions of enforcing authority and local police),
- is guilty of an offence.
- s.14J(2) - a person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

3.4.4.5. Offences outside of the UK

Corresponding offences

FSA 1989 s.22¹⁰³²: Restriction orders arising out of offences outside England and Wales.

- s.22(1) - Her Majesty may, by Order in Council, specify offences (“corresponding offences”); under the law of any country outside England and Wales which appear to Her to correspond to any offence to which Schedule 1 to this Act applies.
- s.22(1A) - for the purposes of subsection (1) above, an offence specified in an Order in Council under that subsection shall be regarded as corresponding to an offence to which Schedule 1 to this Act applies notwithstanding that any period specified in the Order is longer than any corresponding period specified in that Schedule.

Procedure

FSA 1989 s.22¹⁰³³: Restriction orders arising out of offences outside England and Wales.

- s.22(2) - upon an information being laid before a justice of the peace that a person has been convicted of a corresponding offence in a country outside England and Wales, the justice may—
- (a) issue a summons directed to that person requiring him to appear before a magistrates' court to answer to the information; or
 - (b) subject to subsection (3) below, issue a warrant to arrest that person and bring him before a magistrates' court.

¹⁰³¹ Commencement: 28 August 2000, as inserted by F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

¹⁰³² Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³³ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

- s.22(3) - no warrant shall be issued under subsection (2) above unless the information is in writing and substantiated on oath.

Test to apply and power to order

FSA 1989 s.22¹⁰³⁴: Restriction orders arising out of offences outside England and Wales.

- s.22(4) - where a person appears or is brought before a magistrates' court in pursuance of subsection (2) above, the court, if satisfied that—
- (a) he is ordinarily resident in England and Wales, and
 - (b) has been convicted in the country outside England and Wales of the corresponding offence,
- may, unless it appears that the conviction is the subject of proceedings in a court of law in that country questioning the conviction, make a banning order in relation to him.
- s.22(6) - in proceedings under subsection (4) above, the court shall have the like powers, including power to adjourn the proceedings and meanwhile to remand the defendant on bail (but not in custody), and the proceedings shall be conducted as nearly as may be in the like manner, as if the proceedings were the trial of an information for a summary offence.

Duty to make an order

FSA 1989 s.22¹⁰³⁵: Restriction orders arising out of offences outside England and Wales.

- s.22(5) - a magistrates' court which has power to make a banning order in relation to a person shall be under a duty to make the order in relation to him if it is satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with regulated football matches.

Must give reasons when not making an order

FSA 1989 s.22¹⁰³⁶: Restriction orders arising out of offences outside England and Wales.

- s.22(5A) - where a magistrates' court has power to make a banning order in relation to a person but does not do so, it shall state in open court that it is not satisfied that there are such reasonable grounds as are mentioned in subsection (5) above and give reasons why it is not satisfied.

¹⁰³⁴ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁵ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁶ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

Appeals

FSA 1989 s.22¹⁰³⁷: Restriction orders arising out of offences outside England and Wales.

- s.22(7) - any person aggrieved by the decision of a magistrates' court making a banning order under this section may appeal to the Crown Court against the decision.

Application of provisions concerning banning order on conviction

FSA 1989 s.22¹⁰³⁸: Restriction orders arising out of offences outside England and Wales.

- s.22(8) - Sections 14E to 14J and 18 to 21 shall apply in relation to a person subject to a banning order under this section as they apply in relation to a person subject to a banning order made by a magistrates' court under section 14A.

Orders in Council

FSA 1989 s.22¹⁰³⁹: Restriction orders arising out of offences outside England and Wales.

- s.22(9) - an Order in Council under subsection (1) above relating to any country may include provision specifying the documentary form in which details are to be given of—
- (a) the conviction of a person in that country of a corresponding offence,
 - (b) the nature and circumstances of the offence, and
 - (c) whether or not the conviction is the subject of proceedings in that country questioning it.
- s.22(10) - a document in the form so specified—
- (a) shall be admissible in any proceedings under this Part of this Act as evidence of the facts stated in it unless the contrary is proved, and
 - (b) shall be taken as such a document unless the contrary is proved.
- s.22(11) - in proceedings against a person under this section, the facts stated in a document in the form so specified shall, on production of the document and proof that that person is the person whose conviction is set out in the document, be taken to be proved unless the contrary is proved.
- s.22(12) - any statutory instrument containing an Order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

¹⁰³⁷ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁸ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

¹⁰³⁹ Commencement: Section 22(1), (9) and (12) in force 22 March 1990, SI 1990/690 art.2. Section 22(2)-(5), (6)-(8), (10) and (11) in force 24 April 1990, SI 1990/690 art.3. Section 22(5A) in force 27 September 1999, as inserted by Football (Offences and Disorder) Act 1999 s.5(3), Football (Offences and Disorder) Act 1999 s.12(2).

3.4.5. Restraining Orders

3.4.5.1. General

Interpretation

PHA 1997 s.7¹⁰⁴⁰: Interpretation of this group of sections

- s.7(1) - this section applies for the interpretation of sections 1 to 5A.
- s.7(2) - references to harassing a person include alarming the person or causing the person distress.
- s.7(3) - a “course of conduct” must involve:
 - (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
 - (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.
- s.7(3A) - a person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another:
 - (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
 - (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.
- s.7(4) - “Conduct” includes speech.
- s.7(5) - references to a person, in the context of the harassment of a person, are references to a person who is an individual.

European orders

Note: There exists an order giving magistrates' courts and, in certain circumstances, the Crown Court, the power to make a European protection order (“EPO”). An EPO may impose prohibitions or restrictions upon an individual and may be made after an application by an individual who is “protected” by a court order in England and Wales (most likely to be a restraining order) and who resides or is going to reside in another member state. The EPO requests that the relevant member state recognises the protection order. See Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 (SI 2014/3300).

The SI also makes provision for the recognition of an EPO made in another member state, which involves a magistrates' court imposing a restraining order under s.5 of the Protection from Harassment Act 1997 which replicates the provisions contained in the EPO as closely as possible (see reg.13).

¹⁰⁴⁰ Commencement: 16 June 1997, SI 1997/1418 art.2.

3.4.5.2. On conviction

Availability

PHA 1997 s.5¹⁰⁴¹: Restraining orders on conviction

- s.5(1) - a court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this section.

Evidence

PHA 1997 s.5¹⁰⁴²: Restraining orders on conviction

- s.5(3A) - in proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.

Contents of the order

PHA 1997 s.5¹⁰⁴³: Restraining orders on conviction

- s.5(2) - the order may, for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which:
- (a) amounts to harassment, or
 - (b) will cause a fear of violence,
- prohibit the defendant from doing anything described in the order.

Length of the order

PHA 1997 s.5¹⁰⁴⁴: Restraining orders on conviction

- s.5(3) - the order may have effect for a specified period or until further order.

Variation or discharge of the order

PHA 1997 s.5¹⁰⁴⁵: Restraining orders on conviction

- s.5(4) - the prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.
- s.5(4A) - Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).

¹⁰⁴¹ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴² Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴³ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴⁴ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴⁵ Commencement: 16 June 1997, SI 1997/1418 art.2.

3.4.5.3. On acquittal

General

PHA 1997 s.5A¹⁰⁴⁶: Restraining orders on acquittal

s.5A(2) - Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that one.

Power to order

PHA 1997 s.5A¹⁰⁴⁷: Restraining orders on acquittal

s.5A(1) - a court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

Evidence

PHA 1997 s.5¹⁰⁴⁸: Restraining orders on conviction

s.5(3A) - in proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.

Length of the order

PHA 1997 s.5¹⁰⁴⁹: Restraining orders on conviction

s.5(3) - the order may have effect for a specified period or until further order.

Variation or discharge of the order

PHA 1997 s.5¹⁰⁵⁰: Restraining orders on conviction

s.5(4) - the prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

s.5(4A) - any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).

¹⁰⁴⁶ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁴⁷ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁴⁸ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁴⁹ Commencement: 16 June 1997, SI 1997/1418 art.2.

¹⁰⁵⁰ Commencement: 16 June 1997, SI 1997/1418 art.2.

3.4.5.4. Appeals

Right of appeal

PHA 1997 s.5A¹⁰⁵¹: Restraining orders on acquittal

- s.5A(5) - a person made subject to an order under this section has the same right of appeal against the order as if:
- (a) he had been convicted of the offence in question before the court which made the order, and
 - (b) the order had been made under section 5.

Court of Appeal allows appeal against conviction: Power to make order on acquittal

PHA 1997 s.5A¹⁰⁵²: Restraining orders on acquittal

- s.5A(3) - where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.

Crown Court allows appeal against conviction: Power to make order on acquittal

PHA 1997 s.5A¹⁰⁵³: Restraining orders on acquittal

- s.5A(4) - where:
- (a) the Crown Court allows an appeal against conviction, or
 - (b) a case is remitted to the Crown Court under subsection (3),
- the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

3.4.5.5. Breach

Post-conviction

PHA 1997 s.5¹⁰⁵⁴: Restraining orders on conviction

- s.5(5) - if without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.
- s.5(6) - a person guilty of an offence under this section is liable:
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

¹⁰⁵¹ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁵² Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁵³ Commencement: 30 September 2009, as inserted by Domestic Violence, Crime and Victims Act 2004 s.12(5), SI 2009/2501 art.2(a).

¹⁰⁵⁴ Commencement: 16 June 1997, SI 1997/1418 art.2.

s.5(7)¹⁰⁵⁵ - a court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.

3.4.5.6. Other sources

Breach of Protective Order Guideline 2006, Sentencing Guidelines Council

¹⁰⁵⁵ The Explanatory Note to Domestic Violence, Crime and Victims Act 2004 para.1(57) states: Subsection (4) allows a court when dealing with a person for the offence of breach of a restraining order under section 5 of the 1997 Act to vary or discharge the order in question irrespective of whether it was the court that made the original order.

3.4.6. Serious Crime Prevention Orders

3.4.6.1. General

What is a Serious Crime Prevention Order?

SCA 2007 s.1¹⁰⁵⁶: Serious Crime Prevention Orders

- s.1(5) - in this Part “*serious crime prevention order*” means:
- (a) an order under this section; or
 - (b) an order under section 19 (corresponding order of the Crown Court on conviction).
- s.1(6) - for the purposes of this Part references to the person who is the subject of a serious crime prevention order are references to the person against whom the public are to be protected.

SCA 2007 s.19¹⁰⁵⁷: Orders by Crown Court on conviction

- s.19(8) - an order under this section is also called a serious crime prevention order.

Nature of proceedings

SCA 2007 s.35¹⁰⁵⁸: Proceedings in the High Court

- s.35(1) - proceedings before the High Court in relation to serious crime prevention orders are civil proceedings.
- s.35(2) - one consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof.

SCA 2007 s.36¹⁰⁵⁹: Proceedings in the Crown Court

- s.36(1) - proceedings before the Crown Court arising by virtue of section 19, 20, 21 or 22E are civil proceedings.
- s.36(2) - one consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof.
- s.36(3) - two other consequences of this are that the court–
- (a) is not restricted to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted; and
 - (b) may adjourn any proceedings in relation to a serious crime prevention order even after sentencing the person concerned.

¹⁰⁵⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁵⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁵⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹⁰⁵⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

s.36(4) - the Crown Court, when exercising its jurisdiction in England and Wales under this Part, is a criminal court for the purposes of Part 7 of the Courts Act 2003 (c. 39) (procedure rules and practice directions).

Interpretation and definitions

SCA 2007 s.42¹⁰⁶⁰: Interpretation Part 1

s.42 - in this Part–

“act” and “conduct” include omissions and statements;

“country” includes territory;

“modifications” includes additions and omissions (and “modify” is to be read accordingly);

“the public” includes a section of the public or a particular member of the public.

SCA 2007 s.43¹⁰⁶¹: Index of defined expressions: Part 1

Expression	Provision
act	<u>section 42</u>
committed a serious offence	<u>section 4(1)</u>
conduct	<u>section 42</u>
conducts oneself in a way likely to facilitate the commission by oneself or another person of a serious offence	<u>section 4(3)</u>
country	<u>section 42</u>
Director of Public Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland	<u>[Paragraphs 2(2), 13(2) and 17 of Schedule 2]</u>
document	<u>section 5(7)</u>
facilitates the commission by another person of a serious offence	<u>section 4(2)</u>
involvement in serious crime: England and Wales orders	<u>sections 2, 4 and 31(3)</u>
involvement in serious crime: Northern Ireland orders	<u>sections 3, 4 and 31(3)</u>
law enforcement officer	<u>section 5(7)</u>
modifications (and modify)	<u>section 42</u>
person who is the subject of a serious crime prevention order	<u>section 1(6)</u>
premises	<u>section 5(7)</u>
production of documents	<u>section 5(8)</u>
the public	<u>section 42</u>
relevant applicant authority	<u>section 10(4)</u>
serious crime prevention order	<u>section 1(5)</u>
serious offence in England and Wales	<u>section 2(2)</u>
serious offence in Northern Ireland	<u>section 3(2)</u>

¹⁰⁶⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(k).

¹⁰⁶¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(k).

3.4.6.2. Availability

Restrictions on making an order

SCA 2007 s.6¹⁰⁶²: Any individual must be 18 or over

An individual under the age of 18 may not be the subject of a serious crime prevention order.

SCA 2007 s.7¹⁰⁶³: Other exceptions

- s.7(1) - a person may not be made the subject of a serious crime prevention order in England and Wales if the person falls within a description specified by order of the Secretary of State.
- s.7(2) - a person may not be made the subject of a serious crime prevention order in Northern Ireland if the person falls within a description specified by order of the Department of Justice in Northern Ireland.

Who may make an application?

SCA 2007 s.8¹⁰⁶⁴: Limited class of applicants for making of orders

A serious crime prevention order may be made only on an application by:

- (a) in the case of an order in England and Wales:
 - (i) the Director of Public Prosecutions; or
 - (iii) the Director of the Serious Fraud Office; and
- (b) in the case of an order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

3.4.6.3. Applications

Functions of applicant authorities

SCA 2007 s.37¹⁰⁶⁵: Functions of applicant authorities

s.37 - Schedule 2 (functions of applicant authorities under this Part) has effect.

SCA 2007 Sch.2¹⁰⁶⁶: Functions of applicant authorities under Part 1

The provisions of the Schedule are not reproduced here. The Explanatory Note about s.37 and Sch.2 is as follows.

126. This section gives effect to Schedule 2 which provides for the functions of the applicant authorities that can make applications for orders (Director of Public Prosecutions, Director of Revenue and Customs Prosecutions, Director of the Serious Fraud Office and Director of Public Prosecutions for Northern Ireland). These functions include

¹⁰⁶² Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁶³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁶⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁶⁵ Commencement: In force 1 March 2008 to the extent that Sch.2 paras.4 and 18 are also in force, SI 2008/219 art.3(b) and (c). Otherwise, 6 April 2008, SI 2008/755 art.15(1)(g).

¹⁰⁶⁶ Commencement: Sch. 2 paras.4 and 18 in force 1 March 2008, SCA 2007 s.37, SI 2008/219 art.3(b) and (c). Otherwise, 6 April 2008, SI 2008/755 art.15(1)(g).

applying for serious crime prevention orders, or the variation or discharge of an order; appearing on applications by others for the variation or discharge of an order; having the conduct of or appearing in any other proceedings about a serious crime prevention order; providing advice about any proceedings or possible proceedings in connection with a serious crime prevention order; or anything for the purposes of, or in connection with, these functions. Special provision has to be made because functions in relation to serious crime prevention orders fall outside the usual prosecutorial functions of the Directors.

127. Paragraphs 1 to 5 of Schedule 2 list the functions of the Director of Public Prosecutions under Part 1 of the Act and provide that he can delegate his functions to a Crown Prosecutor (paragraph 2). Paragraphs 6 to 11 of this Schedule list the functions of the Director of Revenue and Customs Prosecutions under Part 1 of the Act and provide that he can delegate his functions to a Revenue and Customs Prosecutor (paragraph 7). Paragraphs 12 to 15 of this Schedule list the functions of the Director of the Serious Fraud Office under Part 1 of the Act and provide that he can delegate his functions to a member of the Serious Fraud Office (paragraph 13). The powers to delegate alter the usual position in relation to the carrying out of functions on behalf of the Directors by their staff. A Director must expressly delegate his functions rather than it occurring automatically. This is intended to ensure that the exercise of the powers is kept under tight control by the Directors.
128. Paragraphs 3, 8 and 14 provide that the functions of the Directors are exercisable under the superintendence of the Attorney General.
129. Paragraphs 16 to 20 of this Schedule list the functions of the Director of Public Prosecutions for Northern Ireland under Part 1 of the Act and make provision about the exercising of those functions.

Note: The role of the Director of Revenue and Customs Prosecutions (DRCP) was merged with the Director of Public Prosecutions (DPP) and therefore reference to the DRCP in the explanatory note should be read as a reference to the DPP, see SI 2014/834 art.3 for more details. The SI amended primary and secondary legislation where appropriate but did not amend the explanatory notes.

3.4.6.4. Power to order

Safeguards

SCA 2007 s.1¹⁰⁶⁷: Serious Crime Prevention Orders

- s.1(4) - the powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).

SCA 2007 s.19¹⁰⁶⁸: Orders by Crown Court on conviction

- s.19(6) - the powers of the court in respect of an order under this section are subject to sections 6 to 15 (safeguards).

¹⁰⁶⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁶⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

High Court

SCA 2007 s.1¹⁰⁶⁹: Serious Crime Prevention Orders

- s.1(1) - the High Court in England and Wales may make an order if–
- (a) it is satisfied that a person has been involved in serious crime (whether in England and Wales or elsewhere); and
 - (b) it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- s.1(2) - the High Court in Northern Ireland may make an order if–
- (a) it is satisfied that a person has been involved in serious crime (whether in Northern Ireland or elsewhere); and
 - (b) it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.

SCA 2007 s.2¹⁰⁷⁰: Involvement in serious crime: England and Wales orders

- s.2(1) - for the purposes of this Part, a person has been involved in serious crime in England and Wales if he:
- (a) has committed a serious offence in England and Wales;
 - (b) has facilitated the commission by another person of a serious offence in England and Wales; or
 - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed).
- s.2(2) - in this Part “*a serious offence in England and Wales*” means an offence under the law of England and Wales which, at the time when the court is considering the application or matter in question:
- (a) is specified, or falls within a description specified, in Part 1 of Schedule 1; or
 - (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.
- s.2(3) - for the purposes of this Part, involvement in serious crime in England and Wales is any one or more of the following–
- (a) the commission of a serious offence in England and Wales;
 - (b) conduct which facilitates the commission by another person of a serious offence in England and Wales;
 - (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in England and Wales (whether or not such an offence is committed).

¹⁰⁶⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁷⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(b).

- s.2(4) - for the purposes of section 1(1)(a), a person has been involved in serious crime elsewhere than in England and Wales if he:
- (a) has committed a serious offence in a country outside England and Wales;
 - (b) has facilitated the commission by another person of a serious offence in a country outside England and Wales; or
 - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside England and Wales (whether or not such an offence was committed).
- s.2(5) - in subsection (4) “*a serious offence in a country outside England and Wales*” means an offence under the law of a country outside England and Wales which, at the time when the court is considering the application or matter in question:
- (a) would be an offence under the law of England and Wales if committed in or as regards England and Wales; and
 - (b) either:
 - (i) would be an offence which is specified, or falls within a description specified, in Part 1 of Schedule 1 if committed in or as regards England and Wales; or
 - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in sub-paragraph (i).
- s.2(6) - the test in subsection (4) is to be used instead of the test in section 3(1) in deciding for the purposes of section 1(1)(a) whether a person has been involved in serious crime in Northern Ireland.
- s.2(7) - an act punishable under the law of a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.

SCA 2007 s.3¹⁰⁷¹: *Involvement in serious crime: Northern Ireland orders*

- s.3(1) - for the purposes of this Part, a person has been involved in serious crime in Northern Ireland if he–
- (a) has committed a serious offence in Northern Ireland;
 - (b) has facilitated the commission by another person of a serious offence in Northern Ireland; or
 - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in Northern Ireland (whether or not such an offence was committed).
- s.3(2) - in this Part “*a serious offence in Northern Ireland*” means an offence under the law of Northern Ireland which, at the time when the court is considering the application or matter in question–
- (a) is specified, or falls within a description specified, in Part 2 of Schedule 1; or

¹⁰⁷¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(c).

- (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.

s.3(3) - for the purposes of this Part, involvement in serious crime in Northern Ireland is any one or more of the following–

- (a) the commission of a serious offence in Northern Ireland;
- (b) conduct which facilitates the commission by another person of a serious offence in Northern Ireland;
- (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Northern Ireland (whether or not such an offence is committed).

s.3(4) - for the purposes of section 1(2)(a), a person has been involved in serious crime elsewhere than in Northern Ireland if he–

- (a) has committed a serious offence in a country outside Northern Ireland;
- (b) has facilitated the commission by another person of a serious offence in a country outside Northern Ireland; or
- (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside Northern Ireland (whether or not such an offence was committed).

s.3(5) - in subsection (4) “*a serious offence in a country outside Northern Ireland*” means an offence under the law of a country outside Northern Ireland which, at the time when the court is considering the application or matter in question–

- (a) would be an offence under the law of Northern Ireland if committed in or as regards Northern Ireland; and
- (b) either–
 - (i) would be an offence which is specified, or falls within a description specified, in Part 2 of Schedule 1 if committed in or as regards Northern Ireland; or
 - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in sub-paragraph (i).

s.3(6) - the test in subsection (4) is to be used instead of the test in section 2(1) in deciding for the purposes of section 1(2)(a) whether a person has been involved in serious crime in England and Wales.

s.3(7) - an act punishable under the law of a country outside the United Kingdom constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.

Crown Court

SCA 2007 s.19¹⁰⁷²: Orders by Crown Court on conviction

- s.19(1) - subsection (2) applies where the Crown Court in England and Wales is dealing with a person who—
- (a) has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with; or
 - (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.
- s.19(2) - the Crown Court may, in addition to dealing with the person in relation to the offence, make an order if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- s.19(2A) - a court that makes an order by virtue of subsection (2) in the case of a person who is already the subject of a serious crime prevention order in England and Wales must discharge the existing order.
- s.19(3) - subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland.
- s.19(4) - the Crown Court may, in addition to dealing with the person in relation to the offence, make an order if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- s.19(4A) - a court that makes an order by virtue of subsection (4) in the case of a person who is already the subject of a serious crime prevention order in Northern Ireland must discharge the existing order.
- s.19(7) - an order must not be made under this section except—
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.

“Serious offences”

SCA 2007 Sch.1¹⁰⁷³: Serious offences

Note: Part 1 details serious offences in England and Wales. Part 2 details serious offences in Northern Ireland. The individual paragraphs have not been specified here as they are simply a list of offences. The Schedule was amended by SCA 2015 s.47(2)-(4), as commenced by SI 2015/820 reg.2(f) and (r)(xvi) on 3 May 2015 and MSA 2015 Sch.5 para.7 as commenced by SI 2015/1476 reg.2(j).

¹⁰⁷² Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

“Involvement in serious crime”

SCA 2007 s.4¹⁰⁷⁴: *Involvement in serious crime: supplementary*

- s.4(1) - in considering for the purposes of this Part whether a person has committed a serious offence:
- (a) the court must decide that the person has committed the offence if:
 - (i) he has been convicted of the offence; and
 - (ii) the conviction has not been quashed on appeal nor has the person been pardoned of the offence; but
 - (b) the court must not otherwise decide that the person has committed the offence.
- s.4(2) - in deciding for the purposes of this Part whether a person (“the respondent”) facilitates the commission by another person of a serious offence, the court must ignore:
- (a) any act that the respondent can show to be reasonable in the circumstances; and
 - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- s.4(3) - in deciding for the purposes of this Part whether a person (“the respondent”) conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore:
- (a) any act that the respondent can show to be reasonable in the circumstances; and
 - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- s.4(4) - the Secretary of State may by order amend Part 1 of Schedule 1.
- s.4(5) - the Department of Justice in Northern Ireland may by order amend Part 2 of Schedule 1.

3.4.6.5. Making the order

Right to make representations

SCA 2007 s.9¹⁰⁷⁵: *Right of third parties to make representations*

- s.9(1) - the High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the making of a serious crime prevention order if it considers that the making of the order would be likely to have a significant adverse effect on that person.
- s.9(4) - the Crown Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it arising by virtue of section 19, 20 21 or 22E if it considers that the making or variation of the serious crime prevention order concerned (or a decision not to vary it) would be likely to have a significant adverse effect on that person.

¹⁰⁷⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

Contents of the order

SCA 2007 s.1¹⁰⁷⁶: Serious Crime Prevention Orders

- s.1(3) - an order under this section may contain:
- (a) such prohibitions, restrictions or requirements; and
 - (b) such other terms;
- as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales or (as the case may be) Northern Ireland.

SCA 2007 s.19¹⁰⁷⁷: Orders by Crown Court on conviction

- s.19(5) - an order under this section may contain–
- (a) such prohibitions, restrictions or requirements; and
 - (b) such other terms;
- as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales or (as the case may be) Northern Ireland.

SCA 2007 s.5¹⁰⁷⁸: Type of provision that may be made by orders

- s.5(1) - this section contains examples of the type of provision that may be made by a serious crime prevention order but it does not limit the type of provision that may be made by such an order.
- s.5(2) - examples of prohibitions, restrictions or requirements that may be imposed by serious crime prevention orders in England and Wales or Northern Ireland include prohibitions, restrictions or requirements in relation to places other than England and Wales or (as the case may be) Northern Ireland.
- s.5(3) - examples of prohibitions, restrictions or requirements that may be imposed on individuals (including partners in a partnership) by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to:
- (a) an individual's financial, property or business dealings or holdings;
 - (b) an individual's working arrangements;
 - (c) the means by which an individual communicates or associates with others, or the persons with whom he communicates or associates;
 - (d) the premises to which an individual has access;
 - (e) the use of any premises or item by an individual;
 - (f) an individual's travel (whether within the United Kingdom, between the United Kingdom and other places or otherwise).

¹⁰⁷⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁷⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.5(4) - examples of prohibitions, restrictions or requirements that may be imposed on bodies corporate, partnerships and unincorporated associations by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to–
- (a) financial, property or business dealings or holdings of such persons;
 - (b) the types of agreements to which such persons may be a party;
 - (c) the provision of goods or services by such persons;
 - (d) the premises to which such persons have access;
 - (e) the use of any premises or item by such persons;
 - (f) the employment of staff by such persons.
- s.5(5) - examples of requirements that may be imposed on any persons by serious crime prevention orders include–
- (a) a requirement on a person to answer questions, or provide information, specified or described in an order–
 - (i) at a time, within a period or at a frequency;
 - (ii) at a place;
 - (iii) in a form and manner; and
 - (iv) to a law enforcement officer or description of law enforcement officer; notified to the person by a law enforcement officer specified or described in the order;
 - (b) a requirement on a person to produce documents specified or described in an order–
 - (i) at a time, within a period or at a frequency;
 - (ii) at a place;
 - (iii) in a manner; and
 - (iv) to a law enforcement officer or description of law enforcement officer; notified to the person by a law enforcement officer specified or described in the order.
- s.5(6) - the prohibitions, restrictions or requirements that may be imposed on individuals by serious crime prevention orders include prohibitions, restrictions or requirements in relation to an individual's private dwelling (including, for example, prohibitions or restrictions on, or requirements in relation to, where an individual may reside).
- s.5(7) - in this Part:
- “document” means anything in which information of any description is recorded (whether or not in legible form);
- “a law enforcement officer” means:
- (a) a constable;
 - (b) a National Crime Agency officer who is for the time being designated under section 9 or 10 of the Crime and Courts Act 2013;
 - (c) an officer of Revenue and Customs; or
 - (d) a member of the Serious Fraud Office; and
- “premises” includes any land, vehicle, vessel, aircraft or hovercraft.

- s.5(8) - any reference in this Part to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

Restrictions on the effect of the order

SCA 2007 s.11¹⁰⁷⁹: Restrictions on oral answers

- s.11 - a serious crime prevention order may not require a person to answer questions, or provide information, orally.

SCA 2007 s.12¹⁰⁸⁰: Restrictions for legal professional privilege

- s.12(1) - a serious crime prevention order may not require a person—
- (a) to answer any privileged question;
 - (b) to provide any privileged information; or
 - (c) to produce any privileged document.
- s.12(2) - a “*privileged question*” is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.
- s.12(3) - “*Privileged information*” is information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.
- s.12(4) - a “*privileged document*” is a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings.
- s.12(5) - but subsection (1) does not prevent an order from requiring a lawyer to provide the name and address of a client of his.

SCA 2007 s.13¹⁰⁸¹: Restrictions on excluded material and banking information

- s.13(1) - a serious crime prevention order may not require a person to produce:
- (a) in the case of an order in England and Wales, any excluded material as defined by section 11 of the Police and Criminal Evidence Act 1984 (c. 60); and
 - (b) in the case of an order in Northern Ireland, any excluded material as defined by Article 13 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)).
- s.13(2) - a serious crime prevention order may not require a person to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on a banking business unless condition A or B is met.
- s.13(3) - condition A is that the person to whom the obligation of confidence is owed consents to the disclosure or production.

¹⁰⁷⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.13(4) - condition B is that the order contains a requirement–
- (a) to disclose information, or produce documents, of this kind; or
 - (b) to disclose specified information which is of this kind or to produce specified documents which are of this kind.

SCA 2007 s.14¹⁰⁸²: Restrictions relating to other enactments

- s.14(1) - a serious crime prevention order may not require a person–
- (a) to answer any question;
 - (b) to provide any information; or
 - (c) to produce any document;
- if the disclosure concerned is prohibited under any other enactment.
- s.14(2) - in this section:
- “*enactment*” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made; and
- “*subordinate legislation*” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under–
- (a) an Act of the Scottish Parliament; or
 - (b) Northern Ireland legislation.

SCA 2007 s.15¹⁰⁸³: Restrictions on use of information obtained

- s.15(1) - a statement made by a person in response to a requirement imposed by a serious crime prevention order may not be used in evidence against him in any criminal proceedings unless condition A or B is met.
- s.15(2) - condition A is that the criminal proceedings relate to an offence under section 25.
- s.15(3) - condition B is that:
- (a) the criminal proceedings relate to another offence;
 - (b) the person who made the statement gives evidence in the criminal proceedings;
 - (c) in the course of that evidence, the person makes a statement which is inconsistent with the statement made in response to the requirement imposed by the order; and
 - (d) in the criminal proceedings evidence relating to the statement made in response to the requirement imposed by the order is adduced, or a question about it is asked, by the person or on his behalf.

¹⁰⁸² Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

Duration of the order

SCA 2007 s.16¹⁰⁸⁴: Duration of orders

- s.16(1) - a serious crime prevention order must specify when it is to come into force and when it is to cease to be in force.
- s.16(2) - an order is not to be in force for more than 5 years beginning with the coming into force of the order.
- s.16(3) - an order can specify different times for the coming into force, or ceasing to be in force, of different provisions of the order.
- s.16(4) - where it specifies different times in accordance with subsection (3), the order–
 - (a) must specify when each provision is to come into force and cease to be in force; and
 - (b) is not to be in force for more than 5 years beginning with the coming into force of the first provision of the order to come into force.
- s.16(5) - the fact that an order, or any provision of an order, ceases to be in force does not prevent the court from making a new order to the same or similar effect.
- s.16(6) - a new order may be made in anticipation of an earlier order or provision ceasing to be in force.
- s.16(7) - Subsections (2) and (4)(b) have effect subject to section 22E.

Duty to serve notice on individual subject to order

SCA 2007 s.10¹⁰⁸⁵: Notice requirements in relation to orders

- s.10(1) - the subject of a serious crime prevention order is bound by it or a variation of it only if:
 - (a) he is represented (whether in person or otherwise) at the proceedings at which the order or (as the case may be) variation is made; or
 - (b) a notice setting out the terms of the order or (as the case may be) variation has been served on him.
- s.10(2) - the notice may be served on him by:
 - (a) delivering it to him in person; or
 - (b) sending it by recorded delivery to him at his last-known address (whether residential or otherwise).
- s.10(3) - for the purposes of delivering such a notice to him in person, a constable or a person authorised for the purpose by the relevant applicant authority may (if necessary by force):
 - (a) enter any premises where he has reasonable grounds for believing the person to be; and
 - (b) search those premises for him.

¹⁰⁸⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁸⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.10(4) - in this Part “the relevant applicant authority” means:
- (a) in relation to a serious crime prevention order in England and Wales—
 - (i) where the order was applied for by the Director of Public Prosecutions, the Director of Public Prosecutions; and
 - (ii) where the order was applied for by the Director of the Serious Fraud Office, the Director of the Serious Fraud Office; and
 - (b) in relation to a serious crime prevention order in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

3.4.6.6. Compliance with orders

SCA 2007 s.38¹⁰⁸⁶: Disclosure of information in accordance with orders

- s.38(1) - a person who complies with a requirement imposed by a serious crime prevention order to answer questions, provide information or produce documents does not breach—
- (a) any obligation of confidence; or
 - (b) any other restriction on making the disclosure concerned (however imposed).
- s.38(2) - but see sections 11 to 14 (which limit the requirements that may be imposed by serious crime prevention orders in connection with answering questions, providing information or producing documents).

SCA 2007 s.5A¹⁰⁸⁷: Verification and disclosure of information

- s.5A(1) - this section applies where information is provided to a law enforcement officer in response to an information requirement imposed by a serious crime prevention order.
“Information requirement” means a requirement of the kind referred to in section 5(5)(a) or (b).
- s.5A(2) - the law enforcement officer may, for the purpose of—
- (a) checking the accuracy of the information, or
 - (b) discovering the true position,
- disclose the information to any person who the officer reasonably believes may be able to contribute to doing either of those things.
- s.5A(3) - any other person may disclose information to—
- (a) the law enforcement officer, or
 - (b) a person to whom the law enforcement officer has disclosed information under subsection (2),
- for the purpose of contributing to doing either of the things mentioned in subsection (2)(a) and (b).

¹⁰⁸⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(i).

¹⁰⁸⁷ Commencement: 3 May 2015, as inserted by Serious Crime Act 2015 s.50(2), SI 2015/820 art.2

- s.5A(4) - the law enforcement officer may also disclose the information referred to in subsection (1) for the purposes of—
- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere, or
 - (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- s.5A(5) - a disclosure under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- s.5A(6) - but nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions.

SCA 2007 s.39¹⁰⁸⁸: Compliance with orders: authorised monitors

- s.39(1) - a serious crime prevention order against a body corporate, partnership or unincorporated association may authorise a law enforcement agency to enter into arrangements with—
- (a) a specified person; or
 - (b) any person who falls within a specified description of persons;
- to perform specified monitoring services or monitoring services of a specified description.
- s.39(2) - a person with whom the agency has entered into arrangements in accordance with such an authorisation is known for the purposes of this section as an authorised monitor.
- s.39(3) - a serious crime prevention order which provides for an authorised monitor may, for the purpose of enabling the performance of monitoring services, impose requirements of the type mentioned in section 5(5) as if the references in paragraph (a)(iv) and (b)(iv) of that provision to a law enforcement officer included references to an authorised monitor.
- s.39(4) - a serious crime prevention order which provides for an authorised monitor may require any body corporate, partnership or unincorporated association which is the subject of the order to pay to the law enforcement agency concerned some or all of the costs incurred by the agency under the arrangements with the authorised monitor.
- s.39(5) - any such order—
- (a) must specify the period, or periods, within which payments are to be made;
 - (b) may require the making of payments on account;
 - (c) may include other terms about the calculation or payment of costs.

¹⁰⁸⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(i).

- s.39(6) - the tests for making or varying a serious crime prevention order in sections 1(1)(b), (2)(b) and (3), 17(1) and (2), 19(2), (4) and (5), 20(2) and (4) and 21(2) and (4) do not operate in relation to an order so far as the order contains terms of the kind envisaged by subsections (4) and (5) above (or by subsection (1) above for the purposes of those subsections).
- s.39(7) - but a court must not include in a serious crime prevention order (whether initially or on a variation) terms of the kind envisaged by subsection (4) or (5) unless it considers that it is appropriate to do so having regard to all the circumstances including, in particular–
- (a) the means of the body corporate, partnership or unincorporated association concerned;
 - (b) the expected size of the costs; and
 - (c) the effect of the terms on the ability of any body corporate, partnership or unincorporated association which is carrying on business to continue to do so.
- s.39(8) - a law enforcement agency must inform the subject of a serious crime prevention order which provides for an authorised monitor of the name of, and an address for, any person with whom the agency has entered into arrangements in accordance with the authorisation in the order.
- s.39(9) - nothing in this section affects the ability of law enforcement agencies to enter into arrangements otherwise than in accordance with an authorisation under this section.
- s.39(10) - in this section–
- “law enforcement agency”* means–
- (za) the chief constable of a police force maintained under section 2 of the Police Act 1996;
 - (zb) the Commissioner of Police of the Metropolis;
 - (zc) the Common Council of the City of London in its capacity as police authority;
 - (a) the Northern Ireland Policing Board;
 - (b) the National Crime Agency;
 - (c) the Commissioners for Her Majesty's Revenue and Customs; or
 - (d) the Director of the Serious Fraud Office;
- “monitoring services”* means–
- (a) analysing some or all information received in accordance with a serious crime prevention order;
 - (b) reporting to a law enforcement officer as to whether, on the basis of the information and any other information analysed for this purpose, the subject of the order appears to be complying with the order or any part of it; and
 - (c) any related services; and
- “specified”*, in relation to a serious crime prevention order, means specified in the order.

SCA 2007 s.41¹⁰⁸⁹: Powers of law enforcement officers to retain documents

- s.41(1) - a law enforcement officer–
- (a) may take and retain copies of, or extracts from, any document produced to a law enforcement officer in pursuance of a serious crime prevention order; and
 - (b) may retain any document so produced for as long as he considers that it is necessary to retain it (rather than any copy of it) for the purposes for which the document was obtained.
- s.41(2) - a law enforcement officer may retain any document produced to a law enforcement officer in pursuance of a serious crime prevention order until the conclusion of any legal proceedings if he has reasonable grounds for believing that the document–
- (a) may have to be produced for the purposes of those proceedings; and
 - (b) might be unavailable unless retained.

3.4.6.7. Costs

SCA 2007 s.40¹⁰⁹⁰: Costs in relation to authorised monitors

- s.40(1) - the appropriate authority may by order make provision about the practice and procedure for determining the amount of–
- (a) any costs payable by virtue of section 39(4) and (5); and
 - (b) any interest payable in respect of those costs.
- s.40(2) - such provision may, in particular, include provision about appeals.
- s.40(3) - where any amounts required to be paid by virtue of section 39(4) and (5) have not been paid within a required period, the law enforcement agency concerned must take reasonable steps to recover them and any interest payable in respect of them.
- s.40(4) - the appropriate authority must by order provide for what are reasonable steps for the purposes of subsection (3).
- s.40(5) - any amounts which have not been recovered despite the taking of the reasonable steps are recoverable as if due to the law enforcement agency concerned by virtue of a civil order or judgment.
- s.40(6) - where any amounts required to be paid by virtue of section 39(4) and (5) are, in the case of an order of the Crown Court, not paid within a required period, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts).
- s.40(7) - for the purposes of section 25, a failure to comply with a requirement imposed by virtue of section 39(4) and (5) to make payments occurs when the amounts become recoverable as mentioned in subsection (5) above (and not before).
- s.40(8) - in this section “*law enforcement agency*” has the same meaning as in section 39.

¹⁰⁸⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(k).

¹⁰⁹⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(j).

- s.40(9) - in this section “*the appropriate authority*” means—
- (a) in relation to serious crime prevention orders in England and Wales, the Secretary of State;
 - (b) in relation to serious crime prevention orders in Northern Ireland, the Department of Justice in Northern Ireland.

3.4.6.8. Interaction with other sentencing orders

SCA 2007 s.19¹⁰⁹¹: Orders by Crown Court on conviction

- s.19(7) - an order must not be made under this section except—
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.

SCA 2007 s.36¹⁰⁹²: Proceedings in the Crown Court

- s.36(5) - a serious crime prevention order may be made as mentioned in section 19(7)(b) in spite of anything in sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or (as the case may be) Articles 4 and 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I.24)) (which relate to orders discharging a person absolutely or conditionally and their effect).

3.4.6.9. Relationship between High Court and Crown Court orders

SCA 2007 s.22¹⁰⁹³: Inter-relationship between different types of orders

- s.22(1) - the fact that a serious crime prevention order has been made or varied by the High Court does not prevent it from being varied by the Crown Court in accordance with this Part.
- s.22(2) - the fact that a serious crime prevention order has been made or varied by the Crown Court does not prevent it from being varied or discharged by the High Court in accordance with this Part.
- s.22(3) - a decision by the Crown Court not to make an order under section 19 does not prevent a subsequent application to the High Court for an order under section 1 in consequence of the same offence.
- s.22(4) - a decision by the Crown Court not to vary a serious crime prevention order under section 20 or 21 does not prevent a subsequent application to the High Court for a variation of the order in consequence of the same offence.

¹⁰⁹¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

¹⁰⁹² Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹⁰⁹³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

3.4.6.10. Variation and discharge of orders

High Court: Variation

SCA 2007 s.17¹⁰⁹⁴: Variation of orders

- s.17(1) - the High Court in England and Wales may, on an application under this section, vary a serious crime prevention order in England and Wales if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the order, in serious crime in England and Wales.
- s.17(2) - the High Court in Northern Ireland may, on an application under this section, vary a serious crime prevention order in Northern Ireland if it has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement, by the person who is the subject of the order, in serious crime in Northern Ireland.
- s.17(3) - an application for the variation of an order under this section may be made by–
 - (a) the relevant applicant authority; or
 - (b) subject as follows–
 - (i) the person who is the subject of the order; or
 - (ii) any other person.
- s.17(4) - the court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order.
- s.17(5) - the court must not entertain an application by any person falling within subsection (3)(b)(ii) unless it considers that–
 - (a) the person is significantly adversely affected by the order;
 - (b) condition A or B is met; and
 - (c) the application is not for the purpose of making the order more onerous on the person who is the subject of it.
- s.17(6) - condition A is that–
 - (a) the person falling within subsection (3)(b)(ii)–
 - (i) has, on an application under section 9, been given an opportunity to make representations; or
 - (ii) has made an application otherwise than under that section;
in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
 - (b) there has been a change of circumstances affecting the order.

¹⁰⁹⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.17(7) - condition B is that–
- (a) the person falling within subsection (3)(b)(ii) has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
 - (b) it was reasonable in all the circumstances for the person not to have done so.
- s.17(8) - a variation on an application under subsection (3)(a) may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)).

High Court: Discharge

SCA 2007 s.18¹⁰⁹⁵: Discharge of orders

- s.18(1) - on an application under this section:
- (a) the High Court in England and Wales may discharge a serious crime prevention order in England and Wales; and
 - (b) the High Court in Northern Ireland may discharge a serious crime prevention order in Northern Ireland.
- s.18(2) - an application for the discharge of an order may be made by–
- (a) the relevant applicant authority; or
 - (b) subject as follows–
 - (i) the person who is the subject of the order; or
 - (ii) any other person.
- s.18(3) - the court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order.
- s.18(4) - the court must not entertain an application by any person falling within subsection (2)(b)(ii) unless it considers that–
- (a) the person is significantly adversely affected by the order; and
 - (b) condition A or B is met.
- s.18(5) - condition A is that–
- (a) the person–
 - (i) has, on an application under section 9, been given an opportunity to make representations; or
 - (ii) has made an application otherwise than under that section; in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
 - (b) there has been a change of circumstances affecting the order.

¹⁰⁹⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

s.18(6) - condition B is that–

- (a) the person has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court); and
- (b) it was reasonable in all the circumstances for the person not to have done so.

High Court: Right to make representations

SCA 2007 s.9¹⁰⁹⁶: Right of third parties to make representations

s.9(2) - the High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the variation of a serious crime prevention order if it considers that:

- (a) the variation of the order; or
- (b) a decision not to vary it;

would be likely to have a significant adverse effect on that person.

s.9(3) - the High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the discharge of a serious crime prevention order if it considers that:

- (a) the discharge of the order; or
- (b) a decision not to discharge it;

would be likely to have a significant adverse effect on that person.

Crown Court: Variation

SCA 2007 s.20¹⁰⁹⁷: Powers of Crown Court to vary orders on conviction

s.20(1) - subsection (2) applies where the Crown Court in England and Wales is dealing with a person who–

- (a) has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with; or
- (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales.

s.20(2) - the Crown Court may–

- (a) in the case of a person who is the subject of a serious crime prevention order in England and Wales; and
- (b) in addition to dealing with the person in relation to the offence;

vary the order if the court has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.

¹⁰⁹⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

¹⁰⁹⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.20(3) - subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of having committed a serious offence in Northern Ireland.
- s.20(4) - the Crown Court may–
- (a) in the case of a person who is the subject of a serious crime prevention order in Northern Ireland; and
 - (b) in addition to dealing with the person in relation to the offence;
- vary the order if the court has reasonable grounds to believe that the terms of the order as varied would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- s.20(5) - a variation under this section may be made only on an application by the relevant applicant authority.
- s.20(6) - a variation must not be made except–
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.
- s.20(7) - a variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)).

SCA 2007 s.36¹⁰⁹⁸: Proceedings in the Crown Court

- s.36(6) - a variation of a serious crime prevention order may be made as mentioned in section 20(6)(b) or 21(6)(b) in spite of anything in sections 12 and 14 of the Act of 2000 or (as the case may be) Articles 4 and 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I.24)) (which relate to orders discharging a person absolutely or conditionally and their effect).

3.4.6.11. Appeals

From High Court

SCA 2007 s.23¹⁰⁹⁹: Additional right of appeal from High Court

- s.23(1) - an appeal may be made to the Court of Appeal in relation to a decision of the High Court–
- (a) to make a serious crime prevention order;
 - (b) to vary, or not to vary, such an order; or
 - (c) to discharge or not to discharge such an order;
- by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(1), (2) or (as the case may be) (3).

¹⁰⁹⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹⁰⁹⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.23(2) - subsection (1) is without prejudice to the rights of other persons to make appeals, by virtue of section 16 of the Senior Courts Act 1981 (c. 54) or section 35 of the Judicature (Northern Ireland) Act 1978 (c. 23), in relation to any judgments or orders of the High Court about serious crime prevention orders.

From the Crown Court

SCA 2007 s.24¹¹⁰⁰: Appeals from Crown Court

- s.24(1) - an appeal against a decision of the Crown Court in relation to a serious crime prevention order may be made to the Court of Appeal by–
- (a) the person who is the subject of the order; or
 - (b) the relevant applicant authority.
- s.24(2) - in addition, an appeal may be made to the Court of Appeal in relation to a decision of the Crown Court–
- (a) to make a serious crime prevention order; or
 - (b) to vary, or not to vary, such an order;
- by any person who was given an opportunity to make representations in the proceedings concerned by virtue of section 9(4).
- s.24(3) - subject to subsection (4), an appeal under subsection (1) or (2) lies only with the leave of the Court of Appeal.
- s.24(4) - an appeal under subsection (1) or (2) lies without the leave of the Court of Appeal if the judge who made the decision grants a certificate that the decision is fit for appeal under this section.
- s.24(5) - subject to any rules of court made under section 53(1) of the Senior Courts Act 1981 (c. 54) (distribution of business between civil and criminal divisions), the criminal division of the Court of Appeal is the division which is to exercise jurisdiction in relation to an appeal under subsection (1) or (2) from a decision of the Crown Court in the exercise of its jurisdiction in England and Wales under this Part.
- s.24(6) - an appeal against a decision of the Court of Appeal on an appeal to that court under subsection (1) or (2) may be made to the Supreme Court by any person who was a party to the proceedings before the Court of Appeal.
- s.24(7) - an appeal under subsection (6) lies only with the leave of the Court of Appeal or the Supreme Court.
- s.24(8) - such leave must not be granted unless–
- (a) it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision; and
 - (b) it appears to the Court of Appeal or (as the case may be) the Supreme Court that the point is one which ought to be considered by the Supreme Court.

¹¹⁰⁰ Commencement: Subsections (9) and (10) in force 1 March 2008, SI 2008/219 art.3(a). Subsections (1) to (8) and (11) and (12) in force 6 April 2008, SI 2008/755 art.15(1)(d).

- s.24(9) - the Secretary of State may for the purposes of this section by order make provision corresponding (subject to any specified modifications) to that made by or under an enactment and relating to—
- (a) appeals to the Court of Appeal under Part 1 of—
 - (i) the Criminal Appeal Act 1968 (c. 19); or
 - (ii) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47);
 - (b) appeals from any decision of the Court of Appeal on appeals falling within paragraph (a); or
 - (c) any matter connected with or arising out of appeals falling within paragraph (a) or (b).
- s.24(9A) - the power to make an order under subsection (9) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as the power may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).
- s.24(10) - an order under subsection (9) may, in particular, make provision about the payment of costs.
- s.24(11) - the power to make an appeal to the Court of Appeal under subsection (1)(a) operates instead of any power for the person who is the subject of the order to make an appeal against a decision of the Crown Court in relation to a serious crime prevention order by virtue of—
- (a) section 9 or 10 of the Criminal Appeal Act 1968; or
 - (b) section 8 of the Criminal Appeal (Northern Ireland) Act 1980.
- s.24(12) - section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from criminal division of the Court of Appeal: England and Wales) does not prevent an appeal to the Supreme Court under subsection (6) above.

Note: The Serious Crime Act 2007 (Appeals under Section 24) Order 2008 sets out provisions dealing with appeals under section 24, including orders for costs. The provisions concerning with England and Wales are set out in full below.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.4¹¹⁰¹:
Hearing of appeal and grounds for allowing an appeal***

- art.4(1) - every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an appeal it would be in the interests of justice to hold a re-hearing.
- art.4(2) - the Court of Appeal will allow an appeal where the decision of the Crown Court was—
- (a) wrong; or
 - (b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

¹¹⁰¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.5¹¹⁰²:
Powers of the Court of Appeal on appeal***

- art.5(1) - the Court of Appeal has all the powers of the Crown Court.
- art.5(2) - the Court of Appeal may—
- (a) make a serious crime prevention order;
 - (b) affirm, set aside or vary any order or judgment made or given by the Crown Court;
 - (c) refer any issue for determination by the Crown Court;
 - (d) order a new hearing in the Crown Court;
 - (e) make an order for costs in accordance with Part 3;
 - (f) make an order for the payment of interest on those costs.
- art.5(3) - the Court of Appeal may exercise its powers in relation to the whole or part of an order of the Crown Court.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.6¹¹⁰³:
Presence and live links***

- art.6(1) - a person has a right to attend a hearing in public unless—
- (a) it is a hearing preliminary or incidental to an appeal, including the hearing of an application for permission to appeal; or
 - (b) that person is in custody in consequence of—
 - (i) a verdict of not guilty by reason of insanity; or
 - (ii) a finding of disability.
- art.6(2) - at any time before the beginning of a hearing, the Court of Appeal may give a live link direction in relation to that hearing if—
- (a) a person who is a party to the appeal is expected to be in custody; and
 - (b) that person has a right to attend the hearing in accordance with paragraph (1).
- art.6(3) - for this purpose—
- (a) “live link direction” is a direction that the person concerned (if the person is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which the person is held; and
 - (b) “live link” means an arrangement by which the person concerned is able to see and hear, and to be seen and heard by, the Court of Appeal (for this purpose any impairment of eyesight or hearing is to be disregarded).

¹¹⁰² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

art.6(4) - the Court of Appeal—

- (a) must not give a live link direction unless the persons who are parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
- (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a person who is a party to the appeal).

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.7¹¹⁰⁴: Evidence

art.7(1) - for the purposes of an appeal, or an application for leave to appeal, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court of Appeal (whether or not the witness was called in the proceedings under section 19, 20 or 21 of the Act); and
- (c) receive any evidence which was not adduced in the proceedings under section 19, 20 or 21 of the Act.

art.7(2) - the power conferred by sub-paragraph 1(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that sub-paragraph to—

- (a) the Court of Appeal; or
- (b) any person who is a party to the appeal.

art.7(3) - the Court of Appeal shall, in considering whether to receive evidence, have regard in particular to—

- (a) whether the evidence appears to the Court of Appeal to be capable of belief;
- (b) whether it appears to the Court of Appeal that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings under section 19, 20 or 21 of the Act on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

art.7(4) - sub-paragraph (1)(c) applies to any evidence of a witness (including the person who is the subject of the serious crime prevention order) who is competent but not compellable.

¹¹⁰⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.8¹¹⁰⁵:
Effect of appeal on serious crime prevention order***

art.8 - the coming into force of a serious crime prevention order shall not be affected by an appeal, subject to any direction which the Court of Appeal may give to the contrary.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.9¹¹⁰⁶:
Powers of the Court of Appeal under Part 2 which are exercisable by a single judge***

art.9(1) - there may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

- (a) the powers of the Court of Appeal under this Part and Part 3 specified in paragraph (2); and
- (b) the power to give leave under section 24(3) of the Act.

art.9(2) - the powers referred to in sub-paragraph (1)(a) are—

- (a) to extend time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination;
- (c) to give a live link direction under article 6(2);
- (d) to make orders under article 7(1)(a) (production of documents etc.);
- (e) to give directions under article 8 (effect of appeal on serious crime prevention order); and
- (f) to make orders for the payment of costs under Part 3.

art.9(3) - if the single judge refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the judge by this article, that person shall be entitled to have the application determined by the Court of Appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.10¹¹⁰⁷:
Powers of the Court of Appeal under Part 2 which are exercisable by the registrar***

art.10(1) - there may be exercised by the registrar, in the same manner as the Court of Appeal and subject to the same provisions, the powers of the Court of Appeal under this Part which are specified in paragraph (2).

art.10(2) - the powers mentioned in paragraph (1) are—

- (a) to extend the time within which notice of appeal or notice of application for leave to appeal may be given;
- (b) to order a witness to attend for examination; and
- (c) to make orders under article 7(1)(a) (production of documents etc.).

art.10(3) - if the registrar refuses an application on the part of a person who is a party to the appeal to exercise any of the powers conferred on the registrar by this article, that person shall be entitled to have the application determined by a single judge.

¹¹⁰⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.11¹¹⁰⁸:
Procedural directions: powers of single judge and registrar***

- art.11(1) - the power of the Court of Appeal to determine an application for procedural directions may be exercised by—
- (a) a single judge; or
 - (b) the registrar.
- art.11(2) - “Procedural directions” means directions for the efficient and effective preparation of—
- (a) an application for leave to appeal; or
 - (b) an appeal.
- art.11(3) - a single judge may give such procedural directions as the single judge thinks fit—
- (a) when acting under paragraph (1);
 - (b) on a reference from the registrar; or
 - (c) of the single judge's own motion, when the single judge is exercising, or considering whether to exercise, any power of the single judge in relation to the application or appeal.
- art.11(4) - the registrar may give such procedural directions as the registrar thinks fit—
- (a) when acting under paragraph (1); or
 - (b) of the registrar's own motion.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.12¹¹⁰⁹:
Appeals against procedural directions***

- art.12(1) - paragraph (2) applies if the registrar gives, or refuses to give, procedural directions.
- art.12(2) - a single judge may, on an application to the single judge under paragraph (3)—
- (a) confirm, set aside or vary any procedural directions given by the registrar; and
 - (b) give such procedural directions as the single judge thinks fit.
- art.12(3) - an application under this article may be made by a person who is a party to the appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.13¹¹¹⁰:
Interpretation and transitional provision***

- art.13(1) - in this Part—
- “*appeal costs order*” means an order under article 14;
 - “*applicant*” means—
- (a) in Chapter 3, the person in whose favour an appeal costs order has been made, and
 - (b) in Chapter 5, the person who has applied for a third party costs order;

¹¹⁰⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁰⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

“*costs judge*” means a taxing master of the Senior Courts;

“*expenses*” include compensation to a witness for the witness's trouble or loss of time and out of pocket expenses;

“*interested party*” means—

- (a) the person who is a party to the appeal benefiting from the wasted costs order or third party costs order; and
- (b) where that person was receiving services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or an order for the payment of costs out of central funds was made in that person's favour, shall include the authority responsible for determining costs payable in respect of those services or out of central funds as the case may be;

“*legal or other representative*” means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any person who is a party to an appeal;

“*presiding judge*” means the judge that presided at the hearing in respect of which the costs are payable under an appeal costs order;

“*proceedings before the Court of Appeal*” means any proceedings before the Court of Appeal including an application for leave to appeal and an appeal;

“*professional witness*” means a witness practising as a member of the legal or medical profession or as a dentist, veterinary surgeon or accountant who attends to give professional evidence as to matters of fact;

“*relevant amount*” has the meaning assigned to it by article 32;

“*third party*” means a person who is not a party to the proceedings before the Court of Appeal;

“*third party costs order*” means an order under article 18;

“*wasted costs order*” means an order under article 17; and

“*witness*” means any person properly attending to give evidence, whether or not the person gives evidence or is called at the instance of one of the persons who is a party to the appeal or of the Court of Appeal, but does not include—

- (c) a person attending as a witness to character only unless the Court of Appeal has certified that the interests of justice required the witness's attendance;
- (d) a member of a police force attending the Court of Appeal in the member's capacity as such;
- (e) a full-time officer of an institution to which the Prison Act 1952 applies attending the Court of Appeal in the officer's capacity as such; or
- (f) a prisoner in respect of any occasion on which the prisoner is conveyed to the Court of Appeal in custody.

art.13(2) - for the purposes of article 14, the costs of the subject of a serious crime prevention order or any party under section 24(2) shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to the witness's attendance.

art.13(3) - where any person who is a party to an appeal is in receipt of services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, then—

- (a) for the purposes of article 14, that person's costs shall be taken not to include the cost of those services; and
- (b) for the purposes of articles 15 to 20, that person's costs shall be taken to include the cost of those services.

art.13(4) - in the application of this Part before the commencement of section 59(1) of the Constitutional Reform Act 2005 (renaming of Supreme Courts of England and Wales), the reference to the Senior Courts is to be read as a reference to the Supreme Court.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.14¹¹¹¹:
Award of costs in favour of subject or party under section 24(2)***

art.14(1) - where the Court of Appeal—

- (a) allows an appeal by the person who is the subject of a serious crime prevention order;
- (b) dismisses an appeal by the relevant applicant authority;
- (c) hears an appeal by a party under section 24(2); or
- (d) determines an application for leave to appeal to the Supreme Court,

it may make an appeal costs order in favour of the person who is the subject of the serious crime prevention order.

art.14(2) - where the Court of Appeal—

- (a) allows an appeal by a party under section 24(2);
- (b) dismisses an appeal by the relevant applicant authority;
- (c) hears an appeal by the person who is the subject of a serious crime prevention order; or
- (d) determines an application for leave to appeal to the Supreme Court,

it may make an appeal costs order in favour of a party under section 24(2).

art.14(3) - subject to paragraphs (4) and (5), an order under this article shall be for the payment out of central funds, to the person in whose favour the order is made, of such amounts as the Court of Appeal considers reasonably sufficient to compensate that person for any expenses properly incurred by that person in the proceedings before the Court of Appeal.

art.14(4) - where the Court of Appeal makes an order under this article but is of the opinion that there are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in paragraph (3) it shall—

- (a) assess what amount would, in its opinion, be just and reasonable; and
- (b) specify that amount in the order.

art.14(5) - subject to paragraph (4), the amount to be paid out of central funds in pursuance of an order under this article shall—

- (a) be specified in the order, in any case where the Court of Appeal considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount; and

¹¹¹¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- (b) in any other case, be determined in accordance with Chapter 3 of this Part and article 37.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.15¹¹¹²:
Award of costs against subject or party under section 24(2)***

art.15(1) - where the Court of Appeal dismisses—

- (a) an appeal or an application for leave to appeal by the person who is the subject of a serious crime prevention order; or
- (b) an application by that person for leave to appeal to the Supreme Court under section 24(7) of the Act,

it may make such order as to costs to be paid by that person, to such person as may be named in the order (including the relevant applicant authority or a party under section 24(2)), as it considers just and reasonable.

art.15(2) - where the Court of Appeal dismisses—

- (a) an appeal or an application for leave to appeal by a party under section 24(2); or
- (b) an application by that person for leave to appeal to the Supreme Court under section 24(7) of the Act,

it may make such order as to costs to be paid by that person, to such person as may be named in the order (including the relevant applicant authority or the person who is the subject of a serious crime prevention order), as it considers just and reasonable.

art.15(3) - the amount to be paid in pursuance of an order under this article shall be specified in the order.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.16¹¹¹³:
Unnecessary or improper acts and omissions***

art.16(1) - where at any time during any proceedings before the Court of Appeal, the Court of Appeal is satisfied that costs have been incurred in respect of those proceedings by any person who is a party to the appeal as a result of an unnecessary or improper act or omission by, or on behalf of, another person who is a party to the appeal, the Court of Appeal may order that all or part of the costs incurred by that person shall be paid by the other person.

art.16(2) - when making an order under paragraph (1) the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the order into account when making any other order as to costs in respect of those proceedings.

art.16(3) - the amount to be paid in pursuance of an order under this article shall be specified in the order.

art.16(4) - before making an order under paragraph (1), the Court of Appeal shall allow any person who is a party to the appeal to make representations and may hear evidence.

¹¹¹² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.17¹¹¹⁴:
Wasted costs order***

- art.17(1) - if in any proceedings before the Court of Appeal, costs have been incurred by a person who is a party to the appeal—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the Court of Appeal considers it is unreasonable to expect that person to pay
- the Court of Appeal may disallow, or (as the case may be) order the legal or other representative to pay, the whole of any wasted costs or such part of them as may be determined in accordance with this article.
- art.17(2) - when making a wasted costs order, the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the wasted costs order into account when making any other order as to costs in respect of those proceedings.
- art.17(3) - the amount to be paid or disallowed in pursuance of a wasted costs order shall be specified in the order.
- art.17(4) - before making a wasted costs order, the Court of Appeal shall allow the legal or other representative and any person who is a party to the appeal to make representations and may hear evidence.
- art.17(5) - where a wasted costs order has been made the Court of Appeal shall notify any interested party of the order and the amount disallowed or ordered to be paid.
- art.17(6) - where the person required to make a payment in respect of sums due under a wasted costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the person benefiting from the order, save that where that person was in receipt of services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or an order for the payment of costs out of central funds was made in that person's favour, the power to recover shall be exercisable by the Lord Chancellor.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.18¹¹¹⁵:
Third party costs order***

- art.18 - if—
- (a) there has been serious misconduct (whether or not constituting a contempt of court) by a third party; and
 - (b) the Court of Appeal considers it appropriate, having regard to that misconduct, to make a third party costs order against the third party

¹¹¹⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

the Court of Appeal may order the third party to pay the whole of any costs incurred or wasted by any person who is a party to the appeal as a result of the misconduct or such part of them as may be determined in accordance with Chapter 4 of this Part.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.19¹¹¹⁶:
Costs of attendance at any proceedings before the Court of Appeal***

- art.19(1) - the Court of Appeal may order the payment out of central funds of such sums as appear to it to be reasonably sufficient to compensate a person who is a party to an appeal who is not in custody and who appears before it on, or in connection with, any proceedings before the Court of Appeal.
- art.19(2) - article 37 will apply for the purpose of determining the amount of any subsistence allowance or travelling expenses ordered to be paid under this article.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.20¹¹¹⁷:
Costs of witnesses etc.***

- art.20(1) - where, in any proceedings before the Court of Appeal—
- (a) a witness attends at the instance of any person who is a party to the appeal or the Court of Appeal; or
 - (b) an interpreter is required because of the lack of English of any person who is a party to the appeal
- the expenses properly incurred by that witness or interpreter shall be allowed out of central funds in accordance with Chapter 5 of this Part, unless the Court of Appeal directs that the expenses are not to be allowed out of central funds.

- art.20(2) - any entitlement to an allowance under this article shall be the same whether the witness or interpreter attends on the same day in one case or more than one case.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.21¹¹¹⁸:
Person who is to determine costs***

- art.21(1) - costs under an appeal costs order shall be determined by the registrar in accordance with this Chapter.
- art.21(2) - the registrar may appoint or authorise the appointment of determining officers to act on the registrar's behalf under this Chapter in accordance with directions given by the registrar or on the registrar's behalf.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.22¹¹¹⁹:
Claims for costs***

- art.22(1) - subject to article 28, no claim for costs shall be entertained unless it is submitted within three months of the date on which the appeal costs order was made.
- art.22(2) - subject to paragraph (3), a claim for costs shall be submitted to the registrar, in such form and manner as the registrar may direct and shall be accompanied by receipts or

¹¹¹⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹¹⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

other evidence of the applicant's payment of the costs claimed, and any receipts or other documents in support of any disbursements claimed.

art.22(3) - a claim shall—

- (a) summarise the items of work done by a solicitor;
- (b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed; and
- (c) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them.

art.22(4) - where there are any special circumstances which should be drawn to the attention of the registrar, the applicant shall specify them.

art.22(5) - the applicant shall supply such further particulars, information and documents as the registrar may require.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.23¹¹²⁰:
Determination of costs***

art.23(1) - the registrar shall consider the claim, any further particulars, information or documents submitted by the applicant under article 22 and shall allow such costs in respect of—

- (a) such work as appears to the registrar to have been actually and reasonably done; and
- (b) such disbursements as appear to the registrar to have been actually and reasonably incurred as the registrar considers reasonably sufficient to compensate the applicant for any expenses properly incurred by the applicant in the proceedings before the Court of Appeal.

art.23(2) - in determining costs under paragraph (1) the registrar shall take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

art.23(3) - when determining costs for the purpose of this article, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.24¹¹²¹:
Payment of costs***

art.24(1) - when the registrar has determined the costs payable to an applicant in accordance with this Chapter, the registrar shall notify the applicant of the costs payable and authorise payment accordingly.

art.24(2) - where the costs payable under paragraph (1) are varied as a result of a re-determination under article 25, an appeal to a costs judge under article 26, or an appeal to the High Court under article 27, then—

¹¹²⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- (a) where the costs are increased, the registrar shall authorise payment of the increase;
 - (b) where the costs are decreased, the applicant shall repay the amount of such decrease; and
 - (c) where the payment of the costs of an appeal is ordered under article 26(14) or 27(8),
- the registrar shall authorise such payment to the applicant.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.25¹¹²²: Re-determination of costs by the registrar

- art.25(1) - an applicant who is dissatisfied with the costs determined under this Chapter by the registrar may apply to the registrar to re-determine them.
- art.25(2) - subject to article 28, the application shall be made within 21 days of the receipt of notification of the costs payable under article 24(1), by giving notice in writing to the registrar specifying the items in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the registrar may direct.
- art.25(3) - the notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the registrar shall notify the applicant of the time of a hearing to hear the applicant or the applicant's representative.
- art.25(4) - the notice of application shall be accompanied by any particulars, information and documents supplied under article 22 and the applicant shall supply such further particulars, information and documents as the registrar may require.
- art.25(5) - the registrar shall re-determine the costs, whether by way of increase, decrease or at the level previously determined, in the light of the objections made by the applicant or on the applicant's behalf and shall notify the applicant of the decision.
- art.25(6) - the applicant may request the registrar to give reasons in writing for the decision and, if so requested, the registrar shall comply with the request.
- art.25(7) - subject to article 28, any request under paragraph (6) shall be made within 21 days of receiving notification of the decision.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.26¹¹²³: Appeals to a costs judge

- art.26(1) - where the registrar has given the reasons for the decision on a re-determination under article 25, an applicant who is dissatisfied with that decision may appeal to a costs judge.
- art.26(2) - subject to article 28, an appeal shall be instituted within 21 days of the receipt of the registrar's reasons by giving notice in writing to the Senior Costs Judge specifying the items in respect of which the appeal is brought and the grounds of objection.
- art.26(3) - the appellant shall send a copy of any notice given under paragraph (2) to the registrar.

¹¹²² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- art.26(4) - the notice of appeal shall be accompanied by—
- (a) a copy of the written notice given under article 25(2);
 - (b) any particulars, information and documents supplied to the registrar under article 25; and
 - (c) the registrar's reasons for the decision given under article 25(6).
- art.26(5) - the notice of appeal shall state whether the appellant wishes to appear or to be represented or whether the appellant will accept a decision given in the absence of the appellant.
- art.26(6) - the Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.
- art.26(7) - with a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on behalf of the Lord Chancellor and, if the Lord Chancellor intends to do so, the Lord Chancellor shall inform the Senior Costs Judge and the appellant.
- art.26(8) - any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Senior Costs Judge and to the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.
- art.26(9) - the appellant shall be permitted a reasonable opportunity to make representations in reply.
- art.26(10) - the costs judge shall inform the appellant (or the appellant's representative) and the Lord Chancellor, where representations have been or are to be made on the Lord Chancellor's behalf, of the date of any hearing and, subject to the provisions of this article, may give directions as to the conduct of the appeal.
- art.26(11) - the costs judge may consult the presiding judge, and the registrar or the determining officer who re-determined the costs on the registrar's behalf as the case may be, and may require the appellant to provide any further information which the costs judge requires for the purpose of the appeal and, unless the costs judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised on the re-determination under article 25.
- art.26(12) - the costs judge shall have the same powers as the registrar under this Chapter and, in the exercise of such powers, may alter the re-determination of the registrar in respect of any sum allowed, whether by increase or decrease, as the costs judge thinks fit.
- art.26(13) - the costs judge shall communicate the decision and the reasons for it in writing to the appellant, the Lord Chancellor, and the registrar or the determining officer who re-determined the costs on the registrar's behalf as the case may be.
- art.26(14) - save where the costs judge confirms or decreases the sums re-determined under article 25, the costs judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by the appellant in connection with the appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.27¹¹²⁴:
Appeals to the High Court***

- art.27(1) - an applicant who is dissatisfied with the decision of a costs judge on an appeal under article 26 may apply to the costs judge to certify a point of principle of general importance.
- art.27(2) - subject to article 28, an application under paragraph (1) shall be made within 21 days of notification of a cost judge's decision under article 26(13).
- art.27(3) - where a costs judge certifies a point of principle of general importance, the applicant may appeal to the High Court against the decision of a costs judge on an appeal under article 26, and the Lord Chancellor shall be a respondent to the appeal.
- art.27(4) - subject to article 28, an appeal under paragraph (3) shall be instituted within 21 days of receiving a cost judge's certificate under paragraph (1).
- art.27(5) - where the Lord Chancellor is dissatisfied with the decision of a costs judge on an appeal under article 26 the Lord Chancellor may, if no appeal has been made by the applicant under paragraph (3), appeal to the High Court against that decision and the applicant shall be a respondent to the appeal.
- art.27(6) - subject to article 28, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the cost judge's decision under article 26(13).
- art.27(7) - an appeal under paragraph (3) or (5) shall be brought in the Queen's Bench Division, follow the procedure set out in Part 52 of the Civil Procedure Rules 1998, and shall be heard and determined by a single judge whose decision shall be final.
- art.27(8) - the judge shall have the same powers as the registrar and a costs judge under this Chapter and may reverse, affirm or amend the decision appealed against or make such other order as the judge thinks fit.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.28¹¹²⁵:
Time limits***

- art.28(1) - subject to paragraph (2), the time limit within which there must be made or instituted—
- (a) a claim for costs by an applicant under article 22, an application for a re-determination under article 25, or a request for the registrar to give reasons for a decision on a re-determination under article 25;
 - (b) an appeal to a costs judge under article 26 or an application for a certificate under article 27(1); or
 - (c) an appeal to the High Court under article 27;
- may, for good reason, be extended by the registrar, the Senior Costs Judge or the High Court, as the case may be.
- art.28(2) - where an applicant without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the registrar, the Senior Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the

¹¹²⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

- art.28(3) - an applicant may appeal to the Senior Costs Judge against a decision made under this article by a registrar and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.29¹¹²⁶:
Determination of a third party costs order***

- art.29(1) - the Court of Appeal may make a third party costs order—

- (a) subject to paragraph (3), at any time during or after the proceedings before the Court of Appeal; and
- (b) on the application of any person who is a party to the appeal or of its own initiative.

- art.29(2) - the Court of Appeal shall make a third party costs order during the proceedings before the Court of Appeal only if it decides that there are good reasons to do so, rather than making the order after the proceedings before the Court of Appeal, and it shall notify the persons who are parties to the appeal and the third party of those reasons and allow any of them to make representations.

- art.29(3) - before making a third party costs order the Court of Appeal shall allow the third party and any person who is a party to the appeal to make representations and may hear evidence.

- art.29(4) - when making a third party costs order the Court of Appeal may take into account any other order as to costs which has been made in respect of the proceedings before the Court of Appeal and may take the third party costs order into account when making any other order as to costs in respect of those proceedings.

- art.29(5) - the amount to be paid in pursuance of a third party costs order shall be specified in the order.

- art.29(6) - when a third party costs order has been made the Court of Appeal shall notify the third party and any interested party of the order and the amount ordered to be paid.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.30¹¹²⁷:
Procedure for third party costs orders***

- art.30(1) - this article applies where a person who is a party to the appeal applies to the Court of Appeal for a third party costs order or the Court of Appeal decides that it might make a third party costs order of its own initiative.

- art.30(2) - an application for a third party costs order shall be in writing and shall contain—

- (a) the name and address of the applicant;

¹¹²⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- (b) the names and addresses of the other persons who are parties to the appeal;
- (c) the name and address of the third party against whom the order is sought;
- (d) the date of the end of the proceedings before the Court of Appeal; and
- (e) a summary of the facts upon which the applicant intends to rely in making the application, including details of the alleged misconduct of the third party.

art.30(3) - the application shall be sent to the registrar and, upon receiving it, the registrar shall serve copies of it on the third party and the other persons who are parties to the appeal.

art.30(4) - where the Court of Appeal decides that it might make a third party costs order of its own initiative the registrar shall serve notice in writing accordingly on the third party and the persons who are parties to the appeal.

art.30(5) - at the same time as serving notice under paragraph (4) the registrar shall serve a summary of the reasons why the Court of Appeal might make a third party costs order, including details of the alleged misconduct of the third party.

art.30(6) - when the registrar serves copies of an application under paragraph (3) or serves notice under paragraph (4) the registrar shall at the same time serve notice on the persons who are parties to the appeal and the third party of the time and place fixed for the hearing.

art.30(7) - at the time notified the Court of Appeal may proceed in the absence of the third party and of any person who is a party to the appeal if it is satisfied that they have been duly served with the notice given under paragraph (6) and the copy of the application or (as the case may be) the notices given under paragraphs (3) and (4), but the Court of Appeal may set aside any third party costs order if it is later shown that the third party did not receive them.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.31¹¹²⁸:
Recovery of sums due under a third party costs order***

art.31 - where the person required to make a payment in respect of sums due under a third party costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the person benefiting from the order, save that where that person was in receipt of services funded for that person by the Legal Services Commission or made available for that person under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or an order for the payment of costs out of central funds was made in that person's favour, the power to recover shall be exercisable by the Lord Chancellor.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.32¹¹²⁹:
Determination of rates or scales of allowances payable out of central funds***

art.32 - the Lord Chancellor shall, with the consent of the Treasury, determine the rates or scales of allowances payable out of central funds to witnesses or interpreters and a reference in this Chapter to the relevant amount means an amount calculated in accordance with the rates or scales so determined.

¹¹²⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹²⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.33¹¹³⁰:
Witnesses other than professional or expert witnesses***

- art.33(1) - a witness (other than a witness to whom article 34 or 35 applies) may be allowed—
- (a) a loss allowance not exceeding the relevant amount in respect of—
 - (i) any expenditure incurred (other than on travelling, lodging or subsistence) to which the witness would not otherwise be subject; or
 - (ii) any loss of earnings or of benefit under the enactments relating to National Insurance; and
 - (b) a subsistence allowance not exceeding the relevant amount.
- art.33(2) - any other person who in the opinion of the Court of Appeal necessarily attends for the purpose of any proceedings otherwise than to give evidence may be allowed the same allowances under paragraph (1) as if that person attended as a witness other than a professional or expert witness.
- art.33(3) - paragraph (2) shall not apply to—
- (a) a member of a police force attending the Court of Appeal in the member's capacity as such;
 - (b) a full-time officer of an institution to which the Prison Act 1952 applies attending the Court of Appeal in the officer's capacity as such; or
 - (c) a prisoner in respect of any occasion on which the prisoner is conveyed to the Court of Appeal in custody.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.34¹¹³¹:
Professional witnesses***

- art.34 - a professional witness may be allowed a professional witness allowance not exceeding the relevant amount.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.35¹¹³²:
Expert witnesses and interpreters***

- art.35(1) - the Court of Appeal may make an allowance in respect of an expert witness for attending to give expert evidence and for work in connection with its preparation of such an amount as it may consider reasonable having regard to the nature and difficulty of the case and the work necessarily involved.
- art.35(2) - paragraph (1) shall apply, with the necessary modifications, to an interpreter as it applies to an expert witness.

¹¹³⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³¹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³² Commencement: 18 August 2008, SI 2008/1863 art.1(1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.36¹¹³³:
Night Allowances***

art.36(1) - a professional or expert witness who is necessarily absent from the witness's place of residence overnight may be allowed a night allowance not exceeding the relevant amount.

art.36(2) - an interpreter who receives an allowance under article 35 may be allowed the same night allowance as if the interpreter attended as a professional or expert witness.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.37¹¹³⁴:
Expenses of subject or party under section 24(2)***

art.37 - a person in whose favour an order is made under article 14 or 19 may be allowed the same subsistence allowance and travelling expenses as if that person attended as a witness other than a professional or expert witness.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.38¹¹³⁵:
Travelling expenses***

art.38(1) - subject to paragraphs (2) and (3), a witness who travels to or from the Court of Appeal by public transport (including by air) may be allowed the fare actually paid.

art.38(2) - unless the Court of Appeal otherwise directs, only the second class fare shall be allowed under paragraph (1) for travel by railway.

art.38(3) - a witness who travels to or from the Court of Appeal by air may be allowed the fare actually paid only if—

- (a) there was no reasonable alternative to travel by air and the class of fare paid was reasonable in all the circumstances; or
- (b) travel by air was more economical in the circumstances taking into account any savings of time resulting from the adoption of such mode of travel and its consequent effect in reducing the amount of allowances payable under the other provisions of this Chapter,

and, where the air fare is not allowed, there may be allowed such amount as the Court of Appeal considers reasonable.

art.38(4) - a witness who travels to or from the Court of Appeal by hired vehicle may be allowed—

- (a) the fare actually paid and any reasonable gratuity so paid in a case of urgency or where public transport is not reasonably available; or
- (b) in any other case, the amount of fare for travel by public transport,

art.38(5) - a witness who travels to or from the Court of Appeal by private vehicle may be allowed an appropriate private vehicle allowance not exceeding the relevant amount.

¹¹³³ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁴ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁵ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

art.38(6) - where—

- (a) a witness is in the opinion of the Court of Appeal suffering from a serious illness; or
 - (b) heavy exhibits have to be taken to the Court of Appeal,
- the Court of Appeal may allow reasonable additional sums in excess of those allowed under paragraphs (1) to (5).

art.38(7) - an interpreter who incurs travelling expenses in providing the Court of Appeal with a report otherwise than in writing may be allowed a travelling allowance not exceeding the relevant amount.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.39¹¹³⁶:
Application for leave to appeal***

art.39(1) - an application to the Supreme Court for leave to appeal shall be made in writing within 28 days beginning with the date on which the application for leave to appeal is refused by the Court of Appeal.

art.39(2) - the Supreme Court may, upon an application made at any time by a person who was a party to the appeal before the Court of Appeal, extend the time within which an application may be made by that person to the Supreme Court under paragraph (1).

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.40¹¹³⁷:
Hearing and disposal of appeal***

art.40 - for the purposes of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court of Appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.41¹¹³⁸:
Powers of Court of Appeal under Part 4 which are exercisable by a single judge***

art.41- the powers of the Court of Appeal under this Part to extend the time for making an application for leave to appeal, may be exercised by a single judge but where the judge refuses an application on the part of a person who is party to the appeal to exercise this power that person shall be entitled to have the application determined by the Court of Appeal.

***Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.42¹¹³⁹:
Award of costs in favour of subject or party under section 24(2)***

art.42(1) - where the Supreme Court determines an appeal to which the person who is the subject of the serious crime prevention order was a party it may make a costs order in favour of that person.

art.42(2) - where the Supreme Court determines an appeal to which a party under section 24(2) was a party it may make a costs order in favour of that person.

¹¹³⁶ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁷ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁸ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹³⁹ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

- art.42(3) Subject to paragraphs (4) and (5), an order under this article shall be for the payment out of central funds of such amounts as the Supreme Court considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses that person has properly incurred in the appeal.
- art.42(4) - where the Supreme Court makes an order under this article but is of the opinion that here are circumstances which make it inappropriate that the person in whose favour the order is made should recover the full amount mentioned in paragraph (3) it shall—
- (a) assess what amount would, in its opinion, be just and reasonable; and
 - (b) specify that amount in the order.
- art.42(5) - subject to paragraph (4), the amount to be paid out of central funds in pursuance of an order under this article shall—
- (a) be specified in the order, in any case where the Supreme Court considers it appropriate for the amount to be specified and the person in whose favour the order is made agrees the amount; and
 - (b) in any other case, shall be determined by such officer as may be prescribed by order of the Supreme Court.

Serious Crime Act 2007 (Appeals under Section 24) Order 2008 (SI 2008/1863) art.43¹¹⁴⁰: Transitional provisions in relation to the Supreme Court

- art.43(1) - in the application of Parts 2 to 4 before the commencement of paragraph 16(3)(b) of Schedule 9 to the Constitutional Reform Act 2005 (amendment of section 33(2) of the Criminal Appeal Act 1968), references to the Supreme Court are to be read as references to the House of Lords.
- art.43(2) - during the time that this Part is to be read as referring to the House of Lords in accordance with paragraph (1)—
- (a) an appeal shall not be heard and determined by the House of Lords unless there are present at least three of the persons designated Lords of Appeal by section 5 of the Appellate Jurisdiction Act 1876; and
 - (b) any order of the House of Lords which provides for the hearing of applications for leave to appeal by a committee constituted in accordance with section 5 of that Act may direct that the decision of that committee shall be taken on behalf of the House.

Right to make representations

SCA 2007 s.9¹¹⁴¹: Right of third parties to make representations

- s.9(5) - a court which is considering an appeal in relation to a serious crime prevention order must, on an application by a person, give the person an opportunity to make representations in the proceedings if that person was given an opportunity to make representations in the proceedings which are the subject of the appeal.

¹¹⁴⁰ Commencement: 18 August 2008, SI 2008/1863 art.1(1).

¹¹⁴¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(a).

3.4.6.12. Particular types of person etc.

Bodies corporate

SCA 2007 s.30¹¹⁴²: Bodies corporate including limited liability partnerships

- s.30(1) - for the purposes of section 10 in its application to a serious crime prevention order against a body corporate or to the variation of such an order–
- (a) a notice setting out the terms of the order or variation–
 - (i) is delivered to the body corporate in person if it is delivered to an officer of the body corporate in person; and
 - (ii) is sent by recorded delivery to the body corporate at its last known address if it is so sent to an officer of the body corporate at the address of the registered office of that body or at the address of its principal office in the United Kingdom; and
 - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the body corporate to be and to search those premises for the officer.
- s.30(2) - if an offence under section 25 committed by a body corporate is proved to have been committed with the consent or connivance of–
- (a) an officer of the body corporate; or
 - (b) a person who was purporting to act in any such capacity;
- he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- s.30(3) - nothing in this section prevents a serious crime prevention order from being made against an officer or employee of a body corporate or against any other person associated with a body corporate.
- s.30(4) - in this section–
- “body corporate”* includes a limited liability partnership;
- “director”*, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; and
- “officer of a body corporate”* means any director, manager, secretary or other similar officer of the body corporate.

¹¹⁴² Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

Other partnerships

SCA 2007 s.31¹¹⁴³: Other partnerships

- s.31(1) - a serious crime prevention order against a partnership must be made in the name of the partnership (and not in that of any of the partners).
- s.31(2) - an order made in the name of the partnership continues to have effect despite a change of partners provided that at least one of the persons who was a partner before the change remains a partner after it.
- s.31(3) - for the purposes of this Part, a partnership is involved in serious crime in England and Wales, Northern Ireland or elsewhere if the partnership, or any of the partners, is so involved; and involvement in serious crime in England and Wales or Northern Ireland is to be read accordingly.
- s.31(4) - for the purposes of section 10 in its application to a serious crime prevention order against a partnership or to the variation of such an order—
- (a) a notice setting out the terms of the order or variation—
 - (i) is delivered to the partnership in person if it is delivered to any of the partners in person or to a senior officer of the partnership in person; and
 - (ii) is sent by recorded delivery to the partnership at its last-known address if it is so sent to any of the partners or to a senior officer of the partnership at the address of the principal office of the partnership in the United Kingdom; and
 - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing a partner or senior officer of the partnership to be and to search those premises for the partner or senior officer.
- s.31(5) - proceedings for an offence under section 25 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).
- s.31(6) - for the purposes of such proceedings—
- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate; and
 - (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43);
 - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); and
 - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).
- s.31(7) - a fine imposed on the partnership on its conviction for an offence under section 25 is to be paid out of the partnership assets.

¹¹⁴³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.31(8) - if an offence under section 25 committed by a partnership is proved to have been committed with the consent or connivance of a partner or a senior officer of the partnership, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.
- s.31(9) - for the purposes of subsection (8)–
- (a) references to a partner or to a senior officer of a partnership include references to any person purporting to act in such a capacity; and
 - (b) subsection (5) is not to be read as prejudicing any liability of a partner under subsection (8).
- s.31(10) - nothing in this section prevents a serious crime prevention order from being made against–
- (a) a particular partner; or
 - (b) a senior officer or employee of a partnership or any other person associated with a partnership.
- s.31(11) - in this section–
- “senior officer of a partnership”* means any person who has the control or management of the business carried on by the partnership at the principal place where it is carried on; and
- “partnership”* does not include a limited liability partnership.

Unincorporated associations

SCA 2007 s.32¹¹⁴⁴: Unincorporated associations

- s.32(1) - a serious crime prevention order against an unincorporated association must be made in the name of the association (and not in that of any of its members).
- s.32(2) - an order made in the name of the association continues to have effect despite a change in the membership of the association provided that at least one of the persons who was a member of the association before the change remains a member after it.
- s.32(3) - for the purposes of section 10 in its application to a serious crime prevention order against an unincorporated association or to the variation of such an order–
- (a) a notice setting out the terms of the order or variation–
 - (i) is delivered to the association in person if it is delivered to an officer of the association in person; and
 - (ii) is sent by recorded delivery to the association at its last-known address if it is so sent to an officer of the association at the address of the principal office of the association in the United Kingdom; and
 - (b) the power conferred by subsection (3) of that section is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the association to be and to search those premises for the officer.

¹¹⁴⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.32(4) - proceedings for an offence under section 25 alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- s.32(5) - for the purposes of such proceedings–
- (a) rules of court relating to the service of documents have effect as if the association were a body corporate; and
 - (b) the following provisions apply as they apply in relation to a body corporate–
 - (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43);
 - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46); and
 - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).
- s.32(6) - a fine imposed on the association on its conviction for an offence under section 25 is to be paid out of the funds of the association.
- s.32(7) - if an offence under section 25 committed by an unincorporated association is proved to have been committed with the consent or connivance of an officer of the association, he (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.
- s.32(8) - for the purposes of subsection (7)–
- (a) references to an officer of an unincorporated association include references to any person purporting to act in such a capacity; and
 - (b) subsection (4) is not to be read as prejudicing any liability of an officer of an unincorporated association under subsection (7).
- s.32(9) - nothing in this section prevents a serious crime prevention order from being made against–
- (a) a member, officer or employee of an unincorporated association; or
 - (b) any other person associated with an unincorporated association.
- s.32(10) - in this section:
- “officer of an unincorporated association”* means any officer of an unincorporated association or any member of its governing body; and
- “unincorporated association”* means any body of persons unincorporate but does not include a partnership.

Overseas bodies

SCA 2007 s.33¹¹⁴⁵: Overseas bodies

- s.33 - the Secretary of State may by order modify section 30, 31 or 32 in its application to a body of persons formed under law having effect outside the United Kingdom.

Providers of information society services

SCA 2007 s.34¹¹⁴⁶: Providers of information society services

- s.34(1) - a serious crime prevention order may not include terms which restrict the freedom of a service provider who is established in an EEA state other than the United Kingdom to provide information society services in relation to an EEA state unless the conditions in subsections (2) and (3) are met.
- s.34(2) - the condition in this subsection is that the court concerned considers that the terms–
- (a) are necessary for the objective of protecting the public by preventing, restricting or disrupting involvement in–
 - (i) in the case of an order in England and Wales, serious crime in England and Wales; and
 - (ii) in the case of an order in Northern Ireland, serious crime in Northern Ireland;
 - (b) relate to an information society service which prejudices that objective or presents a serious and grave risk of prejudice to it; and
 - (c) are proportionate to that objective.
- s.34(3) - the conditions in this subsection are that–
- (a) a law enforcement officer has requested the EEA state in which the service provider is established to take measures which the law enforcement officer considers to be of equivalent effect under the law of the EEA state to the terms and the EEA state has failed to take the measures; and
 - (b) a law enforcement officer has notified the Commission of the European Communities and the EEA state of–
 - (i) the intention to seek an order containing the terms; and
 - (ii) the terms.
- s.34(4) - it does not matter for the purposes of subsection (3) whether the request or notification is made before or after the making of the application for the order.
- s.34(5) - a serious crime prevention order may not include terms which impose liabilities on service providers of intermediary services so far as the imposition of those liabilities would result in a contravention of Article 12, 13 or 14 of the E-Commerce Directive (various protections for service providers of intermediary services).

¹¹⁴⁵ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁴⁶ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.34(6) - a serious crime prevention order may not include terms which impose a general obligation on service providers of intermediary services covered by Articles 12, 13 and 14 of the E-Commerce Directive—
- (a) to monitor the information which they transmit or store when providing those services; or
 - (b) actively to seek facts or circumstances indicating illegal activity when providing those services.

s.34(7) - for the purposes of this section—

- (a) a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for an indefinite period and he is a national of an EEA state or a company or firm mentioned in Article 54 of the treaty on the Functioning of the European Union;
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the service provider has the centre of his activities relating to the service;

and references to a person being established in an EEA state are to be read accordingly.

s.34(8) - in this section—

“the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“information society services”—

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations); and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“intermediary services” means an information society service which—

- (a) consists in the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service;
- (b) consists in the transmission in a communication network of information which—
 - (i) is provided by a recipient of the service; and
 - (ii) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient; or

(c) consists in the storage of information provided by a recipient of the service;

“*recipient*”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible; and

“*service provider*” means a person providing an information society service.

s.34(9) - for the purposes of paragraph (a) of the definition of “intermediary services”, the provision of access to a communication network and the transmission of information in a communication network includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is for the sole purpose of carrying out the transmission in the network.

s.34(10) - subsection (9) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

3.4.6.13. Breach and offences committed during the currency of the order

Breach

Offence

SCA 2007 s.25¹¹⁴⁷: Offence of failing to comply with order

s.25(1) - a person who, without reasonable excuse, fails to comply with a serious crime prevention order commits an offence.

Penalty

SCA 2007 s.25¹¹⁴⁸: Offence of failing to comply with order

s.25(2) - a person who commits an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

s.25(3) - in the application of subsection (2)(a) in Northern Ireland, the reference to 12 months is to be read as a reference to 6 months.

Evidence

SCA 2007 s.25¹¹⁴⁹: Offence of failing to comply with order

s.25(4) - in proceedings for an offence under this section, a copy of the original order or any variation of it, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

¹¹⁴⁷ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁴⁸ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁴⁹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

Forfeiture

SCA 2007 s.26¹¹⁵⁰: Powers of forfeiture in respect of offence

- s.26(1) - the court before which a person is convicted of an offence under section 25 may order the forfeiture of anything in his possession at the time of the offence which the court considers to have been involved in the offence.
- s.26(2) - before making an order under subsection (1) in relation to anything the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of that thing or otherwise to have an interest in it.
- s.26(3) - an order under subsection (1) may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.
- s.26(4) - where the court makes an order under subsection (1), it may also make such other provision as it considers to be necessary for giving effect to the forfeiture.
- s.26(5) - that provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of what is forfeited.
- s.26(6) - provision made by virtue of this section may be varied at any time by the court that made it.

Crown Court: Power to vary

SCA 2007 s.21¹¹⁵¹: Powers of Crown Court to vary or replace orders on breach

- s.21(1) - subsection (2) applies where the Crown Court in England and Wales is dealing with a person who—
 - (a) has been convicted by or before a magistrates' court of having committed an offence under section 25 in relation to a serious crime prevention order and has been committed to the Crown Court to be dealt with; or
 - (b) has been convicted by or before the Crown Court of having committed an offence under section 25 in relation to a serious crime prevention order.
- s.21(2) - the Crown Court may—
 - (a) in the case of an order in England and Wales; and
 - (b) in addition to dealing with the person in relation to the offence;vary or replace the order if it has reasonable grounds to believe that the terms of the order as varied, or the new order, would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- s.21(3) - subsection (4) applies where the Crown Court in Northern Ireland is dealing with a person who has been convicted by or before the Crown Court of an offence under section 25 in relation to a serious crime prevention order.

¹¹⁵⁰ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁵¹ Commencement: 6 April 2008, SI 2008/755 art.15(1)(d).

- s.21(4) - the Crown Court may–
- (a) in the case of an order in Northern Ireland; and
 - (b) in addition to dealing with the person in relation to the offence;
- vary or replace the order if it has reasonable grounds to believe that the terms of the order as varied, or the new order, would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.
- s.21(5) - an order may be varied or replaced under this section only on an application by the relevant applicant authority.
- s.21(6) - a variation or new order must not be made except–
- (a) in addition to a sentence imposed in respect of the offence concerned; or
 - (b) in addition to an order discharging the person conditionally.
- s.21(7) - a variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by section 16(2) and (4)(b)).
- s.21(8) - a reference in this section to replacing a serious crime prevention order is to making a new serious crime prevention order and discharging the existing one.

Petition for winding up of company

SCA 2007 s.27¹¹⁵²: Powers to wind up companies etc: England and Wales and Scotland

- s.27(1) - the Director of Public Prosecutions or the Director of the Serious Fraud Office may present a petition to the court for the winding up of a company, partnership or relevant body if–
- (a) the company, partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the Director concerned considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up.
- s.27(2) - the Insolvency Act 1986 (c. 45) applies in relation to–
- (a) a petition under this section for the winding up of a company; and
 - (b) the company's winding up;
- as it applies in relation to a petition under section 124A of the Act of 1986 for the winding up of a company and the company's winding up (winding up on grounds of public interest) but subject to the modifications in subsections (3) and (4).
- s.27(3) - s.124(4)(b) of the Act of 1986 (application for winding up) applies in relation to a petition under this section as if it permits the petition to be presented by the Director of Public Prosecutions or the Director of the Serious Fraud Office.

¹¹⁵² Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.27(4) - the court may make an order under section 125 of the Act of 1986 (powers of court on hearing of petition) to wind up the company only if–
- (a) the company has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the court considers that it is just and equitable for the company to be wound up.
- s.27(5) - s.240 of the Act of 1986 (power to make provision about insolvent partnerships) applies for the purposes of this section as if the reference to an insolvent partnership were a reference to a partnership to which this section applies.
- s.27(6) - the appropriate Minister may by order provide for the Act of 1986 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up.
- s.27(7) - an order made by virtue of subsection (5) or (6) must ensure that the court may make an order to wind up the partnership or relevant body only if–
- (a) the partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the court considers that it is just and equitable for the partnership or relevant body to be wound up.
- s.27(8) - no petition may be presented to, or order to wind up made by, a court in Scotland by virtue of this section in respect of a company, partnership or relevant body whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985 (c. 66).
- s.27(9) - no petition may be presented, or order to wind up made, by virtue of this section if–
- (a) an appeal against conviction for the offence concerned has been made and not finally determined; or
 - (b) the period during which such an appeal may be made has not expired.
- s.27(10) - no petition may be presented, or order to wind up made, by virtue of this section if the company, partnership or relevant body is already being wound up by the court.
- s.27(11) - in deciding for the purposes of subsection (9) whether an appeal is finally determined or whether the period during which an appeal may be made has expired, any power to appeal out of time is to be ignored.
- s.27(12) - in this section–
- “*appropriate Minister*” means–
- (a) in relation to a relevant body falling within paragraphs (a) to (c) of the definition of “relevant body” below, the Treasury; and
 - (b) in relation to any other relevant body, the Secretary of State;
- “*company*” means—
- (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
 - (b) an unregistered company within the meaning of Part 5 of the Insolvency Act 1986 (see section 220 of that Act),
- but does not include a relevant body;
- “*the court*”, in relation to a company, means a court in England and Wales or Scotland having jurisdiction to wind up the company;

“partnership” does not include a relevant body; and

“relevant body” means–

- (a) a building society (within the meaning of the Building Societies Act 1986 (c. 53));
- (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992 (c. 40));
- (c) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014;
- (d) a limited liability partnership; or
- (e) such other description of person as may be specified by order made by the Secretary of State;

and the references to sections 124 to 125 of the Insolvency Act 1986 (c. 45) include references to those sections as applied by section 221(1) of that Act (unregistered companies).

SCA 2007 s.28¹¹⁵³: Powers to wind up companies etc: Northern Ireland

- s.28(1) - the Director of Public Prosecutions for Northern Ireland may present a petition to the court for the winding up of a company, partnership or relevant body if–
- (a) the company, partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the Director of Public Prosecutions for Northern Ireland considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up.
- s.28(2) - the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) applies in relation to–
- (a) a petition under this section for the winding up of a company; and
 - (b) the company's winding up;
- as it applies in relation to a petition under Article 104A of the Order of 1989 for the winding up of a company and the company's winding up (winding up on grounds of public interest) but subject to the modifications in subsections (3) and (4).
- s.28(3) - Article 104(5)(b) of the Order of 1989 (application for winding up) applies in relation to a petition under this section as if it permits the petition to be presented by the Director of Public Prosecutions for Northern Ireland.
- s.28(4) - the court may make an order under Article 105 of the Order of 1989 (powers of court on hearing of petition) to wind up the company only if–
- (a) the company has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the court considers that it is just and equitable for the company to be wound up.
- s.28(5) - Article 364 of the Order of 1989 (power to make provision about insolvent partnerships) applies for the purposes of this section as if the reference to an insolvent partnership were a reference to a partnership to which this section applies.

¹¹⁵³ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

- s.28(6) - the appropriate Minister may by order provide for the Order of 1989 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up.
- s.28(7) - an order made by virtue of subsection (5) or (6) must ensure that the court may make an order to wind up the partnership or relevant body only if–
- (a) the partnership or relevant body has been convicted of an offence under section 25 in relation to a serious crime prevention order; and
 - (b) the court considers that it is just and equitable for the partnership or relevant body to be wound up.
- s.28(8) - no petition may be presented, or order to wind up made, by virtue of this section if–
- (a) an appeal against conviction for the offence concerned has been made and not finally determined; or
 - (b) the period during which such an appeal may be made has not expired.
- s.28(9) - no petition may be presented, or order to wind up made, by virtue of this section if the company, partnership or relevant body is already being wound up by the court.
- s.28(10) - in deciding for the purposes of subsection (8) whether an appeal is finally determined or whether the period during which an appeal may be made has expired, any power to appeal out of time is to be ignored.
- s.28(11) - in this section:
- “*appropriate Minister*” means:
- (a) in relation to a relevant body falling within paragraph (a) or (b) of the definition of “relevant body” below, the Treasury; and
 - (b) in relation to any other relevant body, the Department of Justice in Northern Ireland;
- “*company*” means:
- (a) a company registered under the Companies Act 2006 in Northern Ireland, or
 - (b) an unregistered company within the meaning of Part 6 of the Insolvency (Northern Ireland) Order 1989 (see Article 184 of that Order),
- but does not include a relevant body;
- “*the court*” means the High Court in Northern Ireland;
- “*an industrial and provident society*” means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24) or a society deemed by virtue of section 4 of that Act to be so registered;
- “*partnership*” does not include a relevant body; and
- “*relevant body*” means–
- (a) a building society (within the meaning of the Building Societies Act 1986 (c. 53));
 - (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992 (c. 40));
 - (c) an industrial and provident society;
 - (d) a limited liability partnership; or
 - (e) such other description of person as may be specified by order made by the Department of Justice in Northern Ireland;

and the references to Articles 104 to 105 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) include references to those Articles as applied by Article 185(1) of that Order (unregistered companies).

SCA 2007 s.29¹¹⁵⁴: Powers to wind up companies etc: Supplementary

- s.29(1) - the Secretary of State may by order make such modifications as he considers appropriate to the application of—
 - (a) the Insolvency Act 1986 (c. 45) by virtue of section 27(2).
- s.29(1A) - the Department of Justice in Northern Ireland may by order make such modifications as the Department considers appropriate to the application of the Insolvency (Northern Ireland) Order 1989³ by virtue of section 28(2).
- s.29(2) - any modifications made by virtue of subsection (1) or (1A) are in addition to the modifications made by section 27(3) and (4) or (as the case may be) section 28(3) and (4).
- s.29(3) - the Secretary of State may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment, as he considers appropriate in connection with section 27(2) to (4).
- s.29(3A) - the Department of Justice in Northern Ireland may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment, as the Department considers appropriate in connection with section 28(2) to (4).
- s.29(4) - an order made by virtue of section 27(5) or (6), section 28(5) or (6) or subsection (1) or (1A) above may, in particular, contain consequential or supplementary provision applying, with or without modifications, any provision made by or under an enactment.

Extension of order where defendant charged with offence during currency of order

SCA 2007 s.22E¹¹⁵⁵: Extension of orders pending outcome of criminal proceedings

- s.22E(1) - this section applies where a person subject to a serious crime prevention order is charged with—
 - (a) a serious offence, or
 - (b) an offence under section 25 of failing to comply with the serious crime prevention order.
- s.22E(2) - the relevant applicant authority may make an application under this section to—
 - (a) the Crown Court in England and Wales, in the case of a serious crime prevention order in England and Wales;
 - (b) the High Court of Justiciary or the sheriff, in the case of a serious crime prevention order in Scotland;
 - (c) the Crown Court in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.

¹¹⁵⁴ Commencement: 6 April 2008, SI 2008/755 art.15(1)(f).

¹¹⁵⁵ Commencement: 3 May 2015, as inserted by Serious Crime Act 2015 s.49, SI 2015/820 art.2

s.22E(3) - on an application under this section, the court or sheriff may vary the serious crime prevention order so that it continues in effect until one of the events listed in subsection (4) occurs (if the order would otherwise cease to have effect before then).

s.22E(4) - the events are—

- (a) following the person's conviction of the offence mentioned in subsection (1)—
 - (i) the order is varied under section 20 or 21, or under section 22B or 22C, by reference to the offence,
 - (ii) a new serious crime prevention order is made under section 19 or 21, or under section 22A or 22C, by reference to the offence, or
 - (iii) the court or sheriff deals with the person for the offence without varying the order or making a new one;
- (b) the person is acquitted of the offence;
- (c) the charge is withdrawn;
- (d) in the case of a serious crime prevention order in England and Wales or Northern Ireland—
 - (i) proceedings in respect of the charge are discontinued, or
 - (ii) an order is made for the charge to lie on the file;
- (e) in the case of a serious crime prevention order in Scotland—
 - (i) proceedings against the person are deserted *simpliciter*,
 - (ii) proceedings against the person are deserted *pro loco et tempore* and no trial diet is appointed,
 - (iii) the indictment or complaint relating to the person falls or for any other reason does not proceed to trial, or
 - (iv) the diet not having been continued, adjourned or postponed, no further proceedings are in contemplation in relation to the person.

s.22E(5) - an order may be made under this section only if—

- (a) the serious crime prevention order is still in force, and
- (b) the court or sheriff has reasonable grounds for believing that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime.

s.22E(6) - in subsection (5)(b) “*serious crime*” means—

- (a) serious crime in England and Wales, in the case of a serious crime prevention order in England and Wales;
- (b) serious crime in Scotland, in the case of a serious crime prevention order in Scotland;
- (c) serious crime in Northern Ireland, in the case of a serious crime prevention order in Northern Ireland.

3.4.6.14. Case law

See *R. v Hancox and Duffy* [2010] EWCA Crim 102; [2010] 2 Cr. App. R. (S.) 74 (p.484). The headnote to which reads, in part:

A serious crime prevention order must be proportionate. The interference which it will create with the defendant's freedom of action must be justified by the public benefit which the order will have in achieving the statutory purpose, and the provisions of the order must be commensurate with the risk that the defendant will commit further serious offences in England and Wales.

Like other forms of preventive order, a serious crime prevention order is not an additional or alternative form of sentence. It is not designed to punish and is not to be imposed because it is thought that the defendant deserves it. Preventive orders of this kind must be expressed in terms from which the defendant, and any police officer contemplating enforcement, can readily know what he may and may not do

3.4.7. Sexual Harm Prevention Orders

3.4.7.1. General

Note: There is still a power to make a SOPO where an application was made before the commencement date. Otherwise, there is a power to make a SHPO; the difference of note is that the test for imposing the order is lowered, from “serious sexual harm” to “sexual harm”.

Commencement, amendment of SOA 2003 and transitional provisions

ASBCPA 2014 s.113¹¹⁵⁶: Sexual harm prevention orders and sexual risk orders, etc

s.113(1) - Schedule 5 (amendments of Parts 2 and 3 of the Sexual Offences Act 2003) has effect.

s.113(2) - in section 142 of the Sexual Offences Act 2003 (extent etc)—

- (a) in subsection (2) (provisions that extend to Northern Ireland, as well as England and Wales), for paragraph (c) there is substituted—

“(c) sections 80 to 85, 86 to 88, 89 to 91, 92 to 96, 96B to 103, 122F and 130 to 136ZD;

(ca) Part 2A;”;

- (b) after that subsection there is inserted—

“(2A) Sections 85A, 96A, 96AA, 110, 117A, 119 and 123 to 129 and Schedule 3A extend only to Northern Ireland.”

- (c) In subsection (3) (provisions that extend to Scotland, as well as England and Wales) for paragraph (a) there is substituted—

“(a) sections 80 to 85, 86 to 88, 89 to 91, 92, 94 to 96, 97 to 103, 122F, 130 to 132 and 133 to 136ZB;”;

- (d) after that subsection there is inserted—

“(3A) Sections 88A to 88I, 96A, 111A, 117B, 120 and 121 extend only to Scotland.

s.113(3B) - sections 104 to 109, 111, 112 to 117, 118 and 122 extend to Northern Ireland and Scotland but not to England and Wales.

s.113(3C) - the references to section 96A in subsections (2A) and (3A) are references respectively to—

- (a) the section 96A inserted by the Criminal Justice Act (Northern Ireland) 2013, and
- (b) the section 96A inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006.”

ASBCPA 2014 Sch.5¹¹⁵⁷: Amendments of Parts 2 and 3 of the Sexual Offences Act 2003

para.1 - Part 2 of the Sexual Offences Act 2003 (notification and orders) is amended as set out in paragraphs 2 to 6.

para.2 - after section 103 there is inserted [SOA 2003 ss.103A to 103K]

¹¹⁵⁶ Commencement: 8 March 2015, SI 2015/373 art.2(a).

¹¹⁵⁷ Commencement: 8 March 2015, SI 2015/373 art.2(a).

Note: the sections inserted to the 2003 Act have not been listed here as they are listed below.

para.3(1) - sections 104 to 122 (sexual offences prevention orders and foreign travel orders) are repealed.

para.3(2) - this paragraph extends only to England and Wales.

ASBCPA 2014 s.114¹¹⁵⁸: Saving and transitional provision

s.114(1) - in this section:

“the 2003 Act” means the Sexual Offences Act 2003;

“existing order” means:

- (a) a sexual offences prevention order under section 104 of the 2003 Act;
- (b) a foreign travel order under section 114 of that Act;
- (c) a risk of sexual harm order under section 123 of that Act;

“new order” means:

- (a) a sexual harm prevention order (made under section 103A of the 2003 Act, inserted by Schedule 5);
- (b) a sexual risk order (made under section 122A of that Act, inserted by that Schedule);

“old order” means:

- (a) a restraining order under section 5A of the Sex Offenders Act 1997;
- (b) a sex offender order under section 2 of the Crime and Disorder Act 1998.

s.114(2) - the repeal or amendment by this Act of sections 104 to 122 or sections 123 to 129 of the 2003 Act does not apply in relation to:

- (a) an application made before the commencement day for an existing order;
- (b) an existing order (whether made before or after that day) applied for before that day;
- (c) anything done in connection with such an application or order.

s.114(3) - the following sections of the 2003 Act inserted by Schedule 5 apply (as appropriate) to an old order as they apply to a new order:

- (a) section 103E (variation, renewal and discharge of sexual harm prevention order);
- (b) section 103I (offence of breach of sexual harm prevention order);
- (c) section 122D (variation, renewal and discharge of sexual risk order);
- (d) section 122H (offence of breach of sexual risk order).

s.114(4) - as from the commencement day there may be no variation of an existing order or an old order that extends the period of the order or of any of its provisions.

¹¹⁵⁸ Commencement: 8 March 2015, SI 2015/373 art.2(a).

- s.114(5) - at the end of the period of 5 years beginning with the commencement day:
- (a) in relation to any existing order or old order that is still in force, sections 103E and 103I of the 2003 Act or sections 122D and 122H of that Act (as appropriate) have effect, with any necessary modifications (and with any modifications specified in an order under section 185(7) of this Act), as if the provisions of the order were provisions of a new order;
 - (b) subsections (2) and (3) cease to have effect.
- s.114(6) - in this section “*commencement day*” means the day on which this section comes into force.

Age

SOA 2003 s.103K¹¹⁵⁹: SHPOs and interim SHPOs: supplementary

s.103K(2) - a person's age is treated for the purposes of sections 103A to 103J and this section as being that which it appears to the court to be after considering any available evidence.”

Applications to the Youth Court

SOA 2003 s.103K¹¹⁶⁰: SHPOs and interim SHPOs: supplementary

- s.103K(1) - rules of court:
- (a) may provide for a youth court to give permission for an application under section 103A(4) against a person aged 18 or over to be made to the youth court if:
 - (i) an application to the youth court has been made, or is to be made, under that section against a person aged under 18, and
 - (ii) the youth court thinks that it would be in the interests of justice for the applications to be heard together;
 - (b) may, in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 103A, 103E, 103F or 103G(6) or (7) have begun:
 - (i) prescribe circumstances in which the proceedings may or must remain in the youth court;
 - (ii) make provision for the transfer of the proceedings from the youth court to a magistrates’ court that is not a youth court (including provision applying section 103F with modifications).

¹¹⁵⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁶⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

General: Definitions

SOA 2003 s.103B¹¹⁶¹: Section 103A: supplemental

s.103B(5) - for the purposes of section 103A, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

s.103B(8) - subsection (9) applies for the purposes of section 103A and this section.

s.103B(9) - in construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates:

- (a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or
- (b) to the age of any person,
is to be disregarded.

3.4.7.2. Post-conviction

Post-conviction orders: Availability

SOA 2003 s.103A¹¹⁶²: Sexual harm prevention orders: applications and grounds

s.103A(1) - a court may make an order under this section (a “sexual harm prevention order”) in respect of a person (“the defendant”) where subsection (2) or (3) applies to the defendant.

s.103A(2) - this subsection applies to the defendant where:

- (a) the court deals with the defendant in respect of:
 - (i) an offence listed in Schedule 3 or 5, or
 - (ii) a finding that the defendant is not guilty of an offence listed in Schedule 3 or 5 by reason of insanity, or
 - (iii) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of an offence listed in Schedule 3 or 5,
- and
- (b) the court is satisfied that it is necessary to make a sexual harm prevention order, for the purpose of:
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant, or
 - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

¹¹⁶¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁶² Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

SOA 2003 Sch.3 and 5

These schedules specify the sexual offences for the purposes of part 2 of the Act (notification and orders)

Note: There is a power under SOA 2003 s.130 for the Secretary of State to amend the schedules.

SOA 2003 Sch.3¹¹⁶³: Sexual offences for the purposes of Part 2

- 1 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 2 An offence under section 5 of that Act (intercourse with girl under 13).
- 3 An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.
- 4 An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.
- 5 An offence under section 12 of that Act (buggery) if–
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 6 An offence under section 13 of that Act (indecentcy between men) if–
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 7 An offence under section 14 of that Act (indecent assault on a woman) if–
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 8 An offence under section 15 of that Act (indecent assault on a man) if–
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 9 An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
- 10 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).
- 11 An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).

¹¹⁶³ Commencement: 1 May 2004, SI 2004/874 art.2.

- 12 An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under 16 to have incestuous sexual intercourse).
- 13 An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and–
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 14 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16 and–
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 15 An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16 and–
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender–
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 16 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), if the offender was 20 or over.
- 17 An offence under section 1 or 2 of this Act (rape, assault by penetration).
- 18 An offence under section 3 of this Act (sexual assault) if–
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

- 19 An offence under any of sections 4 to 6 of this Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
- 20 An offence under section 7 of this Act (sexual assault of a child under 13) if the offender—
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 21 An offence under any of sections 8 to 12 of this Act (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults).
- 22 An offence under section 13 of this Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 23 An offence under section 14 of this Act (arranging or facilitating the commission of a child sex offence) if the offender—
- (a) was 18 or over, or
 - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 24 An offence under section 15 of this Act (meeting a child following sexual grooming etc).
- 25 An offence under any of sections 16 to 19 of this Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been—
- (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 26 An offence under section 25 or 26 of this Act (familial child sex offences) if the offender—
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 27 An offence under any of sections 30 to 37 of this Act (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).
- 28 An offence under any of sections 38 to 41 of this Act (care workers for persons with mental disorder) if—
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been—
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community sentence of at least 12 months.

- 29 An offence under section 47 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29A An offence under section 48 of this Act (causing or inciting child prostitution or pornography) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29B An offence under section 49 of this Act (controlling a child prostitute or a child involved in pornography) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29C An offence under section 50 of this Act (arranging or facilitating child prostitution or pornography) if the offender–
- (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 30 An offence under section 61 of this Act (administering a substance with intent).
- 31 An offence under section 62 or 63 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 32 An offence under section 64 or 65 of this Act (sex with an adult relative) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

- 33 An offence under section 66 of this Act (exposure) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 34 An offence under section 67 of this Act (voyeurism) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 35 An offence under section 69 or 70 of this Act (intercourse with an animal, sexual penetration of a corpse) if–
- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.
- 35A An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender—
- (a) was 18 or over, and
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.
- 35B An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children) if the offender—
- (a) was 18 or over, and
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.
- 35C An offence under section 69 of the Serious Crime Act 2015 (possession of paedophile manual) if the offender—
- (a) was 18 or over, or
 - (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

SOA 2003 Sch.5¹¹⁶⁴: Other offences for purposes of Part 2

- 1 Murder.
- 2 Manslaughter.
- 3 Kidnapping.
- 4 False imprisonment.
- 4A Outraging public decency.
- 5 An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).
- 6 An offence under section 16 of that Act (threats to kill).
- 7 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 8 An offence under section 20 of that Act (malicious wounding).
- 9 An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).
- 10 An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).
- 11 An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).
- 12 An offence under section 27 of that Act (abandoning children).
- 13 An offence under section 28 of that Act (causing bodily injury by explosives).
- 14 An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).
- 15 An offence under section 30 of that Act (placing explosives with intent to do bodily injury).
- 16 An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).
- 17 An offence under section 32 of that Act (endangering the safety of railway passengers).
- 18 An offence under section 35 of that Act (injuring persons by furious driving).
- 19 An offence under section 37 of that Act (assaulting officer preserving wreck).
- 20 An offence under section 38 of that Act (assault with intent to resist arrest).
- 21 An offence under section 47 of that Act (assault occasioning actual bodily harm).

¹¹⁶⁴ Commencement: 1 May 2004, SI 2004/874 art.2.

- 22 An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).
- 23 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 24 An offence under section 1 of the Infant Life (Preservation) Act 1929 (c. 34) (child destruction).
- 25 An offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to children).
- 26 An offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide).
- 27 An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).
- 28 An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).
- 29 An offence under section 17(1) of that Act (use of firearm to resist arrest).
- 30 An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).
- 31 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 31A An offence under section 1 of the Theft Act 1968 (c.60) (theft).
- 32 An offence under section 8 of that Act (robbery or assault with intent to rob).
- 33 An offence under section 9(1)(a) of that Act (burglary with intent to steal, inflict grievous bodily harm or do unlawful damage).
- 34 An offence under section 10 of that Act (aggravated burglary).
- 35 An offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.
- 36 An offence of arson under section 1 of the Criminal Damage Act 1971 (c. 48).
- 37 An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.
- 38 An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).
- 39 An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).
- 40 An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).
- 41 An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).
- 42 An offence under section 4 of that Act (offences in relation to certain dangerous articles).

- 43 An offence under section 127 of the Mental Health Act 1983 (c. 20) (ill-treatment of patients).
- 43A An offence under section 1 of the Child Abduction Act 1984 (c. 37) (offence of abduction of child by parent, etc).
- 43B An offence under section 2 of that Act (offence of abduction of child by other persons).
- 44 An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).
- 45 An offence under section 1 of the Public Order Act 1986 (c. 64) (riot).
- 46 An offence under section 2 of that Act (violent disorder).
- 47 An offence under section 3 of that Act (affray).
- 48 An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).
- 49 An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).
- 50 An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).
- 51 An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).
- 52 An offence under section 9 of that Act (hijacking of ships).
- 53 An offence under section 10 of that Act (seizing or exercising control of fixed platforms).
- 54 An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).
- 55 An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).
- 56 An offence under section 13 of that Act (offences involving threats).
- 56A An offence under section 2 or 2A of the Protection from Harassment Act 1997 (c. 40)(offences of harassment and stalking)
- 57 An offence under section 4 or 4A of that Act (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress).
- 58 An offence under section 29 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults).
- 59 An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (c. 64)).
- 60 An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).

- 60ZA An offence under section 53 or 54 of the Regulation of Investigatory Powers Act 2000 (contravention of notice relating to encrypted information or tipping off in connection with such a notice).
- 60A An offence under section 85(3) or (4) of the Postal Services Act 2000 (c. 26) (prohibition on sending certain articles by post).
- 61 An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.
- 61A An offence under section 127(1) of the Communications Act 2003 (c. 21) (improper use of public electronic communications network).
- 62 An offence under section 47 of this Act, where the victim or (as the case may be) other party was 16 or over.
- 63 An offence under any of sections 51 to 53 or 57 to 59A of this Act.
- 63A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm).
- 63B An offence under section 2 of the Modern Slavery Act 2015 (human trafficking).
- 173 A reference in a preceding paragraph to an offence includes—
(a) a reference to an attempt, conspiracy or incitement to commit that offence, and
(b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- 173A A reference in a preceding paragraph to an offence (“offence A”) includes a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed.
- 174 A reference in a preceding paragraph to a person's age is a reference to his age at the time of the offence.

Note: Paras. 64-111 apply to Scotland, paras.112-171C apply to Northern Ireland, paras.172 and 172A apply to service offences and are not listed in this document.

Child defendants

SOA 2003 s.103A¹¹⁶⁵: Sexual harm prevention orders: applications and grounds

s.103A(8) - where the defendant is a child, a reference in this section to a magistrates' court is to be taken as referring to a youth court (subject to any rules of court made under section 103K(1)).

¹¹⁶⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

3.4.7.3. Stand-alone orders (on complaint)

Stand-alone orders: Power to order

SOA 2003 s.103A¹¹⁶⁶: Sexual harm prevention orders: applications and grounds

s.103A(1) - a court may make an order under this section (a “sexual harm prevention order”) in respect of a person (“the defendant”) where subsection (2) or (3) applies to the defendant.

s.103A(3) - this subsection applies to the defendant where:

- (a) an application under subsection (4) has been made in respect of the defendant and it is proved on the application that the defendant is a qualifying offender, and
- (b) the court is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make a sexual harm prevention order, for the purpose of:
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant, or
 - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

s.103A(4) - a chief officer of police or the Director General of the National Crime Agency (“the Director General”) may by complaint to a magistrates’ court apply for a sexual harm prevention order in respect of a person if it appears to the chief officer or the Director General that:

- (a) the person is a qualifying offender, and
- (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.

s.103A(5) - a chief officer of police may make an application under subsection (4) only in respect of a person:

- (a) who resides in the chief officer's police area, or
- (b) who the chief officer believes is in that area or is intending to come to it.

s.103A(6) - an application under subsection (4) may be made to any magistrates’ court acting for a local justice area that includes:

- (a) any part of a relevant police area, or
- (b) any place where it is alleged that the person acted in a way mentioned in subsection (4)(b).

s.103A(7) - the Director General must as soon as practicable notify the chief officer of police for a relevant police area of any application that the Director has made under subsection (4).

s.103A(9) - in this section “*relevant police area*” means:

- (a) where the applicant is a chief officer of police, the officer's police area;
- (b) where the applicant is the Director General:

¹¹⁶⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

- (i) the police area where the person in question resides, or
- (ii) a police area which the Director General believes the person is in or is intending to come to.

Stand alone order: Definitions

SOA 2003 s.103B¹¹⁶⁷: Section 103A: supplemental

s.103B(1) In section 103A:

“appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which the offender was convicted, found or cautioned as mentioned in subsection (2) or (3) below;

“child” means a person under 18;

“the public” means the public in the United Kingdom;

“sexual harm” from a person means physical or psychological harm caused:

- (a) by the person committing one or more offences listed in Schedule 3, or
- (b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

“qualifying offender” means a person within subsection (2) or (3) below;

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise.

s.103B(2) - a person is within this subsection if, whether before or after the commencement of this Part, the person:

- (a) has been convicted of an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5,
- (b) has been found not guilty of such an offence by reason of insanity,
- (c) has been found to be under a disability and to have done the act charged against him in respect of such an offence, or
- (d) has been cautioned in respect of such an offence.

s.103B(3) - a person is within this subsection if, under the law in force in a country outside the United Kingdom and whether before or after the commencement of this Part:

- (a) the person has been convicted of a relevant offence (whether or not the person has been punished for it),
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of insanity,
- (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence, or

¹¹⁶⁷ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

- (d) the person has been cautioned in respect of a relevant offence.

s.103B(4) - in subsection (3), “*relevant offence*” means an act which:

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 3 (other than at paragraph 60) or in Schedule 5 if it had been done in any part of the United Kingdom.

For this purpose an act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law, however it is described in that law.

s.103B(6) - subject to subsection (7), on an application under section 103A(4) the condition in subsection (4)(b) above (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice:

- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met,
- (b) showing the grounds for that opinion, and
- (c) requiring the applicant to prove that the condition is met.

s.103B(7) - the court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

3.4.7.4. Making the order

Contents of the order

SOA 2003 s.103C¹¹⁶⁸: SHPOs: Effect

s.103B(3) - a sexual harm prevention order:

- (a) may specify that some of its prohibitions have effect until further order and some for a fixed period;
- (b) may specify different periods for different prohibitions.

Test for imposing prohibitions

SOA 2003 s.103C¹¹⁶⁹: SHPOs: Effect

s.103C(4) - the only prohibitions that may be included in a sexual harm prevention order are those necessary for the purpose of:

- (a) protecting the public or any particular members of the public from sexual harm from the defendant, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

¹¹⁶⁸ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁶⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

s.103C(5) - in subsection (4) "*the public*", "*sexual harm*", "*child*" and "*vulnerable adult*" each has the meaning given in section 103B(1).

(6) Where a court makes a sexual harm prevention order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Length of the order

SOA 2003 s.103C¹¹⁷⁰: SHPOs: Effect

s.103C(2) - subject to section 103D(1), a prohibition contained in a sexual harm prevention order has effect:

- (a) for a fixed period, specified in the order, of at least 5 years, or
- (b) until further order.

Prohibitions on foreign travel: Length

SOA 2003 s.103D¹¹⁷¹: SHPOs: prohibitions on foreign travel

s.103D(1) - a prohibition on foreign travel contained in a sexual harm prevention order must be for a fixed period of not more than 5 years.

s.103D(3) - subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 103E.

3.4.7.5. Effect of order

What is an SHPO?

SOA 2003 s.103C¹¹⁷²: SHPOs: Effect

s.103C(1) - a sexual harm prevention order prohibits the defendant from doing anything described in the order.

s.103C(2) - subject to section 103D(1), a prohibition contained in a sexual harm prevention order has effect:

- (a) for a fixed period, specified in the order, of at least 5 years, or
- (b) until further order.

¹¹⁷⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷² Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

What is a foreign travel prohibition?

SOA 2003 s.103D¹¹⁷³: SHPOs: prohibitions on foreign travel

s.103D(2) - a “prohibition on foreign travel” means:

- (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
- (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
- (c) a prohibition on travelling to any country outside the United Kingdom.

Prohibitions on foreign travel: Effect

SOA 2003 s.103D¹¹⁷⁴: SHPOs: prohibitions on foreign travel

s.103D(4) - a sexual harm prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a police station specified in the order:

- (a) on or before the date when the prohibition takes effect, or
- (b) within a period specified in the order.

Prohibitions on foreign travel: Return of passports

SOA 2003 s.103D¹¹⁷⁵: SHPOs: prohibitions on foreign travel

s.103D(5) - any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a sexual harm prevention order containing a prohibition within subsection (2)(c) (unless the person is subject to an equivalent prohibition under another order).

s.103D(6) - subsection (5) does not apply in relation to:

- (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
- (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

¹¹⁷³ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁴ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Prohibitions on foreign travel: Definition of “passport”

SOA 2003 s.103D¹¹⁷⁶: SHPOs: prohibitions on foreign travel

s.103D(7) - in this section “passport” means:

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971;
- (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
- (c) a document that can be used (in some or all circumstances) instead of a passport.

3.4.7.6. Notification requirements

Relevant offender prior to making SHPO

SOA 2003 s.103G¹¹⁷⁷: SHPOs and interim SHPOs: notification requirements

s.103G(1) - where:

- (a) a sexual harm prevention order is made in respect of a defendant who was a relevant offender immediately before the making of the order, and
- (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.

Not a relevant offender prior to making SHPO

SOA 2003 s.103G¹¹⁷⁸: SHPOs and interim SHPOs: notification requirements

s.103G(2) - where a sexual harm prevention order is made in respect of a defendant who was not a relevant offender immediately before the making of the order:

- (a) the order causes the defendant to become subject to the notification requirements of this Part from the making of the order until the order (as renewed from time to time) ceases to have effect, and
- (b) this Part applies to the defendant, subject to the modification set out in subsection (3).

s.103G(3) - the “relevant date” is the date of service of the order.

¹¹⁷⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁷ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁷⁸ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Interim orders

SOA 2003 s.103G¹¹⁷⁹: SHPOs and interim SHPOs: notification requirements

s.103G(4) -subsections (1) to (3) apply to an interim sexual harm prevention order as if references to a sexual harm prevention order were references to an interim sexual harm prevention order, and with the omission of “(as renewed from time to time)” in both places.

“Relevant sex offenders”

SOA 2003 s.103G¹¹⁸⁰: SHPOs and interim SHPOs: notification requirements

s.103G(5) -where:

- (a) a sexual harm prevention order is in effect in relation to a relevant sex offender (within the meaning of section 88A), and
- (b) by virtue of section 88F or 88G the relevant sex offender ceases to be subject to the notification requirements of this Part,

the sexual harm prevention order ceases to have effect.

Notification orders

SOA 2003 s.103G¹¹⁸¹: SHPOs and interim SHPOs: notification requirements

s.103G(6) -on an application for a sexual harm prevention order made by a chief officer of police, the court must make a notification order in respect of the defendant (either in addition to or instead of a sexual harm prevention order) if:

- (a) the applicant invites the court to do so, and
- (b) it is proved that the conditions in section 97(2) to (4) are met.

s.103G(7) -on an application for an interim sexual harm prevention order made by a chief officer of police, the court may, if it considers it just to do so, make an interim notification order (either in addition to or instead of an interim sexual harm prevention order).

3.4.7.7. Interaction with other sentencing orders

Note: Smith, below, was decided in relation to SOPOs not SHPOs, however the principle should apply to the new orders due to their similar nature.

General

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[9]

“[...] [I]t must be remembered that a defendant convicted of sexual offences is likely to be subject to at least three other relevant regimes [notification, disqualification from

¹¹⁷⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

working with children, licence]. No SOPO is needed if it merely duplicates such a regime. Nor must a SOPO interfere with such a regime.” (Hughes LJ, at [9])

Extended or Determinate term of imprisonment

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[14]

“[...] [A] SOPO may plainly be necessary if the sentence is a determinate term or an extended term. In each of those cases, whilst conditions may be attached to the licence, that licence will have a defined and limited life. The SOPO by contrast can extend beyond it and this may be necessary to protect the public from further offences and serious sexual harm as a result.” (Hughes LJ, at [14])

Life sentences

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[13]

“The usual rule ought to be that an indeterminate sentences needs so SOPO, at least unless there is some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later.” (Hughes LJ, at [13])

Notification

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[17]

“[...] [I]t is not normally a proper use of the power to impose a SOPO to use it to extend notification requirements beyond the period prescribed by law. Absent some unusual feature, it would therefore be wrong to add to a SOPO terms which although couched as prohibitions amounted in effect to no more than notification requirements, but for a period longer than the law provides for. But it does not follow that the duration of a SOPO ought generally to be the same as the duration of notification requirements. Notification requirements and the conditions of a SOPO are generally two different things. The first require positive action by the defendant, who must report his movements to the police. The second prohibit him from doing specified things. Ordinarily there ought to be little or no overlap between them. If the circumstances require it, we can see no objection to the prohibitory provisions of a SOPO extending beyond the notification requirements of the statute. It may also be possible that a SOPO for less than an indefinite period might be found to be the right order in a case where the notification requirements endure for ever; that also is permissible in law.” (Hughes LJ, at [17])

Parenting orders

CDA 1998 s.8¹¹⁸²: Parenting orders

- s.8(1) - application of section: [...] (b) a Sexual Harm Prevention Order is made in respect of a child or young person; [...]
- s.8(2) - subject to s.8(3) and s.9(1), if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under ss.443 or 444 (“the parent”).

¹¹⁸² Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- s.8(3) - a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn
- s.8(6) - The relevant condition is that the parenting order would be desirable in the interests of preventing:
- (1) in a case falling within paragraph (a), (aa) or (b) of s.8(1), any repetition of the kind of behaviour which led to the order being made or the injunction granted;
 - (2) in a case falling within paragraph (c), the commission of any further offence by the child or young person;
 - (3) in a case falling within paragraph (d), the commission of any further offence under Education Act 1996 ss.443 or 444.

Suspended sentences

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[14] and [15]

[...] [A] SOPO may plainly be necessary if the sentence is a determinate term or an extended term. In each of those cases, whilst conditions may be attached to the licence, that licence will have a defined and limited life. The SOPO by contrast can extend beyond it and this may be necessary to protect the public from further offences and serious sexual harm as a result.

The same is true, only more clearly, where the sentence is a suspended sentence. The SOPO serves a different purpose from the suspension of the sentence, and its duration is certain to be longer, since it cannot be made unless prohibitions for at least five years are called for: s 107(1)(b). (Hughes LJ, [14]-[15])

3.4.7.8. Variation, renewal and discharge of orders

Who may apply?

SOA 2003 s.103E¹¹⁸³: SHPOs: variations, renewals and discharges

s.103E(1) - a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual harm prevention order.

s.103E(2) - the persons are:

- (a) the defendant;
- (b) the chief officer of police for the area in which the defendant resides;
- (c) a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
- (d) where the order was made on an application by a chief officer of police under section 103A(4), that officer.

¹¹⁸³ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Procedure

SOA 2003 s.103E¹¹⁸⁴: SHPOs: variations, renewals and discharges

s.103E(3) - an application under subsection (1) may be made:

- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
- (b) in any other case, by complaint.

Power to vary etc.

SOA 2003 s.103E¹¹⁸⁵: SHPOs: variations, renewals and discharges

s.103E(4) - subject to subsections (5) and (7), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual harm prevention order, that the court considers appropriate.

s.103E(5) - an order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of:

- (a) protecting the public or any particular members of the public from sexual harm from the defendant, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose.

s.103E(6) - in subsection (5) “the public”, “sexual harm”, “child” and “vulnerable adult” each has the meaning given in section 103B(1).

Prohibition on discharging an order

SOA 2003 s.103E¹¹⁸⁶: SHPOs: variations, renewals and discharges

s.103E(7) - the court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and:

- (a) where the application is made by a chief officer of police, that chief officer, or
- (b) in any other case, the chief officer of police for the area in which the defendant resides.

s.103E(8) - subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

¹¹⁸⁴ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

Variation, renewal and discharge: Definitions

SOA 2003 s.103E¹¹⁸⁷: SHPOs: variations, renewals and discharges

s.103E(9) - in this section “the appropriate court” means:

- (a) where the Crown Court or the Court of Appeal made the sexual harm prevention order, the Crown Court;
- (b) where an adult magistrates’ court made the order, that court, an adult magistrates’ court for the area in which the defendant resides or, where the application is made by a chief officer of police, any adult magistrates’ court acting for a local justice area that includes any part of the chief officer’s police area;
- (c) where a youth court made the order and the defendant is under the age of 18, that court, a youth court for the area in which the defendant resides or, where the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer’s police area;
- (d) where a youth court made the order and the defendant is aged 18 or over, an adult magistrates’ court for the area in which the defendant resides or, where the application is made by a chief officer of police, any adult magistrates’ court acting for a local justice area that includes any part of the chief officer’s police area.

In this subsection “adult magistrates’ court” means a magistrates’ court that is not a youth court.

3.4.7.9. Interim orders

SOA 2003 s.103F¹¹⁸⁸: Interim SHPOs

s.103F(1) - this section applies where an application under section 103A(4) (“the main application”) has not been determined.

s.103F(2) - an application for an order under this section (“an interim sexual harm prevention order”):

- (a) may be made by the complaint by which the main application is made, or
- (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.

s.103F(3) - the court may, if it considers it just to do so, make an interim sexual harm prevention order, prohibiting the defendant from doing anything described in the order.

s.103F(4) - such an order:

- (a) has effect only for a fixed period, specified in the order;
- (b) ceases to have effect, if it has not already done so, on the determination of the main application.

¹¹⁸⁷ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁸⁸ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

s.103F(5) - the applicant or the defendant may by complaint apply to the court that made the interim sexual harm prevention order for the order to be varied, renewed or discharged.

3.4.7.10. Appeals

Power to appeal

SOA 2003 s.103H¹¹⁸⁹: SHPOs and interim SHPOs: appeals

s.103H(1) - a defendant may appeal against the making of a sexual harm prevention order:

- (a) where the order was made by virtue of section 103A(2)(a)(i), as if the order were a sentence passed on the defendant for the offence;
- (b) where the order was made by virtue of section 103A(2)(a)(ii) or (iii), as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;
- (c) where the order was made on an application under section 103A(4), to the Crown Court.

Power to appeal against interim orders

SOA 2003 s.103H¹¹⁹⁰: SHPOs and interim SHPOs: appeals

s.103H(2) - a defendant may appeal to the Crown Court against the making of an interim sexual harm prevention order.

Power to appeal against variations, renewals and discharges

SOA 2003 s.103H¹¹⁹¹: SHPOs and interim SHPOs: appeals

s.103H(3) - a defendant may appeal against the making of an order under section 103E, or the refusal to make such an order:

- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
- (b) in any other case, to the Crown Court.

Powers on appeal

SOA 2003 s.103H¹¹⁹²: SHPOs and interim SHPOs: appeals

s.103H(4) - on an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

¹¹⁸⁹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹⁰ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹¹ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹² Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

s.103H(5) - any order made by the Crown Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a magistrates' court) is for the purposes of section 103E(9) or 103F(5) (respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court).

3.4.7.11. Breach

Offence

SOA 2003 s.103I¹¹⁹³: Offence: breach of SHPO or interim SHPO etc

s.103I(1) - a person who, without reasonable excuse, does anything that the person is prohibited from doing by:

- (a) a sexual harm prevention order,
- (b) an interim sexual harm prevention order,
- (c) a sexual offences prevention order,
- (d) an interim sexual offences prevention order, or
- (e) a foreign travel order,

commits an offence.

s.103I(2) - a person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 103D(4).

Penalty

SOA 2003 s.103I¹¹⁹⁴: Offence: breach of SHPO or interim SHPO etc

s.103I(3) - a person guilty of an offence under this section is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Restriction on imposing discharge

SOA 2003 s.103I¹¹⁹⁵: Offence: breach of SHPO or interim SHPO etc

s.103I(4) - where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

¹¹⁹³ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹⁴ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

¹¹⁹⁵ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

3.4.7.12. Guidance

SOA 2003 s.103J¹¹⁹⁶: Guidance

- s.103J(1) - the Secretary of State must issue guidance to chief officers of police and to the Director General of the National Crime Agency in relation to the exercise by them of their powers with regard to sexual harm prevention orders and interim sexual harm prevention orders.
- s.103(2) - the Secretary of State may, from time to time, revise the guidance issued under subsection (1).
- s.103J(3) - the Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.

¹¹⁹⁶ Commencement: 8 March 2015 as inserted by ASBCPA 2014 s.113 and Sch.5 para.2, SI 2015/373 art.2(a).

3.4.8. Travel Restriction Orders

3.4.8.1. General

What is a TRO?

CJPA 2001 s.33¹¹⁹⁷: Power to make travel restriction orders

- s.33(3) - a travel restriction order is an order that prohibits the offender from leaving the United Kingdom at any time in the [specified] period [...]

Interpretation

CJPA 2001 s.33¹¹⁹⁸: Power to make travel restriction orders

- s.33(6) - in this section “*post-commencement*”–
- (a) except in relation to an offence that is a drug trafficking offence by virtue of an order under section 34(1)(c), means committed after the coming into force of this section; and
 - (b) in relation to an offence that is a drug trafficking offence by virtue of such an order, means committed after the coming into force of that order.
- s.33(7) - references in this section to the offender's release from custody are references to his first release from custody after the imposition of the travel restriction order which is neither–
- (a) a release on bail; nor
 - (b) a temporary release for a fixed period.
- s.33(8) - in this section “*UK passport*” means a United Kingdom passport within the meaning of the Immigration Act 1971 (see section 33(1)).

3.4.8.2. Availability

Availability

CJPA 2001 s.33¹¹⁹⁹: Power to make travel restriction orders

- s.33(1) - this section applies where–
- (a) a person (“the offender”) has been convicted by any court of a post-commencement drug trafficking offence;
 - (b) the court has determined that it would be appropriate to impose a sentence of imprisonment for that offence; and
 - (c) the term of imprisonment which the court considers appropriate is a term of four years or more.

¹¹⁹⁷ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹¹⁹⁸ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹¹⁹⁹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

R. v Alexander [2011] EWCA Crim 89; [2011] 2 Cr. App. R. (S.) 52 (p.297)

For s.33(1)(c) to be triggered, there must be a term of imprisonment of a least four years attaching to a single post-commencement drug-trafficking offence. The section has no application to consecutive sentences adding up to four years or more.

Note: This is in contrast to the approach taken with extended sentences.

3.4.8.3. Duty to consider making a TRO

Duty to consider whether TRO appropriate and give reasons if order not made

CJPA 2001 s.33¹²⁰⁰: Power to make travel restriction orders

- s.33(2) - it shall be the duty of the court, on sentencing the offender–
- (a) to consider whether it would be appropriate for the sentence for the offence to include the making of a travel restriction order in relation to the offender;
 - (b) if the court determines that it is so appropriate, to make such travel restriction order in relation to the offender as the court thinks suitable in all the circumstances (including any other convictions of the offender for post-commencement drug trafficking offences in respect of which the court is also passing sentence); and
 - (c) if the court determines that it is not so appropriate, to state its reasons for not making a travel restriction order.

Meaning of “drug trafficking offence”

CJPA 2001 s.34¹²⁰¹: Meaning of “drug trafficking offence”

- s.34(1) - in section 33 “drug trafficking offence” means any of the following offences (including one committed by aiding, abetting, counselling or procuring)–
- (a) an offence under section 4(2) or (3) of the Misuse of Drugs Act 1971 (c. 38) (production and supply of controlled drugs);
 - (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
 - (c) any such other offence under that Act as may be designated by order made by the Secretary of State;
 - (d) an offence under–
 - (i) section 50(2) or (3) of the Customs and Excise Management Act 1979 (c. 2) (improper importation),
 - (ii) section 68(2) of that Act (exportation), or
 - (iii) section 170 of that Act (fraudulent evasion),in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38);
 - (e) an offence under section 1 of the Criminal Law Act 1977 (c. 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120)

¹²⁰⁰ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰¹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

(N.I. 13)), or in Scotland at common law, of conspiracy to commit any of the offences in paragraphs (a) to (d) above;

- (f) an offence under section 1 of the Criminal Attempts Act 1981 (c. 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any of those offences; and
- (g) an offence under section 19 of the Misuse of Drugs Act 1971 (c. 38) or at common law of inciting another person to commit any of those offences.

s.34(2) - the power to make an order under subsection (1)(c) shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

s.34(3) - an order under subsection (1)(c) may provide, in relation to any offence designated by such an order, that it is to be treated as so designated only–

- (a) for such purposes, and
- (b) in cases where it was committed in such manner or in such circumstances, as may be described in the order.

3.4.8.4. Making the order

When does a TRO take effect?

CJPA 2001 s.33¹²⁰²: Power to make travel restriction orders

- s.33(3) - a travel restriction order [...]
- (a) begins with the offender's release from custody [...]

Minimum term

CJPA 2001 s.33¹²⁰³: Power to make travel restriction orders

- s.33(3) - a travel restriction order is an order that prohibits the offender from leaving the United Kingdom at any time in the period which–
- (a) begins with the offender's release from custody; and
 - (b) continues after that time for such period of not less than two years as may be specified in the order.

Discretion to include requirement to surrender passport

CJPA 2001 s.33¹²⁰⁴: Power to make travel restriction orders

- s.33(4) - a travel restriction order may contain a direction to the offender to deliver up, or cause to be delivered up, to the court any UK passport held by him; and where such a direction is given, the court shall send any passport delivered up in pursuance of the direction to the Secretary of State at such address as the Secretary of State may determine.

¹²⁰² Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰³ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰⁴ Commencement: 1 April 2002, SI 2002/344 art.3(a).

- s.33(5) - where the offender's passport is held by the Secretary of State by reason of the making of any direction contained in a travel restriction order, the Secretary of State (without prejudice to any other power or duty of his to retain the passport)–
- (a) may retain it for so long as the prohibition imposed by the order applies to the offender, and is not for the time being suspended; and
 - (b) shall not return the passport after the prohibition has ceased to apply, or when it is suspended, except where the passport has not expired and an application for its return is made to him by the offender.

The order cannot exclude certain countries

R. v Mee [2004] EWCA Crim 629; [2004] 2 Cr. App. R. (S.) 81 (p.434)

The legislation does not contemplate a TRO that is linked to only certain parts of the world where the drug trade flourishes with its greatest potency. The drug trade is truly international.

Duty to give reasons for the order

R. v Mee [2004] EWCA Crim 629; [2004] 2 Cr. App. R. (S.) 81 (p.434)

[...] [U]nless the exchanges between counsel and the court clearly disclose why the need to make an order arises and, secondly, why a certain period is to be imposed, the judge should give succinct reasons explaining why he is imposing the order and his reasons for the period he imposes. (Newman J, at [17])

3.4.8.5. Revocation and suspension of TRO

Power to revoke or suspend order

CJPA 2001 s.35¹²⁰⁵: Revocation and suspension of a travel restriction order

- s.35(1) - subject to the following provisions of this section, the court by which a travel restriction order has been made in relation to any person under section 33 may–
- (a) on an application made by that person at any time which is–
 - (i) after the end of the minimum period, and
 - (ii) is not within three months after the making of any previous application for the revocation of the prohibition,revoke the prohibition imposed by the order with effect from such date as the court may determine; or
 - (b) on an application made by that person at any time after the making of the order, suspend the prohibition imposed by the order for such period as the court may determine.

¹²⁰⁵ Commencement: 1 April 2002, SI 2002/344 art.3(a).

Revoking the prohibition: Test to apply

CJPA 2001 s.35¹²⁰⁶: Revocation and suspension of a travel restriction order

- s.35(2) - a court to which an application for the revocation of the prohibition imposed on any person by a travel restriction order is made shall not revoke that prohibition unless it considers that it is appropriate to do so in all the circumstances of the case and having regard, in particular, to—
- (a) that person's character;
 - (b) his conduct since the making of the order; and
 - (c) the offences of which he was convicted on the occasion on which the order was made.

Suspending the prohibition: Test to apply

CJPA 2001 s.35¹²⁰⁷: Revocation and suspension of a travel restriction order

- s.35(3) - a court shall not suspend the prohibition imposed on any person by a travel restriction order for any period unless it is satisfied that there are exceptional circumstances, in that person's case, that justify the suspension on compassionate grounds of that prohibition for that period.
- s.35(4) - in making any determination on an application for the suspension of the prohibition imposed on any person by a travel restriction order, a court (in addition to considering the matters mentioned in subsection (3)) shall have regard to—
- (a) that person's character;
 - (b) his conduct since the making of the order;
 - (c) the offences of which he was convicted on the occasion on which the order was made; and
 - (d) any other circumstances of the case that the court considers relevant.

Duty where TRO suspended

CJPA 2001 s.35¹²⁰⁸: Revocation and suspension of a travel restriction order

- s.35(5) - where the prohibition imposed on any person by a travel restriction order is suspended, it shall be the duty of that person—
- (a) to be in the United Kingdom when the period of the suspension ends; and
 - (b) if the order contains a direction under section 33(4), to surrender, before the end of that period, any passport returned or issued to that person, in respect of the suspension, by the Secretary of State;
- and a passport that is required to be surrendered under paragraph (b) shall be surrendered to the Secretary of State in such manner or by being sent to such address as the Secretary of State may direct at the time when he returns or issues it.

¹²⁰⁶ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰⁷ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²⁰⁸ Commencement: 1 April 2002, SI 2002/344 art.3(a).

Effect of suspension of TRO

CJPA 2001 s.35¹²⁰⁹: Revocation and suspension of a travel restriction order

- s.35(6) - where the prohibition imposed on any person by a travel restriction order is suspended for any period under this section, the end of the period of the prohibition imposed by the order shall be treated (except for the purposes of subsection (7)) as postponed (or, if there has been one or more previous suspensions, further postponed) by the length of the period of suspension.

Interpretation

CJPA 2001 s.35¹²¹⁰: Revocation and suspension of a travel restriction order

- s.35(7) - in this section “the minimum period”–
- (a) in the case of a travel restriction order imposing a prohibition for a period of four years or less, means the period of two years beginning at the time when the period of the prohibition began;
 - (b) in the case of a travel restriction order imposing a prohibition of more than four years but less than ten years, means the period of four years beginning at that time; and
 - (c) in any other case, means the period of five years beginning at that time.

3.4.8.6. Breach

Offence: Leaving UK during currency of order

CJPA 2001 s.36¹²¹¹: Offences of contravening orders

- s.36(1) - a person who leaves the United Kingdom at a time when he is prohibited from leaving it by a travel restriction order is guilty of an offence and liable–
- (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

Offence: Not returning to UK at end of suspension of order

CJPA 2001 s.36¹²¹²: Offences of contravening orders

- s.36(2) - a person who is not in the United Kingdom at the end of a period during which a prohibition imposed on him by a travel restriction order has been suspended shall be guilty of an offence and liable–
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

¹²⁰⁹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹⁰ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹¹ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹² Commencement: 1 April 2002, SI 2002/344 art.3(a).

- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

Offence: Failure to surrender passport

CJPA 2001 s.36¹²¹³: Offences of contravening orders

s.36(3) - a person who fails to comply with–

- (a) a direction contained in a travel restriction order to deliver up a passport to a court, or to cause such a passport to be delivered up, or
- (b) any duty imposed on him by section 35(5)(b) to surrender a passport to the Secretary of State,

shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

CJPA 2001 s.36¹²¹⁴: Offences of contravening orders

s.36(4) - this section has effect subject to section 37(3).

CJPA 2001 s.37¹²¹⁵: Saving for powers to remove a person from the United Kingdom

s.37(3) - no person shall be guilty of an offence under section 36 in respect of any act or omission required of him by an obligation imposed in the exercise of a prescribed removal power.

s.37(4) - in this section “a prescribed removal power” means any such power conferred by or under any enactment as–

- (a) consists in a power to order or direct the removal of a person from the United Kingdom; and
- (b) is designated for the purposes of this section by an order made by the Secretary of State.

Travel Restriction Order (Prescribed Removal Powers) Order 2002 (SI 2002/313)

art.1 - this Order may be cited as the Travel Restriction Order (Prescribed Removal Powers) Order 2002 and shall come into force on 1st April 2002

art.2 - each of the powers set out in the Schedule to this Order is designated as a prescribed removal power for the purposes of section 37 of the Criminal Justice and Police Act 2001.

Sch.1 - [a list of statutory provisions designated as prescribed removal powers]

¹²¹³ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹⁴ Commencement: 1 April 2002, SI 2002/344 art.3(a).

¹²¹⁵ Commencement: 19 June 2001 (for the purpose of making regulations or orders), SI 2001/2223 art.2(2)(b). Otherwise in force 1 April 2002, SI 2002/344 art.3(a).

3.4.8.7. Existing powers to remove persons from UK

CJPA 2001 s.37¹²¹⁶: Saving for powers to remove a person from the United Kingdom

- s.37(1) - a travel restriction order made in relation to any person shall not prevent the exercise in relation to that person of any prescribed removal power.
- s.37(2) - a travel restriction order made in relation to any person shall remain in force, notwithstanding the exercise of any prescribed removal power in relation to that person, except in so far as either—
 - (a) the Secretary of State by order otherwise provides; or
 - (b) the travel restriction order is suspended or revoked under section 35.
- s.37(3) - no person shall be guilty of an offence under section 36 in respect of any act or omission required of him by an obligation imposed in the exercise of a prescribed removal power.
- s.37(4) - in this section “*a prescribed removal power*” means any such power conferred by or under any enactment as—
 - (a) consists in a power to order or direct the removal of a person from the United Kingdom; and
 - (b) is designated for the purposes of this section by an order made by the Secretary of State.
- s.37(5) - an order under subsection (2)(a) or (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- s.37(6) - an order under subsection (2)(a)—
 - (a) may make different provision for different cases; and
 - (b) may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
- s.37(7) - references in this section to a person's removal from the United Kingdom include references to his deportation, extradition, repatriation, delivery up or other transfer to a place outside the United Kingdom.

¹²¹⁶ Commencement: 19 June 2001 (for the purpose of making regulations or orders), SI 2001/2223 art.2(2)(b). Otherwise in force 1 April 2002, SI 2002/344 art.3(a).

3.4.9. Forfeiture of licence to sell alcohol

General

LA 2003 s.111¹²¹⁷: Personal licence

s.111(1) - in this Act “*personal licence*” means a licence which—

- (a) is granted by a licensing authority to an individual, and
- (b) authorises that individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence.

s.111(2) - in subsection (1)(b) the reference to an individual supplying alcohol is to him—

- (a) selling alcohol by retail, or
- (b) supplying alcohol by or on behalf of a club to, or to the order of, a member of the club.

LA 2003 s.113¹²¹⁸: Meaning of “relevant offence” and “foreign offence”

s.113(1) - in this Part “*relevant offence*” means an offence listed in Schedule 4.

s.113(2) - the Secretary of State may by order amend that list so as to add, modify or omit any entry.

s.113(3) - in this Part “*foreign offence*” means an offence (other than a relevant offence) under the law of any place outside England and Wales.

LA 2003 Sch.4¹²¹⁹: Personal licence: Relevant offences

Note: The schedule lists the relevant offences for the purposes of s.113. The provisions are not listed in this document.

Power to order forfeiture of licence

LA 2003 s.129¹²²⁰: Forfeiture or suspension of licence on conviction for relevant offence

s.129(1) - this section applies where the holder of a personal licence is convicted of a relevant offence by or before a court in England and Wales.

s.129(2) - the court may—

- (a) order the forfeiture of the licence, or
- (b) order its suspension for a period not exceeding six months.

s.129(3) - in determining whether to make an order under subsection (2), the court may take account of any previous conviction of the holder for a relevant offence.

¹²¹⁷ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

¹²¹⁸ Commencement: Section 113(1) and (3) in force 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1. Section 113(2) in force 16 December 2003, SI 2003/3222 art.2 and Sch.1 para.1.

¹²¹⁹ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

¹²²⁰ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

- s.129(4) - where a court makes an order under this section it may suspend the order pending an appeal against it.
- s.129(5) - subject to subsection (4) and section 130, an order under this section takes effect immediately after it is made.

Appeals

LA 2003 s.130¹²²¹: Powers of appellate court to suspend order under section 129

- s.130(1) - this section applies where—
- (a) a person (“the offender”) is convicted of a relevant offence, and
 - (b) an order is made under section 129 in respect of that conviction (“the section 129 order”).
- s.130(2) - in this section any reference to the offender's sentence includes a reference to the section 129 order and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
- s.130(3) - where the offender—
- (a) appeals to the Crown Court, or
 - (b) appeals or applies for leave to appeal to the Court of Appeal,
- against his conviction or his sentence, the Crown Court or, as the case may be, the Court of Appeal may suspend the section 129 order.
- s.130(4) - where the offender appeals or applies for leave to appeal to the Supreme Court—
- (a) under section 1 of the Administration of Justice Act 1960 (c. 65) from any decision of the High Court which is material to his conviction or sentence, or
 - (b) under section 33 of the Criminal Appeal Act 1968 (c. 19) from any decision of the Court of Appeal which is material to his conviction or sentence,
- the High Court or, as the case may require, the Court of Appeal may suspend the section 129 order.
- s.130(5) - where the offender makes an application in respect of the decision of the court in question under section 111 of the Magistrates' Courts Act 1980 (c. 43) (statement of case by magistrates' court) or section 28 of the Senior Courts Act 1981 (c. 54) (statement of case by Crown Court) the High Court may suspend the section 129 order.
- s.130(6) - where the offender—
- (a) applies to the High Court for a quashing order to remove into the High Court any proceedings of a magistrates' court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
 - (b) applies to the High Court for permission to make such an application,
- the High Court may suspend the section 129 order.

¹²²¹ Commencement: 7 February 2005, SI 2004/2360 art.2(1) and Sch.1 para.1.

- s.130(7) - any power of a court under this section to suspend the section 129 order is a power to do so on such terms as the court thinks fit.
- s.130(8) - where, by virtue of this section, a court suspends the section 129 order it must send notice of the suspension to the relevant licensing authority.
- s.130(9) - where the section 129 order is an order for forfeiture of the licence, an order under this section to suspend that order has effect to reinstate the licence for the period of the suspension.

3.4.10. Restricted premises/sale orders

CYPA 1933 s.12A¹²²²: *Restricted premises orders*

- s.12A(1) - this section applies where a person (“the offender”) is convicted of a tobacco or nicotine offence (“the relevant offence”).
- s.12A(2) - the person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted premises order to be made in respect of the premises in relation to which that offence was committed (“the relevant premises”).
- s.12A(3) - a restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco, cigarette papers or nicotine product to any person.
- s.12A(4) - the prohibition applies to sales whether made—
 - (a) by the offender or any other person, or
 - (b) by means of any machine kept on the premises or any other means.
- s.12A(5) - the order has effect for the period specified in the order, but that period may not exceed one year.
- s.12A(6) - the applicant must, after making reasonable enquiries, give notice of the application to every person appearing to the applicant to be a person affected by it.
- s.12A(7) - the court may make the order if (and only if) it is satisfied that—
 - (a) on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco or nicotine offences in relation to the relevant premises, and
 - (b) the applicant has complied with subsection (6).
- s.12A(8) - persons affected by the application may make representations to the court as to why the order should not be made.
- s.12A(9) - if—
 - (a) a person affected by an application for a restricted premises order was not given notice under subsection (6), and
 - (b) consequently the person had no opportunity to make representations to the court as to why the order should not be made,the person may by complaint apply to the court for an order varying or discharging it.
- s.12A(10) - on an application under subsection (9) the court may, after hearing—
 - (a) that person, and
 - (b) the applicant for the restricted premises order,make such order varying or discharging the restricted premises order as it considers appropriate.

¹²²² Commencement: 1 April 2009, as inserted by CJIA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.37.

s.12A(11) - for the purposes of this section the persons affected by an application for a restricted premises order in respect of any premises are—

- (a) the occupier of the premises, and
- (b) any other person who has an interest in the premises.

CYPA 1933 s.12B¹²²³: Restricted sale orders

s.12B(1) - this section applies where a person (“the offender”) is convicted of a tobacco or nicotine offence (“the relevant offence”).

s.12B(2) - the person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted sale order to be made in respect of the offender.

s.12B(3) - a restricted sale order is an order prohibiting the person to whom it relates—

- (a) from selling any tobacco or nicotine products, cigarette papers or nicotine product to any person,
- (b) from having any management functions in respect of any premises in so far as those functions relate to the sale on the premises of tobacco or nicotine products, cigarette papers or nicotine products to any person,
- (c) from keeping any machine on any premises for the purpose of selling tobacco or nicotine products or permitting any machine to be kept on any premises by any other person for that purpose, and
- (d) from having any management functions in respect of any premises in so far as those functions relate to any machine kept on the premises for the purpose of selling tobacco or nicotine products.

s.12B(4) - the order has effect for the period specified in the order, but that period may not exceed one year.

s.12B(5) - the court may make the order if (and only if) it is satisfied that, on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco or nicotine offences.

s.12B(6) - in this section any reference to a machine is a reference to an automatic machine for the sale of tobacco or nicotine products.

CYPA 1933 s.12C¹²²⁴: Enforcement

s.12C(1) - if—

- (a) a person sells on any premises any tobacco, cigarette papers or nicotine product in contravention of a restricted premises order, and
 - (b) the person knew, or ought reasonably to have known, that the sale was in contravention of the order,
- the person commits an offence.

¹²²³ Commencement: 1 April 2009, as inserted by CJIA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.37.

¹²²⁴ Commencement: 1 April 2009, as inserted by CJIA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.37.

- s.12C(2) - if a person fails to comply with a restricted sale order, the person commits an offence.
- s.12C(3) - it is a defence for a person charged with an offence under subsection (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- s.12C(4) - a person guilty of an offence under this section is liable, on summary conviction, to a fine.
- s.12C(5) - a restricted premises order is a local land charge and in respect of that charge the applicant for the order is the originating authority for the purposes of the Local Land Charges Act 1975.

CYPA 1933 s.12D¹²²⁵: Interpretation

- s.12D(1) - in sections 12A and 12B a “*tobacco or nicotine offence*” means—
- (a) an offence committed under section 7(1) on any premises (which are accordingly “the premises in relation to which the offence is committed”),
 - (b) an offence committed under section 7(2) in respect of an order relating to any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”),
 - (c) an offence committed under section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 in respect of any machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”), or
 - (d) an offence committed under section 92 of the Children and Families Act 2014 on any premises (which are accordingly “the premises in relation to which the offence is committed”).
- s.12D(2) - in sections 12A to 12C the expressions “*tobacco*” and “*cigarette*” have the same meaning as in section 7.
- s.12D(2A) - in sections 12A to 12C “*nicotine product*” means a nicotine product within the meaning of section 92 of the Children and Families Act 2014 the sale of which to persons aged under 18 is for the time being prohibited by regulations under subsection (1) of that section.
- s.12D(3) - in sections 12A and 12B “*notice*” means notice in writing.

¹²²⁵ Commencement: 1 April 2009, as inserted by CJIA 2008 s.143(2), SI 2009/860 art.2(1)(c) subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.37.

3.4.11. Hygiene prohibition order

Food Hygiene (England) Regulations 2013 (SI 2013/2996) reg.7¹²²⁶: Hygiene prohibition orders

- r.7(1) - if —
- (a) a food business operator is convicted of an offence under these Regulations; and
 - (b) the court by or before which the operator is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,
- the court shall by an order impose the appropriate prohibition.
- r.7(2) - the health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely —
- (a) the use for the purposes of the business of any process or treatment;
 - (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
 - (c) the state or condition of any premises or equipment used for the purposes of the business.
- r.7(3) - the appropriate prohibition is—
- (a) in a case falling within sub-paragraph (a) of paragraph (2), a prohibition on the use of the process or treatment for the purposes of the business;
 - (b) in a case falling within sub-paragraph (b) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description; and
 - (c) in a case falling within sub-paragraph (c) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of any food business.
- r.7(4) - if —
- (a) a food business operator is convicted of an offence under these Regulations; and
 - (b) the court by or before which the operator is so convicted thinks it proper to do so in all the circumstances of the case,
- the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.
- r.7(5) - as soon as practicable after the making of an order under paragraph (1) or (4) (in these Regulations referred to as a “*hygiene prohibition order*”), the enforcement authority shall —
- (a) serve a copy of the order on the relevant food business operator; and
 - (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,
- and any person who knowingly contravenes such an order commits an offence.

¹²²⁶ Commencement: 31 December 2013, SI 2013/2996 reg.1

- r.7(6) - a hygiene prohibition order ceases to have effect —
- (a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and
 - (b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.
- r.7(7) - the enforcement authority must issue a certificate under sub-paragraph (a) of paragraph (6) within three days of their being satisfied as mentioned in that sub-paragraph; and on an application by the food business operator for such a certificate, the authority must —
- (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not they are so satisfied; and
 - (b) if they determine that they are not so satisfied, give notice to the food business operator of the reasons for that determination.
- r.7(8) - the court shall give a direction under sub-paragraph (b) of paragraph (6) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made —
- (a) within six months of the making of the hygiene prohibition order; or
 - (b) within three months of the making by the food business operator of a previous application for such a direction.
- r.7(9) - where a magistrates' court makes an order under paragraph (2) of regulation 8 with respect to any food business, paragraph (1) shall apply as if the food business operator had been convicted by the court of an offence under these Regulations.
- r.7(10) - where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 11, paragraph (4) shall apply in relation to that other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator is to be construed accordingly.

3.4.12. Supervision orders (Street Offences Act 1959)

3.4.12.1. Making the order

Offence in respect of which an order may be made

SOA 1959 s.1¹²²⁷: Loitering or soliciting for purposes of prostitution

- s.1(1) - it shall be an offence for a person aged 18 or over (whether male or female) persistently to loiter or solicit in a street or public place for the purpose of prostitution.

Punishment

SOA 1959 s.1¹²²⁸: Loitering or soliciting for purposes of prostitution

- s.1(2) - a person guilty of an offence under this section shall be liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale, or, for an offence committed after a previous conviction, to a fine of an amount not exceeding level 3 on that scale.

Power to order

SOA 1959 s.1¹²²⁹: Loitering or soliciting for purposes of prostitution

- s.1(2A) - the court may deal with a person convicted of an offence under this section by making an order requiring the offender to attend three meetings with the person for the time being specified in the order ("the supervisor") or with such other person as the supervisor may direct.

Purpose of the order

SOA 1959 s.1¹²³⁰: Loitering or soliciting for purposes of prostitution

- s.1(2B) - the purpose of an order under subsection (2A) is to assist the offender, through attendance at those meetings, to—
- (a) address the causes of the conduct constituting the offence, and
 - (b) find ways to cease engaging in such conduct in the future.

Order already in place

SOA 1959 s.1¹²³¹: Loitering or soliciting for purposes of prostitution

- s.1(2C) - where the court is dealing with an offender who is already subject to an order under subsection (2A), the court may not make a further order under that subsection unless it first revokes the existing order.

¹²²⁷ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²²⁸ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²²⁹ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³⁰ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³¹ Commencement: 16 August 1959, SOA 1959 s.5(4).

Cannot impose another penalty

SOA 1959 s.1¹²³²: Loitering or soliciting for purposes of prostitution

s.1(2D) - if the court makes an order under subsection (2A) it may not impose any other penalty in respect of the offence.

Interpretation

SOA 1959 s.1¹²³³: Loitering or soliciting for purposes of prostitution

s.1(4) - for the purposes of this section —

- (a) conduct is persistent if it takes place on two or more occasions in any period of three months;
- (b) any reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute;
- (c) “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street (as hereinbefore defined), and any ground adjoining and open to a street, shall be treated as forming part of the street.

SOA 1959 s.1A¹²³⁴: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

Requirement for “suitable” supervisor

SOA 1959 s.1A¹²³⁵: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(2) - the order may not be made unless a suitable person has agreed to act as supervisor in relation to the offender.

s.1A(3) - in subsection (2) “suitable person” means a person appearing to the court to have appropriate qualifications or experience for helping the offender to make the best use of the meetings for the purpose mentioned in section 1(2B).

¹²³² Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³³ Commencement: 16 August 1959, SOA 1959 s.5(4).

¹²³⁴ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²³⁵ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Contents of the order

SOA 1959 s.1A¹²³⁶: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(4) - the order must specify—
- (a) a date (not more than six months after the date of the order) by which the meetings required by the order must take place;
 - (b) the local justice area in which the offender resides or will reside while the order is in force.

Duties of the supervisor

SOA 1959 s.1A¹²³⁷: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(5) - the supervisor must determine—
- (a) the times of the meetings required by the order and their duration, and
 - (b) the places at which they are held.
- s.1A(6) - the supervisor must—
- (a) make any arrangements that are necessary to enable the meetings required by the order to take place; and
 - (b) once the order has been complied with, notify the court which made the order of that fact.

Duties of the court

SOA 1959 s.1A¹²³⁸: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(7) - the court making the order must provide copies of it to the offender and the supervisor.
- s.1A(8) - subsection (9) applies where—
- (a) the order is made by the Crown Court, or
 - (b) the order is made by a magistrates' court but specifies a local justice area for which the court making the order does not act.
- s.1A(9) - the court must provide to a magistrates' court acting for the local justice area specified in the order—
- (a) a copy of the order, and
 - (b) any documents and information relating to the case that it considers likely to be of assistance to that court in the exercise of any functions in relation to the order.

¹²³⁶ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²³⁷ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²³⁸ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Cessation of the order

SOA 1959 s.1A¹²³⁹: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(10) - the order ceases to be in force (unless revoked earlier under section 1(2C) or under the Schedule to this Act)—
- (a) at the end of the day on which the supervisor notifies the court that the order has been complied with, or
 - (b) at the end of the day specified in the order under subsection (4)(a),
- whichever first occurs.

3.4.12.2. Revocation and breach of orders

SOA 1959 s.1A¹²⁴⁰: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

- para.1(1) - this Schedule applies to an order made under section 1(2A).
- para.1(2) - in this Schedule, in relation to the order—
- “the offender”* means the person in respect of whom the order was made;
 - “the supervisor”* means the person for the time being specified as the supervisor in the order.
- para.1(3) - for the purposes of this Schedule, the offender fails to comply with the order if the offender fails to attend any of the three meetings mentioned in section 1(2A) at the time and place determined by the supervisor.

Breach of order

SOA 1959 s.1A¹²⁴¹: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

¹²³⁹ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²⁴⁰ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

¹²⁴¹ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

- para.2(1) - if the supervisor is of the opinion that the offender has failed without reasonable excuse to comply with the order, the supervisor must cause an information to be laid before a justice of the peace in respect of the failure.
- para.2(2) - if it appears on information to the justice of the peace that the offender has failed to comply with the order, the justice may issue a summons requiring the offender to appear at the place and time specified in it.
- para.2(3) - any such summons must direct the offender to appear before a magistrates' court acting in the relevant local justice area.
- para.2(4) - in sub-paragraph (3) "*the relevant local justice area*" means—
- (a) the local justice area for the time being specified in the order, or
 - (b) if it appears to the justice of the peace that the offender resides in another local justice area, that local justice area.
- para.3(1) - this paragraph applies where the offender does not appear in answer to a summons issued under paragraph 2.
- para.3(2) - the magistrates' court may issue a warrant for the arrest of the offender.
- para.3(3) - any such warrant must require the offender to be brought before a magistrates' court acting in the relevant local justice area.
- para.3(4) - in sub-paragraph (3) "*the relevant local justice area*" means—
- (a) the local justice area for the time being specified in the order, or
 - (b) if it appears to the magistrates' court that the offender resides in another local justice area, that local justice area.
- para.4(1) - this paragraph applies where—
- (a) the offender appears or is brought before a magistrates' court in accordance with this Part of this Schedule, and
 - (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the order.
- para.4(2) - the court—
- (a) must revoke the order (if it remains in force), and
 - (b) may deal with the offender in respect of the failure by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with the offender if the offender had just been convicted by it of the offence.
- para.4(3) - in dealing with an offender under sub-paragraph (2)(b), the court must take into account the extent to which the offender has complied with the order.
- para.4(4) - a person sentenced under sub-paragraph (2)(b) may appeal to the Crown Court against the sentence.

Amendment of order

SOA 1959 s.1A¹²⁴²: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

para.5(1) - where the supervisor is unable to continue acting in that capacity, the supervisor, a constable or the offender may apply to the relevant magistrates' court to amend the order by specifying a different person to act as supervisor.

para.5(2) - where the court is satisfied that the supervisor is unable to continue acting, the court must—

- (a) amend the order by specifying a different person to act as supervisor, or
- (b) if no such person is available, revoke the order.

para.5(3) - the person specified to act as supervisor must be a suitable person (within the meaning given by section 1A(3)).

para.5(4) - in this paragraph "*the relevant magistrates' court*" means—a magistrates' court acting in the relevant local justice area.

para.5(5) - in sub-paragraph (4) "*the relevant local justice area*" means—

- (a) the local justice area for the time being specified in the order, or
- (b) if the offender resides in another local justice area, that local justice area.

para.6(1) - where a court revokes an order under paragraph 5(2)(b), it may deal with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with the offender if the offender had just been convicted by it of the offence (other than by making an order under section 1(2A)).

para.6(2) - in dealing with an offender under sub-paragraph (1), the court must take into account the extent to which the offender has complied with the order.

para.6(3) - a person sentenced under sub-paragraph (1) may appeal to the Crown Court against the sentence.

para.7(1) - the offender or the supervisor may apply to the relevant magistrates' court to amend the order by substituting another local justice area for the area specified in the order.

para.7(2) - an application under sub-paragraph (1) may only be made if the offender resides or will reside in the other local justice area.

para.7(3) - if the application is made by the supervisor, the relevant magistrates' court must amend the order by substituting the other local justice area for the area specified in the order.

¹²⁴² Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

- para.7(4) - if the application is made by the offender, the relevant magistrates' court may amend the order by substituting the other local justice area for the area specified in the order.
- para.7(5) - Sub-paragraphs (4) and (5) of paragraph 5 apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- para.8(1) - where the relevant magistrates' court proposes to exercise its powers under paragraph 5, otherwise than on the application of the offender, it must summon the offender to appear before the court and, if the offender does not appear in answer to the summons, may issue a warrant for the arrest of the offender.
- para.8(2) - an order may not be amended under this Part of this Schedule while an appeal against the order is pending.

Detention and remand

SOA 1959 s.1A¹²⁴³: Orders under section 1(2A): supplementary

- s.1A(1) - this section applies to an order under section 1(2A).
- s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

- para.9(1) - this paragraph applies where the offender is arrested in pursuance of a warrant under this Schedule and cannot be brought immediately before the court before which the warrant directs him to be brought ("the appropriate court").
- para.9(2) - the person in whose custody the offender is must, as soon as practicable and in any event before the end of the period of 72 hours beginning with the time of the arrest, bring the offender before any magistrates' court.
- para.9(3) - that person may make arrangements for the offender to be detained until brought before the court.
- para.9(5) - a person who is detained in pursuance of arrangements made under sub-paragraph (3) is deemed to be in legal custody.
- para.10(1) - this paragraph applies where the court before which an offender is brought under paragraph 9(2) is not the appropriate court (within the meaning of paragraph 9).
- para.10(2) - the alternative court may direct that the offender is to be released forthwith or remand him to appear before the appropriate court.
- para.10(3) - for the purposes of sub-paragraph (2), section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) applies as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.
- para.10(4) - any power to remand the offender in custody which is conferred by section 128 of the Magistrates' Court Act 1980 (as modified by sub-paragraph (3)) is to be taken to be a power to remand the offender to a prison.

¹²⁴³ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Adjournments

SOA 1959 s.1A¹²⁴⁴: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

para.11(1) - this paragraph applies to any hearing relating to an offender held by a magistrates' court in any proceedings under this Schedule.

para.11(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.11(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.11(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, must not resume the hearing unless it is satisfied that the offender and, where appropriate, the supervisor have had adequate notice of the time and place for the resumed hearing.

para.11(5) - the powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

para.11(6) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

¹²⁴⁴ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3).

Notification

SOA 1959 s.1A¹²⁴⁵: Orders under section 1(2A): supplementary

s.1A(1) - this section applies to an order under section 1(2A).

s.1A(11) - the Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.

SOA 1959 Sch.1: Orders under s.1(2A): Breach, amendment etc.

para.12(1) - this paragraph applies where a court revokes or amends an order under any provision of this Schedule.

para.12(2) - the proper officer must—

- (a) provide copies of the revoking or amending order to the offender and the supervisor, and
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to a magistrates' court acting for that area.

para.12(3) - if the court that revokes or amends the order is a magistrates' court acting in a local justice area other than the area specified in the order, the proper officer must provide a copy of the revoking or amending order to a magistrates' court acting in the local justice area specified in the order.

para.12(4) - where the proper officer acts under sub-paragraph (2)(b), the officer must also provide to the court such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of any function in relation to the order.

para.12(5) - in this paragraph "*proper officer*" means the designated officer for the court.

¹²⁴⁵ Commencement: 1 April 2010, as inserted by Policing and Crime Act 2009 s.17(3), SI 2010/507 art.5(d) and 6.

3.4.13. Female Genital Mutilation Protection Orders

3.4.13.1. General

FGMA 2003 s.5A¹²⁴⁶: Female genital mutilation protection orders

s.5A(1) - Schedule 2 provides for the making of female genital mutilation protection orders.

s.5A(2) - in that Schedule—

- (a) Part 1 makes provision about powers of courts in England and Wales to make female genital mutilation protection orders;
- (b) Part 2 makes provision about powers of courts in Northern Ireland to make such orders.”

3.4.13.2. Power to order: Criminal proceedings

FGMA 2003 Sch.2 para.3¹²⁴⁷: Power to make order in criminal proceedings

para.3 - the court before which there are criminal proceedings in England and Wales for a genital mutilation offence may make an FGM protection order (without an application being made to it) if—

- (a) the court considers that an FGM protection order should be made to protect a girl (whether or not the victim of the offence in relation to the criminal proceedings), and
- (b) a person who would be a respondent to any proceedings for an FGM protection order is a defendant in the criminal proceedings.

FGMA 2003 Sch.2 para.1¹²⁴⁸: Power to make FGM protection order

para.1(1) - the court in England and Wales may make an order (an “FGM protection order”) for the purposes of—

- (a) protecting a girl against the commission of a genital mutilation offence, or
- (b) protecting a girl against whom any such offence has been committed.

para.1(2) - in deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court must have regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected.

para.1(3) - An FGM protection order may contain—

- (a) such prohibitions, restrictions or requirements, and
- (b) such other terms,

as the court considers appropriate for the purposes of the order.

¹²⁴⁶ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁴⁷ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁴⁸ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

para.1(4) - the terms of an FGM protection order may, in particular, relate to—

- (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
- (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who commit or attempt to commit, or may commit or attempt to commit, a genital mutilation offence against a girl;
- (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.

para.1(5) - for the purposes of sub-paragraph (4) examples of involvement in other respects are—

- (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to commit, or attempt to commit, a genital mutilation offence against a girl;
- (b) conspiring to commit, or to attempt to commit, such an offence.

para.1(6) - an FGM protection order may be made for a specified period or until varied or discharged (see paragraph 6).

3.4.13.3. Power to order: Ex parte orders

FGMA 2003 Sch.2 para.5¹²⁴⁹: Ex parte orders

para.5(1) - the court may, in any case where it is just and convenient to do so, make an FGM protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

para.5(2) - in deciding whether to exercise its powers under sub-paragraph (1), the court must have regard to all the circumstances including—

- (a) the risk to the girl, or to another person, of becoming a victim of a genital mutilation offence if the order is not made immediately,
- (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately, and
- (c) whether there is reason to believe that—
 - (i) the respondent is aware of the proceedings but is deliberately evading service, and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the girl to be protected or (if different) an applicant.

para.5(3) - the court must give the respondent an opportunity to make representations about an order made by virtue of sub-paragraph (1).

para.5(4) - the opportunity must be—

- (a) as soon as just and convenient, and
- (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

¹²⁴⁹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

3.4.13.4. Variation and discharge of orders

FGMA 2003 Sch.2 para.6¹²⁵⁰: Variation and discharge of orders

para.6(1) - the court may vary or discharge an FGM protection order on an application by—

- (a) any party to the proceedings for the order,
- (b) the girl being protected by the order (if not a party to the proceedings for the order), or
- (c) any person affected by the order.

para.6(2) - in the case of an order made in criminal proceedings under paragraph 3, the reference in sub-paragraph (1)(a) to a party to the proceedings for the order is to be read as a reference to the prosecution and the defendant.

para.6(3) - in addition, the court may vary or discharge an FGM protection order made by virtue of paragraph 2(1)(b) or 3 even though no application under sub-paragraph (1) above has been made to the court.

para.6(4) - paragraph 5 applies to a variation of an FGM protection order as it applies to the making of such an order (and references in that paragraph to the making of an FGM protection order are to be read accordingly).

3.4.13.5. Breach

Offence

FGMA 2003 Sch.2 para.4¹²⁵¹: Offence of breaching order

para.4(1) - a person who without reasonable excuse does anything that the person is prohibited from doing by an FGM protection order is guilty of an offence.

para.4(2) - in the case of an FGM protection order made by virtue of paragraph 5(1), a person can be guilty of an offence under this paragraph only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

para.4(3) - where a person is convicted of an offence under this paragraph in respect of any conduct, the conduct is not punishable as a contempt of court.

para.4(4) - a person cannot be convicted of an offence under this paragraph in respect of any conduct which has been punished as a contempt of court.

para.4(5) - a person guilty of an offence under this paragraph is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

¹²⁵⁰ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵¹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

para.4(6) - a reference in any enactment to proceedings under this Part of this Schedule, or to an order under this Part of this Schedule, does not include a reference to proceedings for an offence under this paragraph or to an order made in proceedings for such an offence.

para.4(7) - “*Enactment*” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

Arrest and remand for suspected breach

FGMA 2003 Sch.2 para.7¹²⁵²: Arrest under warrant

para.7(1) - an interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with an FGM protection order or is otherwise in contempt of court in relation to such an order.

para.7(2) - the relevant judge must not issue a warrant on an application under sub-paragraph (1) unless—

- (a) the application is substantiated on oath, and
- (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.

para.7(3) - in this paragraph “*interested party*”, in relation to an FGM protection order, means—

- (a) the girl being protected by the order,
- (b) (if a different person) the person who applied for the order, or
- (c) any other person;

but no application may be made under sub-paragraph (1) by a person falling within paragraph (c) without leave of the relevant judge.

FGMA 2003 Sch.2 para.8¹²⁵³: Remand: general

para.8(1) - the court before which an arrested person is brought by virtue of a warrant under paragraph 7 may, if the matter is not then disposed of immediately, remand the person concerned.

para.8(2) - paragraphs 9 to 14 contain further provision about the powers of a court to remand under this paragraph.

para.8(3) - sub-paragraph (4) applies if a person remanded under this paragraph is granted bail under paragraphs 10 to 14.

para.8(4) - the person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

¹²⁵² Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵³ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

FGMA 2003 Sch.2 para.9¹²⁵⁴: Remand: medical examination and report

- para.9(1) - any power to remand a person under paragraph 8(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.
- para.9(2) - if such a power is so exercised, the adjournment must not be for more than four weeks at a time unless the relevant judge remands the accused in custody.
- para.9(3) - if the relevant judge remands the accused in custody, the adjournment must not be for more than three weeks at a time.
- para.9(4) - sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application under paragraph 7(1) is suffering from mental disorder within the meaning of the Mental Health Act 1983.
- para.9(5) - the relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

FGMA 2003 Sch.2 para.10¹²⁵⁵: Remand: further provision

- para.10(1) - where a court has power to remand a person under paragraph 8, the court may remand the person in custody or on bail.
- para.10(2) - if remanded in custody, the person is to be committed to custody to be brought before the court—
- (a) at the end of the period of remand, or
 - (b) at such earlier time as the court may require.
- para.10(3) - the court may remand a person on bail—
- (a) by taking from the person a recognizance (with or without sureties) conditioned as provided in paragraph 11, or
 - (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 14 and, in the meantime, committing the person to custody as mentioned in sub-paragraph (2) above.
- para.10(4) - where a person is brought before the court after remand the court may further remand the person.
- para.10(5) - in this paragraph and in paragraphs 11 to 14, references to “the court” includes a reference to a judge of the court or, in the case of proceedings in a magistrates’ court, a justice of the peace.

¹²⁵⁴ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵⁵ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

FGMA 2003 Sch.2 para.11¹²⁵⁶

para.11(1) - where a person is remanded on bail, the court may direct that the person's recognizance be conditioned for his or her appearance—

- (a) before the court at the end of the period of remand, or
- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

para.11(2) - where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1), the fixing of any time for the person next to appear is to be treated as a remand.

para.11(3) - nothing in this paragraph deprives the court of power at any subsequent hearing to remand a person afresh.

FGMA 2003 Sch.2 para.12¹²⁵⁷

para.12(1) - the court may not remand a person for a period exceeding 8 clear days unless—

- (a) the court adjourns a case under paragraph 9(1), or
- (b) the person is remanded on bail and both that person and the other party to the proceedings (or, in the case of criminal proceedings, the prosecution) consent.

para.12(2) - if sub-paragraph (1)(a) applies, the person may be remanded for the period of the adjournment.

para.12(3) - where the court has power to remand a person in custody, the person may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.

FGMA 2003 Sch.2 para.13¹²⁵⁸

para.13(1) - if the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear before the court at the end of the period of remand, the court may further remand the person in his or her absence.

para.13(2) - the power in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties to a later time.

para.13(3) - where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may, in the person's absence, enlarge the person's recognizance and those of any sureties for the person to a later time.

para.13(4) - the enlargement of a person's recognizance is to be treated as a further remand.

para.13(5) - paragraph 12(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

¹²⁵⁶ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵⁷ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁵⁸ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

FGMA 2003 Sch.2 para.14¹²⁵⁹

para.14(1) - this paragraph applies where under paragraph 10(3)(b) the court fixes the amount in which the principal and the sureties (if any) are to be bound.

para.14(2) - the recognizance may afterwards be taken by a person prescribed by rules of court (with the same consequences as if it had been entered into before the court).

FGMA 2003 Sch.2 para.15¹²⁶⁰: Contempt proceedings

para.15 - the powers of the court in relation to contempt of court arising out of a person's failure to comply with an FGM protection order, or otherwise in connection with such an order, may be exercised by the relevant judge.

3.4.13.6. Effect of FGM protection order on other powers of the court

FGMA 2003 Sch.2 para.16¹²⁶¹: Other protection or assistance against female genital mutilation

para.16(1) - nothing in this Part of this Schedule affects any other protection or assistance available to a girl who is or may become the victim of a genital mutilation offence.

para.16(2) - in particular, it does not affect—

- (a) the inherent jurisdiction of the High Court;
- (b) any criminal liability;
- (c) any civil remedies under the Protection from Harassment Act 1997;
- (d) any right to an occupation order or a non-molestation order under Part 4 of the Family Law Act 1996;
- (e) any right to a forced marriage protection order under Part 4A of that Act;
- (f) any protection or assistance under the Children Act 1989;
- (g) any claim in tort.

3.4.13.7. Interpretation of Sch.2 Part 1

FGMA 2003 Sch.2 para.17¹²⁶²: Interpretation

para.17(1) - in this Part of this Schedule—

“the court”, except as provided in sub-paragraph (2), means the High Court, or the family court, in England and Wales;

“FGM protection order” means an order under paragraph 1;

“genital mutilation offence” means an offence under section 1, 2 or 3;

¹²⁵⁹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁶⁰ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁶¹ Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

¹²⁶² Commencement: 17 July 2015, SI 2015/1428 reg.2(a).

“the relevant judge”, in relation to an FGM protection order, means—

- (a) where the order was made by the High Court, a judge of that court;
- (b) where the order was made by the family court, a judge of that court;
- (c) where the order was made by a court in criminal proceedings under paragraph 3—
 - (i) a judge of that court, or
 - (ii) a judge of the High Court or of the family court.

para.17(2) - where the power to make an FGM protection order is exercisable by a court in criminal proceedings under paragraph 3, references in this Part of this Schedule to *“the court”* (other than in paragraph 2) are to be read as references to that court.

para.17(3) - in paragraph (c)(i) of the definition of *“relevant judge”* in sub-paragraph (1), the reference to a judge of the court that made the order includes, in the case of criminal proceedings in a magistrates’ court, a reference to a justice of the peace.

3.4.14. Slavery and trafficking prevention orders

3.4.14.1. General

Note: There is a power to make a slavery and trafficking prevention order on application, however as that order is not made in relation to a sentencing hearing, the details are not included in this document. See MSA 215 s.15 for details.

What is a slavery and trafficking prevention order?

MSA 2015 s.17¹²⁶³: Effect of slavery and trafficking prevention orders

s.17(1) - a slavery and trafficking prevention order is an order prohibiting the defendant from doing anything described in the order.

Interpretation etc.

MSA 2015 s.14¹²⁶⁴: Slavery and trafficking prevention orders on sentencing

s.14(3) - a “slavery or human trafficking offence” means an offence listed in Schedule 1.

s.14(5) - for the purposes of this section, convictions and findings include those taking place before this section comes into force.

3.4.14.2. Making the order

Availability

MSA 2015 s.14¹²⁶⁵: Slavery and trafficking prevention orders on sentencing

s.14(1) - a court may make a slavery and trafficking prevention order against a person (“the defendant”) where it deals with the defendant in respect of—

- (a) a conviction for a slavery or human trafficking offence,
- (b) a finding that the defendant is not guilty of a slavery or human trafficking offence by reason of insanity, or
- (c) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of a slavery or human trafficking offence.

Trigger offences

MSA 2015 Sch.1¹²⁶⁶: Slavery and Human Trafficking Offences

1 Nationality, Immigration and Asylum Act 2002 (c. 41)
 An offence under section 145 of the Nationality, Immigration and Asylum Act 2002 (trafficking for prostitution).

¹²⁶³ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(g).

- 2 Sexual Offences Act 2003 (c. 42)
(1) An offence under section 57, 58, 58A, 59 or 59A of the Sexual Offences Act 2003 (trafficking for sexual exploitation).
(2) An offence under section 62 of that Act (committing offence with intent to commit relevant sexual offence), where the relevant sexual offence the person in question intended to commit was an offence under section 57, 58, 58A, 59 or 59A of that Act.
- 3 Criminal Justice (Scotland) Act 2003 (asp 7)
An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc).
- 4 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)
An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation).
- 5 Coroners and Justice Act 2009 (c. 25)
An offence under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour).
- 6 Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)
An offence under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (slavery, servitude and forced or compulsory labour).
- 7 Modern Slavery Act 2015 (c. 30)
An offence under section 1, 2 or 4 of this Act.
- 8 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.))
An offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude and forced or compulsory labour; human trafficking).
- 9 Ancillary offences
(1) An offence of attempting or conspiring to commit an offence listed in this Schedule.
(2) An offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence listed in this Schedule.
(3) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence listed in this Schedule.

Power of Secretary of State to amend Schedule 1

MSA 2015 s.14¹²⁶⁷: Slavery and trafficking prevention orders on sentencing

s.14(4) - the Secretary of State may by regulations amend Schedule 1.

¹²⁶⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

Test to apply

MSA 2015 s.14¹²⁶⁸: Slavery and trafficking prevention orders on sentencing

- s.14(2) - the court may make the order only if it is satisfied that—
- (a) there is a risk that the defendant may commit a slavery or human trafficking offence, and
 - (b) it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.

3.4.14.3. Contents of the order

Test for imposing prohibitions under the order

MSA 2015 s.17¹²⁶⁹: Effect of slavery and trafficking prevention orders

- s.17(2) - the only prohibitions that may be included in the order are those which the court is satisfied are necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence.

Prohibitions

MSA 2015 s.17¹²⁷⁰: Effect of slavery and trafficking prevention orders

- s.17(3) - the order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom.

MSA 2015 s.18¹²⁷¹: Prohibitions on foreign travel

- s.18(2) - a “prohibition on foreign travel” means—
- (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
 - (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - (c) a prohibition on travelling to any country outside the United Kingdom.
- s.18(4) - a slavery and trafficking prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant's passports at a police station specified in the order—
- (a) on or before the date when the prohibition takes effect, or
 - (b) within a period specified in the order.

¹²⁶⁸ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁶⁹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁰ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷¹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- s.18(5) - any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a slavery and trafficking prevention order containing a prohibition within subsection (2)(c).
- s.18(6) - subsection (5) does not apply in relation to—
- (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

MSA 2015 s.19¹²⁷²: Requirement to provide name and address

- s.19(1) - a slavery and trafficking prevention order may (as well as imposing prohibitions on the defendant) require the defendant to comply with subsections (3) to (6).
- s.19(2) - it may do so only if the court is satisfied that the requirement is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed a slavery or human trafficking offence.
- s.19(3) - before the end of the period of 3 days beginning with the day on which a slavery and trafficking prevention order requiring the defendant to comply with subsections (3) to (6) is first served the defendant must, in the way specified in the order, notify the person specified in the order of the relevant matters.
- s.19(4) - the relevant matters are—
- (a) the defendant's name and, where the defendant uses one or more other names, each of those names, and
 - (b) the defendant's home address.
- s.19(5) - if while the defendant is subject to the order the defendant—
- (a) uses a name which has not been notified under the order, or
 - (b) changes home address,
- the defendant must, in the way specified in the order, notify the person specified in the order of the new name or the new home address.
- s.19(6) - the notification must be given before the end of the period of 3 days beginning with the day on which the defendant uses the name or changes home address.
- s.19(7) - where the order requires the defendant to notify the Director General of the National Crime Agency or an immigration officer, the Director General or the officer must give details of any notification to the chief officer of police for each relevant police area.
- s.19(8) - “Relevant police area” means—
- (a) where the defendant notifies a new name, the police area where the defendant lives;

¹²⁷² Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- (b) where the defendant notifies a change of home address, the police area where the defendant lives and (if different) the police area where the defendant lived before the change of home address.

Length of the order

MSA 2015 s.17¹²⁷³: Effect of slavery and trafficking prevention orders

- s.17(4) - subject to section 18(1), a prohibition contained in a slavery and trafficking prevention order has effect—
 - (a) for a fixed period, specified in the order, of at least 5 years, or
 - (b) until further order.
- s.17(5) - a slavery and trafficking prevention order—
 - (a) may specify that some of its prohibitions have effect until further order and some for a fixed period;
 - (b) may specify different periods for different prohibitions.

MSA 2015 s.18¹²⁷⁴: Prohibitions on foreign travel

- s.18(1) - a prohibition on foreign travel contained in a slavery and trafficking prevention order must be for a fixed period of not more than 5 years.
- s.18(3) - subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 20.

Court imposes order on defendant already subject to an order

MSA 2015 s.17¹²⁷⁵: Effect of slavery and trafficking prevention orders

- s.17(6) - if a court makes a slavery and trafficking prevention order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

3.4.14.4. Variation, renewal, discharge

Interpretation

MSA 2015 s.20¹²⁷⁶: Variation, renewal and discharge

- s.20(10) - in this section “the appropriate court” means—
 - (a) where the Crown Court or the Court of Appeal made the slavery and trafficking prevention order, the Crown Court;
 - (b) where an adult magistrates' court made the order—
 - (i) that court,

¹²⁷³ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- (ii) an adult magistrates' court for the area in which the defendant lives, or
 - (iii) where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area;
- (c) where a youth court made the order and the defendant is under 18—
 - (i) that court,
 - (ii) a youth court for the area in which the defendant lives, or
 - (iii) where the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer's police area;
- (d) where a youth court made the order and the defendant is 18 or over—
 - (i) an adult magistrates' court for the area in which the defendant lives, or
 - (ii) where the application is made by a chief officer of police, any adult magistrates' court acting for a local justice area that includes any part of the chief officer's police area.

Who may apply?

MSA 2015 s.20¹²⁷⁷: Variation, renewal and discharge

- s.20(1) - a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a slavery and trafficking prevention order.
- s.20(2) - the persons are—
- (a) the defendant;
 - (b) the chief officer of police for the area in which the defendant lives;
 - (c) a chief officer of police who believes that the defendant is in, or is intending to come to, that officer's police area;
 - (d) where the order was made on an application under section 15 by a chief officer of police, that officer;
 - (e) where the order was made on an application under section 15 by an immigration officer, an immigration officer;
 - (f) where the order was made on an application under section 15 by the Director General of the National Crime Agency ("the Director General"), the Director General.

Making the application

MSA 2015 s.20¹²⁷⁸: Variation, renewal and discharge

- s.20(8) - an application under this section may be made—
- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
 - (b) in any other case, by complaint.

¹²⁷⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁷⁸ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- s.20(9) - where an immigration officer or the Director General makes an application under this section, the officer or the Director General must give notice of the application to the chief officer of police for—
- (a) the police area where the defendant lives, or
 - (b) a police area which the immigration officer or the Director General believes the defendant is in or is intending to come to.

Court's powers

MSA 2015 s.20¹²⁷⁹: Variation, renewal and discharge

- s.20(3) - on the application the court, after hearing—
- (a) the person making the application, and
 - (b) the other persons mentioned in subsection (2) (if they wish to be heard), may make any order varying, renewing or discharging the slavery and trafficking prevention order that the court considers appropriate.

Test to apply

MSA 2015 s.20¹²⁸⁰: Variation, renewal and discharge

- s.20(4) - an order may be renewed, or varied so as to impose additional prohibitions on the defendant or require the defendant to comply with section 19(3) to (6), only if the court is satisfied that—
- (a) there is a risk that the defendant may commit a slavery or human trafficking offence, and
 - (b) it is necessary to renew or vary the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendant committed such an offence.

Extent of renewed or varied order

MSA 2015 s.20¹²⁸¹: Variation, renewal and discharge

- s.20(5) - any renewed or varied order—
- (a) may contain only those prohibitions which the court is satisfied are necessary for that purpose,
 - (b) may require the defendant to comply with section 19(3) to (6) only if the court is satisfied that the requirement is necessary for that purpose.

¹²⁷⁹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸⁰ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸¹ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

Limit on discharging orders

MSA 2015 s.20¹²⁸²: Variation, renewal and discharge

- s.20(6) - the court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of—
- (a) the defendant and the chief officer of police for the area in which the defendant lives, or
 - (b) where the application is made by a chief officer of police, the defendant and that chief officer.
- s.20(7) - subsection (6) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

3.4.14.5. Interim orders

MSA 2015 s.21¹²⁸³: Interim slavery and trafficking prevention orders

- s.21(1) - this section applies where an application under section 15 (“the main application”) has not been determined.
- s.21(2) - an application for an interim slavery and trafficking prevention order—
- (a) may be made by the complaint by which the main application is made, or
 - (b) if the main application has been made, may be made by the person who has made that application, by complaint to the court to which that application has been made.
- s.21(3) - the court may, if it considers it just to do so, make an interim slavery and trafficking prevention order.
- s.21(4) - an interim slavery and trafficking prevention order is an order which prohibits the defendant from doing anything described in the order.
- s.21(5) - the order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom.
- s.21(6) - the order may (as well as imposing prohibitions on the defendant) require the defendant to comply with subsections (3) to (6) of section 19.
- If it does, those subsections apply as if references to a slavery and trafficking prevention order were to an interim slavery and trafficking prevention order.
- s.21(7) - the order—
- (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.

¹²⁸² Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸³ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

- s.21(8) - the applicant or the defendant may by complaint apply to the court that made the interim slavery and trafficking prevention order for the order to be varied, renewed or discharged.

3.4.14.6. Appeals

Order (and interim orders) appealable as if it were a sentence

MSA 2015 s.22¹²⁸⁴: Appeals

- s.22(1) - a defendant may appeal against the making of a slavery and trafficking prevention order—
- (a) where the order was made under section 14(1)(a), as if the order were a sentence passed on the defendant for the offence;
 - (b) where the order was made under section 14(1)(b) or (c), as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for the offence;
 - (c) where the order was made on an application under section 15, to the Crown Court.
- s.22(2) - a defendant may appeal to the Crown Court against the making of an interim slavery and trafficking prevention order.

Variations, renewals and discharges

MSA 2015 s.22¹²⁸⁵: Appeals

- s.22(3) - a defendant may appeal against the making of an order under section 20, or the refusal to make such an order—
- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
 - (b) in any other case, to the Crown Court.

Powers on appeal

MSA 2015 s.22¹²⁸⁶: Appeals

- s.22(4) - on an appeal under subsection (1)(c), (2) or (3)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

¹²⁸⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

¹²⁸⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

Effect of orders made on appeal

MSA 2015 s.22¹²⁸⁷: Appeals

- s.22(5) - any order made by the Crown Court on an appeal under subsection (1)(c) or (2) is for the purposes of section 20(10) or 21(8) (respectively) to be treated as if it were an order of the court from which the appeal was brought.
- s.22(6) - subsection (5) does not apply to an order directing that an application be reheard by a magistrates' court.

¹²⁸⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(b).

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3.5 Financial ancillary orders

3.5.1. Victim-oriented

3.5.1.1. Compensation orders

3.5.1.1.1 General

Offenders are not able to buy shorter sentences

R. v Copley (1979) 1 Cr. App. R. (S.) 55

It is not open to offenders to buy their way out of prison, or to buy shorter sentences, by offering money in the way of compensation.

A compensation order is not a punishment

R. v Dorton (1987) 9 Cr. App. R. (S.) 514

...it is not right, certainly not right in every case and certainly not right in this case, to regard the imposition of a compensation order as being by way of additional punishment. (French J, at p.514)

3.5.1.1.2 Availability and power to order

When can an order be imposed?

PCC(S)A 2000 s.130¹²⁸⁸: Compensation order against convicted persons

- s.130(1) - a court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Act referred to as a “*compensation order*”) requiring him—
- (a) to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence; or
 - (b) to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road;

but this is subject to the following provisions of this section and to section 131 below.

Mandatory or required sentences

PCC(S)A 2000 s.130¹²⁸⁹: Compensation order against convicted persons

- s.130(2) - where the person is convicted of an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (2ZA), subsection (1) above shall have effect as if the words “instead of or” were omitted.

s.130(2ZA) - the provisions referred to in subsection (2) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;

¹²⁸⁸ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁸⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
- (d) section 110(2) or 111(2) of this Act;
- (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

s.130(2A) - a court must consider making a compensation order in any case where this section empowers it to do so.

Theft/Fraud where damage occurred out of owner's possession

PCC(S)A 2000 s.130¹²⁹⁰: Compensation order against convicted persons

s.130(5) - in the case of an offence under the Theft Act 1968 or Fraud Act 2006, where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of subsection (1) above as having resulted from the offence, however and by whomever the damage was caused.

Funeral expenses

PCC(S)A 2000 s.130¹²⁹¹: Compensation order against convicted persons

s.130(9) - a compensation order in respect of funeral expenses may be made for the benefit of any one who incurred the expenses.

Bereavement

PCC(S)A 2000 s.130¹²⁹²: Compensation order against convicted persons

s.130(10) - a compensation order in respect of bereavement may be made only for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976; and the amount of compensation in respect of bereavement shall not exceed the amount for the time being specified in section 1A(3) of that Act.

Duty to give reasons where compensation order not made

PCC(S)A 2000 s.130¹²⁹³: Compensation order against convicted persons

s.130(3) - a court shall give reasons, on passing sentence, if it does not make a compensation order in a case where this section empowers it to do so.

¹²⁹⁰ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹¹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹² Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹³ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.1.1.3 Motor-vehicle exception

Power to make the order

PCC(S)A 2000 s.130¹²⁹⁴: Compensation order against convicted persons

- s.130(6) - a compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person's dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if—
- (a) it is in respect of damage which is treated by subsection (5) above as resulting from an offence under the Theft Act 1968 or Fraud Act 2006; or
 - (b) it is in respect of injury, loss or damage as respects which—
 - (i) the offender is uninsured in relation to the use of the vehicle; and
 - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party.

Setting the amount

PCC(S)A 2000 s.130¹²⁹⁵: Compensation order against convicted persons

- s.130(7) - where a compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

Interpretation etc.

PCC(S)A 2000 s.130¹²⁹⁶: Compensation order against convicted persons

- s.130(8) - a vehicle the use of which is exempted from insurance by section 144 of the Road Traffic Act 1988 is not uninsured for the purposes of subsection (6) above.

3.5.1.1.4 Deciding whether or not to make an order

Must prove a loss/injury

Note: There are several cases which establish the principle that the loss must be proved and that where the loss is disputed an order should not be made until proven, as an example, see R. v Kneeshaw (1974) 58 Cr. App. R. 439.

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council

- p.165 [7] In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment for it to be obtained.

¹²⁹⁴ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹⁵ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹⁶ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

R. v Cooper (1982) 4 Cr. App. R. (S.) 55

An award of compensation is not appropriate where matters such as full details of the injury and matters which may reduce the amount of compensation are not ascertained and cannot be ascertained. In such circumstances proceedings in the County Court would be more appropriate.

Complex cases

R. v James [2003] EWCA Crim 811; [2003] 2 Cr. App. R. (S.) 97 (p.574)

It is wrong to make a compensation order where there are difficult and complex issues of liability and the sum claimed is neither agreed nor proved.

Order should be attributed to relevant offence

TICs and Totality Guideline, Sentencing Council

p.12 Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.

3.5.1.1.5 Fixing the amount

General

PCC(S)A 2000 s.130¹²⁹⁷: Compensation order against convicted persons

s.130(4) - compensation under subsection (1) above shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor.

s.130(11) - in determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

R. v Amey (1982) 4 Cr. App. R. (S) 410

Care must be taken to ensure that the evidence is sufficient before making an order. The amount of loss should be established by evidence, not inference or guesswork.

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council

Note: Pages 165 and 166 of the guidelines specify suggested amounts for physical injury. They are taken from the CICS (2001). The CICS table was updated in 2012.

Global orders

TICs and Totality Guideline, Sentencing Council p.16

The court should not fix a global compensation figure unless the offences were committed against the same victim (*R v Warton* [1976] Crim LR 520). Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis (*R v Miller* [1976] Crim LR 694).

¹²⁹⁷ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

Offenders aged under 18

PCC(S)A 2000 s.131¹²⁹⁸: Limit on amount payable under compensation order of magistrates' court in case of young offender

- s.131(A1) - this section applies if (but only if) a magistrates' court has convicted a person aged under 18 ("the offender") of an offence or offences.
- s.131(1) - the compensation to be paid under a compensation order made by the court in respect of the offence, or any one of the offences, shall not exceed £5,000.
- s.131(2) - the compensation or total compensation to be paid under a compensation order or compensation orders made by the court in respect of any offence or offence taken into consideration in determining sentence shall not exceed the difference (if any) between—
- (a) the amount or total amount which under subsection (1) above is the maximum for the offence or offences of which the offender has been convicted; and
 - (b) the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

Payment by instalments

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council, p.167

Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases.

3.5.1.1.6 Effect of compensation order on damages awarded in civil proceedings

PCC(S)A 2000 s.134¹²⁹⁹: Effect of compensation order on subsequent award of damages in civil proceedings

- s.134(1) - this section shall have effect where a compensation order, or a service compensation order, has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.
- s.134(2) - the damages in the civil proceedings shall be assessed without regard to the order, but the plaintiff may only recover an amount equal to the aggregate of the following—
- (a) any amount by which they exceed the compensation; and
 - (b) a sum equal to any portion of the compensation which he fails to recover, and may not enforce the judgment, so far as it relates to a sum such as is mentioned in paragraph (b) above, without the leave of the court.
- s.134(3) - in this section "service compensation order" means a service compensation order under the Armed Forces Act 2006.

¹²⁹⁸ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.1.1.7 Interaction with other sentencing orders

Community orders

TICs and Totality Guideline, Sentencing Council, p.16

A compensation order can be combined with a community order.

Confiscation orders

TICs and Totality Guideline, Sentencing Council, p.16

A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation (*R v Mitchell* [2001] Crim LR 239).

POCA 2002 s.13¹³⁰⁰: Effect of order on court's other powers

- s.13(1) - if the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- s.13(2) - the court must take account of the confiscation order before—
 - (a) it imposes a fine on the defendant, or
 - (b) it makes an order falling within subsection (3).
- s.13(3) - these orders fall within this subsection—
 - (a) an order involving payment by the defendant, other than [an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) or a priority order;
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under section 143 of the Sentencing Act (deprivation orders);
 - (d) an order under section 23 or 23A of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- s.13(3A) - in this section “*priority order*” means any of the following—
 - (a) a compensation order under section 130 of the Sentencing Act;
 - (b) an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003;
 - (c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

¹³⁰⁰ Commencement: 24 March 2003, SI 2003/333 art.2 and Sch.1, as amended by SCA 2015 s.6 on 1 June 2015.

Discharges

PCC(S)A 2000 s.12¹³⁰¹: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: a compensation order

Disqualification from being a company director

R. v Holmes (1992) 13 Cr. App. R. (S.) 29

A sentencer who imposes a compensation order should be careful not to reduce or inhibit the offender's means to pay the order. When a compensation order is made, it is generally wrong in principle to inhibit offenders from freely engaging in business activities which must have been contemplated as necessary for the purposes of fulfilling their obligations under the compensation order, by disqualifying them from acting as directors of companies.

Fines

PCC(S)A 2000 s.130¹³⁰²: Compensation order against convicted persons

s.130(12) - where the court considers—

- (a) that it would be appropriate both to impose a fine and to make a compensation order, but
- (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).

TICs and Totality Guideline, Sentencing Council, p.16

Priority is given to the imposition of a compensation order over a fine. This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.

Imprisonment (immediate)

TICs and Totality Guideline, Sentencing Council, p 16

A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

Suspended sentence orders

TICs and Totality Guideline, Sentencing Council, p 16

A compensation order can be combined with a suspended sentence order.

Note: The guideline cites PCC(S)A 2000 s.118(5) as its authority for this proposition; a suspended sentence order is an order under the CJA 2003. The order under the 2000 Act to which s.118 applies is a suspended sentence. This provision has been repealed subject to certain savings. There is no provision dealing with SSOs under the 2003 Act.

¹³⁰¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³⁰² Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

Surcharge

CJA 2003 s.161A¹³⁰³: Court's duty to order payment of surcharge

s.161A(3) - where a court dealing with an offender considers—

- (a) that it would be appropriate to make one or more of a compensation order, an unlawful profit order and a slavery and trafficking reparation order, but
 - (b) that he has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,
- the court must reduce the surcharge accordingly (if necessary to nil).

Surcharge where order made/varied on appeal

PCC(S)A 2000 s.132¹³⁰⁴: Compensation orders: appeals etc.

s.132(4A) - where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or the Supreme Court shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person's liability under that section is the same as it would be if he were being dealt with by the Crown Court.

3.5.1.1.8 Review of compensation orders

Power

PCC(S)A 2000 s.133¹³⁰⁵: Review of compensation orders

s.133(1) - the magistrates' court for the time being having functions in relation to the enforcement of a compensation order (in this section referred to as "*the appropriate court*") may, on the application of the person against whom the compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) to (4) below.

When can the power be exercised?

PCC(S)A 2000 s.133¹³⁰⁶: Review of compensation orders

s.133(2) - the appropriate court may exercise a power conferred by subsection (1) above only—

- (a) at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the compensation order could be varied or set aside; and
- (b) at a time before the person against whom the compensation order was made has paid into court the whole of the compensation which the order requires him to pay.

¹³⁰³ Commencement: 1 April 2007, as inserted by DVCVA 2004 s.14(1), SI 2007/602 art.2(a).

¹³⁰⁴ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³⁰⁵ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³⁰⁶ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

- s.133(3) - the appropriate court may exercise a power conferred by subsection (1) above only if it appears to the court—
- (a) that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or
 - (b) in the case of a compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
 - (c) that the means of the person against whom the compensation order was made are insufficient to satisfy in full both the order and any or all of the following made against him in the same proceedings—
 - (i) a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002;
 - (ii) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013;
 - (iii) a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015; or
 - (d) that the person against whom the compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

Must get consent of Crown Court

PCC(S)A 2000 s.133¹³⁰⁷: Review of compensation orders

- s.133(4) - where the compensation order was made by the Crown Court, the appropriate court shall not exercise any power conferred by subsection (1) above in a case where it is satisfied as mentioned in paragraph (c) or (d) of subsection (3) above unless it has first obtained the consent of the Crown Court.

Orders made on appeal

PCC(S)A 2000 s.133¹³⁰⁸: Review of compensation orders

- s.133(5) - where the compensation order has been made on appeal, for the purposes of subsection (4) above it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
 - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.

¹³⁰⁷ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³⁰⁸ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.1.1.9 Appeals

Compensation not payable until time limit to appeal conviction or sentence or vary sentence has expired

PCC(S)A 2000 s.132¹³⁰⁹: Compensation orders: appeals etc.

- s.32(1) - a person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- s.132(2) - the Criminal Procedure Rules may make provision regarding the way in which the magistrates' court for the time being having functions (by virtue of section 41(1) of the Administration of Justice Act 1970) in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended.

Court of Appeal: Power to annul or vary order

PCC(S)A 2000 s.132¹³¹⁰: Compensation orders: appeals etc.

- s.132(3) - the Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.

Order made/varied on appeal: Surcharge

PCC(S)A 2000 s.132¹³¹¹: Compensation orders: appeals etc.

- s.132(4A) - where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or the Supreme Court shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person's liability under that section is the same as it would be if he were being dealt with by the Crown Court.

TICs

PCC(S)A 2000 s.132¹³¹²: Compensation orders: appeals etc.

- s.132(5) - where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;

¹³⁰⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹⁰ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹¹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹² Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

- (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Supreme Court: Power to order

PCC(S)A 2000 s.132¹³¹³: Compensation orders: appeals etc.

- s.132(4) - where the Supreme Court restores a conviction, it may make any compensation order which the court of trial could have made.

3.5.1.2. Restitution Orders

3.5.1.2.1 Making the order

Availability

PCC(S)A 2000 s.148¹³¹⁴: Restitution orders

- s.148(1) - this section applies where goods have been stolen, and either—
 - (a) a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence); or
 - (b) a person is convicted of any other offence, but such an offence as is mentioned in paragraph (a) above is taken into consideration in determining his sentence.
- s.148(5) - the court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers.
- s.148(6) - in subsection (5) above “*the available documents*” means—
 - (a) any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial; and
 - (b) such documents as were served on the offender in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998.

Application not necessary

PCC(S)A 2000 s.149¹³¹⁵: Restitution orders: supplementary

- s.149(1) - the following provisions of this section shall have effect with respect to section 148 above.
- s.149(2) - the powers conferred by subsections (2)(c) and (4) of that section shall be exercisable without any application being made in that behalf or on the application of any person appearing to the court to be interested in the property concerned.

¹³¹³ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Power to order

PCC(S)A 2000 s.148¹³¹⁶: Restitution orders

s.148(2) - where this section applies, the court by or before which the offender is convicted may on the conviction (whether or not the passing of sentence is in other respects deferred) exercise any of the following powers—

- (a) the court may order anyone having possession or control of the stolen goods to restore them to any person entitled to recover them from him; or
- (b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the stolen goods (as being the proceeds of any disposal or realisation of the whole or part of them or of goods so representing them), the court may order those other goods to be delivered or transferred to the applicant; or
- (c) the court may order that a sum not exceeding the value of the stolen goods shall be paid, out of any money of the person convicted which was taken out of his possession on his apprehension, to any person who, if those goods were in the possession of the person convicted, would be entitled to recover them from him;

and in this subsection “*the stolen goods*” means the goods referred to in subsection (1) above.

R. v Church (1971) 55 Cr. App. R. 65

The court has no power to receive evidence after the conclusion of the trial to establish the basis for making a restitution order. Restitution orders should only be made in the plainest cases.

Crown money

PCC(S)A 2000 s.148¹³¹⁷: Restitution orders

s.148(11) - an order may be made under this section in respect of money owed by the Crown.

Recovery limited to value of goods

PCC(S)A 2000 s.148¹³¹⁸: Restitution orders

s.148(3) - where the court has power on a person’s conviction to make an order against him both under paragraph (b) and under paragraph (c) of subsection (2) above with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the person in whose favour the orders are made does not thereby recover more than the value of those goods.

¹³¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³¹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Consequential victims

PCC(S)A 2000 s.148¹³¹⁹: Restitution orders

- s.148(4) - where the court on a person's conviction makes an order under subsection (2)(a) above for the restoration of any goods, and it appears to the court that the person convicted—
- (a) has sold the goods to a person acting in good faith, or
 - (b) has borrowed money on the security of them from a person so acting,
- the court may order that there shall be paid to the purchaser or lender, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan.

Effect of order

PCC(S)A 2000 s.148¹³²⁰: Restitution orders

- s.148(7) - any order under this section shall be treated as an order for the restitution of property within the meaning of section 30 of the Criminal Appeal Act 1968 (which relates to the effect on such orders of appeals).

Definitions

PCC(S)A 2000 s.148¹³²¹: Restitution orders

- s.148(8) - subject to subsection (9) below, references in this section to stealing shall be construed in accordance with section 1(1) of the Theft Act 1968 (read with the provisions of that Act relating to the construction of section 1(1)).
- s.148(9) - Subsections (1) and (4) of section 24 of that Act (interpretation of certain provisions) shall also apply in relation to this section as they apply in relation to the provisions of that Act relating to goods which have been stolen.
- s.148(10) - in this section and section 149 below, “goods”, except in so far as the context otherwise requires, includes money and every other description of property (within the meaning of the Theft Act 1968) except land, and includes things severed from the land by stealing.

3.5.1.2.2 Appeals

CAA 1968 s.30¹³²²: Restitution of property

- s.30(1) - the operation of an order for the restitution of property to a person made by the Crown Court shall, unless the Court direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute, be suspended until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal

¹³¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

on which the order could be varied or set aside, and provision may be made by rules of court for the custody of any property in the meantime.

- s.30(2) - the Court of Appeal may by order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.
- s.30(3) - where the Supreme Court restores a conviction, it may make any order for the restitution of property which the court of trial could have made.

PCC(S)A 2000 s.149¹³²³: Restitution orders: supplementary

Order is suspended until time period to appeal has expired

- s.149(1) - the following provisions of this section shall have effect with respect to section 148 above.
- s.149(4) - any order under that section made by a magistrates' court shall be suspended—
- (a) in any case until the end of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court;
 - (b) where notice of appeal is given within the period so prescribed, until the determination of the appeal;
- but this subsection shall not apply where the order is made under section 148(2)(a) or (b) and the court so directs, being of the opinion that the title to the goods to be restored or, as the case may be, delivered or transferred under the order is not in dispute.

TICS

PCC(S)A 2000 s.149¹³²⁴: Restitution orders: supplementary

- s.149(1) - the following provisions of this section shall have effect with respect to section 148 above.
- s.149(3) - where an order is made under that section against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

¹³²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.5.2. Slavery and trafficking reparation orders

3.5.2.1. General

What is a slavery and trafficking reparation order?

MSA 2015 s.9¹³²⁵: Effect of slavery and trafficking reparation orders

- s.9(1) - a slavery and trafficking reparation order is an order requiring the person against whom it is made to pay compensation to the victim of a relevant offence for any harm resulting from that offence.
- s.9(2) - “*Relevant offence*” means—
- (a) the offence under section 1, 2 or 4 of which the person is convicted;
 - (b) any other offence under section 1, 2 or 4 which is taken into consideration in determining the person’s sentence.

Interpretation

MSA 2015 s.8¹³²⁶: Power to make slavery and trafficking reparation orders

- s.8(8) - in this section—
- (a) “*the court*” means—
 - (i) the Crown Court, or
 - (ii) any magistrates’ court that has power to make a confiscation order by virtue of an order under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates’ courts);
 - (b) “*confiscation order*” means a confiscation order under section 6 of the Proceeds of Crime Act 2002;
 - (c) a confiscation order is made in respect of an offence if the offence is the offence (or one of the offences) concerned for the purposes of Part 2 of that Act.

MSA 2015 s.13¹³²⁷: Interpretation of Part 1

- s.13(1) - in this Part—
- “*captain*” means master (of a ship) or commander (of an aircraft);
- “*confiscation order*” has the meaning given by section 8(8);
- “*the Human Rights Convention*” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950;
- “*land vehicle*” means any vehicle other than a ship or aircraft;
- “*ship*” includes every description of vessel (including a hovercraft) used in navigation;
- “*slavery and trafficking reparation order*” means an order made under section 8;

¹³²⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³²⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³²⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

“UK national” means—

- (a) a British citizen,
- (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or
- (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

s.13(2) - in sections 8 and 10, references to provisions of the Proceeds of Crime Act 2002 include references to those provisions as amended or otherwise modified by virtue of an order (whenever made) under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates’ courts).

s.13(3) - in sections 11 and 12, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

3.5.2.2. Making the order

Availability

MSA 2015 s.8¹³²⁸: Power to make slavery and trafficking reparation orders

- s.8(1) - the court may make a slavery and trafficking reparation order against a person if—
- (a) the person has been convicted of an offence under section 1, 2 or 4, and
 - (b) a confiscation order is made against the person in respect of the offence.
- s.8(2) - the court may also make a slavery and trafficking reparation order against a person if—
- (a) by virtue of section 28 of the Proceeds of Crime Act 2002 (defendants who abscond during proceedings) a confiscation order has been made against a person in respect of an offence under section 1, 2 or 4, and
 - (b) the person is later convicted of the offence.
- s.8(3) - the court may make a slavery and trafficking reparation order against the person in addition to dealing with the person in any other way (subject to section 10(1)).
- s.8(4) - in a case within subsection (1) the court may make a slavery and trafficking reparation order against the person even if the person has been sentenced for the offence before the confiscation order is made.

Application of compensation order provisions to slavery and trafficking reparation orders

MSA 2015 s.10¹³²⁹: Slavery and trafficking reparation orders: supplementary provision

- s.10(2) - where the court makes a slavery and trafficking reparation order as mentioned in section 8(4), for the purposes of the following provisions the person’s sentence is to be regarded as imposed or made on the day on which the order is made—
- (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or application for leave to appeal);

¹³²⁸ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³²⁹ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of application for leave to refer a case under section 36 of that Act).
- s.10(3) - sections 132 to 132 of the Powers of Criminal Courts (Sentencing) Act 2000 (appeals, review etc of compensation orders) apply to slavery and trafficking reparation orders as if—
 - (a) references to a compensation order were references to a slavery and trafficking reparation order;
 - (b) references to the court of trial were references to the court (within the meaning of section 8 above);
 - (c) references to injury, loss or damage were references to harm;
 - (d) the reference in section 133(3)(c)(iii) to a slavery and trafficking reparation order under section 8 above were to a compensation order under section 130 of that Act;
 - (e) in section 134 the references to service compensation orders were omitted.

Determining whether or not to make an order

MSA 2015 s.8¹³³⁰: Power to make slavery and trafficking reparation orders

- s.8(5) - in determining whether to make a slavery and trafficking reparation order against the person the court must have regard to the person's means.

Determining the amount

MSA 2015 s.9¹³³¹: Effect of slavery and trafficking reparation orders

- s.9(3) - the amount of the compensation is to be such amount as the court considers appropriate having regard to any evidence and to any representations made by or on behalf of the person or the prosecutor, but subject to subsection (4).
- s.9(4) - the amount of the compensation payable under the slavery and trafficking reparation order (or if more than one order is made in the same proceedings, the total amount of the compensation payable under those orders) must not exceed the amount the person is required to pay under the confiscation order.
- s.9(5) - in determining the amount to be paid by the person under a slavery and trafficking reparation order the court must have regard to the person's means.
- s.9(6) - in subsection (4) "*the confiscation order*" means the confiscation order within section 8(1)(b) or (2)(a) (as the case may be).

¹³³⁰ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³¹ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

Reparation orders take preference over fines

MSA 2015 s.8¹³³²: Power to make slavery and trafficking reparation orders

- s.8(6) - if the court considers that—
- (a) it would be appropriate both to impose a fine and to make a slavery and trafficking reparation order, but
 - (b) the person has insufficient means to pay both an appropriate fine and appropriate compensation under such an order,
- the court must give preference to compensation (although it may impose a fine as well).

Duty of court to give reasons when not making an order

MSA 2015 s.8¹³³³: Power to make slavery and trafficking reparation orders

- s.8(7) - in any case in which the court has power to make a slavery and trafficking reparation order it must—
- (a) consider whether to make such an order (whether or not an application for such an order is made), and
 - (b) if it does not make an order, give reasons.

3.5.2.3. Interaction with other sentencing orders

Compensation orders

MSA 2015 s.10¹³³⁴: Slavery and trafficking reparation orders: supplementary provision

- s.10(1) - a slavery and trafficking reparation order and a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 may not both be made in respect of the same offence.

Confiscation orders

MSA 2015 s.10¹³³⁵: Slavery and trafficking reparation orders: supplementary provision

- s.10(4) - if under section 21 or 22 of the Proceeds of Crime Act 2002 the court varies a confiscation order so as to increase the amount required to be paid under that order, it may also vary any slavery and trafficking reparation order made by virtue of the confiscation order so as to increase the amount required to be paid under the slavery and trafficking reparation order.
- s.10(5) - if under section 23 or 29 of that Act the court varies a confiscation order so as to reduce the amount required to be paid under that order, it may also—
- (a) vary any relevant slavery and trafficking reparation order so as to reduce the amount which remains to be paid under that order;

¹³³² Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³³ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

(b) discharge any relevant slavery and trafficking reparation order.

s.10(6) - if under section 24 of that Act the court discharges a confiscation order, it may also discharge any relevant slavery and trafficking reparation order.

s.10(7) - for the purposes of subsections (5) and (6) a slavery and trafficking reparation order is relevant if it is made by virtue of the confiscation order and some or all of the amount required to be paid under it has not been paid.

s.10(8) - if on an appeal under section 31 of the Proceeds of Crime Act 2002 the Court of Appeal—

(a) quashes a confiscation order, it must also quash any slavery and trafficking reparation order made by virtue of the confiscation order;

(b) varies a confiscation order, it may also vary any slavery and trafficking reparation order made by virtue of the confiscation order;

(c) makes a confiscation order, it may make any slavery and trafficking reparation order that could have been made under section 8 above by virtue of the confiscation order.

s.10(9) - if on an appeal under section 33 of that Act the Supreme Court—

(a) quashes a confiscation order, it must also quash any slavery and trafficking reparation order made by virtue of the confiscation order;

(b) varies a confiscation order, it may also vary any slavery and trafficking reparation order made by virtue of the confiscation order.

s.10(10) - for the purposes of this section—

(a) a slavery and trafficking reparation order made under section 8(1) is made by virtue of the confiscation order within section 8(1)(b);

(b) a slavery and trafficking reparation order made under section 8(2) is made by virtue of the confiscation order within section 8(2)(a).

3.5.3. Surcharge

3.5.3.1. Duty to impose a surcharge

CJA 2003 s.161A¹³³⁶: Court's duty to order payment of surcharge

Duty to impose surcharge

s.161A(1) - a court when dealing with a person for one or more offences must also (subject to subsections (2) and (3)) order him to pay a surcharge.

Exceptions

s.161A(2) - subsection (1) does not apply in such cases as may be prescribed by an order made by the Secretary of State.

s.161A(4) - for the purposes of this section a court does not “deal with” a person if it–

- (a) discharges him absolutely, or
- (b) makes an order under the Mental Health Act 1983 in respect of him.

Insufficient means to pay both surcharge and compensation/unlawful profit order

s.161A(3) - where a court dealing with an offender considers–

- (a) that it would be appropriate to make one or more of a compensation order, an unlawful profit order and a slavery and trafficking reparation order, but
 - (b) that he has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,
- the court must reduce the surcharge accordingly (if necessary to nil).

s.161A(5) - in this section —

“*slavery and trafficking reparation order*” means an order under section 8 of the Modern Slavery Act 2015, and “*unlawful profit order*” means an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

3.5.3.2. Secretary of State's power to set the amount of the surcharge

CJA 2003 s.161B¹³³⁷: Amount of surcharge

s.161B(1) - the surcharge payable under section 161A is such amount as the Secretary of State may specify by order.

s.161B(2) - an order under this section may provide for the amount to depend on:

- (a) the offence or offences committed,
- (b) how the offender is otherwise dealt with (including, where the offender is fined, the amount of the fine),
- (c) the age of the offender.

¹³³⁶ Commencement: 1 April 2007, as inserted by DVCVA 2004 s.14(1), SI 2007/602 art.2(a).

¹³³⁷ Commencement: 1 April 2007, as inserted by DVCVA 2004 s.14(1), SI 2007/602 art.2(a).

This is not to be read as limiting section 330(3) (power to make different provision for different purposes etc).

3.5.3.3. The amounts

3.5.3.3.1 Offence (or one of multiple offences) committed between 1 April 2007 and 1 October 2012

Citation, commencement and interpretation

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.1(1) - this Order may be cited as the Criminal Justice Act 2003 (Surcharge)(No 2) Order 2007 and shall come into force on 1st April 2007.

art.1(2) - in this Order “the 2003 Act” means the Criminal Justice Act 2003.

Revocation

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.2 - the Criminal Justice Act 2003 (Surcharge) Order 2007 is revoked.

Cases in which the duty to order payment of the surcharge does not apply

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.3(1) - Section 161A(1) of the 2003 Act (court’s duty to order payment of surcharge) does not apply in the cases prescribed in paragraph (2).

art.3(2) - the cases referred to in paragraph (1) are those in which a court deals with a person for one or more offences and does not impose a fine.

Amount of surcharge

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.4 - the amount specified for the purposes of section 161B(1) of the 2003 Act as the surcharge payable under section 161A of that Act is £15.

3.5.3.3.2 Offence (or one of multiple offences) committed between 1 October 2012 and 31 August 2014

Citation, commencement and interpretation

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³³⁸**

art.1(1) - this Order may be cited as the Criminal Justice Act 2003 (Surcharge) Order 2012 and comes into force on 1st October 2012.

art.1(2) - in this Order “the 2003 Act” means the Criminal Justice Act 2003.

para.1(3) - a reference in this Order to a table is a reference to a table in the Schedule.

¹³³⁸ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

Cases in which the duty to order payment of the surcharge does not apply

Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)¹³³⁹

- art.2 - Section 161A(1) of the 2003 Act (court's duty to order payment of surcharge) does not apply in cases in which a court deals with a person for one or more offences and does not impose any disposal described in the Schedule.

Amount of surcharge: offences committed by an individual aged under 18

Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)¹³⁴⁰

- art.3(1) - Where a court deals with an individual for one or more offences by way of a single disposal described in column 1 of table 1, and every one of those offences was committed when that individual was aged under 18, the surcharge payable under section 161A of the 2003 Act is the amount specified in the corresponding entry in column 2 of that table.
- art.3(2) - where a court deals with an individual for one or more offences by way of more than one disposal described in column 1 of table 1, and every one of those offences was committed when that individual was aged under 18, the surcharge payable under section 161A of the 2003 Act is—
- (a) where the amount in column 2 of that table corresponding to each of those disposals is the same, that amount;
 - (b) where the amount in column 2 of that table corresponding to each of those disposals is not the same, the highest such amount.

Amount of surcharge: offences committed by an individual aged 18 or over

Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)¹³⁴¹

- art.4(1) - where a court deals with an individual for one or more offences by way of a single disposal described in column 1 of table 2, and every one of those offences was committed when that individual was aged over 18, the surcharge payable under section 161A of the 2003 Act is the amount specified in the corresponding entry in column 2 of that table.
- art.4(2) - where a court deals with an individual for one or more offences by way of more than one disposal described in column 1 of table 2, and every one of those offences was committed when that individual was aged over 18, the surcharge payable under section 161A of the 2003 Act is—
- (a) where the amount in column 2 of that table corresponding to each of those disposals is the same, that amount;
 - (b) where the amount in column 2 of that table corresponding to each of those disposals is not the same, the highest such amount.

¹³³⁹ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

¹³⁴⁰ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

¹³⁴¹ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

Amount of surcharge: other cases involving offences committed by an individual

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³⁴²**

- art.5(1) - where a court deals with an individual for more than one offence by way of a single disposal described in column 1 of table 1, and the condition in paragraph (3) is satisfied in relation to those offences, the surcharge payable under section 161A of the 2003 Act is the amount specified in the corresponding entry in column 2 of that table.
- art.5(2) - where a court deals with an individual for more than one offence by way of more than one disposal described in column 1 of table 1, and the condition in paragraph (3) is satisfied in relation to those offences, the surcharge payable under section 161A of the 2003 Act is—
- (a) where the amount in column 2 of that table corresponding to each of those disposals is the same, that amount;
 - (b) where the amount in column 2 of that table corresponding to each of those disposals is not the same, the highest such amount.
- art.5(3) - the condition in this paragraph is satisfied in relation to the offences for which a court is dealing with an individual if at least one of those offences was committed when the individual was under 18 and at least one of those offences was committed when the individual was aged 18 or over.

Amount of Surcharge: offences committed by a person who is not an individual

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³⁴³**

- art.6(1) - where a court deals with a person who is not an individual for one or more offences by way of a single disposal described in column 1 of table 3, the surcharge payable under section 161A of the 2003 Act is the amount in column 2 of that table corresponding to that disposal.
- art.6(2) - where a court deals with a person who is not an individual for one or more offences by way of more than one disposal described in column 1 of table 3, the surcharge payable under section 161A of the 2003 Act is the highest amount in column 2 of that table corresponding to each of those disposals.

Revocation and transitional and saving provision

- art.7(1) The Criminal Justice Act 2003 (Surcharge) (No. 2) Order 2007 (“the 2007 Order”) is revoked.
- art.7(2) - notwithstanding its revocation by paragraph (1), the 2007 Order continues to apply, and Articles 2 to 6 of this Order do not apply, where after the coming into force of this Order a court deals with a person for—
- (a) a single offence committed before 1st October 2012; or
 - (b) more than one offence, at least one of which was committed before 1st October 2012.

¹³⁴² Commencement: 1 October 2012, SI 2012/1696 art.1(1).

¹³⁴³ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

Schedule 1**Table 1 - Offences committed by those under 18**

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£10
A fine	£15
An order under section 1 of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders)	£15
An order under section 16(2) or 16(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders)	£15
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£15
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment)	£20
A sentence specified in section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (meaning of custodial sentence) where imposed by the Crown Court	£20

Table 2 - Offences committed by those aged 18 or over

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£60
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a period of 6 months or less	£80
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a determinate period of more than 6 months	£100
A sentence of imprisonment or detention in a young offender institution imposed by the Crown Court for a determinate period of up to and including 6 months	£80
A sentence of imprisonment or detention in a young offender institution imposed by the Crown Court for a determinate period of more than 6 months and up to and including 24 months	£100

Column 1	Column 2
A sentence of imprisonment or detention in a young offender institution for a determinate period exceeding 24 months	£120
A sentence of imprisonment or custody for life	£120

Table 3 - Offences committed by those who are not individuals

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.

3.5.3.3.3 Offence (or one of multiple offences) committed before 1 September 2014

Citation and commencement

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

art.1 - This Order may be cited as the Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 and comes into force on 1st September 2014.

Amendments to the Criminal Justice Act 2003 (Surcharge) Order 2012

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

art.2(1) - the Schedule to the Criminal Justice Act 2003 (Surcharge) Order 2012 is amended as follows.

para.2(2) - in Column 1 of Table 1, in the entry relating to section 76 of the Powers of Criminal Courts (Sentencing) Act 2000, omit “where imposed by the Crown Court”.

art.2(3) - in Column 1 of Table 2, in the entry relating to a sentence of imprisonment or detention in a young offender institution for a determinate period of up to and including 6 months, omit “imposed by the Crown Court”.

art.2(4) - in Column 1 of Table 2, in the entry relating to a sentence of imprisonment or detention in a young offender institution for a determinate period of more than 6 months and up to and including 24 months, omit “imposed by the Crown Court”.

Transitional provision

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

art.3 - the amendments made by article 2 do not apply where, after the coming into force of this Order, a magistrates’ court deals with a person for—

- a single offence committed before the coming into force of this Order; or
- more than one offence, at least one of which was committed before the coming into force of this Order.

The tables, as amended**Table 1 - Offences committed by those under 18**

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£10
A fine	£15
An order under section 1 of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders)	£15
An order under section 16(2) or 16(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders)	£15
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£15
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment)	£20
A sentence specified in section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (meaning of custodial sentence)	£20

Table 2 - Offences committed by those aged 18 or over

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£60
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a period of 6 months or less	£80
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a determinate period of more than 6 months	£100
A sentence of imprisonment or detention in a young offender institution for a determinate period of up to and including 6 months	£80
A sentence of imprisonment or detention in a young offender institution for a determinate period of more than 6 months and up to and including 24 months	£100

Column 1	Column 2
A sentence of imprisonment or detention in a young offender institution for a determinate period exceeding 24 months	£120
A sentence of imprisonment or custody for life	£120

Table 3 - Offences committed by those who are not individuals

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.

3.5.4. Costs

3.5.4.1. Introduction

Criminal Procedure Rules 2015 (SI2015/1490)

rule.45.1(1) - This Part applies where the court can make an order about costs under—

- (a) Part II of the Prosecution of Offences Act 1985(a) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(b);
- (b) section 109 of the Magistrates' Courts Act 1980(c);
- (c) section 52 of the Senior Courts Act 1981(d) and rule 76.6 or rule 76.7;
- (d) section 8 of the Bankers Books Evidence Act 1879(e);
- (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(f);
- (f) section 36(5) of the Criminal Justice Act 1972(g);
- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988(h);
- (h) section 14H(5) of the Football Spectators Act 1989(i);
- (i) section 4(7) of the Dangerous Dogs Act 1991(j);
- (j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(k); or
- (k) Part 1 or 2 of the Extradition Act 2003(l).

rule45.1(2) - In this Part, 'costs' means—

- (a) the fees payable to a legal representative;
- (b) the disbursements paid by a legal representative; and
- (c) any other expenses incurred in connection with the case.

*Note.*¹³⁴⁴ A costs order can be made under—

- (a) *section 16 of the Prosecution of Offences Act 1985(m) (defence costs), for the payment out of central funds of a defendant's costs (see rule 45.4);*
- (b) *section 17 of the Prosecution of Offences Act 1985(a) (prosecution costs), for the payment out of central funds of a private prosecutor's costs (see rule 45.4);*
- (c) *section 18 of the Prosecution of Offences Act 1985(b) (award of costs against accused), for the payment by a defendant of another person's costs (see rules 45.5 and 45.6);*
- (d) *section 19(1) of the Prosecution of Offences Act 1985(c) and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986, for the payment by a party of another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 45.8);*
- (e) *section 19A of the Prosecution of Offences Act 1985(d) (costs against legal representatives, etc.)—*

¹³⁴⁴ This note is contained within the CPR.

- (i) *for the payment by a legal representative of a party's costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or*
 - (ii) *disallowing the payment to that representative of such costs*

(see rule 45.9);
- (f) *section 19B of the Prosecution of Offences Act 1985(e) (provision for award of costs against third parties) and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986(f), for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 45.10);*
- (g) *section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 45.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 45.6);*
- (h) *section 52 of the Senior Courts Act 1981 and—*
 - (i) *rule 45.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g),*
 - (ii) *rule 45.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement, or on an application to lift the suspension of a prosecution after breach of such an agreement;*
- (i) *section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 45.7);*
- (j) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 17.7 to have it withdrawn (see rule 45.7);*
- (k) *section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of—*
 - (i) *a point of law, or*
 - (ii) *an unduly lenient sentence*

(see rule 45.4);
- (l) *section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 45.6);*
- (m) *section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 45.7);*
- (n) *section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 45.7);*
- (o) *article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(a), corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 45.4);*
- (p) *article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 45.6);*
- (q) *article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 45.8);*
- (r) *article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 45.9);*

- (s) *article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 45.10);*
- (t) *section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs (see rule 45.4); or*
- (u) *section 61 or 134 of the Extradition Act 2003(b) (costs where discharge ordered) for the payment out of central funds of a defendant's costs (see rule 45.4).*

Note: This document included only costs orders under POA 1985 ss.16, 17 and 18, and costs in relation to Attorney General's references as these are the main orders made in relation to sentence. Provisions dealing with costs in relation to specific sentencing orders, e.g. under the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, are included within the relevant section. Costs orders under the Extradition Act 2003 are not included.

3.5.4.2. Criminal procedure rules

Criminal Procedure Rules 2015 (SI 2015/1490)

When this Part applies

45.1.—(1) This Part applies where the court can make an order about costs under—

- (a) Part II of the Prosecution of Offences Act 1985(a) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(b);
- (b) section 109 of the Magistrates' Courts Act 1980(c);
- (c) section 52 of the Senior Courts Act 1981(d) and rule 76.6 or rule 76.7;
- (d) section 8 of the Bankers Books Evidence Act 1879(e);
- (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(f);
- (f) section 36(5) of the Criminal Justice Act 1972(g);
- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988(h);
- (h) section 14H(5) of the Football Spectators Act 1989(i);
- (i) section 4(7) of the Dangerous Dogs Act 1991(j);
- (j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(k); or
- (k) Part 1 or 2 of the Extradition Act 2003(l).

(2) In this Part, 'costs' means—

- (a) the fees payable to a legal representative;
- (b) the disbursements paid by a legal representative; and
- (c) any other expenses incurred in connection with the case.

Costs orders: general rules

45.2.—(1) The court must not make an order about costs unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—
 - (i) to attend, or
 - (ii) to make representations.

- (2) The court may make an order about costs—
 - (a) at a hearing in public or in private; or
 - (b) without a hearing.
- (3) In deciding what order, if any, to make about costs, the court must have regard to all the circumstances, including—
 - (a) the conduct of all the parties; and
 - (b) any costs order already made.
- (4) If the court makes an order about costs, it must—
 - (a) specify who must, or must not, pay what, to whom; and
 - (b) identify the legislation under which the order is made, where there is a choice of powers.
- (5) The court must give reasons if it—
 - (a) refuses an application for a costs order; or
 - (b) rejects representations opposing a costs order.
- (6) If the court makes an order for the payment of costs—
 - (a) the general rule is that it must be for an amount that is sufficient reasonably to compensate the recipient for costs—
 - (i) actually, reasonably and properly incurred, and
 - (ii) reasonable in amount; but
 - (b) the court may order the payment of—
 - (i) a proportion of that amount,
 - (ii) a stated amount less than that amount,
 - (iii) costs from or until a certain date only,
 - (iv) costs relating only to particular steps taken, or
 - (v) costs relating only to a distinct part of the case.
- (7) On an assessment of the amount of costs, relevant factors include—
 - (a) the conduct of all the parties;
 - (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (c) the skill, effort, specialised knowledge and responsibility involved;
 - (d) the time spent on the case;
 - (e) the place where and the circumstances in which work or any part of it was done; and
 - (f) any direction or observations by the court that made the costs order.
- (8) If the court orders a party to pay costs to be assessed under rule 45.11, it may order that party to pay an amount on account.
- (9) An order for the payment of costs takes effect when the amount is assessed, unless the court exercises any power it has to order otherwise.

Court's power to vary requirements

45.3.—(1) The court may—

- (a) extend a time limit for serving an application or representations under rules 45.4 to 45.10, even after it has expired; and
- (b) consider an application or representations—
 - (i) made in a different form to one set out in the Practice Direction, or
 - (ii) made orally instead of in writing.

(2) A person who wants an extension of time must—

- (a) apply when serving the application or representations for which it is needed; and
- (b) explain the delay.

Costs out of central funds

45.4.—(1) This rule applies where the court can order the payment of costs out of central funds.

(2) In this rule, costs—

- (a) include—
 - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
 - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
- (b) do not include costs met by legal aid.

(3) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(4) Where a person wants the court to make an order that person must—

- (a) apply as soon as practicable; and
- (b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
- (c) specify the amount claimed, if that person wants the court to assess the amount itself.

(5) The general rule is that the court must make an order, but—

- (a) the court may decline to make a defendant's costs order if, for example—
 - (i) the defendant is convicted of at least one offence, or
 - (ii) the defendant's conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
- (b) the court may decline to make a prosecutor's costs order if, for example, the prosecution was started or continued unreasonably.

(6) If the court makes an order—

- (a) the court may direct an assessment under, as applicable—
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986(a), or

- (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b);
 - (b) the court may assess the amount itself in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
 - (c) an order for the payment of a defendant's costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.
- (7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.
- (8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

Costs on conviction and sentence, etc.

- 45.5.—(1) This rule applies where the court can order a defendant to pay the prosecutor's costs if the defendant is—
- (a) convicted or found guilty;
 - (b) dealt with in the Crown Court after committal for sentence there;
 - (c) dealt with for breach of a sentence; or
 - (d) in an extradition case—
 - (i) ordered to be extradited, under Part 1 of the Extradition Act 2003,
 - (ii) sent for extradition to the Secretary of State, under Part 2 of that Act, or
 - (iii) unsuccessful on an appeal by the defendant to the High Court, or on an application by the defendant for permission to appeal from the High Court to the Supreme Court.
- (2) The court may make an order—
- (a) on application by the prosecutor; or
 - (b) on its own initiative.
- (3) Where the prosecutor wants the court to make an order—
- (a) the prosecutor must—
 - (i) apply as soon as practicable, and
 - (ii) specify the amount claimed; and
 - (b) the general rule is that the court must make an order if it is satisfied that the defendant can pay.
- (4) A defendant who wants to oppose an order must make representations as soon as practicable.
- (5) If the court makes an order, it must assess the amount itself.

Costs on appeal

45.6.—(1) This rule—

- (a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980(a), or
 - (ii) section 45 of the Mental Health Act 1983(b).

(2) In this rule, costs include—

- (a) costs incurred in the court that made the decision under appeal; and
- (b) costs met by legal aid.

(3) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(4) A person who wants the court to make an order must—

- (a) apply as soon as practicable;
- (b) notify each other party;
- (c) specify—
 - (i) the amount claimed, and
 - (ii) against whom; and
- (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—
 - (i) apply in writing not more than 14 days later, and
 - (ii) serve the application on the appellant and on the Crown Court officer.

(5) A party who wants to oppose an order must—

- (a) make representations as soon as practicable; and
- (b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.

(6) Where the application was under paragraph (4)(d), the Crown Court officer may—

- (a) submit it to the Crown Court; or
- (b) serve it on the magistrates' court officer, for submission to the magistrates' court.

(7) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself where—

- (a) the appellant abandons an appeal to the Crown Court;
- (b) the Crown Court decides an appeal, except an appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980, or

- (ii) section 45 of the Mental Health Act 1983; or
- (c) the Court of Appeal decides an appeal to which Part 40 applies (Appeal to the Court of Appeal about reporting or public access restriction).

(8) If the court makes an order in any other case, it must assess the amount itself.

Costs on an application

45.7.—(1) This rule—

- (a) applies where the court can order a party to pay another person's costs in a case in which—
 - (i) the court decides an application for the production in evidence of a copy of a bank record,
 - (ii) a magistrates' court or the Crown Court decides an application to terminate a football banning order,
 - (iii) a magistrates' court or the Crown Court decides an application to terminate a disqualification for having custody of a dog,
 - (iv) the Crown Court allows an application to withdraw a witness summons, or
 - (v) the Crown Court decides an application relating to a deferred prosecution agreement under rule 11.5 (breach), rule 11.6 (variation) or rule 11.7 (lifting suspension of prosecution);
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an application to that court under rule 11.5, 11.6 or 11.7.

(2) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(3) A person who wants the court to make an order must—

- (a) apply as soon as practicable;
- (b) notify each other party; and
- (c) specify—
 - (i) the amount claimed, and
 - (ii) against whom.

(4) A party who wants to oppose an order must make representations as soon as practicable.

(5) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself.

Costs resulting from unnecessary or improper act, etc.

45.8.—(1) This rule applies where the court can order a party to pay another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party.

(2) In this rule, costs include costs met by legal aid.

- (3) The court may make an order—
 - (a) on application by the party who incurred such costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar), and
 - (ii) each other party;
 - (c) in that application specify—
 - (i) the party by whom costs should be paid,
 - (ii) the relevant act or omission,
 - (iii) the reasons why that act or omission meets the criteria for making an order,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
 - (a) identify the party against whom it proposes making the order; and
 - (b) specify—
 - (i) the relevant act or omission,
 - (ii) the reasons why that act or omission meets the criteria for making an order, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A party who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order, it must assess the amount itself.

Costs against a legal representative

45.9.—(1) This rule applies where—

- (a) a party has incurred costs—
 - (i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative's employee, or
 - (ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and
 - (b) the court can—
 - (i) order the representative responsible to pay such costs, or
 - (ii) prohibit the payment of costs to that representative.
- (2) In this rule, costs include costs met by legal aid.

- (3) The court may make an order—
 - (a) on application by the party who incurred such costs; or
 - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
 - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the representative responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected; in that application specify—
 - (i) the representative responsible,
 - (ii) the relevant act or omission,
 - (iii) the reasons why that act or omission meets the criteria for making an order,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
 - (a) identify the representative against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant act or omission,
 - (ii) the reasons why that act or omission meets the criteria for making an order, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A representative who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
 - (a) the general rule is that it must do so without waiting until the end of the case, but it may postpone making the order; and
 - (b) it must assess the amount itself.
- (8) Instead of making an order, the court may make adverse observations about the representative's conduct for use in an assessment where—
 - (a) a party's costs are—
 - (i) to be met by legal aid, or
 - (ii) to be paid out of central funds; or
 - (b) there is to be an assessment under rule 45.11.

Costs against a third party

45.10.-(1) This rule applies where—

- (a) there has been serious misconduct by a person who is not a party; and
- (b) the court can order that person to pay a party's costs.

(2) In this rule, costs include costs met by legal aid.

(3) The court may make an order—

- (a) on application by the party who incurred the costs; or
- (b) on its own initiative.

(4) A party who wants the court to make an order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the person responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected;
- (c) in that application specify—
 - (i) the person responsible,
 - (ii) the relevant misconduct,
 - (iii) the reasons why the criteria for making an order are met,
 - (iv) the amount claimed, and
 - (v) those on whom the application has been served.

(5) Where the court considers making an order on its own initiative, it must—

- (a) identify the person against whom it proposes making that order; and
- (b) specify—
 - (i) the relevant misconduct,
 - (ii) the reasons why the criteria for making an order are met, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.

(6) A person who wants to oppose an order must—

- (a) make representations as soon as practicable; and
- (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.

(7) If the court makes an order—

- (a) the general rule is that it must do so at the end of the case, but it may do so earlier; and
- (b) it must assess the amount itself.

Assessment and re-assessment

- 45.11.–(1) This rule applies where the court directs an assessment under—
- (a) rule 33.48 (Confiscation and related proceedings – restraint and receivership proceedings: rules that apply generally – assessment of costs);
 - (b) rule 45.6 (Costs on appeal); or
 - (c) rule 45.7 (Costs on an application).
- (2) The assessment must be carried out by the relevant assessing authority, namely—
- (a) the Lord Chancellor, where the direction was given by a magistrates' court or by the Crown Court; or
 - (b) the Registrar, where the direction was given by the Court of Appeal.
- (3) The party in whose favour the court made the costs order ('the applicant') must—
- (a) apply for an assessment—
 - (i) in writing, in any form required by the assessing authority, and
 - (ii) not more than 3 months after the costs order; and
 - (b) serve the application on—
 - (i) the assessing authority, and
 - (ii) the party against whom the court made the costs order ('the respondent').
- (4) The applicant must—
- (a) summarise the work done;
 - (b) specify—
 - (i) each item of work done, giving the date, time taken and amount claimed,
 - (ii) any disbursements or expenses, including the fees of any advocate, and
 - (iii) any circumstances of which the applicant wants the assessing authority to take particular account; and
 - (c) supply—
 - (i) receipts or other evidence of the amount claimed, and
 - (ii) any other information or document for which the assessing authority asks, within such period as that authority may require.
- (5) A respondent who wants to make representations about the amount claimed must—
- (a) do so in writing; and
 - (b) serve the representations on the assessing authority, and on the applicant, not more than 21 days after service of the application.
- (6) The assessing authority must—
- (a) if it seems likely to help with the assessment, obtain any other information or document;
 - (b) resolve in favour of the respondent any doubt about what should be allowed; and
 - (c) serve the assessment on the parties.
- (7) Where either party wants the amount allowed re-assessed—
- (a) that party must—

- (i) apply to the assessing authority, in writing and in any form required by that authority,
 - (ii) serve the application on the assessing authority, and on the other party, not more than 21 days after service of the assessment,
 - (iii) explain the objections to the assessment,
 - (iv) supply any additional supporting information or document, and
 - (v) ask for a hearing, if that party wants one; and
 - (b) a party who wants to make representations about an application for re-assessment must—
 - (i) do so in writing,
 - (ii) serve the representations on the assessing authority, and on the other party, not more than 21 days after service of the application, and
 - (iii) ask for a hearing, if that party wants one;
 - (c) the assessing authority—
 - (i) must arrange a hearing, in public or in private, if either party asks for one,
 - (ii) subject to that, may re-assess the amount allowed with or without a hearing,
 - (iii) must re-assess the amount allowed on the initial assessment, taking into account the reasons for disagreement with that amount and any other representations,
 - (iv) may maintain, increase or decrease the amount allowed on the assessment,
 - (v) must serve the re-assessment on the parties, and
 - (vi) must serve written reasons on the parties, if not more than 21 days later either party asks for such reasons.
- (8) A time limit under this rule may be extended even after it has expired—
- (a) by the assessing authority, or
 - (b) by the Senior Costs Judge, if the assessing authority declines to do so.

Appeal to a costs judge

45.12.—(1) This rule applies where—

- (a) the assessing authority has re-assessed the amount allowed under rule 45.11; and
 - (b) either party wants to appeal against that amount.
- (2) That party must—
- (a) serve an appeal notice on—
 - (i) the Senior Costs Judge,
 - (ii) the other party, and
 - (iii) the assessing authoritynot more than 21 days after service of the written reasons for the re-assessment;
 - (b) explain the objections to the re-assessment;
 - (c) serve on the Senior Costs Judge with the appeal notice—

- (i) the applications for assessment and re-assessment,
 - (ii) any other information or document considered by the assessing authority,
 - (iii) the assessing authority's written reasons for the re-assessment, and
 - (iv) any other information or document for which a costs judge asks, within such period as the judge may require; and
 - (d) ask for a hearing if that party wants one.
- (3) A party who wants to make representations about an appeal must—
- (a) serve representations in writing on—
 - (i) the Senior Costs Judge, and
 - (ii) the applicantnot more than 21 days after service of the appeal notice; and
 - (b) ask for a hearing, if that party wants one.
- (4) Unless a costs judge otherwise directs, the parties may rely only on—
- (a) the objections to the amount allowed on the initial assessment; and
 - (b) any other representations and material considered by the assessing authority.
- (5) A costs judge—
- (a) must arrange a hearing, in public or in private, if either party asks for one;
 - (b) subject to that, may determine an appeal with or without a hearing;
 - (c) may—
 - (i) consult the assessing authority,
 - (ii) consult the court which made the costs order, and
 - (iii) obtain any other information or document;
 - (d) must reconsider the amount allowed by the assessing authority, taking into account the objections to the re-assessment and any other representations;
 - (e) may maintain, increase or decrease the amount allowed on the re-assessment;
 - (f) may provide for the costs incurred by either party to the appeal; and
 - (g) must serve reasons for the decision on—
 - (i) the parties, and
 - (ii) the assessing authority.
- (6) A costs judge may extend a time limit under this rule, even after it has expired.

Appeal to a High Court judge

45.13.—(1) This rule applies where—

- (a) a costs judge has determined an appeal under rule 45.12; and
 - (b) either party wants to appeal against the amount allowed.
- (2) A party who wants to appeal—
- (a) may do so only if a costs judge certifies that a point of principle of general importance was involved in the decision on the review; and
 - (b) must apply in writing for such a certificate and serve the application on—

- (i) the costs judge,
 - (ii) the other party
- not more than 21 days after service of the decision on the review.
- (3) That party must—
 - (a) appeal to a judge of the High Court attached to the Queen’s Bench Division as if it were an appeal from the decision of a master under Part 52 of the Civil Procedure Rules 1998(a); and
 - (b) serve the appeal not more than 21 days after service of the costs judge’s certificate under paragraph (2).
- (4) A High Court judge—
 - (a) may extend a time limit under this rule even after it has expired;
 - (b) has the same powers and duties as a costs judge under rule 45.12; and
 - (c) may hear the appeal with one or more assessors.

Application for an extension of time

- 45.14. A party who wants an extension of time under rule 45.11, 45.12 or 45.13 must—
- (a) apply in writing;
 - (b) explain the delay; and
 - (c) attach the application, representations or appeal for which the extension of time is needed.

Parts 34 (Appeal to the Crown Court) and 39 (Appeal to the Court of Appeal about conviction or sentence) also contain rules about appeals against costs orders.

3.5.4.3. Interaction with other sentencing orders

Confiscation

POCA 2002 s.13¹³⁴⁵: Effect of order on court’s other powers

- s.13(1) - if the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- s.13(2) - the court must take account of the confiscation order before—
 - (a) it imposes a fine on the defendant, or
 - (b) it makes an order falling within subsection (3).
- s.13(3) - these orders fall within this subsection—
 - (a) an order involving payment by the defendant, other than [an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) or a priority order;

¹³⁴⁵ Commencement: 24 March 2003, SI 2003/333 art.2 and Sch.1, as amended by SCA 2015 s.6 on 1 June 2015.

- (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
- (c) an order under section 143 of the Sentencing Act (deprivation orders);
- (d) an order under section 23 or 23A of the Terrorism Act 2000 (c. 11) (forfeiture orders).

s.13(3A) - in this section “*priority order*” means any of the following—

- (a) a compensation order under section 130 of the Sentencing Act;
- (b) an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003;
- (c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

Discharges

PCC(S)A 2000 s.12¹³⁴⁶: Absolute and conditional discharge

s.12(7) - nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from making an order for costs against the offender [...]

Fines

R. v Northallerton Magistrates' Court [2000] 1 Cr. App. R. (S.) 136

While there is no requirement that any sum ordered by justices to be paid to a prosecutor by way of costs should stand in any arithmetical relationship to any fine imposed, the costs ordered to be paid should not in the ordinary way be grossly disproportionate to the fine. (Lord Bingham CJ, p. 142)

POA 1985 s.18¹³⁴⁷: Award of costs against accused

s.18(5) - where any person under the age of eighteen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.

3.5.4.4. Defendant's costs (Central funds)

3.5.4.4.1 General

Note: The Practice Direction (Costs in Criminal Proceedings) 2015 sets out the approach to take and the considerations a court should have in mind when considering a defendant's costs order.

¹³⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹³⁴⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Criminal Procedure Rules 2015 (SI 2015/1490)

Costs out of central funds

- 45.4.—(1) This rule applies where the court can order the payment of costs out of central funds.
- (2) In this rule, costs—
- (a) include—
 - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
 - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
 - (b) do not include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
 - (b) on its own initiative.
- (4) Where a person wants the court to make an order that person must—
- (a) apply as soon as practicable; and
 - (b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
 - (c) specify the amount claimed, if that person wants the court to assess the amount itself.
- (5) The general rule is that the court must make an order, but—
- (a) the court may decline to make a defendant's costs order if, for example—
 - (i) the defendant is convicted of at least one offence, or
 - (ii) the defendant's conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
 - (b) the court may decline to make a prosecutor's costs order if, for example, the prosecution was started or continued unreasonably.
- (6) If the court makes an order—
- (a) the court may direct an assessment under, as applicable—
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986(a), or
 - (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b);
 - (b) the court may assess the amount itself in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
 - (c) an order for the payment of a defendant's costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.
- (7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.

- (8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

*Note.*¹³⁴⁸ See also rule 45.2.

An order for the payment of costs out of central funds can be made—

- (a) *for a defendant—*
- (i) *on acquittal,*
 - (ii) *where a prosecution does not proceed,*
 - (iii) *where the Crown Court allows any part of a defendant's appeal from a magistrates' court,*
 - (iv) *where the Court of Appeal allows any part of a defendant's appeal from the Crown Court,*
 - (v) *where the Court of Appeal decides a prosecutor's appeal under Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing) or Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution),*
 - (vi) *where the Court of Appeal decides a reference by the Attorney General under Part 41 (Reference to the Court of Appeal of point of law or unduly lenient sentence),*
 - (vii) *where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order, or*
 - (viii) *where the defendant is discharged under Part 1 or 2 of the Extradition Act 2003;*
(See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; section 36(5) of the Criminal Justice Act 1972 and paragraph 11 of Schedule 3 to the Criminal Justice Act 1988; article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and sections 61 and 134 of the Extradition Act 2003.)
- (b) *for a private prosecutor, in proceedings in respect of an offence that must or may be tried in the Crown Court;*
(See section 17 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986.)
- (c) *for a person adversely affected by a serious crime prevention order, where the Court of Appeal—*
- (i) *allows an appeal by that person about that order, or*
 - (ii) *decides an appeal about that order by someone else.*
- (See article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)*

Where the court makes an order for the payment of a defendant's costs out of central funds—

- (a) *the general rule is that the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness costs), but if the defendant is an individual then an order may require payment of such an amount in a case—*
- (i) *in a magistrates' court, including in an extradition case,*

¹³⁴⁸ This note is contained within the procedure rules.

- (ii) *in the Crown Court, on appeal from a magistrates' court,*
 - (iii) *in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or*
 - (iv) *in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964, or on an appeal under section 16A of the Criminal Appeal Act 1968 (appeal against order made in cases of insanity or unfitness to plead); and*
- (b) *any such amount may not exceed an amount specified by regulations made by the Lord Chancellor.*

(See section 16A of the Prosecution of Offences Act 1985, sections 62A, 62B, 135A and 135B of the Extradition Act 2003 and regulations 4A and 7 of the Costs in Criminal Cases (General) Regulations 1986.

3.5.4.4.2 Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335)

Note: The Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) regs.4-13 provide for the procedure, determination of applications and appeals arising out of costs paid out of central funds.

3.5.4.4.3 Power to order

Magistrates' Court: bind over breaches

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.14¹³⁴⁹: Costs fixed by the court

reg.14(4) - section 16 of the Act shall apply to proceedings in a magistrates' court or the Crown Court in which it is alleged that an offender required to enter into a recognisance to keep the peace or be of good behaviour has failed to comply with a condition of that recognisance, as if that failure were an indictable offence.

Appeal to Crown Court

POA 1985 s.16¹³⁵⁰: Defence costs

s.16(3) - where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal—

[...]

(b) a less severe punishment is awarded;

the Crown Court may make a defendant's costs order in favour of the accused.

¹³⁴⁹ Commencement: 1 October 1986

¹³⁵⁰ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

Court of Appeal

POA 1985 s.16¹³⁵¹: Defence costs

s.16(4) - where the Court of Appeal—

- (a) allows an appeal under Part I of the Criminal Appeal Act 1968 against—
[...]
- (c) on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below); or
- (d) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);

the court may make a defendant's costs order in favour of the accused.

Attorney General's references

CJA 1988 Sch.3 para.11¹³⁵²:

para.11(1) - where on a reference to the Court of Appeal under section 36 above or a reference to the Supreme Court under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court of Appeal or the Supreme Court, he shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, under Supreme Court Rules.

para.11(2) - sub-paragraph (1) has effect subject to—

- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).

para.11(3) - a person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.

para.11(4) - Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

¹³⁵¹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵² Commencement: 1 February 1989, SI 1989/1 art. 2(b)

3.5.4.5. Divisional Court, Supreme Court

POA 1985 s.16¹³⁵³: Defence costs

s.16(5) - where—

- (a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen's Bench Division;
- (b) the Supreme Court determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;
- (c) the Court of Appeal determines an application for leave to appeal to the Supreme Court under Part II of the Criminal Appeal Act 1968; or
- (d) the Supreme Court determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant's costs order in favour of the accused.

Test to apply

POA 1985 s.16¹³⁵⁴: Defence costs

s.16(6) - a defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

Power to order part-payment

POA 1985 s.16¹³⁵⁵: Defence costs

s.16(6A) - where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

s.16(6B) - subsections (6) and (6A) have effect subject to—

- (a) section 16A, and
- (b) regulations under section 20(1A)(d).

Legal costs: Requisite conditions

POA 1985 s.16A¹³⁵⁶: Legal costs

s.16A(1) - a defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section.

¹³⁵³ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁴ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁵ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁶ Commencement: 1 October 2012, as inserted by LASPOA 2012 Sch.7 para.3. The insertion does not have effect in relation to costs orders made by a court in proceedings which commenced before the relevant day, LASPOA 2012 Sch.7 para.20.

- s.16A(2) - subsection (1) does not apply where condition A, B, C or D is met.
- s.16A(3) - condition A is that the accused is an individual and the order is made under—
- (a) section 16(1),
 - (b) section 16(3), or
 - (c) section 16(4)(a)(ii) or (iii) or (d).
- s.16A(4) - condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—
- (a) proceedings in a magistrates' court, or
 - (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence).
- s.16A(5) - condition C is that the legal costs were incurred in proceedings in the Supreme Court.
- s.16A(5A) - condition D is that—
- (a) the accused is an individual,
 - (b) the order is made under section 16(2),
 - (c) the legal costs were incurred in relevant Crown Court proceedings, and
 - (d) the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings
- (and condition D continues to be met if the determination is withdrawn).
- s.16A(6) - the Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
- (a) provision amending this section by adding, modifying or removing an exception, and
 - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- s.16A(7) - regulations under subsection (6) may not remove or limit the exception provided by condition C.
- s.16A(8) - where a court makes a defendant's costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- s.16A(9) - where, in a defendant's costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
- s.16A(10) - in this section—
- "legal costs"* means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;
- "advocacy services"* means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

s.16A(11) - in subsection (5A)—

“determination of financial ineligibility”, in relation to an individual and proceedings, means a determination under section 21 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that the individual's financial resources are such that the individual is not eligible for representation under section 16 of that Act for the purposes of the proceedings;

“Director of Legal Aid Casework” means the civil servant designated under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“relevant Crown Court proceedings” means any of the following—

- (a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates' court to the Crown Court for trial;
- (b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;
- (c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.

Fixing the amount

POA 1985 s.16¹³⁵⁷: Defence costs

s.16(6C) - when making a defendant's costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—

- (a) the accused agrees the amount, or
- (b) subsection (6A) applies.

s.16(6D) - where the court does not fix the amount to be paid out of central funds in the order—

- (a) it must describe in the order any reduction required under subsection (6A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.4A¹³⁵⁸: Costs fixed by the court

reg.4A - where the court fixes an amount to be paid to the accused out of central funds in accordance with section 16(6C) of the Act or sections 62A(4) or 135A(4) of the Extradition Act 2003, it must, in relation to any amounts payable in respect of legal

¹³⁵⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁸ Commencement: 1 October 2012, as inserted by SI 2012/1804 reg.5. Transitional arrangements etc. are set out in reg.3.

costs, calculate such amounts in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to regulation 7(7), whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the accused.

3.5.4.6. Private prosecutor's costs (Central funds)

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335)

Note: The Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) regs.4-13 provide for the procedure, determination of applications and appeals arising out of costs paid out of central funds.

Power to order

POA 1986 s.17¹³⁵⁹: Prosecution costs

s.17(1) - subject to subsections (2) and (2A) below, the court may—

- (a) in any proceedings in respect of an indictable offence; and
- (b) in any proceedings before a Divisional Court of the Queen's Bench Division or the Supreme Court in respect of a summary offence;

order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.

No costs for public authority etc.

POA 1986 s.17¹³⁶⁰: Prosecution costs

s.17(2) - no order under this section may be made in favour of—

- (a) a public authority; or
- (b) a person acting—
 - (i) on behalf of a public authority; or
 - (ii) in his capacity as an official appointed by such an authority.

s.17(6) - in this section "*public authority*" means —

- (a) a police force within the meaning of section 3 of this Act;
- (b) the Crown Prosecution Service or any other government department;
- (c) a local authority or other authority or body constituted for purposes of—
 - (i) the public service or of local government; or
 - (ii) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
- (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

¹³⁵⁹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶⁰ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Power to award partial costs

POA 1986 s.17¹³⁶¹: Prosecution costs

s.17(2A) - where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

Fixing the amount

POA 1986 s.17¹³⁶²: Prosecution costs

s.17(2B) - when making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—

- (a) the prosecutor agrees the amount, or
- (b) subsection (2A) applies.

s.17(2C) - where the court does not fix the amount to be paid out of central funds in the order—

- (a) it must describe in the order any reduction required under subsection (2A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor

Proceedings taken over by the CPS

POA 1986 s.17¹³⁶³: Prosecution costs

s.17(5) - where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.

Persons committed to Crown Court for sentence etc.

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.14¹³⁶⁴: Costs fixed by the court

reg.14(1) - Sections 17 and 18 of the Act shall apply to proceedings in the Crown Court in respect of a person committed by a magistrates' court to that Court—

- (a) with a view to his being sentenced for an indictable offence in accordance with section 42 of the Powers of Criminal Courts Act 1973; or
- (b) with a view to his being sentenced by the Crown Court under section 6(6) or 9(3) of the Bail Act 1976 or
- (c) with a view to the making of a hospital order with an order restricting his discharge under Part III of the Mental Health Act 1983,

¹³⁶¹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶² Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶³ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶⁴ Commencement: 1 October 1986

as they apply where a person is convicted in proceedings before the Crown Court.

3.5.4.7. Prosecution costs (paid by defendant)

General

Practice Direction (Costs in Criminal Proceedings) 2015

- 3.4 An order should be made where the court is satisfied that the defendant or appellant has the means and the ability to pay. The order is not intended to be in the nature of a penalty which can only be satisfied on the defendant's release from prison. An order should not be made on the assumption that a third party might pay. Whilst the court should take into account any debt of the appellant or defendant, where the greater part of those debts relates to the offence itself, the court may still make an order for costs.
- 3.5 Where co-defendants are husband and wife, the couple's means should not be taken together. Where there are multiple defendants the court may make joint and several orders, but the costs ordered to be paid by an individual should be related to the costs in or about the prosecution of that individual. In a multi handed case where some defendants have insufficient means to pay their share of the costs, it is not right for that share to be divided among the other defenders.
- 3.6 The prosecution should serve upon the defence, at the earliest time, full details of its costs so as to give the defendant a proper opportunity to make representations upon them if appropriate. If a defendant wishes to dispute all or any of the prosecution's claim for costs, the defendant should, if possible, give proper notice to the prosecution of the objections proposed to be made or at least make it plain to the court precisely what those objections are. There is no provision for assessment of prosecution costs in a criminal case, such disputes have to be resolved by the court, which must specify the amount to be paid.¹³⁶⁵

Criminal Procedure Rules 2015 (SI 2015/1490)

Costs on conviction and sentence, etc.

- 45.5.—(1) This rule applies where the court can order a defendant to pay the prosecutor's costs if the defendant is—
- (a) convicted or found guilty;
 - (b) dealt with in the Crown Court after committal for sentence there;
 - (c) dealt with for breach of a sentence; or
 - (d) in an extradition case—
 - (i) ordered to be extradited, under Part 1 of the Extradition Act 2003,
 - (ii) sent for extradition to the Secretary of State, under Part 2 of that Act, or
 - (iii) unsuccessful on an appeal by the defendant to the High Court, or on an application by the defendant for permission to appeal from the High Court to the Supreme Court.

¹³⁶⁵ See *R v Associated Octel Ltd* [1996] EWCA Crim 1327; [1997] Crim LR 144.

- (2) The court may make an order—
 - (a) on application by the prosecutor; or
 - (b) on its own initiative.
- (3) Where the prosecutor wants the court to make an order—
 - (a) the prosecutor must—
 - (i) apply as soon as practicable, and
 - (ii) specify the amount claimed; and
 - (b) the general rule is that the court must make an order if it is satisfied that the defendant can pay.
- (4) A defendant who wants to oppose an order must make representations as soon as practicable.
- (5) If the court makes an order, it must assess the amount itself.

*Note.*¹³⁶⁶ See—

- (a) *rule 45.2;*
- (b) *section 18 of the Prosecution of Offences Act 1985(a) and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; and*
- (c) *sections 60 and 133 of the Extradition Act 2003.*

Under section 18(4) and (5) of the 1985 Act, if a magistrates' court—

- (a) *imposes a fine, a penalty, forfeiture or compensation that does not exceed £5—*
 - (i) *the general rule is that the court will not make a costs order against the defendant, but*
 - (ii) *the court may do so;*
- (b) *fines a defendant under 18, no costs order against the defendant may be for more than the fine.*

Part 39 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.

Power to order: Magistrates' Court and Crown Court

POA 1985 s.18¹³⁶⁷: Award of costs against accused

s.18(1) - where—

- (a) any person is convicted of an offence before a magistrates' court;
 - (b) the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or
 - (c) any person is convicted of an offence before the Crown Court;
- the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.

¹³⁶⁶ The note is contained within the procedure rules.

¹³⁶⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Power to order: Court of Appeal

POA 1985 s.18¹³⁶⁸: Award of costs against accused

s.18(2) - where the Court of Appeal dismisses—

- (a) an appeal or application for leave to appeal under Part I of the Criminal Appeal Act 1968 ;
- (b) an application by the accused for leave to appeal to the Supreme Court under Part II of that Act;
- (c) an appeal or application for leave under section 9(11) of the Criminal Justice Act 1987; or
- (d) an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996,

it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

High Court

Practice Direction (Costs in Criminal Proceedings) 2015

3.8 The High Court is not covered by section 18 of the Act but it has complete discretion over all costs between the parties in relation to proceedings before it.¹³⁶⁹

Amount must be specified

POA 1985 s.18¹³⁷⁰: Award of costs against accused

s.18(3) - the amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.

Restriction on costs in magistrates' courts where nominal fine imposed

POA 1985 s.18¹³⁷¹: Award of costs against accused

s.18(4) - where any person is convicted of an offence before a magistrates' court and—

- (a) under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
- (b) the sum so ordered to be paid does not exceed £5;

the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.

¹³⁶⁸ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶⁹ s.51 Supreme Court Act 1981

¹³⁷⁰ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷¹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Those under 18

POA 1985 s.18¹³⁷²: Award of costs against accused

- s.18(5) - where any person under the age of eighteen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.

Costs of transcripts

POA 1985 s.18¹³⁷³: Award of costs against accused

- s.18(6) - costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

Persons committed to Crown Court for sentence etc.

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.14¹³⁷⁴: Costs fixed by the court

- reg.14(1) - Sections 17 and 18 of the Act shall apply to proceedings in the Crown Court in respect of a person committed by a magistrates' court to that Court—
- (a) with a view to his being sentenced for an indictable offence in accordance with section 42 of the Powers of Criminal Courts Act 1973; or
 - (b) with a view to his being sentenced by the Crown Court under section 6(6) or 9(3) of the Bail Act 1976 or
 - (c) with a view to the making of a hospital order with an order restricting his discharge under Part III of the Mental Health Act 1983,
- as they apply where a person is convicted in proceedings before the Crown Court.

Appeals

MCA 1980 s.108¹³⁷⁵: Right of appeal to the Crown Court

- s.108(1) - a person convicted by a magistrates' court may appeal to the Crown Court—
- (a) if he pleaded guilty, against his sentence;
 - (b) if he did not, against the conviction or sentence.
- s.108(3) - in this section “sentence” includes any order made on conviction by a magistrates' court, not being—
- (b) an order for the payment of costs [...]

¹³⁷² Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷³ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷⁴ Commencement: 1 October 1986

¹³⁷⁵ Commencement: 6 July 1981, SI 1981/457 art.2.

MCA 1980 s.109¹³⁷⁶: Abandonment of appeal

- s.109(1) - where notice to abandon an appeal has been duly given by the appellant—
- (a) the court against whose decision the appeal was brought may issue process for enforcing that decision, subject to anything already suffered or done under it by the appellant; and
 - (b) the said court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given to that party.
- s.109(2) - in this section “*appeal*” means an appeal from a magistrates’ court to the Crown Court, and the reference to a notice to abandon an appeal is a reference to a notice shown to the satisfaction of the magistrates’ court to have been given in accordance with rules of court.

POA 1985 s.18¹³⁷⁷: Award of costs against accused

- s.18(6) - costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

Criminal Procedure Rules 2014 [2014] EWCA Crim 1610 rule 76.6¹³⁷⁸: Costs on appeal

Costs on appeal

- 45.6.—(1) This rule—
- (a) applies where a magistrates’ court, the Crown Court or the Court of Appeal can order a party to pay another person’s costs on an appeal, or an application for permission to appeal;
 - (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party’s costs on an appeal to that court, except on an appeal under—
 - (i) section 108 of the Magistrates’ Courts Act 1980, or
 - (ii) section 45 of the Mental Health Act 1983.
- (2) In this rule, costs include—
- (a) costs incurred in the court that made the decision under appeal; and
 - (b) costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
 - (b) on its own initiative.

¹³⁷⁶ Commencement: 6 July 1981, SI 1981/457 art.2.

¹³⁷⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷⁸ Commencement: 6 October 2014

- (4) A person who wants the court to make an order must—
 - (a) apply as soon as practicable;
 - (b) notify each other party;
 - (c) specify—
 - (i) the amount claimed, and
 - (ii) against whom; and
 - (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—
 - (i) apply in writing not more than 14 days later, and
 - (ii) serve the application on the appellant and on the Crown Court officer.
- (5) A party who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.
- (6) Where the application was under paragraph (4)(d), the Crown Court officer may—
 - (a) submit it to the Crown Court; or
 - (b) serve it on the magistrates' court officer, for submission to the magistrates' court.
- (7) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself where—
 - (a) the appellant abandons an appeal to the Crown Court;
 - (b) the Crown Court decides an appeal, except an appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980, or
 - (ii) section 45 of the Mental Health Act 1983; or
 - (c) the Court of Appeal decides an appeal to which Part 40 applies (Appeal to the Court of Appeal about reporting or public access restriction).
- (8) If the court makes an order in any other case, it must assess the amount itself.

*Note.*¹³⁷⁹ See also rule 45.2.

A magistrates' court can order an appellant to pay a respondent's costs on abandoning an appeal to the Crown Court.

The Crown Court can order—

- (a) *the defendant to pay the prosecutor's costs on dismissing a defendant's appeal—*
 - (i) *against conviction or sentence, under section 108 of the Magistrates' Courts Act 1980, or*
 - (ii) *where the magistrates' court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and*

¹³⁷⁹ The note is contained within the procedure rules.

- (b) *one party to pay another party's costs on deciding any other appeal to which Part 34 (Appeal to the Crown Court) applies.*

The Court of Appeal can order—

- (a) *the defendant to pay another person's costs on dismissing a defendant's appeal or application to which Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 39 (Appeal to the Court of Appeal about conviction or sentence) or Part 43 (Appeal or reference to the Supreme Court) applies;*
- (b) *the defendant to pay another person's costs on allowing a prosecutor's appeal to which Part 38 (Appeal to the Court of Appeal against ruling adverse to the prosecution) applies;*
- (c) *the appellant to pay another person's costs on dismissing an appeal or application by a person affected by a serious crime prevention order;*
- (d) *one party to pay another party's costs on deciding an appeal to which Part 40 (Appeal to the Court of Appeal about reporting or public access restriction) applies.*

See section 109 of the Magistrates' Courts Act 1980; section 52 of the Senior Courts Act 1981 (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988; and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008

3.5.4.8. Solicitors paying costs: The inherent jurisdiction of the senior courts

Practice Direction (Costs in Criminal Proceedings) 2015

- 1.2.3 The Senior Courts also have the power under their inherent jurisdiction over officers of the court to order a solicitor personally to pay costs thrown away. The inherent jurisdiction of the court should be invoked only to avoid a clear injustice.¹³⁸⁰ Where the legislature has stepped in with particular legislation in a particular area (eg, the wasted costs provisions) then, within that particular area, the existing inherent jurisdiction will be ousted or curtailed, at any rate in so far as the particular legislation is negative in character.¹³⁸¹ Given the present provisions relating to costs, the exercise of the inherent jurisdiction will occur only in the rarest of circumstances.

4.6 Awards of Costs against Solicitors under the Court's Inherent Jurisdiction

- 4.6.1 In addition to the power under regulation 3 of the General Regulations to order that costs improperly incurred be paid by a party to the proceedings and the power to make wasted costs orders under section 19A of the Act, the Senior Courts (which includes the Crown Court) may, in the exercise of its inherent jurisdiction over officers of the court, order a solicitor personally to pay costs thrown away by reason of a serious breach on the part of the solicitor of his duty to the court.
- 4.6.2 No such order may be made unless reasonable notice has been given to the solicitor of the matter alleged against him and he is given a reasonable opportunity of being heard in reply.
- 4.6.3 This power should be used only in exceptional circumstances not covered by the statutory powers: see para 1.2.3.

¹³⁸⁰ *Symbol Park Lane Ltd v Steggles Palmer* [1985] 1 WLR 668 CA

¹³⁸¹ *Shiloh Spinners Ltd v Harding* [1973] AC 691; *Harrison v Tew* [1989] QB 307 HL

3.5.4.9. Criminal Courts Charge

3.5.4.9.1 When does it apply?

Availability

POA 1985 s.21A¹³⁸²: Criminal courts charge

s.21A(1) - a court mentioned in section 21B must, at the times listed there, order a person convicted of an offence to pay a charge in respect of relevant court costs, subject to—

- (a) subsections (2) and (3), and
- (b) section 21C.

s.21A(2) - an order must not be made if the person was under 18 when the offence was committed.

s.21A(3) - an order must not be made in a case or class of case prescribed by the Lord Chancellor by regulations.

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) reg.2¹³⁸³: Cases in which the duty to order payment of the criminal courts charge does not apply

- reg.2(1) - an order under section 21A(1) of the POA 1985 (criminal courts charge) must not be made against a person (“P”) convicted of an offence in the following cases—
- (a) where a court deals with P for the offence by making an order discharging P absolutely under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute discharge);
 - (b) where a court deals with P for the offence by making in respect of P an order under section 37(1) of the MHA 1983 (power of courts to order hospital admission or guardianship) or a direction under section 45A(3) of the MHA 1983 (power of higher courts to order hospital admission);
 - (c) where the Crown Court dismisses an appeal against conviction or sentence for the offence following a reference by the Criminal Cases Review Commission under section 11(1) of the CAA 1995 (cases dealt with summarily in England and Wales);
 - (d) where the Court of Appeal dismisses an appeal for the offence under Part 1 of the CAA 1968 following a reference by the Criminal Cases Review Commission under section 9(1) of the CAA 1995 (cases dealt with on indictment in England and Wales).
- reg.2(2) - paragraph (3) applies where a court deals with a person in the same proceedings—
- (a) for an offence; and
 - (b) for a failure to comply with a requirement mentioned in section 21B of the POA 1985 (criminal courts charge: courts and times).

¹³⁸² Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸³ Commencement: 13 April 2015, SI 2015/796 art.1(1).

- reg.2(3) - an order under section 21A(1) of the POA 1985 must not be made in respect of a failure to comply with a requirement mentioned in section 21B of the POA 1985.
- reg.2(4) - paragraph (5) applies where a court deals with a person in the same proceedings for a failure to comply with more than one of the requirements mentioned in section 21B of the POA 1985 and paragraph (3) does not apply.
- reg.2(5) - an order under section 21A(1) of the POA 1985 must not be made—
- (a) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(b), (c) and (d) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(c) or (d);
 - (b) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(b) and (c) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(c);
 - (c) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(b) and (d) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(d);
 - (d) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(c) and (d) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(d);
 - (e) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(2)(b) and (c) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(2)(c).

Exception

POA 1985 s.21A¹³⁸⁴: Criminal courts charge

- s.21A(4) - a court must not take into account the duty under subsection (1) or any order under this section when dealing with a person (other than under this section) for an offence or for a failure to comply with a requirement mentioned in section 21B.

Interpretation

POA 1985 s.21A¹³⁸⁵: Criminal courts charge

- s.21A(5) - in this section—

“*court costs*” means costs of providing the judiciary and the rest of the system of courts, but does not include defence or prosecution costs;

“*relevant court costs*” means court costs incurred in connection with criminal proceedings or proceedings for a failure to comply with a requirement mentioned in

¹³⁸⁴ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸⁵ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

section 21B, but does not include costs of providing the Supreme Court or judges of that Court.

3.5.4.9.2 When must the order be made?

Magistrates' Court

POA 1985 s.21B¹³⁸⁶: Criminal courts charge: courts and times

s.21B(1) - a magistrates' court must make an order under section 21A at the following times—

- (a) when dealing with the person for the offence;
- (b) when dealing with the person under Schedule 8 to the Criminal Justice Act 2003 for failure to comply with any of the requirements of a community order;
- (c) when dealing with the person under Schedule 12 to the Criminal Justice Act 2003 for failure to comply with any of the community requirements of a suspended sentence order;
- (d) when dealing with the person under section 256AC of the Criminal Justice Act 2003 for failure to comply with a supervision requirement imposed under section 256AA of that Act.

Crown Court

POA 1985 s.21B¹³⁸⁷: Criminal courts charge: courts and times

s.21B(2) - the Crown Court must make an order under section 21A at the following times—

- (a) when dealing with the person for the offence;
- (b) when dealing with the person under Schedule 8 to the Criminal Justice Act 2003 for failure to comply with any of the requirements of a community order;
- (c) when dealing with the person under Schedule 12 to the Criminal Justice Act 2003 for failure to comply with any of the community requirements of a suspended sentence order;
- (d) when dismissing an appeal by the person against conviction or sentence for the offence.

¹³⁸⁶ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸⁷ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

Court of Appeal

POA 1985 s.21B¹³⁸⁸: Criminal courts charge: courts and times

- s.21B(3) - the Court of Appeal must make an order under section 21A at the following times—
- (a) when dismissing an appeal under Part 1 of the Criminal Appeal Act 1968 against the person's conviction or sentence for the offence;
 - (b) when dismissing an application for leave to bring such an appeal.

3.5.4.9.3 How much is the charge?

POA 1985 s.21C¹³⁸⁹: Amount of criminal courts charge

- s.21C(1) - a charge ordered to be paid under section 21A must be of an amount specified by the Lord Chancellor by regulations.
- s.21C(2) - when specifying amounts under this section, the Lord Chancellor must seek to secure that an amount specified in respect of a class of case does not exceed the relevant court costs reasonably attributable to a case of that class.
- s.21C(3) - in this section "*relevant court costs*" has the same meaning as in section 21A.

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) reg.3¹³⁹⁰: Cases in which the duty to order payment of the criminal courts charge does not apply Amount of the criminal courts charge

- reg.3(1) - the table in the Schedule, read with the provisions of this regulation, sets out the charge that must be ordered to be paid under section 21A(1) of the POA 1985 by class of case.
- reg.3(2) - paragraph (3) applies where, following the summary conviction of a person ("P") for an offence, a magistrates' court commits P to the Crown Court for sentence and the Crown Court accordingly deals with P for the offence.
- reg.3(3) - the charge the Crown Court must order to be paid is the amount in column 2 of the table which corresponds to the amount the magistrates' court would have had to order had P not been committed to the Crown Court for sentence.
- reg.3(4) - paragraph (5) applies where more than one entry in column 1 of the table applies.
- reg.3(5) - the charge the court must order to be paid is the amount in column 2 which corresponds to the entry mentioned in paragraph (4) which results in the highest amount.

¹³⁸⁸ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸⁹ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁰ Commencement: 13 April 2015, SI 2015/796 art.1(1).

reg.3(6) - where a person (“P”) changes P’s plea from not guilty to guilty after the start of a summary or Crown Court trial the charge the court must order to be paid is the amount that would have applied if P had not changed the plea.

reg.3(7) - for the purposes of paragraph (6)—

- (a) the start of a summary trial is the time when the prosecution opens its case;
- (b) the start of a Crown Court trial is—
 - (i) the time when a jury is sworn; or
 - (ii) where a trial takes place without a jury, the time when the prosecution opens its case.

The amounts

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796)
Sch.1¹³⁹¹

Column 1	Column 2
Conviction by a magistrates’ court in proceedings conducted in accordance with section 16A of the Magistrates’ Courts Act 1980 (trial by single justice on the papers)	£150
Conviction by a magistrates’ court for a summary offence on a guilty plea	£150
Conviction by a magistrates’ court at a trial of a summary offence where (a) the defendant did not enter a plea, (b) the trial proceeded in the absence of the defendant, and (c) the court dealt with the case on the papers without reliance on any oral evidence	£150
Conviction by a magistrates’ court for an offence triable either-way on a guilty plea	£180
Conviction by a magistrates’ court at a trial of a summary offence	£520
Conviction by a magistrates’ court at a trial of an offence triable either way	£1,000
Conviction by the Crown Court on a guilty plea	£900
Conviction by the Crown Court at a trial on indictment	£1,200
Magistrates’ court when dealing with a person under section 21B(1)(b), (c) or (d) of the POA 1985	£100
Crown Court when dealing with a person under section 21B(2)(b) or (c) of the POA 1985	£150
Crown Court dismissing an appeal by a person against conviction or sentence	£150
Court of Appeal dismissing an application for leave to bring an appeal under Part 1 of the CAA 1968 against a person’s conviction or sentence	£150
Court of Appeal dismissing an appeal under Part 1 of the CAA 1968 against a person’s conviction or sentence	£200

¹³⁹¹ Commencement: 13 April 2015, SI 2015/796 art.1(1).

3.5.4.9.4 Interest on the charge

POA 1985 s.21D¹³⁹²: Interest on criminal courts charge

- s.21D(1) - the Lord Chancellor may by regulations provide that a person who is ordered to pay a charge under section 21A must pay interest on the charge if or to the extent that it remains unpaid.
- s.21D(2) - the regulations may, in particular—
- (a) make provision about the rate of interest,
 - (b) make provision about periods when interest is or is not payable, and
 - (c) make provision by reference to a measure or document as amended from time to time.
- s.21D(3) - the regulations may not make provision for a rate of interest that is higher than the rate that the Lord Chancellor considers would maintain the value in real terms of amounts that remain unpaid.
- s.21D(4) - an amount of interest payable under the regulations is to be treated as part of the charge ordered to be paid under section 21A.

3.5.4.9.5 Power to remit the charge

Power to remit

POA 1985 s.21E¹³⁹³: Power to remit criminal courts charge

- s.21E(1) - a magistrates' court may remit the whole or part of a charge ordered to be paid by a person under section 21A, subject to the restrictions in subsections (2) to (4).

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) reg.4¹³⁹⁴: Remittal of the criminal courts charge

- reg.4 - the period specified for the purposes of section 21E(4) of the POA 1985 (power to remit criminal courts charge) is—
- (a) where the person liable to pay the charge has made the application to a magistrates' court to remit the charge, two years;
 - (b) in any other case, 12 months.

¹³⁹² Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹³ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁴ Commencement: 13 April 2015, SI 2015/796 art.1(1).

Restrictions

POA 1985 s.21E¹³⁹⁵: Power to remit criminal courts charge

s.21E(2) - it may remit the charge only if—

- (a) it is satisfied that the person has taken all reasonable steps to pay it, having regard to the person's personal circumstances, or
- (b) it is satisfied that collection and enforcement of the charge is impracticable.

s.21E(3) - it may not remit the charge at a time when the person is detained in prison.

s.21E(4) - it may not remit the charge unless each of following has expired—

- (a) a specified period beginning with the day on which an order under section 21A was last made in respect of the person;
- (b) a specified period beginning with the day on which the person was last convicted of an offence;
- (c) where relevant, a specified period beginning with the day on which the person was last released from prison.

Charge remitted: Unpaid work imposed for default

POA 1985 s.21E¹³⁹⁶: Power to remit criminal courts charge

s.21E(5) - where a court remits a charge under section 21A after an order has been made under section 300(2) of the Criminal Justice Act 2003 (power to impose unpaid work requirement etc on fine defaulter) for default in paying the charge (or the charge and other amounts), the court must—

- (a) reduce the total number of hours or days to which the order relates by the same proportion as the amount remitted bears to the total amount in respect of which the order was made, or
- (b) if the total number of hours or days would be reduced to nil under paragraph (a), revoke the order.

s.21E(6) - in calculating a reduction required by subsection (5), any fraction of an hour or day is to be rounded down to the nearest hour or day.

¹³⁹⁵ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁶ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

Interpretation

POA 1985 s.21E¹³⁹⁷: Power to remit criminal courts charge

s.21E(7) - in this section—

“*prison*” includes any place where a person serving a sentence of detention for an offence is liable to be detained;

“*specified period*” means a period of a length specified by the Lord Chancellor by regulations.

3.5.4.9.6 Secretary of State's power to make regulations

POA 1985 s.21F¹³⁹⁸: Regulations under this Part

s.21F - regulations under this Part may include transitional, transitory and saving provision.

3.5.4.9.7 Secretary of State's power to make regulations: General

POA 1985 s.20¹³⁹⁹: Regulations

s.20(1) - the Lord Chancellor may make regulations for carrying this Part into effect

s.20(1A) - the Lord Chancellor may by regulations—

- (a) make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,
- (b) make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,
- (c) make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),
- (d) make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and
- (e) make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.

s.20(1B) - in subsection (1A)(d) “*relevant costs order*” means a costs order other than—

- (a) an order made by any court under section 17, and

¹³⁹⁷ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁸ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

- (b) so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.

s.20(1C) - regulations under subsection (1A) may, in particular—

- (a) make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,
- (b) make different provision in relation to different costs orders and different areas, and
- (c) make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.

s.20(2) - the Lord Chancellor may by regulations make provision for the recovery of sums paid by the Lord Chancellor under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or out of central funds in accordance with a costs order in cases where—

- (a) a costs order has been made against a party to proceedings; and
- (b) the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant's costs order or, as the case may be, an order under section 17 of this Act has been made.

s.20(3) - regulations made under subsection (1A) above may provide that provision as to the calculation of amounts payable out of central funds under a costs order (whether in the form of rates or scales or other provision) shall be determined by the Lord Chancellor with the consent of the Treasury.

s.20(4) - regulations made under subsection (2) above may, in particular—

- (a) require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and
- (b) enable the Lord Chancellor to enforce those directions in cases to which they apply.

s.20(6) - any regulations under this Part may contain such incidental, supplemental and transitional provisions as the Lord Chancellor considers appropriate.

s.20(7) - before making any regulations under section 19(1), 19A or 19B of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.

s.20(8) - in this section "*costs order*" means —

- (a) an order made under or by virtue of this Part for payment to be made—
 - (i) out of central funds; or
 - (ii) by any person; or
- (b) an order made in a criminal case by the Supreme Court for the payment of costs by a party to proceedings.

3.5.5. Preventive orders (financial reporting orders)

The power to make a financial reporting order was repealed on 3 May 2015 by the Serious Crime Act 2015 s.50(1)(a), as commenced by SI 2015/820 reg.2(i). The repeal coincided with the insertion of Serious Crime Act 2007 s.5A. An explanatory memorandum to the Serious Crime Act 2015 stated that the effect was to consolidate the financial reporting order into the serious crime order.

3.5.6. Confiscatory in nature

Note: There is also a power to make an unlawful profit order in civil proceedings. For more details, see section 5 of the Act.

3.5.6.1. Unlawful profit orders

3.5.6.1.1 General

What is an unlawful profit order?

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁰: Unlawful profit orders: criminal proceedings

s.4(3) - an “*unlawful profit order*” is an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence.

Interpretation

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰¹: Unlawful profit orders: criminal proceedings

s.4(13) - in this section “*the landlord*” means the landlord under the tenancy in respect of which the offence was committed.

Note: Section 11 of the Act also provides definitions.

3.5.6.1.2 Making the order

Availability

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰²: Unlawful profit orders: criminal proceedings

s.4(1) - this section applies if a person (“the offender”) is convicted of—

- (a) an offence under section 1 or 2 (Unlawful sub-letting: secure tenancies and Unlawful sub-letting: assured tenancies) or
- (b) an associated offence in relation to an offence under section 1 or 2.

¹⁴⁰⁰ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰¹ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰² Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

Power/duty of the court to consider whether or not to impose an order

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰³: Unlawful profit orders: criminal proceedings

- s.4(2) - the court by or before which the offender is convicted—
- (a) must, on application or otherwise, decide whether to make an unlawful profit order, and
 - (b) may, if it considers it appropriate to do so, make such an order, instead of or in addition to dealing with the offender in any other way.

Must give reasons if not making an order

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁴: Unlawful profit orders: criminal proceedings

- s.4(4) - if the court decides not to make an unlawful profit order, it must give reasons for that decision on passing sentence on the offender.

Determining the amount

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁵: Unlawful profit orders: criminal proceedings

- s.4(5) - the amount payable under an unlawful profit order must be such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor, but subject to subsections (6) and (7).

Calculating the maximum amount

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁶: Unlawful profit orders: criminal proceedings

- s.4(6) - the maximum amount payable under an unlawful profit order is calculated as follows—
- Step 1*
- Determine the total amount the offender received as a result of the conduct constituting the offence (or the best estimate of that amount).
- Step 2*
- Deduct from the amount determined under step 1 the total amount, if any, paid by the offender as rent to the landlord (including service charges) over the period during which the offence was committed.

¹⁴⁰³ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁴ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁵ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁶ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

3.5.6.1.3 Unpaid orders

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁷: Unlawful profit orders: criminal proceedings

- s.4(10) - if the amount required to be paid by a person under an unlawful profit order is not paid when it is required to be paid, that person must pay interest on the amount for the period for which it remains unpaid.
- s.4(11) - the rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (interest on civil judgment debts).

3.5.6.1.4 Offenders aged under 18

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁸: Unlawful profit orders: criminal proceedings

- s.4(12) - sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - (c) section 133(3)(a) and (b) were omitted, and
 - (d) the reference in 133(3)(c)(ii) to an unlawful profit order under section 4 were to a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000.

PCC(S)A 2000 s.131¹⁴⁰⁹: Limit on amount payable under compensation order of magistrates' court in case of young offender

- s.131(A1) - this section applies if (but only if) a magistrates' court has convicted a person aged under 18 ("the offender") of an offence or offences.
- s.131(1) - the compensation to be paid under a compensation order made by the court in respect of the offence, or any one of the offences, shall not exceed £5,000.
- s.131(2) - the compensation or total compensation to be paid under a compensation order or compensation orders made by the court in respect of any offence or offence taken into consideration in determining sentence shall not exceed the difference (if any) between—
- (a) the amount or total amount which under subsection (1) above is the maximum for the offence or offences of which the offender has been convicted; and
 - (b) the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

¹⁴⁰⁷ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁸ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.6.1.5 Interaction with other sentencing orders

Civil unlawful profit order

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹⁰: Unlawful profit orders: criminal proceedings

- s.4(7) - where an unlawful profit order has been made against the offender under section 5, an order under this section may only provide for the landlord to recover an amount equal to the aggregate of the following—
- (a) any amount by which the amount of the offender's profit found under this section exceeds the amount payable under the order made under section 5, and
 - (b) a sum equal to any portion of the amount payable under the order made under section 5 that the landlord fails to recover,
- and the landlord may not enforce the order under this section, so far as it relates to a sum mentioned in paragraph (b), without the leave of the court.

Fines

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹¹: Unlawful profit orders: criminal proceedings

- s.4(8) - subsection (9) applies where the court considers—
- (a) that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, and
 - (b) that the offender has insufficient means to pay both—
 - (i) an appropriate sum under an unlawful profit order, and
 - (ii) an appropriate sum under a fine.
- s.4(9) - the court must give preference to making an unlawful profit order (though it may impose a fine as well).

¹⁴¹⁰ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴¹¹ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

3.5.6.1.6 Review of orders

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹²: Unlawful profit orders: criminal proceedings

- s.4(12) - Sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - (c) section 133(3)(a) and (b) were omitted, and
 - (d) the reference in section 133(3)(c) to a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order (or both) were to such a confiscation order or a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (or both).

Power

PCC(S)A 2000 s.133¹⁴¹³: Review of compensation orders

- s.133(1) - the magistrates' court for the time being having functions in relation to the enforcement of a compensation order (in this section referred to as "*the appropriate court*") may, on the application of the person against whom the compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) to (4) below.

When can the power be exercised?

PCC(S)A 2000 s.133¹⁴¹⁴: Review of compensation orders

- s.133(2) - the appropriate court may exercise a power conferred by subsection (1) above only—
- (a) at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the compensation order could be varied or set aside; and
 - (b) at a time before the person against whom the compensation order was made has paid into court the whole of the compensation which the order requires him to pay.
- s.133(3) - the appropriate court may exercise a power conferred by subsection (1) above only if it appears to the court—
- (a) that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or

¹⁴¹² Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴¹³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) in the case of a compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
- (c) that the means of the person against whom the compensation order was made are insufficient to satisfy in full both the order and a confiscation order under Part VI of the Criminal Justice Act 1988, or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013 (or both), made against him in the same proceedings; or
- (d) that the person against whom the compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

Must get consent of Crown Court

PCC(S)A 2000 s.133¹⁴¹⁵: Review of compensation orders

s.133(4) - where the compensation order was made by the Crown Court, the appropriate court shall not exercise any power conferred by subsection (1) above in a case where it is satisfied as mentioned in paragraph (c) or (d) of subsection (3) above unless it has first obtained the consent of the Crown Court.

Orders made on appeal

PCC(S)A 2000 s.133¹⁴¹⁶: Review of compensation orders

s.133(5) - where the compensation order has been made on appeal, for the purposes of subsection (4) above it shall be deemed—

- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.

3.5.6.1.7 Appeals

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹⁷: Unlawful profit orders: criminal proceedings

- s.4(12) - Sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - (c) section 133(3)(a) and (b) were omitted, and

¹⁴¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁷ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

- (d) the reference in section 133(3)(c) to a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order (or both) were to such a confiscation order or a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (or both).

Compensation not payable until time limit to appeal conviction or sentence or vary sentence has expired

PCC(S)A 2000 s.132¹⁴¹⁸: Compensation orders: appeals etc.

- s.132(1) - a person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- s.132(2) - the Criminal Procedure Rules may make provision regarding the way in which the magistrates' court for the time being having functions (by virtue of section 41(1) of the Administration of Justice Act 1970) in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended.

Court of Appeal: Power to annul or vary order

PCC(S)A 2000 s.132¹⁴¹⁹: Compensation orders: appeals etc.

- s.132(3) - the Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.

Order made/varied on appeal: Surcharge

PCC(S)A 2000 s.132¹⁴²⁰: Compensation orders: appeals etc.

- s.132(4A) - where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or the Supreme Court shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person's liability under that section is the same as it would be if he were being dealt with by the Crown Court.

¹⁴¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁰ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

TICs

PCC(S)A 2000 s.132¹⁴²¹: Compensation orders: appeals etc.

- s.132(5) - where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Supreme Court: Power to order

PCC(S)A 2000 s.132¹⁴²²: Compensation orders: appeals etc.

- s.132(4) - where the Supreme Court restores a conviction, it may make any compensation order which the court of trial could have made.

¹⁴²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

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3.6 Deprivation, forfeiture and destruction

3.6.1. Deprivation

3.6.1.1. General

What is a deprivation order?

PCC(S)A 2000 s.143¹⁴²³: Powers to deprive offender of property used etc. for purposes of crime

s.143(3) - an order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

Purpose of the order

R. v Highbury Corner Magistrates' Court ex. parte Di Matteo (1991) 92 Cr. App. R. 263

[The order] can serve a dual purpose...the removal from public circulation of an article which has been used to commit or facilitate the commission of an offence and as part of the punishment of the offender. (Watkins LJ, at p.268)

3.6.1.2. Making the order

Power to order: Property used for the purposes of crime

PCC(S)A 2000 s.143¹⁴²⁴: Powers to deprive offender of property used etc. for purposes of crime

- s.143(1) - where a person is convicted of an offence and the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him, or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—
- (a) has been used for the purpose of committing, or facilitating the commission of, any offence, or
 - (b) was intended by him to be used for that purpose,
- the court may (subject to subsection (5) below) make an order under this section in respect of that property.
- s.143(8) - facilitating the commission of an offence shall be taken for the purposes of subsection (1) above to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

¹⁴²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Power to order: Unlawful possession of property

PCC(S)A 2000 s.143¹⁴²⁵: Powers to deprive offender of property used etc. for purposes of crime

- s.143(2) - where a person is convicted of an offence and the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
- (a) has been lawfully seized from him, or
 - (b) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,
- the court may (subject to subsection (5) below) make an order under this section in respect of that property.

Considerations before making the order

PCC(S)A 2000 s.143¹⁴²⁶: Powers to deprive offender of property used etc. for purposes of crime

- s.143(5) - in considering whether to make an order under this section in respect of any property, a court shall have regard—
- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

Motor vehicles

PCC(S)A 2000 s.143¹⁴²⁷: Powers to deprive offender of property used etc. for purposes of crime

- s.143(6) - where a person commits an offence to which this subsection applies by—
- (a) driving, attempting to drive, or being in charge of a vehicle, or
 - (b) failing to comply with a requirement made under section 7 or 7A of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test or to give permission for such a test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
 - (c) failing, as the driver of a vehicle, to comply with subsection (2) or (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),
- the vehicle shall be regarded for the purposes of subsection (1) above (and section 144(1)(b) below) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence).

¹⁴²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

s.143(7) - subsection (6) above applies to—

- (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment;
- (b) an offence of manslaughter; and
- (c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).

Immigration or asylum

UKBA 2007 s.25¹⁴²⁸: Forfeiture of detained property

- s.25(1) - a court making a forfeiture order about property may order that the property be taken into the possession of the Secretary of State (and not of the police).
- s.25(2) - an order may be made under subsection (1) only if the court thinks that the offence in connection with which the order is made—
- (a) related to immigration or asylum, or
 - (b) was committed for a purpose connected with immigration or asylum.
- s.25(3) - in subsection (1) “*forfeiture order*” means an order under—
- (a) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
 - (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)).

3.6.1.3. Applications for proceeds of forfeited property

Power to order sums paid to person suffering loss etc.

PCC(S)A 2000 s.145¹⁴²⁹: Application of proceeds of forfeited property

- s.145(1) - where a court makes an order under section 143 above in a case where:
- (a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.

¹⁴²⁸ Commencement: 31 March 2008, SI 2008/309 art.3(a) and art.6.

¹⁴²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Test to apply

PCC(S)A 2000 s.145¹⁴³⁰: Application of proceeds of forfeited property

s.145(2) - the court may make an order under this section only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

Exceptions

PCC(S)A 2000 s.145¹⁴³¹: Application of proceeds of forfeited property

s.145(3) - an order under this section has no effect:

- (a) before the end of the period specified in section 144(1)(a) above; or
- (b) if a successful application under section 1(1) of the Police (Property) Act 1897 has been made.

3.6.1.4. Particular circumstances

Cannot forfeit a house

R. v Khan [1983] 76 Cr. App. R. 29

Deprivation orders do not apply to real property.

Hire purchase agreements and property owned (partly/wholly) by others

R. v Troth [1979] 1 Cr. App. R. (S.) 341

Orders should not be made unless they are simple with no complicating factors.¹⁴³²

3.6.1.5. Interaction with other sentencing orders

No requirement for other sentence

PCC(S)A 2000 s.143¹⁴³³: Powers to deprive offender of property used etc. for purposes of crime

- s.143(4) - any power conferred on a court by subsection (1) or (2) above may be exercised—
- (a) whether or not the court also deals with the offender in any other way in respect of the offence of which he has been convicted; and
 - (b) without regard to any restrictions on forfeiture in any enactment contained in an Act passed before 29th July 1988.

¹⁴³⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴³¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴³² The context was an order was made in respect of a lorry part-owned by the offender following his plea of guilty to the theft of coal.

¹⁴³³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.6.1.6. Property in the possession of the police

Application of Police (Property) Act 1897

PCC(S)A 2000 s.144¹⁴³⁴: Property which is in the possession of the police by virtue of section 143

- s.144(1) - the Police (Property) Act 1897 shall apply, with the following modifications, to property which is in the possession of the police by virtue of section 143 above—
- (a) no application shall be made under section 1(1) of that Act by any claimant of the property after the end of six months from the date on which the order in respect of the property was made under section 143 above; and
 - (b) no such application shall succeed unless the claimant satisfies the court either—
 - (i) that he had not consented to the offender having possession of the property; or
 - (ii) where an order is made under subsection (1) of section 143 above, that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that subsection.
- s.144(2) - in relation to property which is in the possession of the police by virtue of section 143 above, the power to make regulations under section 2 of the Police (Property) Act 1897 (disposal of property in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect to it) shall, subject to subsection (3) below, include power to make regulations for disposal (including disposal by vesting in the relevant authority) in cases where no application by a claimant of the property has been made within the period specified in subsection (1)(a) above or no such application has succeeded.
- s.144(3) - the regulations may not provide for the vesting in the relevant authority of property in relation to which an order has been made under section 145 below (court order as to application of proceeds of forfeited property).
- s.144(4) - nothing in subsection (2A)(a) or (3) of section 2 of the Police (Property) Act 1897 limits the power to make regulations under that section by virtue of subsection (2) above.
- s.144(5) - in this section “*relevant authority*” has the meaning given by section 2(2B) of the Police (Property) Act 1897.

Power to order delivery of property to the owner

Police (Property) Act 1897 s.1¹⁴³⁵: Power to make orders with respect to property in possession of police

- s.1(1) - where any property has come into the possession of the police in connexion with their investigation of a suspected offence a court of summary jurisdiction may, on application, either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.

¹⁴³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴³⁵ Commencement: 6 August 1897, the Act received Royal Assent on 6 August 1897 and it appears it came into force on the same day.

- s.1(2) - an order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.

Unclaimed property

Police (Property) Act 1897 s.2¹⁴³⁶: Power to make orders with respect to property in possession of police

- s.2(1) - a Secretary of State may make regulations for the disposal of property which has come into the possession of the police under the circumstances mentioned in this Act in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto.
- s.2(2) - the regulations may authorised the sale of any such property, and the application of the proceeds of any such sale, and the application of any money of which the owner cannot be ascertained, to all or any of the following purposes:
- (a) the expenses of executing the regulations;
 - (b) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the police;
 - (c) the making of payments for the benefit of discharged prisoners or of persons dependent on prisoners or discharged prisoners; or
 - (d) such other purposes as the Secretary of State may consider expedient.
- s.2(2A) - the regulations may also provide that where, in the case of property other than money—
- (a) the property has remained in the possession of the police for a year,
 - (b) the police would under the regulations have power to sell the property,
 - (c) in the opinion of the relevant body, the property can be used for police purposes, and
 - (d) the relevant body determine, in such manner as may be prescribed by the regulations, that the property is to be retained by the relevant body,
- the relevant body is to become the owner of the property on the making of the determination or at such later time as the regulations may specify.
- s.2(2B) - the relevant body for the purposes of subsection (2A) is the local policing body.
- s.2(3) - where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for a year. In any other case the property shall not be sold until it has remained in the possession of the police for a year.
- s.2(4) - the regulations may also provide for the investment of money and for the audit of accounts.

¹⁴³⁶ Commencement: 6 August 1897, the Act received Royal Assent on 6 August 1897 and it appears it came into force on the same day.

- s.2(4A) - the regulations may also provide for the publication of determinations falling within subsection (2A)(d) above.
- s.2(5) - the regulations shall apply whether the property to which they relates has come into the possession of the police before of after the making of the regulations.
- s.2(6) - in relation to England and Wales, the power to make regulations under this section is exercisable by statutory instrument; and a statutory instrument made in the exercise of that power is subject to annulment in pursuance of a resolution of either House of Parliament.
- s.2(7) - in relation to Northern Ireland, the power to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, and regulations made in the exercise of that power are subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall have effect accordingly.

3.6.2. Forfeiture

3.6.2.1. Drugs

Availability

MDA 1971 s.27¹⁴³⁷: Forfeiture

- s.27(3) - an offence falls within this subsection if it is an offence which is specified in—
- (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
 - (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

Power to order

MDA 1971 s.27¹⁴³⁸: Forfeiture

- s.27(1) - subject to subsection (2) below, the court by or before which a person is convicted of an offence under this Act or an offence falling within subsection (3) below or an offence to which section 1 of the Criminal Justice (Scotland) Act 1987 relates or a drug trafficking offence, as defined in Article 2(2) of the Proceeds of Crime (Northern Ireland) Order 1996 may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Restriction

MDA 1971 s.27¹⁴³⁹: Forfeiture

- s.27(2) - the court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Availability

- s.27(3) - an offence falls within this subsection if it is an offence which is specified in—
- (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
 - (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

¹⁴³⁷ Commencement: 1 July 1973, SI 1973/795 art.2.

¹⁴³⁸ Commencement: 1 July 1973, SI 1973/795 art.2.

¹⁴³⁹ Commencement: 1 July 1973, SI 1973/795 art.2.

3.6.2.2. Firearms

Power to order

FA 1968 s.52¹⁴⁴⁰: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(1) - where a person—

- (a) is convicted of an offence under this Act (other than an offence under section 22(3) or an offence relating specifically to air weapons) or is convicted of a crime for which he is sentenced to imprisonment, or detention in a detention centre or in a young offenders' institution in Scotland or is subject to a detention and training order; or
- (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour, a condition of which is that he shall not possess, use or carry a firearm; or
- (c) is subject to a community order containing a requirement that he shall not possess, use or carry a firearm; or
- (d) has, in Scotland, been ordained to find caution a condition of which is that he shall not possess, use or carry a firearm,

the court by or before which he is convicted, or by which the order is made, may make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm certificate or shot gun certificate held by him.

Applications by police for forfeiture etc.

FA 1968 s.52¹⁴⁴¹: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(4) - a court of summary jurisdiction or, in Scotland, the sheriff may, on the application of the chief officer of police, order any firearm or ammunition seized and detained by a constable under this Act to be destroyed or otherwise disposed of.

Seizing items subject of forfeiture orders

FA 1968 s.52¹⁴⁴²: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(3) - a constable may seize and detain any firearm or ammunition which may be the subject of an order for forfeiture under this section.

¹⁴⁴⁰ Commencement: 1 August 1968, FA 1968 s.60(2).

¹⁴⁴¹ Commencement: 1 August 1968, FA 1968 s.60(2).

¹⁴⁴² Commencement: 1 August 1968, FA 1968 s.60(2).

Interpretation

FA 1968 s.52¹⁴⁴³: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(1A) - in subsection (1)(c) “community order” means—

- (a) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, made in England and Wales, or
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).

s.52(5) - in this section references to ammunition include references to a primer to which section 35 of the Violent Crime Reduction Act 2006 applies and to an empty cartridge case incorporating such a primer.

3.6.2.3. Offensive weapons

3.6.2.3.1 Prevention of Crime Act 1953

Power to order

PCA 1953 s.1¹⁴⁴⁴: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

s.1(2) - where any person is convicted of an offence under subsection (1) of this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

Offence

PCA 1953 s.1¹⁴⁴⁵: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

- s.1(1) - any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the prescribed sum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding four years or a fine, or both.

¹⁴⁴³ Commencement: 1 August 1968, FA 1968 s.60(2).

¹⁴⁴⁴ Commencement: 6 June 1953, PCA 1953 s.2(2).

¹⁴⁴⁵ Commencement: 6 June 1953, PCA 1953 s.2(2).

Interpretation

PCA 1953 s.1¹⁴⁴⁶: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

- s.1(4) - in this section “*public place*” includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and “*offensive weapon*” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

3.6.2.3.2 Crossbows Act 1987

CA 1987 s.6¹⁴⁴⁷: Punishments

- s.6(3) - the court by which a person is convicted of an offence under this Act may make such order as it thinks fit as to the forfeiture or disposal of any crossbow or part of a crossbow in respect of which the offence was committed.

3.6.2.3.3 Knives Act 1997

Power to make the order

KA 1997 s.6¹⁴⁴⁸: Forfeiture of knives and publications

- s.6(1) - if a person is convicted of an offence under section 1 in relation to a knife of a particular description, the court may make an order for forfeiture in respect of any knives of that description—
- (a) seized under a warrant issued under section 5; or
 - (b) in the offender's possession or under his control at the relevant time.
- s.6(2) - if a person is convicted of an offence under section 2 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which—
- (a) have been seized under a warrant issued under section 5; or
 - (b) were in the offender's possession or under his control at the relevant time.
- s.6(3) - the court may make an order under subsection (1) or (2)—
- (a) whether or not it also deals with the offender in respect of the offence in any other way; and
 - (b) without regard to any restrictions on forfeiture in any enactment.
- s.6(4) - in considering whether to make an order, the court must have regard—
- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

¹⁴⁴⁶ Commencement: 6 June 1953, PCA 1953 s.2(2).

¹⁴⁴⁷ Commencement: 15 July 1987, CA 1987 s.8(2).

¹⁴⁴⁸ Commencement: 1 September 1997, SI 1997/1906 art.2.

- s.6(5) - in this section “*relevant time*”—
- (a) in relation to a person convicted in England and Wales or Northern Ireland of an offence under section 1 or 2, means the time of his arrest for the offence or of the issue of a summons in respect of it;
 - (b) in relation to a person so convicted in Scotland, means the time of his arrest for the offence or of his being cited as an accused in respect of it.

Effect of the order

KA 1997 s.7¹⁴⁴⁹: Effect of a forfeiture order

- s.7(1) - an order under section 6 (a “forfeiture order”) operates to deprive the offender of his rights, if any, in the property to which it relates.
- s.7(2) - the property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).
- s.7(3) - the court may, on an application made by a person who—
- (a) claims property to which a forfeiture order applies, but
 - (b) is not the offender from whom it was forfeited,
- make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that he owns it.
- s.7(4) - an application to a sheriff must be made in such manner as may be prescribed by act of adjournal.
- s.7(5) - no application may be made after the end of the period of 6 months beginning with the date on which the forfeiture order was made.
- s.7(6) - no application may succeed unless the claimant satisfies the court—
- (a) that he had not consented to the offender having possession of the property; or
 - (b) that he did not know, and had no reason to suspect, that the offence was likely to be committed.
- s.7(7) - if a person has a right to recover property which is in the possession of another in pursuance of a recovery order, that right—
- (a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the date on which the order is made; but
 - (b) is lost at the end of that period.
- s.7(8) - the Secretary of State may make regulations, in relation to property forfeited under this section, for disposing of the property and dealing with the proceeds in cases where—
- (a) no application has been made before the end of the period of 6 months beginning with the date on which the forfeiture order was made; or
 - (b) no such application has succeeded.
- s.7(9) - the regulations may also provide for investing money and auditing accounts.

¹⁴⁴⁹ Commencement: 1 September 1997, SI 1997/1906 art.2.

s.7(10) - in this section, “*application*” means an application under subsection (3).

SIs made under the Act

Knives (Forfeited Property) Regulations 1997 (SI 1997/1907)

1. Citation and commencement

These Regulations may be cited as the Knives (Forfeited Property) Regulations 1997 and shall come into force on 1st September 1997.

2. Interpretation

In these Regulations,

“*museum or similar institution*” means any institution which has as its purposes, or one of its purposes, the preservation and display of material of historical, aesthetic or technical interest to which the public are given access.

“*the relevant authority*” means

- (a) in relation to a police area in England and Wales, the local policing body (within the meaning of section 101(1) of the Police Act 1996);
- (c) in relation to Scotland, a police authority (within the meaning given by section 2(1), as read with section 19(9)(a), of the Police (Scotland) Act 1967 for the area for which the police force is maintained

“*the 1997 Act*” means the Knives Act 1997.

3. Property to which Regulations apply

- (1) Subject to paragraph (2) below, these Regulations apply to property which is in the possession of the police by virtue of a forfeiture order under section 6 of the 1997 Act and in respect of which—
 - (a) no application under section 7(3) of the 1997 Act has been made before the end of the period of 6 months beginning with the date on which the forfeiture order was made; or
 - (b) no such application has succeeded.
- (2) Where, within the period specified in paragraph (1) above, an application by a claimant of the property has been made under section 7(3) of the 1997 Act or the person upon whose conviction the court ordered the forfeiture of the property under section 6 of that Act has appealed against the conviction or sentence, these Regulations shall not apply to the property until that application or appeal has been determined.

4. Disposal of property

- (1) Subject to paragraph (2) below, property to which these Regulations apply shall be destroyed.
- (2) Where the relevant authority are satisfied that property to which these Regulations apply which would otherwise fall to be destroyed is of particular rarity, aesthetic quality or technical or historical interest, they may, instead of arranging for its destruction, give or sell it to a museum or similar institution.
- (3) The proceeds of disposals under these Regulations (if any) shall be paid to the relevant authority and

- (a) in relation to authorities in England and Wales shall be subject to the regulations governing the application of the proceeds of sale of property made under section 2 of the Police (Property) Act 1897; and
- (b) in relation to authorities in Scotland shall vest in the relevant authority.

Local Policing Bodies (Consequential Amendments) Regulations 2011 (SI 2011/3058)

1. Citation and commencement

- (1) These Regulations may be cited as the Local Policing Bodies (Consequential Amendments) Regulations 2011
- (2) These Regulations come into force on 16th January 2012, with the exception of regulation 21(2)(a) which comes into force on 22nd November 2012.

13. Amendments to the Knives (Forfeited Property) Regulations 1997

- (1) The Knives (Forfeited Property) Regulations 1997 are amended as follows.
- (2) In regulation 2 (interpretation), in the definition of “the relevant authority”—
 - (a) for paragraph (a), substitute—

“(a) in relation to a police area in England and Wales, the local policing body (within the meaning of section 101(1) of the Police Act 1996);”;
 - (b) omit paragraph (b).

3.6.2.4. Obscene publications

Seizing articles

OPA 1959 s.3¹⁴⁵⁰: Powers of search and seizure

- s.3(1) - if a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that, in any premises or on any stall or vehicle, being premises or a stall or vehicle specified in the information, obscene articles are, or are from time to time, kept for publication for gain, the justice may issue a warrant under his hand empowering any constable to enter (if need be by force) and search the premises, or to search the stall or vehicle and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles and to be kept for publication for gain.

Duty to make order for forfeiture

OPA 1959 s.3¹⁴⁵¹: Powers of search and seizure

- s.3(3) - subject to subsection (3A) of this section any articles seized under subsection (1) of this section shall be brought before a justice of the peace acting in the local justice area in which the articles were seized, who may thereupon issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before a magistrates' court acting in that local justice area to show cause why the articles or any of them should not be forfeited;

¹⁴⁵⁰ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵¹ Commencement: 29 August 1959, OPA 1959 s.5(2).

and if the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited:

Provided that if the person summoned does not appear, the court shall not make an order unless service of the summons is proved. Provided also that this subsection does not apply in relation to any article seized under subsection (1) of this section which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found.

OPA 1964 s.1¹⁴⁵²: Obscene articles intended for publication for gain

s.1(4) - where articles are seized under section 3 of the Obscene Publications Act 1959 (which provides for the seizure and forfeiture of obscene articles kept for publication for gain), and a person is convicted under section 2 of that Act of having them for publication for gain, the court on his conviction shall order the forfeiture of those articles:

Provided that an order made by virtue of this subsection (including an order so made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose—

- (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal shall not be deemed to be finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

- (5) References in section 3 of the Obscene Publications Act 1959 and this section to publication for gain shall apply to any publication with a view to gain, whether the gain is to accrue by way of consideration for the publication or in any other way.

Restriction on making order for forfeiture

OPA 1959 s.3¹⁴⁵³: Powers of search and seizure

s.3(3A) - without prejudice to the duty of a court to make an order for the forfeiture of an article where section 1(4) of the Obscene Publications Act 1964 applies (orders made on conviction), in a case where by virtue of subsection (3A) of section 2 of this Act proceedings under the said section 2 for having an article for publication for gain could not be instituted except by or with the consent of the Director of Public Prosecutions, no order for the forfeiture of the article shall be made under this section unless the warrant under which the article was seized was issued on an information laid by or on behalf of the Director of Public Prosecutions.

¹⁴⁵² Commencement: 31 August 1964, OPA 1964 s.3(2).

¹⁴⁵³ Commencement: 29 August 1959, OPA 1959 s.5(2).

Right to make representations as to forfeiture of items

OPA 1959 s.3¹⁴⁵⁴: Powers of search and seizure

- s.3(4) - in addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

Forfeiture order suspended until appeal period expired

OPA 1959 s.3¹⁴⁵⁵: Powers of search and seizure

- s.3(5) - where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court, and no such order shall take effect until the expiration of the period within which notice of appeal to the Crown Court may be given against the order, or, if before the expiration thereof notice of appeal is duly given or application is made for the statement of a case for the opinion of the High Court, until the final determination or abandonment of the proceedings on the appeal or case.

Costs where items not forfeited

OPA 1959 s.3¹⁴⁵⁶: Powers of search and seizure

- s.3(6) - if as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.

Interpretation

OPA 1959 s.3¹⁴⁵⁷: Powers of search and seizure

- s.3(7) - for the purposes of this section the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

¹⁴⁵⁴ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵⁵ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵⁶ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵⁷ Commencement: 29 August 1959, OPA 1959 s.5(2).

3.6.2.5. Forgery and counterfeiting

3.6.2.5.1 Forgery and kindred offences

Power to order forfeiture or destruction on conviction

FCA 1981 s.7¹⁴⁵⁸: Powers of search, forfeiture, etc.

- s.7(3) - subject to subsection (4) below, the court by or before which a person is convicted of an offence under this Part of this Act may order any object shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Owner of property objects etc.

FCA 1981 s.7¹⁴⁵⁹: Powers of search, forfeiture, etc.

- s.7(4) - the court shall not order any object to be forfeited under subsection (2) or (3) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

3.6.2.5.2 Counterfeiting and kindred offences

Power to order forfeiture or destruction on conviction

FCA 1981 s.24¹⁴⁶⁰: Powers of search, forfeiture, etc.

- s.24(3) - subject to subsection (4) below, the court by or before which a person is convicted of an offence under this Part of this Act may order any thing shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Right to be heard

FCA 1981 s.24¹⁴⁶¹: Powers of search, forfeiture, etc.

- s.24(4) - the court shall not order any thing to be forfeited under subsection (2) or (3) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Power to direct object to be passed to authority to issue notes/coins

FCA 1981 s.24¹⁴⁶²: Powers of search, forfeiture, etc.

- s.24(5) - without prejudice to the generality of subsections (2) and (3) above, the powers conferred on the court by those subsections include power to direct that any object

¹⁴⁵⁸ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁵⁹ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶⁰ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶¹ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶² Commencement: 27 October 1981, FCA 1981 s.33.

shall be passed to an authority with power to issue notes or coins or to any person authorised by such an authority to receive the object.

Scotland

FCA 1981 s.24¹⁴⁶³: Powers of search, forfeiture, etc.

- s.24(6) - in the application of this section to Scotland—
- (a) in subsection (1) for the words “justice of the peace” there shall be substituted the words “justice within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975”;
 - (b) in subsection (2):—
 - (i) for the words “A constable” there shall be substituted “The procurator fiscal”; and
 - (ii) for the words “a magistrates' court” there shall be substituted “the sheriff court”.

3.6.2.6. Written material (racial hatred)

Offences under sections 19, 21 and 23

Power

POA 1986 s.25¹⁴⁶⁴: Power to order forfeiture

- s.25(1) - a court by or before which a person is convicted of—
- (a) an offence under section 18 relating to the display of written material, or
 - (b) an offence under section 19, 21 or 23,
- shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

Order suspended until appeal time limit expired

POA 1986 s.25¹⁴⁶⁵: Power to order forfeiture

- s.25(2) - an order made under this section shall not take effect—
- (a) in the case of an order made in proceedings in England and Wales, until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned;
 - (b) in the case of an order made in proceedings in Scotland, until the expiration of the time within which, by virtue of any statute, an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned.

¹⁴⁶³ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶⁴ Commencement: 1 April 1987, SI 1987/198 art.2.

¹⁴⁶⁵ Commencement: 1 April 1987, SI 1987/198 art.2.

Interpretation

POA 1986 s.25¹⁴⁶⁶: Power to order forfeiture

- s.25(3) - for the purposes of subsection (2)(a)—
- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and
 - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.
- s.25(4) - for the purposes of subsection (2)(b) the lodging of an application for a stated case or note of appeal against sentence shall be treated as the institution of an appeal.

Offences under section 29B, 29C, 29E and 29G

POA 1986 s.29I¹⁴⁶⁷: Power to order forfeiture

- s.29I(1) - a court by or before which a person is convicted of—
- (a) an offence under section 29B relating to the display of written material, or
 - (b) an offence under section 29C, 29E or 29G,
- shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.
- s.29I(2) - an order made under this section shall not take effect—
- (a) until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned.
- s.29I(3) - for the purposes of subsection (2)(a)—
- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and
 - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

¹⁴⁶⁶ Commencement: 1 April 1987, SI 1987/198 art.2.

¹⁴⁶⁷ Commencement: 1 October 2007, to the extent specified in SI 2007/2490 art.2.

3.6.2.7. Magazines etc. likely to fall into the hands of children

CYP(HP)A¹⁴⁶⁸ 1955 s.1¹⁴⁶⁹: Works to which this Act Applies

- s.1 - this Act applies to any book, magazine or other like work which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying—
- (a) the commission of crimes; or
 - (b) acts of violence or cruelty; or
 - (c) incidents of a repulsive or horrible nature;
- in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.

CYP(HP)A¹⁴⁷⁰ 1955 s.3¹⁴⁷¹: Power to search for, and dispose of, works to which this Act applies and articles for printing them

Orders for forfeiture upon conviction (suspended until expiration of appeal time limit)

- s.3(2) - the court by or before which a person is convicted of an offence under the last foregoing section with respect to a work may order any copies of that work and any plate prepared for the purpose of printing copies of that work or photographic film prepared for that purpose, being copies which have, or a plate or film which has, been found in his possession or under his control, to be forfeited:
- Provided that an order made under this subsection by a magistrate's court or, on appeal from a magistrate's court, by the Crown Court shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged (whether by giving notice of appeal or applying for a case to be stated for the opinion of the High Court) or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

3.6.2.8. Immigration offences

Availability

IA 1971 s.25C¹⁴⁷²: Forfeiture of vehicle, ship or aircraft

- s.25C(1) - this section applies where a person is convicted on indictment of an offence under section 25, 25A or 25B.

¹⁴⁶⁸ Children and Young Persons (Harmful Publications) Act 1955

¹⁴⁶⁹ Commencement: 6 June 1955, CYP(HP)A 1955 s.5(4).

¹⁴⁷⁰ Children and Young Persons (Harmful Publications) Act 1955

¹⁴⁷¹ Commencement: 6 June 1955, CYP(HP)A 1955 s.5(4).

¹⁴⁷² Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

Power to order

IA 1971 s.25C¹⁴⁷³: Forfeiture of vehicle, ship or aircraft

- s.25C(2) - the court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—
- (a) owned the vehicle at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
 - (e) was driving the vehicle in the course of the commission of the offence.
- s.25C(3) - the court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—
- (a) owned the ship or aircraft at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
 - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
 - (e) was at that time a charterer of the ship or aircraft, or
 - (f) committed the offence while acting as captain of the ship or aircraft.

Limitation on forfeiture

IA 1971 s.25C¹⁴⁷⁴: Forfeiture of vehicle, ship or aircraft

- s.25C(4) - but in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
- (a) in the case of a ship, if subsection (5) or (6) applies;
 - (b) in the case of an aircraft, if subsection (5) or (7) applies.
- s.25C(5) - this subsection applies where—
- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and
 - (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.
- s.25C(6) - this subsection applies where a ship's gross tonnage is less than 500 tons.

¹⁴⁷³ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

¹⁴⁷⁴ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

s.25C(7) - this subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

Right to make representations

IA 1971 s.25C¹⁴⁷⁵: Forfeiture of vehicle, ship or aircraft

s.25C(8) - where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.

Interpretation

IA 1971 s.25C¹⁴⁷⁶: Forfeiture of vehicle, ship or aircraft

s.25C(9) - in the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—

- (a) an individual who seeks to enter a member State in breach of immigration law (for which purpose “member State” and “immigration law” have the meanings given by section 25(2) and (7)), and
- (b) an individual who is the victim of conduct which constitutes an offence under section 2 of the Modern Slavery Act 2015 (human trafficking)..

s.25C(10) - in the case of an offence under section 25A, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—

- (a) an asylum-seeker (within the meaning of that section), and
- (b) an individual who is the victim of conduct which constitutes an offence under section 2 of the Modern Slavery Act 2015 (human trafficking)..

s.25C(11) - in the case of an offence under section 25B, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to an individual who is the victim of conduct which constitutes an offence under section 2 of the Modern Slavery Act 2015 (human trafficking).

Power to extend to islands

3.6.2.9. Incitement to disaffection

IDA 1934 s.3¹⁴⁷⁷: Provisions as to punishment of offences

s.3(4) - where any person is convicted of an offence under this Act, the court dealing with the case may order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order, but no documents shall be destroyed before the expiration of the period within which an appeal may be lodged, and if an appeal is lodged no document shall be destroyed until after the appeal has been heard and decided.

¹⁴⁷⁵ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

¹⁴⁷⁶ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

¹⁴⁷⁷ Commencement: 16 November 1934

3.6.2.10. Terrorist cases

TA 2000 s.23¹⁴⁷⁸: Forfeiture: terrorist property offences

- s.23(1) - the court by or before which a person is convicted of an offence under any of sections 15 to 18 may make a forfeiture order in accordance with the provisions of this section.
- s.23(2) - where a person is convicted of an offence under section 15(1) or (2) or 16, the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
 - (a) had been used for the purposes of terrorism, or
 - (b) they intended should be used, or had reasonable cause to suspect might be used, for those purposes.
- s.23(3) - where a person is convicted of an offence under section 15(3) the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
 - (a) had been used for the purposes of terrorism, or
 - (b) which, at that time, they knew or had reasonable cause to suspect would or might be used for those purposes.
- s.23(4) - where a person is convicted of an offence under section 17 or 18 the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
 - (a) had been used for the purposes of terrorism, or
 - (b) was, at that time, intended by them to be used for those purposes.
- s.23(5) - where a person is convicted of an offence under section 17 the court may order the forfeiture of the money or other property to which the arrangement in question related, and which—
 - (a) had been used for the purposes of terrorism, or
 - (b) at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for those purposes.
- s.23(5A) - where a person is convicted of an offence under section 17A the court may order the forfeiture of the amount paid under, or purportedly under, the insurance contract.
- s.23(6) - where a person is convicted of an offence under section 18 the court may order the forfeiture of the money or other property to which the arrangement in question related.
- s.23(7) - where a person is convicted of an offence under any of sections 15 to 18, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

¹⁴⁷⁸ Commencement: A new s.23 was inserted and moved under a new heading by CTA 2008 s.34 on 18 June 2009.

TA 2000 s.23A¹⁴⁷⁹: Forfeiture: other terrorism offences and offences with a terrorist connection

- s.23A(1) - the court by or before which a person is convicted of an offence to which this section applies may order the forfeiture of any money or other property in relation to which the following conditions are met—
- (a) that it was, at the time of the offence, in the possession or control of the person convicted; and
 - (b) that—
 - (i) it had been used for the purposes of terrorism,
 - (ii) it was intended by that person that it should be used for the purposes of terrorism, or
 - (iii) the court believes that it will be used for the purposes of terrorism unless forfeited.
- s.23A(2) - this section applies to an offence under—
- (a) any of the following provisions of this Act—
 - section 54 (weapons training);
 - section 57, 58 or 58A (possessing things and collecting information for the purposes of terrorism);
 - section 59, 60 or 61 (inciting terrorism outside the United Kingdom);
 - (b) any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
 - section 2 (dissemination of terrorist publications);
 - section 5 (preparation of terrorist acts);
 - section 6 (training for terrorism);
 - sections 9 to 11 (offences involving radioactive devices or materials).
- s.23A(3) - this section applies to any ancillary offence (as defined in section 94 of the Counter-Terrorism Act 2008) in relation to an offence listed in subsection (2).
- s.23A(4) - this section also applies to an offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered) as to which—
- (a) in England and Wales, the court dealing with the offence has determined, in accordance with section 30 of that Act, that the offence has a terrorist connection;
 - (b) in Scotland, it has been proved, in accordance with section 31 of that Act, that the offence has a terrorist connection.
- s.23A(5) - the Secretary of State may by order amend subsection (2).
- s.23A(6) - an order adding an offence to subsection (2) applies only in relation to offences committed after the order comes into force.

¹⁴⁷⁹ Commencement: 18 June 2009, as inserted by CTA 2008 s.35.

TA 2000 s.23B¹⁴⁸⁰: Forfeiture: supplementary provisions

- s.23B(1) - before making an order under section 23 or 23A, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under that section.
- s.23B(2) - in considering whether to make an order under section 23 or 23A in respect of any property, a court shall have regard to—
- (a) the value of the property, and
 - (b) the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).
- s.23B(3) - a court in Scotland must not make an order under section 23 or 23A except on the application of the prosecutor—
- (a) in proceedings on indictment, when the prosecutor moves for sentence, and
 - (b) in summary proceedings, before the court sentences the accused;
- and for the purposes of any appeal or review, an order under either of those sections made by a court in Scotland is a sentence.
- s.23B(4) - Schedule 4 makes further provision in relation to forfeiture orders under section 23 or 23A.

TA 2000 Sch.4: Forfeiture orders

Schedule 4 sets out provisions concerning the implementation of forfeiture orders, restraint orders pertaining to money, freezing orders abroad and insolvency. It is not set out here.

TA 2000 s.120¹⁴⁸¹: Supplementary powers of forfeiture

- s.120(1) - a court by or before which a person is convicted of an offence under a provision mentioned in column 1 of the following table may order the forfeiture of any item mentioned in column 2 in relation to that offence.

Note: There is a procedure for the forfeiture of seized cash in terrorism cases contained within the Anti-terrorism, Crime and Security Act 2001 Sch.1. It is not listed here as the order is not one made by a sentencing court.

Offence	Items liable to forfeiture
Section 54 (weapons training)	Anything that the court considers to have been in the possession of the person for purposes connected with the offence.
Section 57 (possession for terrorist purposes)	Any article that is the subject matter of the offence.
Section 58 (collection of information)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.

¹⁴⁸⁰ Commencement: 18 June 2009, as inserted by CTA 2008 s.36.

¹⁴⁸¹ Commencement: 13 April 2006, as inserted by TA 2006 s.37(3), SI 2006/1013 art.2(2)(c).

Offence	Items liable to forfeiture
Section 58A (eliciting, publishing or communicating information about members of armed forces etc)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.

- s.120(2) - before making an order under this section, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under this section.
- s.120(3) - an order under this section does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).
- s.120(4) - where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.
- s.120(5) - provision made by virtue of subsection (4) may be varied at any time by the court that made it.
- s.120(6) - the power of forfeiture under this section is in addition to any power of forfeiture under section 23A.

3.6.2.11. Trafficking

Interpretation

MSA 2015 s.13¹⁴⁸²: Interpretation of Part 1

- s.13(1) - in this Part—
- “*captain*” means master (of a ship) or commander (of an aircraft);
- “*confiscation order*” has the meaning given by section 8(8);
- “*the Human Rights Convention*” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950;
- “*land vehicle*” means any vehicle other than a ship or aircraft;
- “*ship*” includes every description of vessel (including a hovercraft) used in navigation;
- “*slavery and trafficking reparation order*” means an order made under section 8;
- “*UK national*” means—
- a British citizen,
 - a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or
 - a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

¹⁴⁸² Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- s.13(2) - in sections 8 and 10, references to provisions of the Proceeds of Crime Act 2002 include references to those provisions as amended or otherwise modified by virtue of an order (whenever made) under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates' courts).
- s.13(3) - in sections 11 and 12, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

Availability

MSA 2015. s.11¹⁴⁸³: Forfeiture of land vehicle, ship or aircraft

- s.11(1) - this section applies if a person is convicted on indictment of an offence under section 2.
- s.11(5) - this subsection applies where a person who, at the time the offence was committed—
- (a) owned the ship or aircraft, or
 - (b) was a director, secretary or manager of a company which owned it,
- knew or ought to have known of the intention to use it in the course of the commission of an offence under section 2.

Power to order

MSA 2015. s.11¹⁴⁸⁴: Forfeiture of land vehicle, ship or aircraft

- s.11(2) - the court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person—
- (a) owned the vehicle at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
 - (e) was driving the vehicle in the course of the commission of the offence.
- s.11(3) - the court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—
- (a) owned the ship or aircraft at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
 - (c) was at that time in possession of the ship or aircraft under a hirepurchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
 - (e) was at that time a charterer of the ship or aircraft, or
 - (f) committed the offence while acting as captain of the ship or aircraft.

¹⁴⁸³ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹⁴⁸⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- s.11(4) - but where subsection (3)(a) or (b) does not apply to the convicted person, forfeiture of a ship or aircraft may be ordered only if subsection (5) applies or—
- (a) in the case of a ship other than a hovercraft, its gross tonnage is less than 500 tons;
 - (b) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

Person with interest in property has right to make representations

MSA 2015. s.11¹⁴⁸⁵: Forfeiture of land vehicle, ship or aircraft

- s.11(6) - where a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations about its forfeiture, the court may not order its forfeiture without giving the person an opportunity to make representations.

¹⁴⁸⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

3.6.3. Destruction

Note: There are powers to destroy property (such as drugs, firearms etc), the details of which are contained in section 3.6.2 above. However, there is also a general power to destroy property in the possession of the police (through seizure, the details of which are not contained in this document because it is not an order of the court in a sentencing hearing). The Police (Property) Regulations 1997 (SI 1997/1908) reg.8 sets out the power to destroy property in the possession of the police or the NCA; a Chief Officer of Police or the Director General of the NCA makes the determination.

3.6.4. Animals

3.6.4.1. Deprivation and disposal

Availability and power to order

AWA 2006 s.33¹⁴⁸⁶: Deprivation

- s.33(1) - if the person convicted of an offence under any of sections 4, 5, 6(1) and (2), 7, 8 and 9 is the owner of an animal in relation to which the offence was committed, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal.
- s.33(2) - where the owner of an animal is convicted of an offence under section 34(9) because ownership of the animal is in breach of a disqualification under section 34(2), the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal.

Animal has dependent offspring

AWA 2006 s.33¹⁴⁸⁷: Deprivation

- s.33(3) - where the animal in respect of which an order under subsection (1) or (2) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

Making the order

AWA 2006 s.33¹⁴⁸⁸: Deprivation

- s.33(4) - where a court makes an order under subsection (1) or (2), it may–
- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
 - (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
 - (c) give directions with respect to the carrying out of the order;
 - (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the offender to reimburse the expenses of carrying out the order.
- s.33(5) - directions under subsection (4)(c) may–
- (a) specify the manner in which an animal is to be disposed of, or

¹⁴⁸⁶ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁸⁷ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁸⁸ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (4)(a).

Duty to give reasons when not making an order

AWA 2006 s.33¹⁴⁸⁹: Deprivation

- s.33(6) - where a court decides not to make an order under subsection (1) or (2) in relation to an offender, it shall—
 - (a) give its reasons for the decision in open court, and
 - (b) if it is a magistrates' court, cause them to be entered in the register of its proceedings.
- s.33(7) - subsection (6) does not apply where the court makes an order under section 34(1) in relation to the offender.

Fighting offences

AWA 2006 s.33¹⁴⁹⁰: Deprivation

- s.33(8) - in subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 8, an animal which took part in an animal fight in relation to which the offence was committed.

Disposal

AWA 2006 s.33¹⁴⁹¹: Deprivation

- s.33(9) - in this section, references to disposing of an animal include destroying it.

Reimbursement of expenses

AWA 2006 s.44¹⁴⁹²: Orders made on conviction for reimbursement of expenses

- s.44 - where an order is made under section 33(4)(e), 36(1)(e), 37(3)(e), 38(3)(e) or 39(1), the expenses that are required by the order to be reimbursed shall not be regarded for the purposes of the Magistrates' Courts Act 1980 (c. 43) as a sum adjudged to be paid by a summary conviction, but shall be recoverable summarily as a civil debt.

¹⁴⁸⁹ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁹⁰ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁹¹ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁹² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.6.4.2. Forfeiture of equipment

Power to order

AWA 2006 s.40¹⁴⁹³: Forfeiture of equipment used in offences

- s.40(1) - where a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, the court by or before which he is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be–
- (a) forfeited, and
 - (b) destroyed or dealt with in such manner as may be specified in the order.

“Qualifying item”

AWA 2006 s.40¹⁴⁹⁴: Forfeiture of equipment used in offences

- s.40(2) - the reference in subsection (1) to any qualifying item is–
- (a) in the case of a conviction for an offence under section 4, to anything designed or adapted for causing suffering to an animal;
 - (b) in the case of a conviction for an offence under section 5, to anything designed or adapted for carrying out a prohibited procedure on an animal;
 - (c) in the case of a conviction for an offence under section 6(1) or (2), to anything designed or adapted for removing the whole or any part of a dog's tail;
 - (d) in the case of a conviction for an offence under section 7, to anything designed or adapted for administering any drug or substance to an animal;
 - (e) in the case of a conviction for an offence under section 8(1) or (2), to anything designed or adapted for use in connection with an animal fight;
 - (f) in the case of a conviction for an offence under section 8(3), to a video recording of an animal fight, including anything on or in which the recording is kept.

Owner must be given opportunity to make representations

AWA 2006 s.40¹⁴⁹⁵: Forfeiture of equipment used in offences

- s.40(3) - the court shall not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless he has been given an opportunity to show cause why the order should not be made.

¹⁴⁹³ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Interpretation

AWA 2006 s.40¹⁴⁹⁶: Forfeiture of equipment used in offences

- s.40(4) - an expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

3.6.4.3. Appeals

Orders suspended until time limit for appeals has expired or appeal concluded

AWA 2006 s.41¹⁴⁹⁷: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(1) - nothing may be done under an order under section 33, 35, 37 or 38 with respect to an animal or an order under section 40 unless–
- (a) the period for giving notice of appeal against the order has expired,
 - (b) the period for giving notice of appeal against the conviction on which the order was made has expired, and
 - (c) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn.

No suspension where court orders destruction not to be delayed

AWA 2006 s.41¹⁴⁹⁸: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(2) - subsection (1) does not apply to an order under section 37(1) if the order is the subject of a direction under subsection (5) of that section.

Effect of suspension

AWA 2006 s.41¹⁴⁹⁹: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(3) - where the effect of an order is suspended under subsection (1)–
- (a) no requirement imposed or directions given in connection with the order shall have effect, but
 - (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.
- s.41(4) - directions under subsection (3)(b) may, in particular–
- (a) authorise the animal to be taken into possession;
 - (b) authorise the removal of the animal to a place of safety;

¹⁴⁹⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

- (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
- (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

Recovery of expenses

AWA 2006 s.41¹⁵⁰⁰: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(5) - any expenses a person is directed to pay under subsection (4)(g) shall be recoverable summarily as a civil debt.

Deprivation

AWA 2006 s.41¹⁵⁰¹: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(6) - where the effect of an order under section 33 is suspended under subsection (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

Breach

AWA 2006 s.41¹⁵⁰²: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(7) - failure to comply with subsection (6) is an offence.

¹⁵⁰⁰ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁵⁰¹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁵⁰² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

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3.7 Driving disqualification/endorsement

3.7.1. General principles

Information after conviction

RTOA 1988 s.25¹⁵⁰³: Information as to date of birth and sex

- s.25(1) - if on convicting a person of an offence involving obligatory or discretionary disqualification or of such other offence as may be prescribed by regulations under section 105 of the Road Traffic Act 1988 the court does not know his date of birth, the court must order him to give that date to the court in writing.
- s.25(2) - if a court convicting a person of such an offence in a case where—
 - (a) notification has been given to the designated officer for a magistrates' court in pursuance of section 12(4) of the Magistrates' Courts Act 1980 (written pleas of guilty), or written intimation of a plea of guilty has been given in pursuance of section 334(3) of the Criminal Procedure (Scotland) Act 1975, and
 - (b) the notification or intimation did not include a statement of the person's sex, does not know the person's sex, the court must order the person to give that information to the court in writing.
- s.25(3) - a person who knowingly fails to comply with an order under subsection (1) or (2) above is guilty of an offence.
- s.25(4) - nothing in section 7 of the Powers of Criminal Courts (Sentencing) Act 2000 (where magistrates' court commits a person to the Crown Court to be dealt with, certain powers and duties transferred to that court) applies to any duty imposed upon a magistrates' court by subsection (1) or (2) above.
- s.25(5) - where a person has given his date of birth in accordance with this section or section 8 of this Act, the Secretary of State may serve on that person a notice in writing requiring him to provide the Secretary of State:
 - (a) with such evidence in that person's possession or obtainable by him as the Secretary of State may specify for the purpose of verifying that date, and
 - (b) if his name differs from his name at the time of his birth, with a statement in writing specifying his name at that time.
- s.25(6) - a person who knowingly fails to comply with a notice under subsection (5) above is guilty of an offence.
- s.25(7) - a notice to be served on any person under subsection (5) above may be served on him by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of this subsection and section 7 of the Interpretation Act 1978 in its application to this subsection the proper address of any person shall be his latest address as known to the person serving the notice.

¹⁵⁰³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

Production of licence

RTOA 1988 s.27¹⁵⁰⁴: Production of licence

- s.27(1) - where a person who is the holder of a licence is convicted of an offence involving obligatory or discretionary disqualification, and a court proposes to make an order disqualifying him or an order under section 44 of this Act, the court must, unless it has already received them, require the licence and its counterpart to be produced to it.
- s.27(3) - if the holder of the licence has not caused it and its counterpart to be delivered, or posted it and its counterpart, in accordance with section 7 of this Act and does not produce it and its counterpart as required under this section or section 40 of the Crime (Sentences) Act 1997, section 146 or 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975, or if the holder of the licence does not produce it and its counterpart as required by section 40B of the Child Support Act 1991, then, unless he satisfied the court that he has applied for a new licence and has not received it—
- (a) he is guilty of an offence, and
 - (b) the licence shall be suspended from the time when its production was required until it and its counterpart are produced to the court and shall, while suspended, be of no effect.
- s.27(4) - subsection (3) above does not apply where the holder of the licence—
- (a) has caused a current receipt for the licence and its counterpart issued under section 56 of this Act to be delivered to the proper officer of the court not later than the day before the date appointed for the hearing, or
 - (b) has posted such a receipt, at such time that in the ordinary course of post it would be delivered not later than that day, in a letter duly addressed to the proper officer and either registered or sent by the recorded delivery service, or
 - (c) surrenders such a receipt to the court at the hearing,
- and produces the licence and its counterpart to the court immediately on its return.
- s.27(4A) - subsection (3) does not apply where section 7(1B) applies in relation to the proceedings and the holder of the licence—
- (a) has caused a current receipt for the licence issued under section 56 to be delivered to the designated officer specified in the single justice procedure notice within the period described in section 7(1B)(a),
 - (b) has posted it to that officer within that period in such manner as is described in section 7(1B)(b), or
 - (c) surrenders such a receipt to the court at the hearing described in section 7(1B)(c),
- and produces the licence to the court immediately on its return.
- s.27(5) - In this section— “proper officer” means—
- (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court, and
 - (b) in relation to any other court, the clerk of the court.

¹⁵⁰⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2).

“single justice procedure notice” has the same meaning as in section 29 of the Criminal Justice Act 2003.

Court may take into account endorsements

RTOA 1988 s.31¹⁵⁰⁵: Court may take particulars endorsed into consideration

- s.31(1) - where a person is convicted of an offence involving obligatory or discretionary disqualification—
- (a) any existing endorsement on the counterpart of his licence or on his driving record is prima facie evidence of the matters endorsed, and
 - (b) the court may, in determining what order to make in pursuance of the conviction, take those matters into consideration.
- s.31(2) - this section has effect notwithstanding anything in section 166(1) to (6) of the Criminal Procedure (Scotland) Act 1995 (requirements as to notices of previous convictions).

Absent defendants

MCA 1980 s.11¹⁵⁰⁶: Non-appearance of accused: general provisions

- s.11(4) - in proceedings to which this subsection applies, the court shall not in a person's absence impose any disqualification on him, except on resumption of the hearing after an adjournment under section 10(3) above; and where a trial is adjourned in pursuance of this subsection the notice required by section 10(2) above shall include notice of the reason for the adjournment.

Purpose of disqualification

R. v Bagshawe [2013] EWCA Crim 127; [2013] 2 Cr. App. R. (S.) 62 (p.393)

...disqualification has a dual role or function. First, it is part of the penalty, as is clear from the sentencing guidelines, and the level of culpability is relevant to the length of disqualification. Second, it has an important preventative element... Thus when assessing the appropriate length of disqualification, the court looks backwards as well as forwards... (Haddon-Cave J, at [13])

Punishment

RTOA 1988 s.33¹⁵⁰⁷: Fine and imprisonment

- s.33(1) - where a person is convicted of an offence against a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or regulations made under any such provision, the maximum punishment by way of fine or imprisonment which may be imposed on him is that shown in column 4 against the offence and (where appropriate) the circumstances or the mode of trial there specified.
- s.33(2) - any reference in column 4 of that Part to a period of years or months is to be construed as a reference to a term of imprisonment of that duration.

¹⁵⁰⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁰⁶ Commencement: 6 July 1981, SI 1981/457 art.2.

¹⁵⁰⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

Interpretation

RTOA 1988 s.96¹⁵⁰⁸: Meaning of “offence involving obligatory endorsement”

- s.96 - for the purposes of this Act, an offence involves obligatory endorsement if it is an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule and either—
- (a) the word “obligatory” (without qualification) appears in column 6 (in the case of Part I) or column 3 (in the case of Part II) against the offence, or
 - (b) that word appears there qualified by conditions relating to the offence which are satisfied.

RTOA 1988 s.97¹⁵⁰⁹: Meaning of “offence involving obligatory disqualification” and “offence involving discretionary disqualification”

- s.97(1) - for the purposes of this Act, an offence involves obligatory disqualification if it is an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule and either—
- (a) the word “obligatory” (without qualification) appears in column 5 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or
 - (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.
- s.97(2) - for the purposes of this Act, an offence involves discretionary disqualification if it is an offence under a provision of the Traffic Acts specified in column 1 of Part I of Schedule 2 to this Act or an offence specified in column 1 of Part II of that Schedule and either—
- (a) the word “discretionary” (without qualification) appears in column 5 (in the case of Part I) or column 2 (in the case of Part II) against the offence, or
 - (b) that word appears there qualified by conditions or circumstances relating to the offence which are satisfied or obtain.

RTOA 1988 s.97A¹⁵¹⁰: Meaning of “driving record”

- s.97A(1) - in this Act “driving record”, in relation to a person, means a record in relation to the person maintained by the Secretary of State and designed to be endorsed with particulars relating to offences committed by the person under the Traffic Acts.
- s.97A(2) - the Secretary of State may make arrangements for the following persons to have access, by such means as the Secretary of State may determine, to information held on a person’s driving record—
- (a) courts,
 - (b) constables,
 - (c) fixed penalty clerks,

¹⁵⁰⁸ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁰⁹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵¹⁰ Commencement: 1 April 2009, as inserted by RSA 2006 s.8, commenced by RSA 2006 s.61(8) and SI 2009/3164 art.4(a).

- (d) the person in respect of whom the record is maintained and persons authorised by him, and
- (e) other persons prescribed in regulations made by the Secretary of State.

s.97A(3) - the power to make regulations under subsection (2)(e) above shall be exercisable by statutory instrument.

s.97A(4) - no regulations shall be made under subsection (2)(e) above unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

RTOA 1988 s.98¹⁵¹¹: General interpretation

s.98(1) - in this Act—

“disqualified” means disqualified for holding or obtaining a licence and *“disqualification”* is to be construed accordingly,

“drive” has the same meaning as in the Road Traffic Act 1988,

“licence” means a licence to drive a motor vehicle granted under Part III of that Act

“provisional licence” means a licence granted by virtue of section 97(2) of that Act,

“the provisions connected with the licensing of drivers” means sections 7, 8, 22, 25 to 29, 31, 32, 34 to 48, 91ZA to 91B, 96 and 97 of this Act,

“road”—

(a) in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes, and

(b) in relation to Scotland, [means any road within the meaning of the Roads (Scotland) Act 1984 and any other way to which the public has access, and includes bridges over which a road passes,

“the Road Traffic Acts” means the Road Traffic Act 1988, the Road Traffic (Consequential Provisions) Act 1988 (so far as it reproduces the effect of provisions repealed by that Act) and this Act, and

“the Traffic Acts” means the Road Traffic Acts and the Road Traffic Regulation Act 1984

and *“Community licence”*, *“counterpart”*, *“EEA State”* and *“Northern Ireland licence”* have the same meanings as in Part III of the Road Traffic Act 1988

s.98(2) - sections 185 and 186 of the Road Traffic Act 1988 (meaning of *“motor vehicle”* and other expressions relating to vehicles) apply for the purposes of this Act as they apply for the purposes of that Act.

s.98(3) - in the Schedules to this Act—

“RTRA” is used as an abbreviation for the Road Traffic Regulation Act 1984, and

“RTA” is used as an abbreviation for the Road Traffic Act 1988 or, if followed by “1989”, the Road Traffic (Driver Licensing and Information Systems) Act 1989.

¹⁵¹¹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

s.98(4) - subject to any express exception, references in this Act to any Part of this Act include a reference to any Schedule to this Act so far as relating to that Part.

3.7.2. Interim

3.7.2.1. Making the order

Magistrates' Court: Availability and power to order

RTOA 1988 s.26¹⁵¹²: Interim disqualification

- s.26(1) - where a magistrates' court—
- (a) commits an offender to the Crown Court under section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 or any enactment mentioned in subsection (4) of that section, or
 - (b) remits an offender to another magistrates' court under section 10 of that Act, to be dealt with for an offence involving obligatory or discretionary disqualification, it may order him to be disqualified until he has been dealt with in respect of the offence.

Any court: Power to order upon deferral of sentence

RTOA 1988 s.26¹⁵¹³: Interim disqualification

- s.26(2) - where a court in England and Wales—
- (a) defers passing sentence on an offender under section 1 of that Act in respect of an offence involving obligatory or discretionary disqualification, or
 - (b) adjourns after convicting an offender of such an offence but before dealing with him for the offence,
- it may order the offender to be disqualified until he has been dealt with in respect of the offence.

Duty of the court when imposing interim disqualification

RTOA 1988 s.26¹⁵¹⁴: Interim disqualification

- s.26(7) - where a court makes an order under this section in respect of any person it must—
- (a) require him to produce to the court any licence held by him and its counterpart, and
 - (b) retain the licence and counterpart until it deals with him or (as the case may be) cause them to be sent to the proper officer of the court which is to deal with him.
- s.26(7A) - in subsection (7) above "*proper officer*" means—
- (a) in relation to a magistrates' court in England and Wales, the designated officer for the court, and
 - (b) in relation to any other court, the clerk of the court.

¹⁵¹² Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵¹³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵¹⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2).

- s.26(8) - if the holder of the licence has not caused it and its counterpart to be delivered, or has not posted them, in accordance with section 7 of this Act and does not produce the licence and counterpart as required under subsection (7) above, then he is guilty of an offence.
- s.26(9) - subsection (8) above does not apply to a person who—
- (a) satisfies the court that he has applied for a new licence and has not received it, or
 - (b) surrenders to the court a current receipt for his licence and its counterpart issued under section 56 of this Act, and produces the licence and counterpart to the court immediately on their return.

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁵¹⁵: Supplementary provisions as to disqualifications and endorsements.

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

3.7.2.2. Effect of the order

Automatic expiration of the order

RTOA 1988 s.26¹⁵¹⁶: Interim disqualification

- s.26(4) - subject to subsection (5) below, an order under this section shall cease to have effect at the end of the period of six months beginning with the day on which it is made, if it has not ceased to have effect before that time.

No further order for interim disqualification

RTOA 1988 s.26¹⁵¹⁷: Interim disqualification

- s.26(6) - where a court orders a person to be disqualified under this section (“the first order”), no court shall make a further order under this section in respect of the same offence or

¹⁵¹⁵ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁵¹⁶ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵¹⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

any offence in respect of which an order could have been made under this section at the time the first order was made.

Licence not to be endorsed for interim disqualification

RTOA 1988 s.26¹⁵¹⁸: Interim disqualification

- s.26(10) - where a court makes an order under this section in respect of any person, sections 44(1), 47(2), 91ZA(7) and 91A(5) of this Act shall not apply in relation to the order, but—
- (a) the court must send notice of the order to the Secretary of State, and
 - (b) if the court which deals with the offender determines not to order him to be disqualified under section 34 or 35 of this Act, it must send notice of the determination to the Secretary of State.
- s.26(11) - a notice sent by a court to the Secretary of State in pursuance of subsection (10) above must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine.

Final disqualification period reduced by period of interim disqualification

RTOA 1988 s.26¹⁵¹⁹: Interim disqualification

- s.26(12) - where on any occasion a court deals with an offender—
- (a) for an offence in respect of which an order was made under this section, or
 - (b) for two or more offences in respect of any of which such an order was made,
- any period of disqualification which is on that occasion imposed under section 34 or 35 of this Act shall be treated as reduced by any period during which he was disqualified by reason only of an order made under this section in respect of any of those offences.

3.7.2.3. Interpretation

Interpretation etc.

RTOA 1988 s.26¹⁵²⁰: Interim disqualification

- s.26(13) - any reference in this or any other Act (including any Act passed after this Act) to the length of a period of disqualification shall, unless the context otherwise requires, be construed as a reference to its length before any reduction under this section.
- s.26(14) - in relation to licences which came into force before 1st June 1990, the references in this section to counterparts of licences shall be disregarded.

¹⁵¹⁸ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵¹⁹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵²⁰ Commencement: 15 May 1989, RTOA 1988 s.99(2).

3.7.3. Obligatory

3.7.3.1. Duties to disqualify for minimum period

Duty to order disqualification for not less than 12 months

RTOA 1988 s.34¹⁵²¹: Disqualification for certain offences

- s.34(1) - where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

Duty to order disqualification for not less than 24 months

RTOA 1988 s.34¹⁵²²: Disqualification for certain offences

- s.34(4) - subject to subsection (3) above, subsection (1) above shall apply as if the reference to twelve months were a reference to two years—
- (a) in relation to a person convicted of—
 - (i) manslaughter, or in Scotland culpable homicide, or
 - (ii) an offence under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving), or
 - (iia) an offence under section 1A of that Act (causing serious injury by dangerous driving), or
 - (iii) an offence under section 3A of that Act (causing death by careless driving while under the influence of drink or drugs), and
 - (b) in relation to a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the three years immediately preceding the commission of the offence.
- s.34(4A) - for the purposes of subsection (4)(b) above there shall be disregarded any disqualification imposed under section 26 of this Act or section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) and any disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence.

¹⁵²¹ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵²² Commencement: 15 May 1988, RTOA 1988 s.99(2).

Duty to disqualify for not less than 36 months

RTOA 1988 s.34¹⁵²³: Disqualification for certain offences

- s.34(3) - where a person convicted of an offence under any of the following provisions of the Road Traffic Act 1988, that is—
- (aa) section 3A (causing death by careless driving when under the influence of drink or drugs),
 - (a) section 4(1) (driving or attempting to drive while unfit),
 - (b) section 5(1)(a) (driving or attempting to drive with excess alcohol),
 - (ba) section 5A(1)(a) and (2) (driving or attempting to drive with concentration of specified controlled drug above specified limit),
 - (c) section 7(6) (failing to provide a specimen) where that is an offence involving obligatory disqualification,
 - (d) section 7A(6) (failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification;
- has within the ten years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to three years.

Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period

RTOA 1988 s.47¹⁵²⁴: Supplementary provisions as to disqualifications and endorsements.

- s.47(1) - in any case where a court exercises its power under section 34, 35 or 44 of this Act not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court or, in Scotland, a court of summary jurisdiction, must cause them to be entered in the register (in Scotland, record) of its proceedings.

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁵²⁵: Supplementary provisions as to disqualifications and endorsements.

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).

¹⁵²³ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵²⁴ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁵²⁵ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

Scotland

RTOA 1988 s.34¹⁵²⁶: Disqualification for certain offences

- s.34(5A) - in relation to Scotland, references in this section to the court include the justice of the peace court.

Does obligatory disqualification apply?

RTOA 1988 Sch.2¹⁵²⁷: Prosecution and punishment of offences cross reference to separate document

Length of disqualification

R. v Bagshawe [2013] EWCA Crim 127; [2013] 2 Cr. App. R. (S.) 62 (p.393)

The statutory minimum period “is a minimum disqualification, not a normal or standard period.” (Haddon-Cave J, at [10])

3.7.3.2. Particular circumstances

Aiding and abetting etc.

RTOA 1988 s.34¹⁵²⁸: Disqualification for certain offences

- s.34(5) - the preceding provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.

Aggravated vehicle-taking

RTOA 1988 s.34¹⁵²⁹: Disqualification for certain offences

- s.34(1A) - where a person is convicted of an offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking), the fact that he did not drive the vehicle in question at any particular time or at all shall not be regarded as a special reason for the purposes of subsection (1) above.

¹⁵²⁶ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵²⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵²⁸ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵²⁹ Commencement: 15 May 1988, RTOA 1988 s.99(2).

Using a vehicle in a dangerous condition

RTOA 1988 s.34¹⁵³⁰: Disqualification for certain offences

- s.34(4B) - where a person convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc.) has within the three years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him as if the reference to twelve months were a reference to six months.

3.7.3.3. Exemptions from disqualification

RTOA 1988 s.34¹⁵³¹: Disqualification for certain offences

- s.34(6) - this section is subject to section 48 of this Act.

RTOA 1988 s.48¹⁵³²: Exemption from disqualification and endorsement for certain construction and use offences

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
- (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.
- s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
- (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.
- s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

¹⁵³⁰ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵³¹ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵³² Commencement: 15 May 1988, RTOA 1988 s.99(2).

3.7.3.4. Extension of disqualification where custodial sentence imposed

RTOA 1988 s.35A¹⁵³³: Extension of disqualification where custodial sentence also imposed

- s.35A(1) - this section applies where a person is convicted in England and Wales of an offence for which the court—
- (a) imposes a custodial sentence, and
 - (b) orders the person to be disqualified under section 34 or 35.
- s.35A(2) - the order under section 34 or 35 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.
- s.35A(3) - the discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 34 or 35.
- s.35A(4) - the appropriate extension period is—
- (a) where an order under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence: determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
 - (b) in the case of a detention and training order under section 100 of that Act (offenders under 18: detention and training orders), a period equal to half the term of that order;
 - (e) where section 226A of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over) applies in relation to the custodial sentence, a period equal to two-thirds of the term imposed pursuant to section 226A(5)(a) of that Act;
 - (f) where section 226B of that Act (extended sentence for certain violent or sexual offences: persons under 18) applies in relation to the custodial sentence, a period equal to two-thirds of the term imposed pursuant to section 226B(3)(a) of that Act;
 - (fa) in the case of a sentence under section 236A of that Act (special custodial sentence for certain offenders of particular concern), a period equal to half of the term imposed pursuant to section 236A(2)(a) of that Act;
 - (g) where an order under section 269(2) of that Act (determination of minimum term in relation to mandatory life sentence: early release) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
 - (h) in any other case, a period equal to half the custodial sentence imposed.
- s.35A(5) - if a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

¹⁵³³ Commencement: 13 April 2009, as inserted by Coroners and Justice Act 2009 Sch.16 para.2(2), subject to transitional provisions specified in Sch.22 paras.29 and 34, SI 2015/819 art.2(b).

s.35A(7) - this section does not apply where—

- (a) the custodial sentence was a suspended sentence,
- (b) the court has made an order under section 269(4) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence: no early release) in relation to the custodial sentence, or
- (c) the court has made an order under section 82A(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in relation to discretionary life sentence: no early release) in relation to the custodial sentence.

s.35A(8) - subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section 243A(3)(a), 244(3)(a) of the Criminal Justice Act 2003 (release of prisoners in certain circumstances) is to be read as a reference to another proportion ("the new proportion").

s.35A(9) - the Secretary of State may by order—

- (a) if the amending order makes provision in respect of section 243A(3)(a) or 244(3)(a) of that Act, provide that the proportion specified in subsection (4)(h) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

s.35A(10) - an order under subsection (9) is to be made by statutory instrument and a draft of the statutory instrument containing the order must be laid before, and approved by a resolution of, each House of Parliament.

s.35A(11) - in this section—

"amending order" means an order under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence);

"custodial sentence" has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;

"suspended sentence" has the meaning given by section 189 of the Criminal Justice Act 2003.

RTOA 1988 s.35B¹⁵³⁴: Effect of custodial sentence in other cases

s.35B(1) - this section applies where a person is convicted in England and Wales of an offence for which a court proposes to order the person to be disqualified under section 34 or 35 and—

- (a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or
- (b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

s.35B(2) - in determining the period for which the person is to be disqualified under section 34 or 35, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

¹⁵³⁴ Commencement: 13 April 2009, as inserted by Coroners and Justice Act 2009 Sch.16 para.2(2), subject to transitional provisions specified in Sch.22 paras.29 and 34, SI 2015/819 art.2(b).

- s.35B(3) - the consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.
- s.35B(4) - if the court proposes to order the person to be disqualified under section 34 or 35 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of subsection (2).
- s.35B(5) - in this section “*custodial sentence*” and “*suspended sentence*” have the same meaning as in section 35A.

3.7.4. Discretionary: General

3.7.4.1. General

Absolute or conditional discharge

RTOA 1988 s.46¹⁵³⁵: Combination of disqualification and endorsement with probation orders and orders for discharge

s.46(2) - a conviction—

- (a) in respect of which a court in England and Wales has ordered a person to be disqualified, or
- (b) of which particulars have been endorsed on the counterpart of any licence held by him or on his driving record,

is to be taken into account, notwithstanding anything in section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction of offender discharged to be disregarded for the purpose of subsequent proceedings), in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁵³⁶: Supplementary provisions as to disqualifications and endorsements.

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

¹⁵³⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵³⁶ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

3.7.4.2. Any offence

Availability and power

PCC(S)A 2000 s.146¹⁵³⁷: Driving disqualification for any offence

s.146(1) - the court by or before which a person is convicted of an offence committed after 31st December 1997 may, instead of or in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence.

Mandatory or required sentences

PCC(S)A 2000 s.146¹⁵³⁸: Driving disqualification for any offence

s.146(2) - where the person is convicted of an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (2A), subsection (1) above shall have effect as if the words “instead of or” were omitted.

s.146(2A) - the provisions referred to in subsection (2) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
- (d) section 110(2) or 111(2) of this Act;
- (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

Requirement to be notified by Secretary of State

PCC(S)A 2000 s.146¹⁵³⁹: Driving disqualification for any offence

s.146(3) - a court shall not make an order under subsection (1) above unless the court 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.

Court must require offender to produce licence etc.

PCC(S)A 2000 s.146¹⁵⁴⁰: Driving disqualification for any offence

s.146(4) - a court which makes an order under this section disqualifying a person for holding or obtaining a driving licence shall require him to produce—

- (a) any such licence held by him;
- (aa) in the case where he holds a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988), his Northern Ireland licence; or

¹⁵³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵³⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵⁴⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) in the case where he holds a Community licence (within the meaning of Part III of the Road Traffic Act 1988), his Community licence.

Interpretation

PCC(S)A 2000 s.146¹⁵⁴¹: Driving disqualification for any offence

s.146(5) - in this section—

“driving licence” means a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988;

3.7.4.3. Used for the purposes of crime

Availability

PCC(S)A 2000 s.147¹⁵⁴²: Driving disqualification where vehicle used for purposes of crime

s.147(1) - this section applies where a person:

- (a) is convicted before the Crown Court of an offence punishable on indictment with imprisonment for a term of two years or more; or
- (b) having been convicted by a magistrates’ court of such an offence, is committed under section 3 above to the Crown Court for sentence.

s.147(2) - this section also applies where a person is convicted by or before any court of common assault or of any other offence involving an assault (including an offence of aiding, abetting, counselling or procuring, or inciting to the commission of, an offence).

Test to apply

PCC(S)A 2000 s.147¹⁵⁴³: Driving disqualification where vehicle used for purposes of crime

- s.147(3) - if, in a case to which this section applies by virtue of subsection (1) above, the Crown Court is satisfied that a motor vehicle was used (by the person convicted or by anyone else) for the purpose of committing, or facilitating the commission of, the offence in question, the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a driving licence.
- s.147(4) - if, in a case to which this section applies by virtue of subsection (2) above, the court is satisfied that the assault was committed by driving a motor vehicle, the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a driving licence.

¹⁵⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵⁴² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵⁴³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Court must require offender to produce licence etc.

PCC(S)A 2000 s.147¹⁵⁴⁴: Driving disqualification where vehicle used for purposes of crime

- s.147(5) - a court which makes an order under this section disqualifying a person for holding or obtaining a driving licence shall require him to produce:
- (a) any such licence held by him;
 - (aa) in the case where he holds a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988), his Northern Ireland licence; or
 - (b) in the case where he holds a Community licence (within the meaning of Part III of the Road Traffic Act 1988), his Community licence.

Facilitating the commission of an offence

PCC(S)A 2000 s.147¹⁵⁴⁵: Driving disqualification where vehicle used for purposes of crime

- s.147(6) - facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

Conspiracy

R. v Langley [2014] EWCA Crim 1284

In *R. v Devine* (1990) 12 Cr App R 235 the court held that there was a power to disqualify in a conspiracy case. That was under the 1973 Act. Section 147(6) was in similar terms to its equivalent under the 1973 Act, and so it followed that there was a power to disqualify under s.147 in conspiracy cases. In the instant case, however, it was in any event open to the court to disqualify using section 146, as had been done at first instance.

Interpretation

PCC(S)A 2000 s.147¹⁵⁴⁶: Driving disqualification where vehicle used for purposes of crime

- s.147(7) - in this section “driving licence” has the meaning given by section 146(5) above.

3.7.4.4. Extension of disqualification

PCC(S)A 2000 s.147A¹⁵⁴⁷: Extension of disqualification where custodial sentence also imposed

- s.147A(1) - this section applies where a person is convicted of an offence for which the court—
- (a) imposes a custodial sentence, and
 - (b) orders the person to be disqualified under section 146 or 147 for holding or obtaining a driving licence.

¹⁵⁴⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁵⁴⁷ Commencement: 13 April 2015, as inserted by Coroners and Justice Act 2009 Sch.16 para.5(1), SI 2015/819 art.2(b), subject to transitional provisions as specified in CJA 2009 Sch.22 para.29.

- s.147A(2) - the order under section 146 or 147 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.
- s.147A(3) - the discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 146 or 147.
- s.147A(4) - the appropriate extension period is—
- (a) where an order under section 82A(2) of this Act (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
 - (b) in the case of a detention and training order under section 100 of this Act (offenders under 18: detention and training orders), a period equal to half the term of that order;
 - (c) where an order under section 181 of the Criminal Justice Act 2003 (prison sentences of less than 12 months) is made in relation to the custodial sentence, a period equal to the custodial period specified pursuant to section 181(3)(a) of that Act less any relevant discount;
 - (d) where an order under section 183 of that Act (intermittent custody orders) is made in relation to the custodial sentence, a period equal to the number of custodial days specified pursuant to section 183(1)(a) of that Act less any relevant discount;
 - (e) where section 227 of that Act (extended sentence for certain violent or sexual offences: persons 18 or over) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 227(2C)(a) of the Criminal Justice Act 2003;
 - (f) where section 228 of that Act (extended sentence for certain violent or sexual offences: persons under 18) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 228(2B)(a) of that Act;
 - (fa) in the case of a sentence under section 236A of that Act (special custodial sentence for certain offenders of particular concern), a period equal to half of the term imposed pursuant to section 236A(2)(a) of that Act;
 - (g) where an order under section 269(2) of that Act (determination of minimum term in relation to mandatory life sentence: early release) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;
 - (h) in any other case, a period equal to half the custodial sentence imposed.
- (5) If a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.
- s.147A(7) - this section does not apply where—
- (a) the custodial sentence was a suspended sentence,
 - (b) the court has made an order under section 269(4) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence: no early release) in relation to the custodial sentence, or
 - (c) the court has made an order under section 82A(4) of this Act (determination of minimum term in relation to discretionary life sentence: no early release) in relation to the custodial sentence.
-

s.147A(8) - subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section 244(3)(a) or 247(2) of the Criminal Justice Act 2003 (release of prisoners in certain circumstances) is to be read as a reference to another proportion ("the new proportion").

s.147A(9) - the Secretary of State may by order—

- (a) if the amending order makes provision in respect of section 244(3)(a) of that Act, provide that the proportion specified in subsection (4)(h) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion;
- (b) if the amending order makes provision in respect of section 247(2) of that Act, provide that the proportion specified in subsection (4)(e) and (f) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

s.147A(10) - in this section—

"amending order" means an order under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence);

"driving licence" means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;

"suspended sentence" has the meaning given by section 189 of the Criminal Justice Act 2003.

PCC(S)A 2000 s.147B¹⁵⁴⁸: Effect of custodial sentence in other cases

s.147B(1) - this section applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under section 146 or 147 for holding or obtaining a driving licence and—

- (a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or
- (b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

s.147B(2) - in determining the period for which the person is to be disqualified under section 146 or 147, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

s.147B(3) - the consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

s.147B(4) - if the court proposes to order the person to be disqualified under section 146 or 147 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of subsection (2).

s.147B(5) - in this section *"suspended sentence"* has the same meaning as in section 147A.

¹⁵⁴⁸ Commencement: 13 April 2015, as inserted by Coroners and Justice Act 2009 Sch.16 para.5(1), SI 2015/819 art.2(b), subject to transitional provisions as specified in CJA 2009 Sch.22 para.29.

3.7.5. Discretionary: Road traffic

Power to order

RTOA 1988 s.34¹⁵⁴⁹: Disqualification for certain offences

- s.34(2) - where a person is convicted of an offence involving discretionary disqualification, and either—
- (a) the penalty points to be taken into account on that occasion number fewer than twelve, or
 - (b) the offence is not one involving obligatory endorsement,
- the court may order him to be disqualified for such period as the court thinks fit.

Does discretionary disqualification apply?

RTOA 1988 Sch.2¹⁵⁵⁰: Prosecution and punishment of offences

See separate document [Schedule 2 to the RTOA 1988](#).

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁵⁵¹: Supplementary provisions as to disqualifications and endorsements.

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

¹⁵⁴⁹ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵⁵⁰ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁵¹ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

3.7.6. Reduced disqualification for attendance on courses

3.7.6.1. When does it apply?

Availability

RTOA 1988 s.34A¹⁵⁵²: Reduced disqualification for attendance on courses

s.34A(1) - this section applies where–

- (a) a person is convicted of a relevant drink offence or a specified offence by or before a court, and
- (b) the court makes an order under section 34 of this Act disqualifying him for a period of not less than twelve months.

s.34A(8) - a court shall not make an order under this section in the case of an offender convicted of a specified offence if–

- (a) the offender has, during the period of three years ending with the date on which the offence was committed, committed a specified offence and successfully completed an approved course pursuant to an order made under this section or section 30A of this Act on conviction of that offence, or
- (b) the specified offence was committed during his probationary period.

s.34A(9) - a court shall not make an order under this section in the case of an offender unless–

- (a) the court is satisfied that a place on the course specified in the order will be available for the offender,
- (b) the offender appears to the court to be of or over the age of 17,
- (c) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and of the amount of the fees which he is required to pay for the course and when he must pay them, and
- (d) the offender has agreed that the order should be made.

¹⁵⁵² Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

Definition of “relevant drink offence”

RTOA 1988 s.34A¹⁵⁵³: Reduced disqualification for attendance on courses

s.34A(2) - in this section “*relevant drink offence*” means–

- (a) an offence under paragraph (a) of subsection (1) of section 3A of the Road Traffic Act 1988 (causing death by careless driving when unfit to drive through drink) committed when unfit to drive through drink,
- (b) an offence under paragraph (b) of that subsection (causing death by careless driving with excess alcohol),
- (c) an offence under paragraph (c) of that subsection (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol,
- (d) an offence under section 4 of that Act (driving or being in charge when under influence of drink) committed by reason of unfitness through drink,
- (e) an offence under section 5(1) of that Act (driving or being in charge with excess alcohol),
- (f) an offence under section 7(6) of that Act (failing to provide a specimen) committed in the course of an investigation into an offence within any of the preceding paragraphs, or
- (g) an offence under section 7A(6) of that Act (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of the preceding paragraphs.

Definition of “specified offence”

RTOA 1988 s.34A¹⁵⁵⁴: Reduced disqualification for attendance on courses

s.34A(3) - in this section “*specified offence*” means–

- (a) an offence under section 3 of the Road Traffic Act 1988 (careless, and inconsiderate, driving),
- (b) an offence under section 36 of that Act (failing to comply with traffic signs),
- (c) an offence under section 17(4) of the Road Traffic Regulation Act 1984 (use of special road contrary to scheme or regulations), or
- (d) an offence under section 89(1) of that Act (exceeding speed limit).

¹⁵⁵³ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

¹⁵⁵⁴ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

s.34A(4) - but the Secretary of State may by regulations amend subsection (3) above by adding other offences or removing offences.

Power to order

RTOA 1988 s.34A¹⁵⁵⁵: Reduced disqualification for attendance on courses

s.34A(5) - where this section applies, the court may make an order that the period of disqualification imposed under section 34 of this Act (“the unreduced period”) shall be reduced if, by the relevant date, the offender satisfactorily completes an approved course specified in the order.

Definition of “an approved course” and “the relevant date”

RTOA 1988 s.34A¹⁵⁵⁶: Reduced disqualification for attendance on courses

s.34A(6) - in subsection (5) above–

“an approved course” means a course approved by the appropriate national authority for the purposes of this section in relation to the description of offence of which the offender is convicted, and

“the relevant date” means such date, at least two months before the last day of the period of disqualification as reduced by the order, as is specified in the order.

The length of the reduction

RTOA 1988 s.34A¹⁵⁵⁷: Reduced disqualification for attendance on courses

s.34A(7) - the reduction made in a period of disqualification by an order under this section is a period specified in the order of–

(a) not less than three months, and

(b) not more than one quarter of the unreduced period,

(and, accordingly, where the unreduced period is twelve months, the reduced period is nine months).

¹⁵⁵⁵ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

¹⁵⁵⁶ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

¹⁵⁵⁷ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

3.7.6.2. Certificates of completion of courses

RTOA 1988 s.34B¹⁵⁵⁸: Certificates of completion of courses

- s.34B(1) - an offender shall be regarded for the purposes of section 34A of this Act as having completed a course satisfactorily if (and only if) a certificate that he has done so is received by the proper officer of the supervising court before the end of the unreduced period.
- s.34B(2) - if a certificate under subsection (1) above is so received before the end of the unreduced period but after the end of the period which would (apart from this subsection) be the reduced period, the reduced period is to be taken to end with the day on which the certificate is so received.
- s.34B(3) - a certificate under subsection (1) above is to be given by the course provider and shall be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the appropriate national authority.
- s.34B(4) - a course provider must give a certificate under subsection (1) above to the offender not later than fourteen days after the date specified in the order as the latest date for the completion of the course unless the offender–
 - (a) fails to make due payment of fees for the course,
 - (b) fails to attend the course in accordance with the course provider's reasonable instructions, or
 - (c) fails to comply with any other reasonable requirement of the course provider.
- s.34B(5) - where a course provider decides not to give a certificate under subsection (1) above to the offender, he shall give written notice of the decision to the offender as soon as possible, and in any event not later than fourteen days after the date specified in the order as the latest date for completion of the course.
- s.34B(6) - an offender to whom a notice is given under subsection (5) above may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court, the High Court of Justiciary or the relevant local court) to either the supervising court or the relevant local court, for a declaration that the course provider's decision not to give a certificate under subsection (1) above was contrary to subsection (4) above.
- s.34B(7) - if the court grants the application, section 34A of this Act shall have effect as if the certificate had been duly received by the proper officer of the supervising court.
- s.34B(8) - if fourteen days after the date specified in the order as the latest date for completion of the course the course provider has given neither a certificate under subsection (1) above nor a notice under subsection (5) above, the offender may, within such period as may be prescribed by rules of court, apply to the supervising court, or (if the supervising court is not the Crown Court, the High Court of Justiciary or the relevant

¹⁵⁵⁸ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

local court) to either the supervising court or the relevant local court, for a declaration that the course provider is in default.

- s.34B(9) - if the court grants the application, section 34A of this Act shall have effect as if the certificate had been duly received by the proper officer of the supervising court.
- s.34B(10) - a notice under subsection (5) above shall specify the ground on which it is given; and the appropriate national authority may by regulations make provision as to the form of notices under that subsection and as to the circumstances in which they are to be treated as given.
- s.34B(11) - where the proper officer of a court receives a certificate under subsection (1) above, or a court grants an application under subsection (6) or (8) above, the proper officer or court must send notice of that fact to the Secretary of State; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

3.7.6.3. Supplementary provisions

Guidance

RTOA 1988 s.34C¹⁵⁵⁹: Provisions supplementary to sections 34A to 34BA

- s.34C(1) - the appropriate national authority may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for the purposes of section 34A of this Act; and—
 - (a) course providers shall have regard to any guidance given to them under this subsection, and
 - (b) in determining for the purposes of section 34B of this Act whether any instructions or requirements of a course provider were reasonable, a court shall have regard to any guidance given to him under this subsection.

Power to make regulations

RTOA 1988 s.34C¹⁵⁶⁰: Provisions supplementary to sections 34A to 34BA

- s.34C(2) - the Secretary of State may by regulations make provision—
 - (a) amending section 34A(1)(b) of this Act by substituting for the period for the time being specified there a different period,

¹⁵⁵⁹ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

¹⁵⁶⁰ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

- (b) amending section 34A(7) of this Act by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both), or
 - (c) amending section 34A(8)(a) of this Act by substituting for the period for the time being specified there a different period.
- s.34C(4) - any power to make regulations under section 34A, 34B or 34BA of this Act or this section includes power to make different provision for different cases, and to make such incidental or supplementary provision as appears necessary or appropriate.
- s.34C(5) - any power to make regulations under section 34A, 34B or 34BA of this Act or this section shall be exercisable by statutory instrument.
- s.34C(6) - no regulations shall be made under section 34A of this Act or this section unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- s.34C(7) - a statutory instrument containing regulations made under section 34B or 34BA of this Act by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

RTOA 1988 s.34C¹⁵⁶¹: Provisions supplementary to sections 34A to 34BA

- s.34C(3) - in sections 34A to 34BA of this Act and this section—
- “appropriate national authority”* means (as respects Wales) the National Assembly for Wales and (otherwise) the Secretary of State;
- “course provider”*, in relation to a course, means the person by whom it is, or is to be, provided;
- “probationary period”* has the meaning given in section 1 of the Road Traffic (New Drivers) Act 1995;
- “proper officer”* means—
- (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court, and
 - (b) otherwise, the clerk of the court;
- “relevant local court”*, in relation to an order under section 34A of this Act in the case of an offender, means—
- (a) in England and Wales, a magistrates’ court acting for the local justice area in which the offender resides, and

¹⁵⁶¹ Commencement: 1 July 1992, as inserted by RTA 1991 s.30. RSA 2006 s.35 inserted a new section 34A-C, in force on 21 December 2012, SI 2012/2938 art.2(1)(a) for the purposes of the making of applications for approval, the approval, and the appeal against refusal of approval or conditional approval of courses for persons convicted of a relevant drink offence, and on 24 June 2013 for all purposes having application where a person is convicted of a relevant drink offence, SI 2012/2938 art.2(1)(b). Otherwise not in force.

- (b) in Scotland, the sheriff court for the district where the offender resides or, where the order is made by a stipendiary magistrate and the offender resides within his commission area, the district court for that area; and

“supervising court”, in relation to an order under section 34A of this Act, means–

- (a) in England and Wales, if the Crown Court made the order the Crown Court and otherwise a magistrates’ court acting for the same local justice area as the court which made the order, and
- (b) in Scotland, the court which made the order.

3.7.7. Totting up

3.7.7.1. Duty to disqualify

Availability

RTOA 1988 s.35¹⁵⁶²: Disqualification for repeated offences

s.35(1A) - subsection (1) above applies to—

- (a) an offence involving discretionary disqualification and obligatory endorsement, and
- (b) an offence involving obligatory disqualification in respect of which no order is made under section 34 of this Act.

Duty to disqualify where penalty points number 12 or more

RTOA 1988 s.35¹⁵⁶³: Disqualification for repeated offences

s.35(1) - where—

- (a) a person is convicted of an offence to which this subsection applies, and
- (b) the penalty points to be taken into account on that occasion number twelve or more,

the court must order him to be disqualified for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

Minimum period

RTOA 1988 s.35¹⁵⁶⁴: Disqualification for repeated offences

s.35(2) - the minimum period referred to in subsection (1) above is—

- (a) six months if no previous disqualification imposed on the offender is to be taken into account, and
- (b) one year if one, and two years if more than one, such disqualification is to be taken into account;

and a previous disqualification imposed on an offender is to be taken into account if it was for a fixed period of 56 days or more and was imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are taken into account under section 29 of this Act.

¹⁵⁶² Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁶³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁶⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2).

More than one offence

RTOA 1988 s.35¹⁵⁶⁵: Disqualification for repeated offences

- s.35(3) - where an offender is convicted on the same occasion of more than one offence to which subsection (1) above applies—
- (a) not more than one disqualification shall be imposed on him under subsection (1) above,
 - (b) in determining the period of the disqualification the court must take into account all the offences, and
 - (c) for the purposes of any appeal any disqualification imposed under subsection (1) above shall be treated as an order made on the conviction of each of the offences.

Limitations

RTOA 1988 s.35¹⁵⁶⁶: Disqualification for repeated offences

- s.35(4) - no account is to be taken under subsection (1) above of any of the following circumstances—
- (a) any circumstances that are alleged to make the offence or any of the offences not a serious one,
 - (b) hardship, other than exceptional hardship, or
 - (c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account under that subsection in ordering the offender to be disqualified for a shorter period or not ordering him to be disqualified.

Interpretation

RTOA 1988 s.35¹⁵⁶⁷: Disqualification for repeated offences

- s.35(5) - references in this section to disqualification do not include a disqualification imposed under section 26 of this Act or section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) or a disqualification imposed in respect of an offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence.

¹⁵⁶⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁶⁶ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁶⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

Aiding and abetting etc.

RTOA 1988 s.35¹⁵⁶⁸: Disqualification for repeated offences

- s.35(5A) - the preceding provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling, procuring, or inciting to the commission of, an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.

Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period

RTOA 1988 s.47¹⁵⁶⁹: Supplementary provisions as to disqualifications and endorsements.

- s.47(1) - in any case where a court exercises its power under section 34, 35 or 44 of this Act not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court or, in Scotland, a court of summary jurisdiction, must cause them to be entered in the register (in Scotland, record) of its proceedings.

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁵⁷⁰: Supplementary provisions as to disqualifications and endorsements.

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).
- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

Scotland

RTOA 1988 s.35¹⁵⁷¹: Disqualification for repeated offences

- s.35(6) - in relation to Scotland, references in this section to the court include the justice of the peace court.

¹⁵⁶⁸ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁶⁹ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁵⁷⁰ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁵⁷¹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

3.7.7.2. Number of points to be taken into account

Determining the number of points

RTOA 1988 s.29¹⁵⁷²: Penalty points to be taken into account on conviction

- s.29(1) - where a person is convicted of an offence involving obligatory endorsement, the penalty points to be taken into account on that occasion are (subject to subsection (2) below)—
- (a) any that are to be attributed to the offence or offences of which he is convicted, disregarding any offence in respect of which an order under section 34 of this Act is made, and
 - (b) any that were on a previous occasion ordered to be endorsed on the counterpart of any licence held by him or on his driving record, unless the offender has since that occasion and before the conviction been disqualified under section 35 of this Act.
- s.29(2) - if any of the offences was committed more than three years before another, the penalty points in respect of that offence shall not be added to those in respect of the other.

Note: The effect is that (a) points are not taken into account where an order for obligatory or discretionary disqualification is made and (b) a “totting up” disqualification erases penalty points. The relevant date for “wiping the slate clean” is the date of sentence, not conviction, see R. v Brentwood Justices ex parte Richardson (1992) 95 Cr. App. R. 187.

Licenses in force pre-1990

RTOA 1988 s.29¹⁵⁷³: Penalty points to be taken into account on conviction

- s.29(3) - in relation to licences which came into force before 1st June 1990, the reference in subsection (1) above to the counterpart of a licence shall be construed as a reference to the licence itself.

Absolute or conditional discharge

RTOA 1988 s.46¹⁵⁷⁴: Combination of disqualification and endorsement with probation orders and orders for discharge

- s.46(2) - a conviction—
- (a) in respect of which a court in England and Wales has ordered a person to be disqualified, or
 - (b) of which particulars have been endorsed on the counterpart of any licence held by him or on his driving record,
- is to be taken into account, notwithstanding anything in section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction of offender discharged to be disregarded for the purpose of subsequent proceedings), in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

¹⁵⁷² Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁷³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁷⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2).

3.7.7.3. Exemptions

RTOA 1988 s.35¹⁵⁷⁵: Disqualification for repeated offences

s.35(7) - this section is subject to section 48 of this Act.

RTOA 1988 s.48¹⁵⁷⁶: Exemption from disqualification and endorsement for certain construction and use offences

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
- (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.
- s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
- (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.
- s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

3.7.7.4. Exceptional hardship

RTOA 1988 s.35¹⁵⁷⁷: Disqualification for repeated offences

- s.35(1) - where—
- (a) a person is convicted of an offence to which this subsection applies, and
 - (b) the penalty points to be taken into account on that occasion number twelve or more,
- the court must order him to be disqualified for not less than the minimum period unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.
- s.35(4) - no account is to be taken under subsection (1) above of any of the following circumstances: [...]
- (b) hardship, other than exceptional hardship [...]

¹⁵⁷⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁷⁶ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵⁷⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

Note: The House of Lords considered exceptional hardship in Fay v Fay [1982] AC 835, concluding that it was not possible to produce a definition of the term and that the imprecision must have been intended by Parliament.

3.7.8. Until test is passed

3.7.8.1. General

When does the order expire?

RTOA 1988 s.36¹⁵⁷⁸: Disqualification until test is passed

- s.36(8) - subject to subsection (9) below, a disqualification by virtue of an order under this section shall be deemed to have expired on production to the Secretary of State of evidence, in such form as may be prescribed by regulations under section 105 of the Road Traffic Act 1988, that the person disqualified has passed the test in question since the order was made.
- s.36(9) - a disqualification shall be deemed to have expired only in relation to vehicles of such classes as may be prescribed in relation to the test passed by regulations under that section.

Duty to endorse licence etc.

RTOA 1988 s.36¹⁵⁷⁹: Disqualification until test is passed

- s.36(10) - where there is issued to a person a licence on the counterpart of which are endorsed particulars of a disqualification under this section, there shall also be endorsed the particulars of any test of competence to drive that he has passed since the order of disqualification was made.
- s.36(10A) - where a person's driving record is endorsed with particulars of a disqualification under this section, it shall also be endorsed with the particulars of any test of competence to drive that he has passed since the order of disqualification was made.

3.7.8.2. Obligatory orders

Availability and duty to order

RTOA 1988 s.36¹⁵⁸⁰: Disqualification until test is passed

- s.36(1) - where this subsection applies to a person the court must order him to be disqualified until he passes the appropriate driving test.
- s.36(2) - subsection (1) above applies to a person who is disqualified under section 34 of this Act on conviction of—
 - (a) manslaughter, or in Scotland culpable homicide, by the driver of a motor vehicle, or
 - (b) an offence under section 1 (causing death by dangerous driving), section 1A (causing serious injury by dangerous driving) or section 2 (dangerous driving) of the Road Traffic Act 1988.

¹⁵⁷⁸ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁷⁹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁸⁰ Commencement: 15 May 1989, RTOA 1988 s.99(2).

- s.36(3) - subsection (1) above also applies—
- (a) to a person who is disqualified under section 34 or 35 of this Act in such circumstances or for such period as the Secretary of State may by order prescribe, or
 - (b) to such other persons convicted of such offences involving obligatory endorsement as may be so prescribed.

Orders made by the Secretary of State for purpose of s.36(3)

RTOA 1988 s.36¹⁵⁸¹: Disqualification until test is passed

- s.36(13) - the power to make an order under subsection (3) above shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- s.36(14) - the Secretary of State shall not make an order under subsection (3) above after the end of 2001 if he has not previously made such an order.

3.7.8.3. Discretionary orders

Power to order

RTOA 1988 s.36¹⁵⁸²: Disqualification until test is passed

- s.36(4) - where a person to whom subsection (1) above does not apply is convicted of an offence involving obligatory endorsement, the court may order him to be disqualified until he passes the appropriate driving test (whether or not he has previously passed any test).

Test to apply

RTOA 1988 s.36¹⁵⁸³: Disqualification until test is passed

- s.36(6) - in determining whether to make an order under subsection (4) above, the court shall have regard to the safety of road users.

Restriction on making disqualification until test is passed order

RTOA 1988 s.36¹⁵⁸⁴: Disqualification until test is passed

- s.36(7) - where a person is disqualified until he passes the extended driving test—
- (a) any earlier order under this section shall cease to have effect, and
 - (b) a court shall not make a further order under this section while he is so disqualified.

¹⁵⁸¹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁸² Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁸³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁸⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2).

3.7.8.4. Exemptions

RTOA 1988 s.36¹⁵⁸⁵: Disqualification until test is passed

s.36(12) - this section is subject to section 48 of this Act.

RTOA 1988 s.48¹⁵⁸⁶: Exemption from disqualification and endorsement for certain construction and use offences

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
- (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.
- s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—
- (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,
- if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.
- s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

3.7.8.5. Interpretation

RTOA 1988 s.36¹⁵⁸⁷: Disqualification until test is passed

- s.36(5) - in this section—
- “*appropriate driving test*” means —
- (a) an extended driving test, where a person is convicted of an offence involving obligatory disqualification or is disqualified under section 35 of this Act,
 - (b) a test of competence to drive, other than an extended driving test, in any other case,
- “*extended driving test*” means a test of competence to drive prescribed for the purposes of this section, and
- “*test of competence to drive*” means a test prescribed by virtue of section 89(3) of the Road Traffic Act 1988.

¹⁵⁸⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁸⁶ Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁵⁸⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

s.36(11) - for the purposes of an order under this section, a person shall be treated as having passed a test of competence to drive other than an extended driving test if he passes a corresponding test conducted—

- (a) under the law of Northern Ireland, the Isle of Man, any of the Channel Islands, another EEA State, Gibraltar or a designated country or territory, or
- (b) for the purposes of obtaining a British Forces licence (as defined by section 88(8) of the Road Traffic Act 1988);

and accordingly subsections (8) to (10) above shall apply in relation to such a test as they apply in relation to a test prescribed by virtue of section 89(3) of that Act.

s.36(11A) - for the purposes of subsection (11) above, “*designated country or territory*” means a country or territory designated by order under section 108(2) of the Road Traffic Act 1988 but a test conducted under the law of such a country or territory shall not be regarded as a corresponding test unless a person passing such a test would be entitled to an exchangeable licence as defined in section 108(1) of that Act.

3.7.9. Endorsement

3.7.9.1. Orders for endorsement

Duty to endorse driving licence counterpart

RTOA 1988 s.44¹⁵⁸⁸: Orders for endorsement

- s.44(1) - where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on the counterpart of any licence held by him particulars of the conviction and also—
- (a) if the court orders him to be disqualified, particulars of the disqualification, or
 - (b) if the court does not order him to be disqualified—
 - (i) particulars of the offence, including the date when it was committed, and
 - (ii) the penalty points to be attributed to the offence.

No duty to order endorsement where special reasons exist

RTOA 1988 s.44¹⁵⁸⁹: Orders for endorsement

- s.44(2) - where the court does not order the person convicted to be disqualified, it need not make an order under subsection (1) above if for special reasons it thinks fit not to do so.

Offender does not hold a driving licence

RTOA 1988 s.44¹⁵⁹⁰: Orders for endorsement

- s.44(3A) - where a person who is not the holder of a licence is convicted of an offence involving obligatory endorsement, subsection (1) above applies as if the reference to the counterpart of any licence held by him were a reference to his driving record.

Offender deceived court as to circumstances etc.

RTOA 1988 s.49¹⁵⁹¹: Offender escaping consequences of endorsable offence by deception

- s.49(1) - this section applies where in dealing with a person convicted of an offence involving obligatory endorsement a court was deceived regarding any circumstances that were or might have been taken into account in deciding whether or for how long to disqualify him.
- s.49(2) - if—
- (a) the deception constituted or was due to an offence committed by that person, and
 - (b) he is convicted of that offence,

¹⁵⁸⁸ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁸⁹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁹⁰ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁹¹ Commencement: 15 May 1988, RTOA 1988 s.99(2).

the court by or before which he is convicted shall have the same powers and duties regarding an order for disqualification as had the court which dealt with him for the offence involving obligatory endorsement but must, in dealing with him, take into account any order made on his conviction of the offence involving obligatory endorsement.

3.7.9.2. Procedure for endorsements

Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period

RTOA 1988 s.47¹⁵⁹²: Supplementary provisions as to disqualifications and endorsements.

- s.47(1) - in any case where a court exercises its power under section 34, 35 or 44 of this Act not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court or, in Scotland, a court of summary jurisdiction, must cause them to be entered in the register (in Scotland, record) of its proceedings.

Duty to send notice to Secretary of State

RTOA 1988 s.44A¹⁵⁹³: Endorsement of driving record in accordance with order

- s.44A(1) - where the court orders the endorsement of a person's driving record with any particulars or penalty points it must send notice of the order to the Secretary of State.
- s.44A(2) - on receiving the notice, the Secretary of State must endorse those particulars or penalty points on the person's driving record.
- s.44A(3) - a notice sent by the court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may require.

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁵⁹⁴: Supplementary provisions as to disqualifications and endorsements.

- s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.
- s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).

¹⁵⁹² Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁵⁹³ Commencement: 1 April 2009, as inserted by RSA 2006 s.9(3), RSA 2006 s.61(8) and SI 2009/3164 art.4(b).

¹⁵⁹⁴ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

3.7.9.3. Effect of endorsements

Counterparts

RTOA 1988 s.45¹⁵⁹⁵: Effect of endorsement of counterparts

- s.45(1) - an order that any particulars or penalty points are to be endorsed on the counterpart of any licence held by the person convicted shall operate as an order that the counterpart of any licence he may then hold or may subsequently obtain is to be so endorsed until he becomes entitled under subsection (4) below to have a licence issued to him with its counterpart free from the particulars or penalty points.
- s.45(2) - on the issue of a new licence to a person, any particulars or penalty points ordered to be endorsed on the counterpart of any licence held by him shall be entered on the counterpart of the licence unless he has become entitled under subsection (4) below to have a licence issued to him with its counterpart free from those particulars or penalty points.
- s.45(4) - a person the counterpart of whose licence has been ordered to be endorsed is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence in pursuance of section 97(1) (grant of licences) of the Road Traffic Act 1988, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part III of that Act and satisfies the other requirements of section 97(1).
- s.45(5) - an endorsement ordered on a person's conviction of an offence remains effective (subject to subsections (6) and (7) below)—
- (a) if an order is made for the disqualification of the offender, until four years have elapsed since the conviction, and
 - (b) if no such order is made, until either—
 - (i) four years have elapsed since the commission of the offence, or
 - (ii) an order is made for the disqualification of the offender under section 35 of this Act.
- s.45(6) - where the offence was one under section 1, 1A or 2 of the Road Traffic Act 1988 (causing death by dangerous driving, causing serious injury by dangerous driving and dangerous driving), the endorsement remains in any case effective until four years have elapsed since the conviction.
- s.45(7) - where the offence was one—
- (a) under section 3A, 4(1) or 5(1)(a) of that Act (driving offences connected with drink or drugs),

¹⁵⁹⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2).

- (b) under section 7(6) of that Act (failing to provide specimen) involving obligatory disqualification, or
- (c) under section 7A(6) of that Act (failing to allow a specimen to be subjected to laboratory test),

the endorsement remains effective until eleven years have elapsed since the conviction.

Driving records

RTOA 1988 s.45A¹⁵⁹⁶: Effect of endorsement of driving records

- s.45A(1) - an order that any particulars or penalty points are to be endorsed on a person's driving record shall operate as an order that his driving record is to be so endorsed until the end of the period for which the endorsement remains effective.
- s.45A(2) - at the end of the period for which the endorsement remains effective the Secretary of State must remove the endorsement from the person's driving record.
- s.45A(3) - on the issue of a new licence to a person, any particulars ordered to be endorsed on his driving record shall be entered on the counterpart of the licence unless he has become entitled under subsection (4) below to have a licence issued to him with its counterpart free from those particulars or penalty points.
- s.45A(4) - a person the counterpart of whose licence has been endorsed under subsection (3) above is entitled to have issued to him with effect from the end of the period for which the endorsement remains effective a new licence with a counterpart free from the endorsement if he applies for a new licence in pursuance of section 97(1) of the Road Traffic Act 1988, surrenders any subsisting licence and its counterpart, pays the fee prescribed by regulations under Part 3 of that Act and satisfies the other requirements of section 97(1).
- s.45A(5) - the period for which an endorsement remains effective is determined in accordance with section 45(5) to (7) of this Act.

3.7.9.4. Exemptions

RTOA 1988 s.44¹⁵⁹⁷: Orders for endorsement

- s.44(4) - this section is subject to section 48 of this Act.

RTOA 1988 s.48¹⁵⁹⁸: Exemption from disqualification and endorsement for certain construction and use offences

- s.48(1) - where a person is convicted of an offence under section 40A of the Road Traffic Act 1988 (using vehicle in dangerous condition etc) the court must not:
 - (a) order him to be disqualified, or
 - (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,

¹⁵⁹⁶ Commencement: 1 April 2009, as inserted by RSA 2006 Sch.2 para.10, SI 2008/3164 art.4(b).

¹⁵⁹⁷ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁵⁹⁸ Commencement: 15 May 1988, RTOA 1988 s.99(2).

if he proves that he did not know, and had no reasonable cause to suspect, that the use of the vehicle involved a danger of injury to any person.

s.48(2) - where a person is convicted of an offence under section 41A of the Road Traffic Act 1988 (breach of requirement as to brakes, steering-gear or tyres) the court must not—

- (a) order him to be disqualified, or
- (b) order any particulars or penalty points to be endorsed on the counterpart of any licence held by him or on his driving record,

if he proves that he did not know, and had no reasonable cause to suspect, that the facts of the case were such that the offence would be committed.

s.48(3) - in relation to licences which came into force before 1st June 1990, the references in subsections (1) and (2) above to the counterpart of a licence shall be construed as references to the licence itself.

3.7.9.5. Penalty points

RTOA 1988 s.28¹⁵⁹⁹: Penalty points to be attributed to an offence

Number of points attributed to an offence

s.28(1) - where a person is convicted of an offence involving obligatory endorsement, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is—

- (a) the number shown in relation to the offence in the last column of Part I or Part II of Schedule 2 to this Act, or
- (b) where a range of numbers is shown, a number within that range.

RTOA 1988 Sch.2¹⁶⁰⁰: Prosecution and punishment of offences

Aiding and abetting etc.

RTOA 1988 s.28¹⁶⁰¹: Penalty points to be attributed to an offence

s.28(2) - where a person is convicted of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of, an offence involving obligatory disqualification, then, subject to the following provisions of this section, the number of penalty points to be attributed to the offence is ten.

Two or more offences

RTOA 1988 s.28¹⁶⁰²: Penalty points to be attributed to an offence

s.28(4) - where a person is convicted (whether on the same occasion or not) of two or more offences committed on the same occasion and involving obligatory endorsement, the total number of penalty points to be attributed to them is the number or highest number that would be attributed on a conviction of one of them (so that if the convictions are on

¹⁵⁹⁹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁶⁰⁰ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁶⁰¹ Commencement: 15 May 1989, RTOA 1988 s.99(2).

¹⁶⁰² Commencement: 15 May 1989, RTOA 1988 s.99(2).

different occasions the number of penalty points to be attributed to the offences on the later occasion or occasions shall be restricted accordingly).

- s.28(5) - in a case where (apart from this subsection) subsection (4) above would apply to two or more offences, the court may if it thinks fit determine that that subsection shall not apply to the offences (or, where three or more offences are concerned, to any one or more of them).
- s.28(6) - where a court makes such a determination it shall state its reasons in open court and, if it is a magistrates' court, or in Scotland a court of summary jurisdiction, shall cause them to be entered in the register (in Scotland, record) of its proceedings.

Power of SoS to amend number of penalty points etc.

RTOA 1988 s.28¹⁶⁰³: Penalty points to be attributed to an offence

- s.28(7) - the Secretary of State may by order made by statutory instrument—
- (a) alter a number or range of numbers shown in relation to an offence in the last column of Part I or Part II of Schedule 2 to this Act (by substituting one number or range for another, a number for a range, or a range for a number),
 - (b) where a range of numbers is shown in relation to an offence in the last column of Part I, add or delete a number together with the words “(fixed penalty)” or the words “or appropriate penalty points (fixed penalty)”,
 - (ba) substitute the words “or appropriate penalty points (fixed penalty)” for a number together with the words “(fixed penalty)”, or substitute a number together with the words “(fixed penalty)” for the words “or appropriate penalty points (fixed penalty)”, in relation to an offence in the last column of Part 1 or 2, and
 - (c) alter the number of penalty points shown in subsection (2) above;
- and an order under this subsection may provide for different numbers or ranges of numbers to be shown in relation to the same offence committed in different circumstances.
- s.28(8) - where the Secretary of State exercises his power under subsection (7) above by substituting or adding a number which appears together with the words “(fixed penalty)”, that number shall not exceed the lowest number in the range shown in the same entry.
- s.28(8A) - before making any order under subsection (3A) above the Secretary of State must consult with such representative organisations as he thinks fit.
- s.28(9) - no order shall be made under this section unless a draft of it has been laid before and approved by resolution of each House of Parliament.

¹⁶⁰³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

Endorsement of counterparts etc. where fixed penalty issued

RTOA 1988 s.28¹⁶⁰⁴: Penalty points to be attributed to an offence

- s.28(3) - for the purposes of sections 57(5), 57A(6) (endorsement of counterparts without hearings), 77(5) (endorsement of counterparts where penalty paid) and 77A(8) (endorsement of driving records where penalty paid) of this Act, the number of penalty points to be attributed to an offence is–
- (a) where both a range of numbers and a number followed by the words “(fixed penalty)” is shown in the last column of Part 1 of Schedule 2 to this Act in relation to the offence, that number,
 - (b) where a range of numbers followed by the words “or appropriate penalty points (fixed penalty)” is shown there in relation to the offence, the appropriate number of penalty points for the offence, and
 - (c) where only a range of numbers is shown there in relation to the offence, the lowest number in the range.
- s.28(3A) - for the purposes of subsection (3)(b) above the appropriate number of penalty points for an offence is such number of penalty points as the Secretary of State may by order made by statutory instrument prescribe.
- s.28(3B) - an order made under subsection (3A) above in relation to an offence may make provision for the appropriate number of penalty points for the offence to be different depending on the circumstances, including (in particular)–
- (a) the nature of the contravention or failure constituting the offence,
 - (b) how serious it is,
 - (c) the area, or sort of place, where it takes place, and
 - (d) whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified.

¹⁶⁰⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2).

3.7.10. Revocation of new drivers' licences

3.7.10.1. General

Note: This is an administrative act not an order of the court. The powers are contained in the Road Traffic (New Drivers) Act 1995 ss.1-10 and Schs.1 and 2.

Persons in public service of the Crown

RT(ND)A 1995 s.8¹⁶⁰⁵: The Crown

s.8 - this Act applies to persons in the public service of the Crown.

Effect of disqualification until test is passed on re-testing rule

RT(ND)A 1995 Sch.1¹⁶⁰⁶: Newly qualified drivers holding test certificates

para.10 - where—

- (a) a person's test certificate has been revoked under paragraph 5 (or a person's Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1) or (1ZA)) or his licence and test certificate have been revoked under paragraph 8 (or a person's Northern Ireland licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1) or (1ZA)); but
- (b) before he passes a relevant driving test, an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed),

paragraph 6(1) or, as the case may be, paragraph 9(1) shall not apply to him.

Extent and commencement etc.

RT(ND)A 1995 s.10¹⁶⁰⁷: Short title, commencement, extent etc.

s.10(1) - this Act may be cited as the Road Traffic (New Drivers) Act 1995.

s.10(2) - the provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be so appointed for different provisions.

s.10(3) - nothing in any provision of this Act applies to a person who becomes a qualified driver before the day on which the provision comes into force.

s.10(4) - the consequential amendments set out in Schedule 2 shall have effect.

s.10(5) - this Act does not extend to Northern Ireland.

¹⁶⁰⁵ Commencement: 1 June 1997, SI 1997/267 art.2(2).

¹⁶⁰⁶ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

¹⁶⁰⁷ Commencement: Section 10(1) and (5) in force 1 March 1997, SI 1997/267 art.2(1), otherwise in force 1 June 1997, SI 1997/267 art.2(2).

3.7.10.2. Probationary period for new drivers

What is the probationary period?

RT(ND)A 1995 s.1¹⁶⁰⁸: Probationary period for newly qualified drivers

s.1(1) - for the purposes of this Act, a person's probationary period is, subject to section 7, the period of two years beginning with the day on which he becomes a qualified driver.

Who is a "qualified driver"?

RT(ND)A 1995 s.1¹⁶⁰⁹: Probationary period for newly qualified drivers

- s.1(2) - for the purposes of this Act, a person becomes a qualified driver on the first occasion on which he passes—
- (a) any test of competence to drive mentioned in paragraph (a) or (c) of section 89(1) of the Road Traffic Act 1988,
 - (b) any test of competence to drive conducted under the law of
 - (i) another EEA State,
 - (ii) the Isle of Man,
 - (iii) any of the Channel Islands, or
 - (iv) Gibraltar.

Early termination of probationary period

RT(ND)A 1995 s.7¹⁶¹⁰: Early termination of probationary period

- s.7 - for the purposes of this Act a person's probationary period comes to an end if—
- (a) an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (order that a person be disqualified until he passes the appropriate driving test);
 - (b) after his licence is revoked under section 3, he is granted a full licence following the passing of a test which is a relevant driving test for the purposes of section 4; or
 - (c) after his test certificate is revoked under paragraph 5 of Schedule 1, or his licence and test certificate are revoked under paragraph 8 of that Schedule; he is granted a full licence following the passing of a test which is a relevant driving test for the purposes of paragraph 6 or 9 of that Schedule:

¹⁶⁰⁸ Commencement: 1 June 1997, SI 1997/267 art.2(2).

¹⁶⁰⁹ Commencement: 1 June 1997, SI 1997/267 art.2(2).

¹⁶¹⁰ Commencement: 1 June 1997, SI 1997/267 art.2(2).

Interpretation

RT(ND)A 1995 s.1¹⁶¹¹: Probationary period for newly qualified drivers

- s.1(3) - in subsection (2) “*EEA State*” means a State which is a contracting party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein.
- s.1(4) - in subsection (3) “*EEA Agreement*” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

3.7.10.3. Test certificates

General

RT(ND)A 1995 s.6¹⁶¹²: Newly qualified drivers holding test certificates

- s.6 - Schedule 1 (which makes provision about newly qualified drivers who hold test certificates) shall have effect.

RT(ND)A 1995 Sch.1¹⁶¹³: Newly qualified drivers holding test certificates

- para.11(1) - the Secretary of State may by regulations make provision for cases where, after the Secretary of State has revoked a person’s test certificate under paragraph 5, or a person’s licence and test certificate under paragraph 8, he receives notice—
- (a) that the person is appealing against a conviction or endorsement which was the basis or formed part of the basis for the revocation;
 - (b) that a court has quashed a conviction which was the basis or formed part of the basis for the revocation;
 - (c) that a court has quashed an endorsement which was the basis or formed part of the basis for the revocation and has not on doing so ordered that person to be disqualified;
 - (d) that a court has made an order which has the effect of reducing the penalty points taken into account for the purposes of section 2 or (as the case may be) the provision of Northern Ireland law corresponding to that section to a number smaller than six.
- para.11(2) - regulations under sub-paragraph (1) may in particular make provision for—
- (a) issuing licence for such period as may be prescribed;
 - (b) licences issued under the regulations to be treated as revoked in such circumstances as may be prescribed;
 - (c) re-issuing a test certificate which has been revoked under paragraph 5 or paragraph 8;

¹⁶¹¹ Commencement: 1 June 1997, SI 1997/267 art.2(2).

¹⁶¹² Commencement: Section 6 in force 1 March 1997 to the extent that it gives effect to Sch.1 para.11, SI 1997/267 art.2(1). Otherwise in force 1 June 1997, SI 1997/267 art.2(2).

¹⁶¹³ Commencement: Section 6 in force 1 March 1997 to the extent that it gives effect to Sch.1 para.11, SI 1997/267 art.2(1). Otherwise in force 1 June 1997, SI 1997/267 art.2(2).

- (d) suspending or terminating any prescribed conditions applied by virtue of paragraph 5(3);
- (e) requiring such courts as may be prescribed to give notice to the Secretary of State of the matters mentioned in sub-paragraph (3).

para.11(3) - the matters referred to are—

- (a) that a person whose certificate has been or is due to be revoked under paragraph 5(1) or whose licence and certificate have been or are due to be revoked under paragraph 8(1) is appealing against a conviction or endorsement which is the basis or forms part of the basis for the revocation;
- (b) that such an appeal has been abandoned.

para.11(4) - any regulations under this paragraph may—

- (a) include such incidental or supplementary provision as appears to the Secretary of State to be expedient;
- (b) make different provision for different cases

para.11(5) - any regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

To whom does the Schedule apply?

RT(ND)A 1995 Sch.1¹⁶¹⁴: Newly qualified drivers holding test certificates

para.2(1) - Part II of this Schedule applies to any person to whom Part III or IV of this Schedule applies.

para.2(2) - Part III of this Schedule applies to a person who holds—

- (a) a licence issued as a provisional licence; and
- (b) a test certificate,

para.2(3) - Part IV of this Schedule applies to a person who falls within sub-paragraph (4) or (5):

para.2(4) - a person falls within this sub-paragraph if—

- (a) he holds a licence issued as a full licence in relation to a class or certain classes of vehicles;
- (b) he is treated under section 98(2) of the Road Traffic Act 1988 as authorised by a provisional licence to drive another class or other classes of vehicles; and
- (c) he holds a test certificate which relates to that other class of vehicles or any of those other classes of vehicles.

para.2(4A) - in relation to the holder of a Northern Ireland licence, the reference in sub-paragraph (4)(b) to section 98(2) of the Road Traffic Act 1988 is a reference to the corresponding provision under the law of Northern Ireland.

¹⁶¹⁴ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.2(5) - a person falls within this sub-paragraph if he holds—

- (a) a licence issued as a full licence in relation to a class or certain classes of vehicles and as a provisional licence in relation to another class or other classes of vehicles; and
- (b) a test certificate which relates to that other class of vehicles or any of those other classes of vehicles.

Duty to provide certificate to court

RT(ND)A 1995 Sch.1¹⁶¹⁵: Newly qualified drivers holding test certificates

para.3(1) - sub-paragraph (2) applies where—

- (a) a person to whom this Part of this Schedule applies is prosecuted for an offence involving obligatory endorsement; and
- (b) the time at which the offence for which he is prosecuted is alleged to have occurred is a time during his probationary period.

para.3(2) - any obligations imposed on the person under section 7 of the Road Traffic Offenders Act 1988 as respects his licence and its counterpart shall also apply as respects his test certificate.

para.3(3) - if, in a case where sub-paragraph (2) applies—

- (a) the person is convicted in the proceedings in question of an offence involving obligatory endorsement, and
 - (b) he has not previously caused his test certificate to be delivered or posted it to the proper officer of the court,
- he must produce his test certificate to the court.

para.3(3A) - in sub-paragraph (3) “*proper officer*” means—

- (a) in relation to a magistrates’ court in England and Wales, the designated officer for the court, and
- (b) in relation to any other court, the clerk of the court.

para.3(4) - in a case where—

- (a) the licence of a person to whom this Part of this Schedule applies has (with its counterpart) been sent to the appropriate person under section 54(7) of the Road Traffic Offenders Act 1988 or delivered to the appropriate person in response to a conditional offer issued under section 75 of that Act;
 - (b) the offence to which the fixed penalty notice or the conditional offer relates is one involving obligatory endorsement and occurring during his probationary period, and
 - (c) the person proposes to pay the fixed penalty to the appropriate person,
- the person must ensure that when the fixed penalty is paid his test certificate is sent to the appropriate person.

¹⁶¹⁵ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.3(5) - a person who without reasonable excuse fails to comply with sub-paragraph (3) or (4) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Surrender of test certificate

RT(ND)A 1995 Sch.1¹⁶¹⁶: Newly qualified drivers holding test certificates

para.4(1) - where the circumstances mentioned in section 2(1) exist with respect to a person to whom this Part of this Schedule applies, sub-paragraph (2) applies instead of section 2(2).

para.4(2) - the court must send to the Secretary of State—

- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in section 2(1)(d); and
- (b) on its production to the court, the person's test certificate.

para.4(3) - where—

- (a) the circumstances mentioned in section 2(3)(a) to (d) and (f) exist with respect to a person to whom this Part of this Schedule applies,
- (b) the appropriate person has received the person's test certificate in accordance with paragraph 3(4), and
- (c) the test certificate shows the date on which the person became a qualified driver, section 2(4) does not apply but if the appropriate person is the fixed penalty clerk sub-paragraph (4) applies instead.

para.4(4) - the fixed penalty clerk must send to the Secretary of State—

- (a) a notice containing the particulars endorsed on the counterpart of the person's licence; and
- (b) the person's test certificate.

Surrender of licence and test certificate

RT(ND)A 1995 Sch.1¹⁶¹⁷: Newly qualified drivers holding test certificates

para.7(1) - where the circumstances mentioned in section 2(1) exist with respect to a person to whom this Part of this Schedule applies sub-paragraph (2) applies instead of section 2(2).

para.7(2) - the court must send to the Secretary of State—

- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in section 2(1)(d),
- (b) on their production to the court, the person's licence and its counterpart; and

¹⁶¹⁶ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

¹⁶¹⁷ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

- (c) on its production to the court, the person's test certificate.

para.7(3) - where—

- (a) the circumstances mentioned in section 2(3) exist with respect to a person to whom this Part of this Schedule applies, and
- (b) the appropriate person has received the person's test certificate in accordance with paragraph 3(4),

sub-paragraph (4) applies instead of section 2(4).

para.7(4) - the appropriate person —

- (a) may not return the person's licence and its counterpart under section 57(3) or (4) or 77(1) of the Road Traffic Offenders Act 1988; but
- (b) unless the appropriate person is the Secretary of State, must send them and the person's test certificate to the Secretary of State.

Revocation of test certificate

RT(ND)A 1995 Sch.1¹⁶¹⁸: Newly qualified drivers holding test certificates

para.5(1) Where the Secretary of State—

- (a) has received a notice sent to him under paragraph 4 of particulars required to be endorsed or endorsed on the counterpart of a person's licence, and
- (b) has received the person's test certificate sent to him under paragraph 4(2)(b) or (4)(b) or is satisfied that the person has been issued with a test certificate,

the Secretary of State must by notice served on that person revoke the test certificate.

para.5(1ZA) - where section 2(4) is disapplied by paragraph 4(3) and the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued revoke that person's test certificate.

para.5(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland test certificate.

para.5(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1) or (1ZA), he must by notice served on that person revoke his test certificate.

para.5(2) - a revocation under this paragraph shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.

para.5(3) - the effect of the revocation of a person's test certificate is that any prescribed conditions to which his provisional licence ceased to be subject when he became a qualified driver shall again apply.

¹⁶¹⁸ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.5(4) - in this paragraph and paragraph 8 references to the revocation of a person's Northern Ireland test certificate are references to its revocation as respects Great Britain.

para.5(5) - the effect of the revocation of a person's Northern Ireland test certificate as respects Great Britain is that any prescribed conditions to which his Northern Ireland provisional licence ceased to be subject when he became a qualified driver shall again apply for the purposes of section 109(1) of the Road Traffic Act 1988.

Revocation of licence and test certificate

RT(ND)A 1995 Sch.1¹⁶¹⁹: Newly qualified drivers holding test certificates

para.8(1) - where the Secretary of State—

- (a) has received a notice sent to him under paragraph 7(2)(a) of particulars required to be endorsed on the counterpart of a person's licence or has received the licence and its counterpart under paragraph 7(2)(b) or (4)(b); and
 - (b) has received the person's test certificate sent to him under paragraph 7(2)(b) or (4)(b) or is satisfied that the person has been issued with a test certificate,
- the Secretary of State must by notice served on that person revoke the licence and the test certificate.

para.8(1ZA) - where paragraph 7(4) applies and the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued revoke that person's licence and test certificate.

para.8(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland licence and the Northern Ireland test certificate.

para.8(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1) or (1ZA), he must by notice served on that person revoke his licence and test certificate.

para.8(2) - a revocation under this paragraph shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.

para.8(3) - in this paragraph references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

¹⁶¹⁹ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

3.7.10.4. Licences

Surrender of licences

RT(ND)A 1995 s.2¹⁶²⁰: Surrender of licences

- s.2(1) - subsection (2) applies where—
- (a) a person is the holder of a licence;
 - (b) he is convicted of an offence involving obligatory endorsement;
 - (c) the penalty points to be taken into account under section 29 of the Road Traffic Offenders Act 1988 on that occasion number six or more.
 - (d) the court makes an order falling within section 44(1)(b) of that Act in respect of the offence;
 - (e) the person's licence shows the date on which he became a qualified driver, or that date has been shown by other evidence in the proceedings, and
 - (f) it appears to the court, in the light of the order and the date so shown, that the offence was committed during the person's probationary period.
- s.2(2) - where this subsection applies, the court must send to the Secretary of State—
- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in subsection (1)(d); and
 - (b) on their production to the court, the person's licence and its counterpart.
- s.2(3) - subsection (4) applies where—
- (a) a person's licence and its counterpart have been sent to the fixed penalty clerk under section 54(7) of the Road Traffic Offenders Act 1988, retained by a vehicle examiner under that section or delivered to the appropriate person in response to a conditional offer issued under section 75 of that Act;
 - (b) the offence to which the fixed penalty notice or the conditional offer relates is one involving obligatory endorsement;
 - (c) the appropriate person endorses the number of penalty points to be attributed to the offence on the counterpart of the licence;
 - (d) the penalty points to be taken into account by the appropriate person in respect of the offence number six or more;
 - (e) the licence shows the date on which the person became a qualified driver; and
 - (f) it appears to the appropriate person, in the light of the particulars of the offence endorsed on the counterpart of the licence and the date so shown, that the offence was committed during the person's probationary period.
- s.2(4) - where this subsection applies —
- (a) the appropriate person may not return the licence and its counterpart under section 57(3) or (4) or 77(1) of the Road Traffic Offenders Act 1988; but
 - (b) unless the appropriate person is the Secretary of State, he must send them to the Secretary of State.

¹⁶²⁰ Commencement: 1 June 1997, SI 1997/267 art.2(2).

- s.2(5) - for the purposes of subsection (3)(d) the penalty points to be taken into account in respect of the offence are the penalty points which would have been taken into account under section 29 of the Road Traffic Offenders Act 1988 if—
- (a) the person in question had been convicted of the offence; and
 - (b) the number of penalty points to be attributed to the offence on that occasion had been determined in accordance with section 28(3) of that Act.

Surrender of licence and test certificate

RT(ND)A 1995 Sch.1¹⁶²¹: Newly qualified drivers holding test certificates

- para.7(1) - where the circumstances mentioned in section 2(1) exist with respect to a person to whom this Part of this Schedule applies sub-paragraph (2) applies instead of section 2(2).
- para.7(2) - the court must send to the Secretary of State—
- (a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in section 2(1)(d),
 - (b) on their production to the court, the person's licence and its counterpart; and
 - (c) on its production to the court, the person's test certificate.
- para.7(3) - where—
- (a) the circumstances mentioned in section 2(3) exist with respect to a person to whom this Part of this Schedule applies, and
 - (b) the appropriate person has received the person's test certificate in accordance with paragraph 3(4),
- sub-paragraph (4) applies instead of section 2(4).
- para.7(4) - the appropriate person —
- (a) may not return the person's licence and its counterpart under section 57(3) or (4) or 77(1) of the Road Traffic Offenders Act 1988; but
 - (b) unless the appropriate person is the Secretary of State, must send them and the person's test certificate to the Secretary of State.

Revocation of licences

RT(ND)A 1995 s.3¹⁶²²: Revocation of licences

- s.3(1) - where the Secretary of State receives—
- (a) a notice sent to him under section 2(2)(a) of particulars required to be endorsed on the counterpart of a person's licence, or
 - (b) a person's licence and its counterpart sent to him in accordance with section 2(2)(b) or (4)(b),
- the Secretary of State must by notice served on that person revoke the licence.

¹⁶²¹ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

¹⁶²² Commencement: 1 June 1997, SI 1997/267 art.2(2).

- s.3(1ZA) - where section 2(4)(a) applies but the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued, revoke that person's licence.
- s.3(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under subsection (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland—
- (a) particulars of the notice; and
 - (b) the Northern Ireland licence.
- s.3(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to subsection (1) or (1ZA), he must by notice served on the holder revoke the licence.
- s.3(2) - a revocation under this section shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.
- s.3(3) - in this section references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

Revocation of licence and test certificate

RT(ND)A 1995 Sch.1¹⁶²³: Newly qualified drivers holding test certificates

para.8(1) - where the Secretary of State—

- (a) has received a notice sent to him under paragraph 7(2)(a) of particulars required to be endorsed on the counterpart of a person's licence or has received the licence and its counterpart under paragraph 7(2)(b) or (4)(b); and
 - (b) has received the person's test certificate sent to him under paragraph 7(2)(b) or (4)(b) or is satisfied that the person has been issued with a test certificate,
- the Secretary of State must by notice served on that person revoke the licence and the test certificate.

para.8(1ZA) - where paragraph 7(4) applies and the appropriate person is the Secretary of State, the Secretary of State must by notice served on the person to whom the fixed penalty notice or conditional offer was given or issued revoke that person's licence and test certificate.

para.8(1A) - where the Secretary of State serves on the holder of a Northern Ireland licence a notice under sub-paragraph (1) or (1ZA), the Secretary of State must send to the licensing authority in Northern Ireland particulars of the notice together with the Northern Ireland licence and the Northern Ireland test certificate.

¹⁶²³ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

- para.8(1B) - where the Secretary of State is sent by that licensing authority particulars of a notice served on the holder of a licence under a provision of Northern Ireland law corresponding to sub-paragraph (1) or (1ZA), he must by notice served on that person revoke his licence and test certificate.
- para.8(2) - a revocation under this paragraph shall have effect from a date specified in the notice of revocation which may not be earlier than the date of service of that notice.
- para.8(3) - in this paragraph references to the revocation of a person's Northern Ireland licence are references to its revocation as respects Great Britain; and, accordingly, the person ceases to be authorised by virtue of section 109(1) of the Road Traffic Act 1988 to drive in Great Britain a motor vehicle of any class.

3.7.10.5. Re-tests

Driver must sit re-test

RT(ND)A 1995 s.4¹⁶²⁴: Retesting

- s.4(1) - subject to subsection (5) and section 5, the Secretary of State may not under Part III of the Road Traffic Act 1988 grant a person whose licence has been revoked under section 3 a full licence to drive any class of vehicles in relation to which the revoked licence was issued as a full licence or (as the case may be) full Northern Ireland licence unless he satisfies the Secretary of State that within the relevant period he has passed a relevant driving test.
- s.4(2) - in this section "*relevant driving test*" means, in relation to a person whose licence has been revoked, any test which—
- (a) falls within paragraph (a) or (b) of section 1(2) and
 - (b) is a test of competence to drive any vehicle included in any class of vehicles in relation to which the revoked licence was issued as a full licence or (as the case may be) full Northern Ireland licence.
- s.4(3) - if the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must (subject to section 92 and Part IV of the Road Traffic Act 1988) be one authorising that person to drive all the classes of vehicles in relation to which the revoked licence was issued as a full licence or (as the case may be) full Northern Ireland licence. s.4(4) - in subsection (1) "*the relevant period*" means the period beginning—
- (a) after the date of the revocation of the licence, and
 - (b) not more than two years before the date on which the application for the full licence is made.
- s.4(5) - subsections (1) and (1A) do not apply to a person whose licence has been revoked under section 3 or whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to section 3(1) if, before he passes a relevant driving test, an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed).

¹⁶²⁴ Commencement: 1 June 1997, SI 1997/267 art.2(2).

Newly qualified driver with provisional licence

RT(ND)A 1995 Sch.1¹⁶²⁵: Newly qualified drivers holding test certificates

- para.6(1) - subject to Part V of this Schedule, the Secretary of State may not under Part III of the Road Traffic Act 1988 grant a person whose test certificate has been revoked under paragraph 5, or whose Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1) or (1ZA), a full licence to drive any class of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions, unless he satisfies the Secretary of State that within the relevant period he has passed a relevant driving test.
- para.6(2) - in this paragraph “*relevant driving test*” means, in relation to a person whose test certificate has been revoked, any test which:
- (a) falls within paragraph (a) or (b) of section 1(2); and
 - (b) is a test of competence to drive any vehicle included in any class of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions.
- para.6(3) - if the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must (subject to section 92 and Part IV of the Road Traffic Act 1988) be one authorising that person to drive all the classes of vehicles that, immediately before his test certificate was revoked, he was permitted to drive without observing prescribed conditions.
- para.6(4) - in sub-paragraph (1) “*the relevant period*” means the period beginning—
- (a) after the date of the revocation of the test certificate; and
 - (b) not more than two years before the date on which the application for the full licence is made.

Newly qualified driver with full and provisional entitlements

RT(ND)A 1995 Sch.1¹⁶²⁶: Newly qualified drivers holding test certificates

- para.9(1) - subject to Part V of this Schedule, the Secretary of State may not under Part III of the Road Traffic Act 1988 grant a person whose licence and test certificate have been revoked under paragraph 8, or whose Northern Ireland licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1) or (1ZA), a full licence to drive any class of vehicles mentioned in sub-paragraph (4); unless he satisfies the Secretary of State that within the relevant period he has passed a relevant driving test.
- para.9(2) - in this paragraph “*relevant driving test*” means any test which—
- (a) falls within paragraph (a) or (b) of section 1(2); and
 - (b) is a test of competence to drive any vehicle included in any class of vehicles mentioned in sub-paragraph (4).

¹⁶²⁵ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

¹⁶²⁶ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

para.9(3) - if the Secretary of State grants a full licence to a person who is required to pass a relevant driving test in order to be granted that licence, the licence granted must (subject to section 92 and Part IV of the Road Traffic Act 1988) be one authorising that person to drive all the classes of vehicles mentioned in sub-paragraph (4),

para.9(4) - the classes of vehicles are—

- (a) any class of vehicles in relation to which the revoked licence was issued as a full licence; and
- (b) any class of vehicles—
 - (i) that he was treated under section 98(2) of the Road Traffic Act 1988, or under a provision of Northern Ireland law corresponding to that section, as authorised to drive under a provisional licence, or
 - (ii) in relation to which the revoked licence was issued as a provisional licence, and that, immediately before the test certificate was revoked, he was permitted to drive without observing prescribed conditions.

para.9(5) - in sub-paragraph (1) “*the relevant period*” means the period beginning—

- (a) after the date of the revocation of the licence and the test certificate; and
- (b) not more than two years before the date on which the application for the full licence is made.

Northern Ireland

RT(ND)A 1995 s.4¹⁶²⁷: Retesting

s.4(1A) - subject to subsection (5), the Secretary of State may not under that Part grant a person whose Northern Ireland licence has been revoked under a provision of Northern Ireland law corresponding to section 3(1) a full licence to drive any class of vehicles in relation to which the revoked licence was issued as a full Northern Ireland licence unless he satisfies the Secretary of State as mentioned in subsection (1).

3.7.10.6. Appeals: Restoration of licence without re-testing

RT(ND)A 1995 s.5¹⁶²⁸: Restoration of licence without retesting in certain cases

s.5(1) - if the Secretary of State receives notice that a person whose licence has been revoked under section 3 is appealing against a conviction or endorsement which was the basis or formed part of the basis for the revocation, he must grant that person free of charge a full licence for a period prescribed by regulations.

s.5(2) - regulations under subsection (1) may in particular prescribe—

- (a) a period expiring when the appeal is finally determined or abandoned; or
- (b) a period expiring on the date on which the revoked licence would have expired if it had not been revoked.

¹⁶²⁷ Commencement: 1 June 1997, SI 1997/267 art.2(2).

¹⁶²⁸ Commencement: Section 5(1) and (2) and (8)-(10) in force 1 March 1997, SI 1997/267 art.2(1). Section 5(3)-(7) and (11) in force 1 June 1997, SI 1997/267 art.2(2).

- s.5(3) - if the regulations prescribe a period other than that mentioned in subsection (2)(a), a licence granted under subsection (1) shall be treated as revoked if—
- (a) following the appeal, the penalty points taken into account for the purposes of section 2 or (as the case may be) the provision of Northern Ireland law corresponding to that section are not reduced to a number smaller than six: or
 - (b) the appeal is abandoned.
- s.5(4) - if, in the case of a person whose licence has been revoked under section 3, the Secretary of State receives notice that a court—
- (a) has quashed a conviction which was the basis or formed part of the basis for the revocation of the licence,
 - (b) has quashed an endorsement which was the basis or formed part of the basis for the revocation of the licence and has not on doing so ordered him to be disqualified, or
 - (c) has made an order which has the effect of reducing the penalty points taken into account for the purposes of section 2 or (as the case may be) the provision of Northern Ireland law corresponding to that section to a number smaller than six,
- then, subject to subsection (5), the Secretary of State must grant that person free of charge a full licence for a period expiring on the date on which the revoked licence would have expired if it had not been revoked.
- s.5(5) - subsection (4) does not require the Secretary of State to grant a licence to a person who has been granted a previous licence which has not been surrendered unless that person provides the Secretary of State with an explanation for not surrendering the previous licence that the Secretary of State considers adequate.
- s.5(6) - if, in accordance with subsection (1) or (4), the Secretary of State grants a full licence to a person whose licence has been revoked under section 3, the licence granted must be one authorising that person to drive all the classes of vehicles in relation to which the revoked licence was issued as a full licence.
- s.5(7) - any licence granted in accordance with subsection (1) or (4) shall have effect for the purposes of the Road Traffic Acts as if it were a licence granted under Part III of the Road Traffic Act 1988.
- s.5(8) - regulations may make provision for requiring such courts as may be prescribed to give notice to the Secretary of State—
- (a) that a person whose licence has been or is due to be revoked under section 3(1) is appealing against a conviction or endorsement which is the basis or forms part of the basis for the revocation;
 - (b) that such an appeal has been abandoned.
- s.5(9) - regulations under this section may—
- (a) include such incidental or supplementary provision as appears to the Secretary of State to be expedient;
 - (b) make different provision for different cases.
- s.5(10) - any regulations made under this section shall be made by the Secretary of State by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.5(11) - nothing in this section applies in relation to a person whose Northern Ireland licence has been revoked under section 3(1).

3.7.10.7. Interpretation

RT(ND)A 1995 s.2¹⁶²⁹: Surrender of licences

- s.2(6) - in this section and section 3 “*licence*” includes a Northern Ireland licence.
- s.2(7) - in this section and section 3–
- “*the appropriate person*”, in relation to a fixed penalty notice, means–
- (a) if it was given by a constable or an authorised person, the fixed penalty clerk, and
 - (b) if it was given by a vehicle examiner or the Secretary of State, the Secretary of State, and
- “*the appropriate person*”, in relation to a conditional offer, means–
- (a) where the conditional offer was issued under subsection (1), (2) or (3) of section 75 of the Road Traffic Offenders Act 1988, the fixed penalty clerk, and
 - (b) where it was issued under subsection (1A) or (3B) of that section, the Secretary of State.

RT(ND)A 1995 s.9¹⁶³⁰: Interpretation etc.

- s.9(1) - expressions used in this Act which are also used in Part III of the Road Traffic Act 1988 shall be construed in the same way as in that Act.
- s.9(2) - expressions used in this Act which are also used in the Road Traffic Offenders Act 1988 shall be construed in the same way as in that Act.
- s.9(2A) - in this Act–
- “*full Northern Ireland licence*” means a Northern Ireland licence other than a Northern Ireland provisional licence,
- “*Northern Ireland provisional licence*” means a Northern Ireland licence which corresponds to a provisional licence.
- s.9(3) - in this Act “*notice*” means notice in writing.
- s.9(4) - Section 107 of the Road Traffic Act 1988 (service of notices) applies to a notice served under section 3 or paragraph 5 or 8 of Schedule 1 as it applies to a notice served under Part III or IV of that Act.
- s.9(5) - any requirement under any provision of this Act that a licence and its counterpart, a test certificate or a notice must be sent to the Secretary of State is a requirement that the licence and its counterpart, the test certificate or the notice must be sent to the Secretary of State at such address as the Secretary of State may determine.

¹⁶²⁹ Commencement: 1 June 1997, SI 1997/267 art.2(2).

¹⁶³⁰ Commencement: 1 June 1997, SI 1997/267 art.2(2).

RT(ND)A 1995 Sch.1¹⁶³¹: Newly qualified drivers holding test certificates

- para.1(1) - in this Schedule “*test certificate*” means a certificate or other document which by virtue of regulations under section 89 of the Road Traffic Act 1988 is evidence that a person has not more than two years previously passed a test of competence to drive prescribed by virtue of such regulations.
- para.1(2) - in this Schedule “*prescribed conditions*” means the prescribed conditions referred to in section 97(3) of the 1988 Act (subject to which provisional licences are granted).
- para.1(2A) - in this Schedule “*the appropriate person*” has the same meaning as in sections 2 and 3 of this Act.
- para.1(3) - in this Schedule “*licence*” includes a Northern Ireland licence, “*full licence*” includes a full Northern Ireland licence and “*provisional licence*” includes a Northern Ireland provisional licence.
- para.1(4) - in relation to the holder of a Northern Ireland licence, the following sub-paragraphs have effect for the purposes of this Schedule.
- para.1(5) - references to a test certificate are references to a certificate or other document (in this Schedule referred to as a “*Northern Ireland test certificate*”) which is evidence that he has not more than two years previously passed a Northern Ireland test of competence to drive corresponding to the test mentioned in sub-paragraph (1).
- para.1(6) - references to prescribed conditions are references to conditions subject to which the Northern Ireland provisional licence was granted.

¹⁶³¹ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

3.7.11. Special reasons

No duty to order endorsement/disqualification where special reasons exist

RTOA 1988 s.34¹⁶³²: Disqualification for certain offences

- s.34(1) - where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

RTOA 1988 s.44¹⁶³³: Orders for endorsement

- s.44(1) - Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on the counterpart of any licence held by him particulars of the conviction and also—
- (a) if the court orders him to be disqualified, particulars of the disqualification, or
 - (b) if the court does not order him to be disqualified—
 - (i) particulars of the offence, including the date when it was committed, and
 - (ii) the penalty points to be attributed to the offence.
- s.44(2) - where the court does not order the person convicted to be disqualified, it need not make an order under subsection (1) above if for special reasons it thinks fit not to do so.

Test to apply

R. v Wickins (1958) 42 Cr. App. R. 236

...the most important of the other cases to which the learned Recorder referred is *Whittall v Kirby [1947] K.B. 194*... “A ‘special reason’ within the exception is one which is special to the facts of the particular case, that is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment.”

If one takes the essence of that definition, there are four conditions there laid down which have to be satisfied.

The first is that it must be a mitigating or an extenuating circumstance...

The next is that it must not amount in law to a defence to the charge...

The third is that it must be directly connected with the commission of the offence...

The fourth is that the matter is one which the court ought properly to take into consideration when imposing punishment. (Devlin J, at pp.239-240)

¹⁶³² Commencement: 15 May 1988, RTOA 1988 s.99(2).

¹⁶³³ Commencement: 15 May 1989, RTOA 1988 s.99(2).

3.7.12. Interaction of driving disqualifications with other sentencing orders

Absolute and conditional discharge

PCC(S)A 2000 s.12¹⁶³⁴: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: any disqualification

RTOA 1988 s.46¹⁶³⁵: Combination of disqualification and endorsement with probation orders and orders for discharge

s.46(1) - notwithstanding anything in PCC(S)A 2000 s.14(3) (conviction of defendant discharged to be disregarded for the purposes of enactments relating to disqualification), a court in England and Wales which on convicting a person of an offence involving obligatory or discretionary disqualification makes: (b) an order discharging him absolutely or conditionally, may on that occasion also exercise any power conferred, and must also discharge any duty imposed, on the court by RTOA 1988 ss.34 (disqualification), 35 (disqualification for repeated offences), 36 (disqualification until test is passed), 44 (endorsement) or 44A (endorsement in accordance with order)

s.46(2) - a conviction—

- (a) in respect of which a court in England and Wales has ordered a person to be disqualified, or
- (b) of which particulars have been endorsed on the counterpart of any licence held by him or on his driving record,

is to be taken into account, notwithstanding anything in section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction of offender discharged to be disregarded for the purpose of subsequent proceedings), in determining his liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently.

s.46(3) - where—

- (a) a person is charged in Scotland with an offence involving obligatory or discretionary disqualification, and
- (b) the court makes an order in respect of the offence under 246(2) or (3) (absolute discharge) of the Criminal Procedure (Scotland) Act 1995,

then, for the purposes of sections 34, 35, 36, 44, 45 and 45A of this Act, he shall be treated as if he had been convicted of an offence of the kind in question and section 247 of that Act shall not apply.

¹⁶³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹⁶³⁵ Commencement: 15 May 1989, RTOA 1988 s.99(2)

Fixed penalties

RTOA 1988 s.30¹⁶³⁶: Penalty points: modification where fixed penalty also in question

- s.30(1) - Sections 28 and 29 of this Act shall have effect subject to this section in any case where—
- (a) a person is convicted of an offence involving obligatory endorsement, and
 - (b) the court is satisfied that the counterpart of his licence or his driving record has been or is liable to be endorsed under section 57, 57A, 77 or 77A of this Act in respect of an offence (referred to in this section as the “connected offence”) committed on the same occasion as the offence of which he is convicted.
- s.30(2) - the number of penalty points to be attributed to the offence of which he is convicted is—
- (a) the number of penalty points to be attributed to that offence under section 28 of this Act apart from this section, less
 - (b) the number of penalty points required to be endorsed on the counterpart of his licence or on his driving record under section 57, 57A, 77 or 77A of this Act in respect of the connected offence (except so far as they have already been deducted by virtue of this paragraph).

Totting up and disqualification until test is passed

Magistrates’ Courts Sentencing Guidelines, Sentencing Guidelines Council p.185

15. An offender disqualified as a ‘totter’ under the penalty points provisions may also be ordered to retake a driving test; in this case, the extended test applies.

Discretionary disqualification and totting up

Magistrates’ Courts Sentencing Guidelines, Sentencing Guidelines Council p.185

12. In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies [...]

Disqualification until test is passed and revocation of new drivers’ licences

RT(ND)A 1995 Sch.1¹⁶³⁷: Newly qualified drivers holding test certificates

- para.10 - where—
- (a) a person’s test certificate has been revoked under paragraph 5 (or a person’s Northern Ireland test certificate has been revoked under a provision of Northern Ireland law corresponding to paragraph 5(1) or (1ZA)) or his licence and test certificate have been revoked under paragraph 8 (or a person’s Northern Ireland

¹⁶³⁶ Commencement: In force in England and Wales on 15 May 1989, RTOA 1988 s.99(2). For Scotland, see s.99(3) and (4).

¹⁶³⁷ Commencement: Sch.1 para.11 in force on 1 March 1997, SI 1997/267 art.2(1). Otherwise in force on 1 June 1997, SI 1997/267 art.2(2).

licence and Northern Ireland test certificate have been revoked under a provision of Northern Ireland law corresponding to paragraph 8(1) or (1ZA)); but

- (b) before he passes a relevant driving test, an order is made in relation to him under section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed),

paragraph 6(1) or, as the case may be, paragraph 9(1) shall not apply to him.

Endorsement and obligatory disqualification

R. v Kent [1983] 1 W.L.R. 794; (1983) 77 Cr. App. R. 120

If a court imposes a sentence of disqualification from driving, it cannot order penalty points to be endorsed.

Note: See also the decision in R. v Usaceva [2015] EWCA Crim 166 which held that the decision in R. v Kent [1983] 1 W.L.R. 794; (1983) 77 Cr. App. R. 120; (1983) 5 Cr. App. R. (S.) 171, decided under the Road Traffic Act 1972 then in force, to the effect that, if a court imposed an obligatory sentence of disqualification from driving, it could not also order penalty points to be endorsed on an offender's licence, would apply to the currently in force Road Traffic Offenders Act 1988

3.7.13. Effect of disqualification order

When is the offender's licence revoked?

RTOA 1988 s.37¹⁶³⁸: Effect of order of disqualification

s.37(1) - where the holder of a licence is disqualified by an order of a court, the licence shall be treated as being revoked with effect from the beginning of the period of disqualification.

Short or interim disqualification

RTOA 1988 s.37¹⁶³⁹: Effect of order of disqualification

s.37(1A) - where—

(a) the disqualification is for a fixed period shorter than 56 days in respect of an offence involving obligatory endorsement, or

(b) the order is made under section 26 of this Act,

subsection (1) above shall not prevent the licence from again having effect at the end of the period of disqualification.

Appeals

RTOA 1988 s.37¹⁶⁴⁰: Effect of order of disqualification

s.37(2) - where the holder of the licence appeals against the order and the disqualification is suspended under section 39 of this Act, the period of disqualification shall be treated for the purpose of subsection (1) above as beginning on the day on which the disqualification ceases to be suspended.

Disqualification until test is passed

RTOA 1988 s.37¹⁶⁴¹: Effect of order of disqualification

s.37(3) - notwithstanding anything in Part III of the Road Traffic Act 1988, a person disqualified by an order of a court under section 36 of this Act is (unless he is also disqualified otherwise than by virtue of such an order) entitled to obtain and to hold a provisional licence and to drive a motor vehicle in accordance with the conditions subject to which the provisional licence is granted.

¹⁶³⁸ Commencement: 15 May 1989, RTOA 1988 s.99(2)

¹⁶³⁹ Commencement: 15 May 1989, RTOA 1988 s.99(2)

¹⁶⁴⁰ Commencement: 15 May 1989, RTOA 1988 s.99(2)

¹⁶⁴¹ Commencement: 15 May 1989, RTOA 1988 s.99(2)

3.7.14. Appeals

Appeal disqualification in same manner as conviction

RTOA 1988 s.38¹⁶⁴²: Appeals against disqualification

- s.38(1) - a person disqualified by an order of a magistrates' court under section 34 or 35 of this Act may appeal against the order in the same manner as against a conviction.
- s.38(2) - a person disqualified by an order of a court in Scotland may appeal against the order in the same manner as against a sentence.

Power to suspend disqualification pending appeal

RTOA 1988 s.39¹⁶⁴³: Suspension of disqualification pending appeal

- s.39(1) - any court in England and Wales (whether a magistrates' court or another) which makes an order disqualifying a person may, if it thinks fit, suspend the disqualification pending an appeal against the order.
- s.39(2) - the court by or before which a person disqualified by an order of a court in Scotland was convicted may, if it thinks fit, suspend the disqualification pending an appeal against the order.
- s.39(3) - where a court exercises its power under subsection (1) or (2) above, it must send notice of the suspension to the Secretary of State.
- s.39(4) - the notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

Appellate courts

RTOA 1988 s.40¹⁶⁴⁴: Power of appellate courts in England and Wales to suspend disqualification

- s.40(1) - this section applies where a person has been convicted by or before a court in England and Wales of an offence involving obligatory or discretionary disqualification and has been ordered to be disqualified; and in the following provisions of this section—
 - (a) any reference to a person ordered to be disqualified is to be construed as a reference to a person so convicted and so ordered to be disqualified, and
 - (b) any reference to his sentence includes a reference to the order of disqualification and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
- s.40(2) - where a person ordered to be disqualified—
 - (a) appeals to the Crown Court, or
 - (b) appeals or applies for leave to appeal to the Court of Appeal,

¹⁶⁴² Commencement: 15 May 1989, RTOA 1988 s.99(2)

¹⁶⁴³ Commencement: 15 May 1989, RTOA 1988 s.99(2)

¹⁶⁴⁴ Commencement: 15 May 1989, RTOA 1988 s.99(2)

against his conviction or his sentence, the Crown Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.

- s.40(3) - where a person ordered to be disqualified has appealed or applied for leave to appeal to the Supreme Court—
- (a) under section 1 of the Administration of Justice Act 1960 from any decision of a Divisional Court of the Queen's Bench Division which is material to his conviction or sentence, or
 - (b) under section 33 of the Criminal Appeal Act 1968 from any decision of the Court of Appeal which is material to his conviction or sentence,
- the Divisional Court or, as the case may require, the Court of Appeal may, if it thinks fit, suspend the disqualification.
- s.40(4) - where a person ordered to be disqualified makes an application in respect of the decision of the court in question under section 111 of the Magistrates' Courts Act 1980 (statement of case by magistrates' court) or section 28 of the Senior Courts Act 1981 (statement of case by Crown Court) the High Court may, if it thinks fit, suspend the disqualification.
- s.40(5) - where a person ordered to be disqualified—
- (a) applies to the High Court for an order of certiorari to remove into the High Court any proceedings of a magistrates' court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
 - (b) applies to the High Court for leave to make such an application,
- the High Court may, if it thinks fit, suspend the disqualification.
- s.40(6) - any power of a court under the preceding provisions of this section to suspend the disqualification of any person is a power to do so on such terms as the court thinks fit.
- s.40(7) - where, by virtue of this section, a court suspends the disqualification of any person, it must send notice of the suspension to the Secretary of State.
- s.40(8) - the notice must be sent in such manner and to such address and must contain such particulars as the Secretary of State may determine.

Suspension pending determination of application regarding completion of courses for reduced disqualification period

RTOA 1988 s.41A¹⁶⁴⁵: Suspension of disqualification pending determination of applications under section 34B

- s.41A(1) - where a person makes an application to a court under section 34B (certificates of completion of courses) of this Act, the court may suspend the disqualification to which the application relates pending the determination of the application.
- s.41A(2) - where a court exercises its power under subsection (1) above it must send notice of the suspension to the Secretary of State.

¹⁶⁴⁵ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- s.41A(3) - the notice must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

Suspension period does not count towards total period of disqualification

RTOA 1988 s.43¹⁶⁴⁶: Rule for determining end of period of disqualification

- s.43 - in determining the expiration of the period for which a person is disqualified by an order of a court made in consequence of a conviction, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

Appeals: Duty to send notice to Secretary of State

RTOA 1988 s.47¹⁶⁴⁷: Supplementary provisions as to disqualifications and endorsements.

- s.47(3) - where on an appeal against an order for the endorsement of a licence or a driving record or the disqualification of a person the appeal is allowed, the court by which the appeal is allowed must send notice of that fact to the Secretary of State.
- s.47(3A) - on receiving such a notice in relation to a person who is not the holder of a licence, the Secretary of State must make any necessary adjustments to the endorsements on the person's driving record to reflect the outcome of the appeal.
- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

3.7.15. Removal of disqualification

Availability

RTOA 1988 s.42¹⁶⁴⁸: Removal of disqualification

- s.42(1) - subject to the provisions of this section, a person who by an order of a court is disqualified may apply to the court by which the order was made to remove the disqualification.
- s.42(6) - the preceding provisions of this section shall not apply where the disqualification was imposed by order under section 36(1) (disqualification until test is passed) of this Act.

¹⁶⁴⁶ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁴⁷ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁴⁸ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

Test to apply

RTOA 1988 s.42¹⁶⁴⁹: Removal of disqualification

- s.42(2) - on any such application the court may, as it thinks proper having regard to—
- (a) the character of the person disqualified and his conduct subsequent to the order,
 - (b) the nature of the offence, and
 - (c) any other circumstances of the case,
- either by order remove the disqualification as from such date as may be specified in the order or refuse the application.

When can an offender apply?

RTOA 1988 s.42¹⁶⁵⁰: Removal of disqualification

- s.42(3) - no application shall be made under subsection (1) above for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is—
- (a) two years, if the disqualification is for less than four years,
 - (b) one half of the period of disqualification, if it is for less than ten years but not less than four years,
 - (c) five years in any other case;
- and in determining the expiration of the period after which under this subsection a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was not disqualified shall be disregarded.

Application refused: No new application for 3 months

RTOA 1988 s.42¹⁶⁵¹: Removal of disqualification

- s.42(4) - where an application under subsection (1) above is refused, a further application under that subsection shall not be entertained if made within three months after the date of the refusal.

Duty of the court where removing disqualification

RTOA 1988 s.42¹⁶⁵²: Removal of disqualification

- s.42(5) - if under this section a court orders a disqualification to be removed, the court—
- (a) must—
 - (i) if particulars of the disqualification were previously endorsed on the counterpart of any licence previously held by the applicant, cause particulars of the order to be endorsed on that counterpart, and

¹⁶⁴⁹ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁵⁰ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁵¹ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁵² Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- (ii) if particulars of the disqualification were previously endorsed on the driving record of the applicant, send notice of the order to the Secretary of State, and
- (b) may in any case order the applicant to pay the whole or any part of the costs of the application.

s.42(5A) - subsection (5)(a)(i) above shall apply only where the disqualification was imposed in respect of an offence involving obligatory endorsement; and in any other case the court must send notice of the order made under this section to the Secretary of State.

s.42(5B) - a notice under subsection (5)(a)(ii) or (5A) above must be sent in such manner and to such address, and must contain such particulars, as the Secretary of State may determine.

Duty to remove endorsement where disqualification removed

RTOA 1988 s.42¹⁶⁵³: Removal of disqualification

s.42(5AA) - if the disqualification was imposed in respect of an offence involving obligatory endorsement, the Secretary of State must, on receiving notice of an order under subsection (5)(a)(ii) above, make any necessary adjustments to the endorsements on the person's driving record to reflect the order.

Duty to give reasons where not disqualifying/endorsing or disqualifying for shorter than require period

RTOA 1988 s.47¹⁶⁵⁴: Supplementary provisions as to disqualifications and endorsements.

s.47(1) - in any case where a court exercises its power under section 34, 35 or 44 of this Act not to order any disqualification or endorsement or to order disqualification for a shorter period than would otherwise be required, it must state the grounds for doing so in open court and, if it is a magistrates' court or, in Scotland, a court of summary jurisdiction, must cause them to be entered in the register (in Scotland, record) of its proceedings.

Duty of court to send licence etc. to Secretary of State

RTOA 1988 s.47¹⁶⁵⁵: Supplementary provisions as to disqualifications and endorsements.

s.47(2) - where a court orders the endorsement of the counterpart of any licence held by a person it may, and where a court orders the holder of a licence to be disqualified for a period of 56 days or more it must, send the licence and its counterpart, on their being produced to the court, to the Secretary of State; and if the court orders the endorsement but does not send the licence and its counterpart to the Secretary of State it must send him notice of the endorsement.

s.47(2A) - subsection (2) above is subject to section 2(2) of and paragraph 7(2) of Schedule 1 to the Road Traffic (New Drivers) Act 1995 (obligation of court to send licence and its counterpart to the Secretary of State).

¹⁶⁵³ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁵⁴ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

¹⁶⁵⁵ Commencement: 1 July 1992, as inserted by RTA 1991 Sch.4 para.97.

- s.47(4) - a notice sent by a court to the Secretary of State in pursuance of this section must be sent in such manner and to such address and contain such particulars as the Secretary of State may determine, and a licence and the counterpart of a licence so sent in pursuance of this section must be sent to such address as the Secretary of State may determine.

3.7.16. Breach

RTA 1988 s.103¹⁶⁵⁶: Obtaining licence, or driving, while disqualified

- s.103(1) - a person is guilty of an offence if, while disqualified for holding or obtaining a licence, he:
- (a) obtains a licence, or
 - (b) drives a motor vehicle on a road.
- s.103(2) - a licence obtained by a person who is disqualified is of no effect (or, where the disqualification relates only to vehicles of a particular class, is of no effect in relation to vehicles of that class)."
- s.103(4) - subsection (1) above does not apply in relation to disqualification by virtue of section 101 of this Act.
- s.103(5) - subsection (1)(b) above does not apply in relation to disqualification by virtue of section 102 of this Act.
- s.103(6) - in the application of subsection (1) above to a person whose disqualification is limited to the driving of motor vehicles of a particular class by virtue of—
- (a) section 102, 117 or 117A of this Act, or
 - (b) subsection (9) of section 36 of the Road Traffic Offenders Act 1988 (disqualification until test is passed),
- the references to disqualification for holding or obtaining a licence and driving motor vehicles are references to disqualification for holding or obtaining a licence to drive and driving motor vehicles of that class."

¹⁶⁵⁶ Commencement: 15 May 1989, RTA 1988 s.197(2).

Road Traffic Offenders Act 1988

Schedule 2 PROSECUTION AND PUNISHMENT OF OFFENCES

Part I OFFENCES UNDER THE TRAFFIC ACTS

England

[

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
<i>Offences under the Road Traffic Regulation Act 1984</i>						
RTRA section 5	Contravention of traffic regulation order.	Summarily.	Level 3 on the standard scale.			
RTRA section 8	Contravention of order regulating traffic in Greater London.	Summarily.	Level 3 on the standard scale.			
RTRA section 11	Contravention of experimental traffic order.	Summarily.	Level 3 on the standard scale.			
RTRA section 13	Contravention of experimental traffic scheme in Greater London.	Summarily.	Level 3 on the standard scale.			
RTRA section 16(1)	Contravention of temporary prohibition or restriction.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a speed restriction.	Obligatory if committed in respect of a speed restriction.	3-6 or 3 (fixed penalty)
RTRA section 16C(1)	Contravention of prohibition or restriction relating to relevant event.	Summarily.	Level 3 on the standard scale.	—	—	—

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTRA section 17(4)	Use of special road contrary to scheme or regulations.	Summarily.	Level 4 on the standard scale.	Discretionary if committed in respect of a motor vehicle otherwise than by unlawfully stopping or allowing the vehicle to remain at rest on a part of a special road on which vehicles are in certain circumstances permitted to remain at rest.	Obligatory if committed as mentioned in the entry in column 5.	3-6 or 3 (fixed penalty) if committed in respect of a speed restriction, 3 in any other case
RTRA section 18(3)	One-way traffic on trunk road.	Summarily.	Level 3 on the standard scale.			
RTRA section 20(5)	Contravention of prohibition or restriction for roads of certain classes.	Summarily.	Level 3 on the standard scale.			
RTRA section 25(5)	Contravention of pedestrian crossing regulations.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3
RTRA section 28(3)	Not stopping at school crossing.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 29(3)	Contravention of order relating to street playground.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	2
RTRA section 35A(1)	Contravention of order as to use of parking place.	Summarily.	(a) Level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles or in an off-street parking place reserved for such vehicles, where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle. (b) Level 2 on the standard scale in any other case.			
RTRA section 35A(2)	Misuse of apparatus for collecting charges or of parking device or connected apparatus	Summarily.	Level 3 on the standard scale.			
RTRA section 35A(5)	Plying for hire in parking place.	Summarily.	Level 2 on the standard scale.			
RTRA section 43(5)	Unauthorised disclosure of information in respect of licensed parking place.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 43(10)	Failure to comply with term or conditions of licence to operate parking place.	Summarily.	Level 3 on the standard scale.			
RTRA section 43(12)	Operation of public off-street parking place without licence.	Summarily.	Level 5 on the standard scale.			
RTRA section 47(1)	Contraventions relating to designated parking places.	Summarily.	(a) Level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle. (b) Level 2 in any other case.			
RTRA section 47(3)	Tampering with parking meter.	Summarily.	Level 3 on the standard scale.			
RTRA section 52(1)	Misuse of parking device.	Summarily.	Level 2 on the standard scale.			
RTRA section 53(5)	Contravention of certain provisions of designation orders.	Summarily.	Level 3 on the standard scale.			
RTRA section 53(6)	Other contraventions of designation orders.	Summarily.	Level 2 on the standard scale.			
RTRA section 61(5)	Unauthorised use of loading area.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 88(7)	Contravention of minimum speed limit.	Summarily.	Level 3 on the standard scale.			
RTRA section 89(1)	Exceeding speed limit.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3-6 or 3 (fixed penalty)
RTRA section 104(5)	Interference with notice as to immobilisation device.	Summarily.	Level 2 on the standard scale.			
RTRA section 104(6)	Interference with immobilisation device.	Summarily.	Level 3 on the standard scale.			
RTRA section 105(5)	Misuse of disabled person's badge (immobilisation devices).	Summarily.	Level 3 on the standard scale.			
[RTRA section 105(6A)	Misuse of recognised badge (immobilisation devices).	Summarily.	Level 3 on the standard scale.			] ¹⁰⁸
RTRA section 108(2) (or that subsection as modified by section 109(2) and (3)).	Non-compliance with notice (excess charge).	Summarily.	Level 3 on the standard scale.			
RTRA section 108(3) (or that subsection as modified by section 109(2) and (3)).	False response to notice (excess charge).	Summarily.	Level 5 on the standard scale.			
RTRA section 112(4)	Failure to give information as to identify of driver.	Summarily.	Level 3 on the standard scale.			
RTRA section 115(1)	Mishandling or faking parking documents.	(a) Summarily. (b) On indictment.	(a) The statutory maximum. (b) 2 years.			

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTRA section 115(2)	False statement for procuring authorisation.	Summarily.	Level 4 on the standard scale.			
RTRA section 116(1)	Non-delivery of suspect document or article.	Summarily.	Level 3 on the standard scale.			
RTRA [section 117(1)] ¹⁰⁸	Wrongful use of disabled person's badge.	Summarily.	Level 3 on the standard scale.			
[RTRA section 117(1A)	Wrongful use of recognised badge.	Summarily.	Level 3 on the standard scale.			] ¹⁰⁸
RTRA section 129(3)	Failure to give evidence at inquiry.	Summarily.	Level 3 on the standard scale.			
Offences under the Road Traffic Act 1988						
RTA section 1	Causing death by dangerous driving.	On indictment.	14 years.	Obligatory.	Obligatory.	3-11
[RTA section 1A	Causing serious injury by dangerous driving.	(a) Summarily.	(a) 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3-11] ¹³
[		(b) On indictment.	(b) 5 years or a fine or both.			] ¹³
RTA section 2	Dangerous driving.	(a) Summarily.	(a) 6 months or the statutory maximum or both.	Obligatory	Obligatory.	3-11
		(b) On indictment.	(b) 2 years or a fine or both.			
[RTA section 2B	Causing death by careless, or inconsiderate, driving.	(a) Summarily.	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.	Obligatory	Obligatory.	3-11] ¹⁷
[		(b) On indictment.	(b) 5 years or a fine or both.			] ¹⁷
RTA section 3	Careless, and inconsiderate, driving.	Summarily.	[Level 5] ¹⁸ on the standard scale.	Discretionary.	Obligatory.	3–9

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[RTA section 3ZB	Causing death by driving: unlicensed [...] ²⁰ or uninsured drivers.	(a) Summarily.	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.	Obligatory.	Obligatory.	3–11] ¹⁹
[		(b) On indictment.	(b) 2 years or a fine or both.			] ¹⁹
[RTA section 3ZC	Causing death by driving: disqualified drivers.	On indictment.	10 years or a fine or both.	Obligatory.	Obligatory.	3–11.] ²¹
[RTA section 3ZD	Causing serious injury by driving: disqualified drivers.	(a) Summarily.	(a) On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3–11] ²¹
[		(b) On indictment.	(b) 4 years or a fine or both.			] ²¹
RTA section 3A	Causing death by careless driving when under influence of drink or drugs.	On indictment.	14 years or a fine or both.	Obligatory.	Obligatory.	3–11.
RTA section 4(1)	Driving or attempting to drive when unfit to drive through drink or drugs.	Summarily.	6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	3–11
RTA section 4(2)	Being in charge of a mechanically propelled vehicle when unfit to drive through drink or drugs.	Summarily.	3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10
RTA section 5(1)(a)	Driving or attempting to drive with excess alcohol in breath, blood or urine.	Summarily.	6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	3–11

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 5(1)(b)	Being in charge of a motor vehicle with excess alcohol in breath, blood or urine.	Summarily.	3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10
[RTA section 5A(1)(a) and (2)	Driving or attempting to drive with concentration of specified controlled drug above specified limit.	Summarily.	On conviction in England and Wales: 51 weeks or level 5 on the standard scale or both. On conviction in Scotland: 6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	3-11] ¹⁰⁵
[RTA section 5A(1)(b) and (2)	Being in charge of a motor vehicle with concentration of specified controlled drug above specified limit.	Summarily.	On conviction in England and Wales: 51 weeks or level 4 on the standard scale or both. On conviction in Scotland: 3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10] ¹⁰⁵
RTA section 6	Failing to co-operate with a preliminary test.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	4
RTA section 7	Failing to provide specimen for analysis or laboratory test.	Summarily.	(a) Where the specimen was required to ascertain ability to drive or proportion of alcohol [or proportion of a specified controlled drug] ²⁸ at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.	(a) Obligatory in case mentioned in column 4(a).	Obligatory.	(a) 3–11 in case mentioned in column 4(a).
			(b) In any other case, 3 months or level 4 on the standard scale or both.	(b) Discretionary in any other case.		(b) 10 in any other case.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 7A	Failing to allow specimen to be subjected to laboratory test	Summarily.	(a) Where the test would be for ascertaining ability to drive or proportion of alcohol [or proportion of a specified controlled drug] ³¹ at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.	(a) Obligatory in the case mentioned in column 4(a)	Obligatory.	3–11, in case mentioned in column 4(a)
			(b) In any other case, 3 months or level 4 on the standard scale or both	(b) Discretionary in any other case		10, in any other case.
RTA section 12	Motor racing and speed trials on public ways.	Summarily.	Level 4 on the standard scale.	Obligatory.	Obligatory.	3–11
RTA section 13	Other unauthorised or irregular competitions or trials on public ways.	Summarily.	Level 3 on the standard scale.			
RTA section 14	Driving or riding in a motor vehicle in contravention of regulations requiring wearing of seat belts.	Summarily.	Level 2 on the standard scale.			
RTA section 15(2)	Driving motor vehicle with child in front not wearing seat belt [or with child in a rear-facing child restraint in front seat with an active air bag] ³³ .	Summarily.	Level 2 on the standard scale.			
RTA section 15(4)	Driving motor vehicle with child in rear not wearing seat belt.	Summarily.	[Level 2] ³⁴ on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 15A(3) or (4)	Selling etc. in certain circumstances equipment as conducive to the safety of children in motor vehicles.	Summarily.	Level 3 on the standard scale.			
[RTA section 15B	Failure to notify bus passengers of the requirement to wear seat belts.	Summarily.	Level 4 on the standard scale.			] ³⁶
RTA section 16	Driving or riding motor cycles in contravention of regulations requiring wearing of protective headgear.	Summarily.	Level 2 on the standard scale.			
RTA section 17	Selling, etc., helmet not of the prescribed type as helmet for affording protection for motor cyclists.	Summarily.	Level 3 on the standard scale.			
RTA section 18(3)	Contravention of regulations with respect to use of head-worn appliances on motor cycles.	Summarily.	Level 2 on the standard scale.			
RTA section 18(4)	Selling, etc., appliance not of prescribed type as approved for use on motor cycles.	Summarily.	Level 3 on the standard scale.			
RTA section 19	Prohibition of parking of heavy commercial vehicles on verges, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 21	Driving or parking on cycle track.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 22	Leaving vehicles in dangerous positions.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3
RTA section 22A	Causing danger to road-users.	(a) Summarily. (b) On indictment.	(a) 6 months or the statutory maximum or both. (b) 7 years or a fine or both.	—	—	—
RTA section 23	Carrying passenger on motor-cycle contrary to section 23.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3
RTA section 24	Carrying passenger on bicycle contrary to section 24.	Summarily.	Level 1 on the standard scale.			
RTA section 25	Tampering with motor vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 26	Holding or getting on to vehicle, etc., in order to be towed or carried.	Summarily.	Level 1 on the standard scale.			
RTA section 27	Dogs on designated roads without being held on lead.	Summarily.	Level 1 on the standard scale.			
RTA section 28	dangerous cycling.	Summarily.	Level 4 on the standard scale.			
RTA section 29	Careless, and inconsiderate, cycling.	Summarily.	Level 3 on the standard scale.			
RTA section 30	Cycling when unfit through drink or drugs.	Summarily.	Level 3 on the standard scale.			
RTA section 31	Unauthorised or irregular cycle racing or trials of speed on public ways.	Summarily.	Level 1 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 32	Contravening prohibition on persons under 14 driving electrically assisted pedal cycles.	Summarily.	Level 2 on the standard scale.			
RTA section 33	Unauthorised motor vehicle trial on footpaths or bridleways.	Summarily.	Level 3 on the standard scale.			
RTA section 34	Driving mechanically propelled vehicles elsewhere than on roads.	Summarily.	Level 3 on the standard scale.			
RTA section 35	Failing to comply with traffic directions.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed in respect of a motor vehicle by failure to comply with a direction of a constable, traffic officer or traffic warden.	Obligatory if committed as described in column 5.	3
RTA section 36	Failing to comply with traffic signs.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for the purposes of this paragraph in regulations under RTA section 36.	Obligatory if committed as described in column 5.	3

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 37	Pedestrian failing to stop when directed [...] ¹⁰⁹ .	Summarily.	Level 3 on the standard scale.			
RTA Section 40A	Using vehicle in dangerous condition etc.	Summarily.	(a) Level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	[(a) Obligatory if committed within three years of a previous conviction of the offender under section 40A.] ⁴⁴	Obligatory.	3
			(b) Level 4 on the standard scale in any other case.	[(b) Discretionary in any other case.] ⁴⁴		
RTA section 41A	Breach of requirement as to brakes, steering-gear or tyres.	Summarily.	(a) Level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	Discretionary.	Obligatory.	3
			(b) Level 4 on the standard scale in any other case.			
RTA section 41B	Breach of requirement as to weight: goods and passenger vehicles.	Summarily.	Level 5 on the standard scale.	—	—	—
[RTA section 41D	Breach of requirements as to control of vehicle, mobile telephones etc.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	Discretionary.	Obligatory.	3.] ⁴⁵

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
[			(b) Level 3 on the standard scale in any other case.			] ⁴⁵
RTA section 42	Breach of other construction and use requirements.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	—	—	—
			(b) Level 3 on the standard scale in any other case.			
RTA section 47	Using, etc., vehicle without required test certificate being in force.	Summarily.	(a) Level 4 on the standard scale in the case of a vehicle adapted to carry more than eight passengers. (b) Level 3 on the standard scale in any other case.			
Regulations under RTA section 49 made by virtue of section 51(2)	Contravention of requirement of regulations (which is declared by regulations to be an offence) that driver of goods vehicle being tested be present throughout test or drive, etc., vehicle as and when directed.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 53(1)	Using, etc., goods vehicle without required plating certificate being in force.	Summarily.	Level 3 on the standard scale.			
RTA section 53(2)	Using, etc., goods vehicle without required goods vehicle test certificate being in force.	Summarily.	Level 4 on the standard scale.			
RTA section 53(3)	Using, etc., goods vehicle where Secretary of State is required by regulations under section 49 to be notified of an alteration to the vehicle or its equipment but has not been notified.	Summarily.	Level 3 on the standard scale.			
Regulations under RTA section 61 made by virtue of subsection (4).	Contravention of requirement of regulations (which is declared by regulations to be an offence) that driver of goods vehicle being tested after notifiable alteration be present throughout test and drive, etc., vehicle as and when directed.	Summarily.	Level 3 on the standard scale.			
RTA section 63(1)	Using, etc., goods vehicle without required certificate being in force showing that it complies with type approval requirements applicable to it.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 63(2)	Using, etc., certain goods vehicles for drawing trailer when plating certificate does not specify maximum laden weight for vehicle and trailer.	Summarily.	Level 3 on the standard scale.			
RTA section 63(3)	Using, etc., goods vehicle where Secretary of State is required to be notified under section 59 of alteration to it or its equipment but has not been notified.	Summarily.	Level 3 on the standard scale.			
RTA section 64	Using goods vehicle with unauthorised weights as well as authorised weights marked on it.	Summarily.	Level 3 on the standard scale.			

[...] ⁴⁶

RTA section 65	Supplying vehicle or vehicle part without required certificate being in force showing that it complies with type approval requirements applicable to it.	Summarily.	Level 5 on the standard scale.			
RTA section 65A	Light passenger vehicles and motor cycles not to be sold without EC certificate of conformity.	Summarily.	Level 5 on the standard scale.	—	—	—
[RTA section 66C(1)	Impersonating a stopping officer etc. with intent to deceive	Summarily	Level 5 on the standard scale			] ⁴⁹

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[RTA section 66C(2)]	Resisting or wilfully obstructing a stopping officer	Summarily	One month or level 3 on the standard scale or both			⁴⁹
RTA section 67	Obstructing testing of vehicle by examiner on road or failing to comply with requirements of RTA section 67 or Schedule 2.	Summarily.	Level 3 on the standard scale.			
RTA section 68	Obstructing inspection, etc., of vehicle by examiner or failing to comply with requirement to take vehicle for inspection.	Summarily.	Level 3 on the standard scale.			
RTA section 71	Driving, etc., vehicle in contravention of prohibition on driving it as being unfit for service, or refusing, neglecting or otherwise failing to comply with direction to remove a vehicle found overloaded.	Summarily.	Level 5 on the standard scale.			
RTA section 74	Contravention of regulations requiring goods vehicle operator to inspect, and keep records of inspection of, goods vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 75	Selling, etc., unroadworthy vehicle or trailer or altering vehicle or trailer so as to make it unroadworthy.	Summarily.	Level 5 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 76(1)	Fitting of defective or unsuitable vehicle parts.	Summarily.	Level 5 on the standard scale.			
RTA section 76(3)	Supplying defective or unsuitable vehicle parts.	Summarily.	Level 4 on the standard scale.			
RTA section 76(8)	Obstructing examiner testing vehicles to ascertain whether defective or unsuitable part has been fitted, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 77	Obstructing examiner testing condition of used vehicles at sale rooms, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 78	Failing to comply with requirement about weighing motor vehicle or obstructing authorised person.	Summarily.	Level 5 on the standard scale.			
RTA section 81	Selling, etc., pedal cycle in contravention of regulations as to brakes, bells, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 83	Selling, etc., wrongly made tail lamps or reflectors.	Summarily.	Level 5 on the standard scale.			
RTA section 87(1)	Driving otherwise than in accordance with a licence.	Summarily.	Level 3 on the standard scale.	Discretionary in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him.	Obligatory in the case mentioned in column 5.	3–6

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 87(2)	Causing or permitting a person to drive otherwise than in accordance with a licence.	Summarily.	Level 3 on the standard scale.			
RTA section 92(7C)	Failure to deliver licence revoked by virtue of section 92(7A) [...] ⁵⁴ to Secretary of State.	Summarily.	Level 3 on the standard scale.			
RTA section 92(10)	Driving after making false declaration as to physical fitness.	Summarily.	Level 4 on the standard scale.	Discretionary.	Obligatory.	3-6
RTA section 93(3)	Failure to deliver revoked licence [...] ⁵⁴ to Secretary of State,	Summarily.	Level 3 on the standard scale.			
RTA section 94(3)	Failure to notify Secretary of State of onset of, or deterioration in, relevant or prospective disability and that subsection as applied by RTA section 99D [or 109C] ⁵⁸ .	Summarily.	Level 3 on the standard scale.			
RTA section 94(3A)	Driving after such a failure and that subsection as applied by RTA section 99D(b) [or 109C(c)] ⁶¹ .	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3-6
RTA section 94A	Driving after refusal of licence under section 92(3), revocation under section 93 or service of a notice under section 99C [or 109B] ⁶³ .	Summarily.	6 months or level 5 on the standard scale or both.	Discretionary.	Obligatory.	3-6

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 96	Driving with uncorrected defective eyesight, or refusing to submit to test of eyesight.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3
RTA section 99(5)	Driving licence holder failing to surrender licence [...] ⁵⁴ .	Summarily.	Level 3 on the standard scale.			
[RTA section 99B(11)]	Driving after failing to comply with a requirement under section 99B(7) or (10).	Summarily.	Level 3 on the standard scale.	—	—	—] ⁶⁹
RTA section 99C(4)	Failure to deliver Community licence to Secretary of State when required by notice under section 99C.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 103(1)(a)	Obtaining driving licence while disqualified.	Summarily.	Level 3 on the standard scale.			
RTA section 103(1)(b)	Driving while disqualified.	(a) Summarily, in England and Wales.	(a) 6 months or level 5 on the standard scale or both.	Discretionary.	Obligatory.	6
		(b) Summarily, in Scotland.	(b) 6 months or the statutory maximum or both.			
		(c) On indictment, in Scotland.	(c) 12 months or a fine or both.			
[RTA section 109B(4)]	Failure to deliver Northern Ireland licence to Secretary of State when required by notice under section 109B.	Summarily.	Level 3 on the standard scale.			] ⁷¹

[...] ⁷²

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 114	Failing to comply with conditions of LGV, PCV licence or LGV Community licence, or causing or permitting person under 21 to drive LGV or PCV in contravention of such conditions.	Summarily.	Level 3 on the standard scale.			
RTA section 115A(4)	Failure to deliver LGV or PCV Community licence when required by notice under section 115A.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 118	Failing to surrender revoked or suspended LGV or PCV licence [...] ⁵⁴ .	Summarily.	Level 3 on the standard scale.			
Regulations made by virtue of RTA section 120(5)	Contravention of provision of regulations (which is declared by regulations to be an offence) about LGV or PCV drivers' licences or LGV or PCV Community licence.	Summarily.	Level 3 on the standard scale.			
RTA section 123(4)	Giving of paid driving instruction by unregistered and unlicensed persons or their employers.	Summarily.	Level 4 on the standard scale.			

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 123(6)	Giving of paid instruction without there being exhibited on the motor car a certificate of registration or a licence under RTA Part V.	Summarily.	Level 3 on the standard scale.			
RTA [section 125(2B)] ⁸¹	Failure, on application [to be registered in respect of driving instruction] ⁸² , to notify Registrar of [...] ⁸³ relevant or prospective disability.	Summarily.	Level 3 on the standard scale	—	—	—
RTA section 133C(4)	Failure by registered or licensed [...] ⁸⁴ driving instructor to notify Registrar of onset of, or deterioration in, relevant or prospective disability.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 133D	Giving of paid driving instruction by [persons required to hold emergency control certificates] ⁸⁵ or their employers without emergency control certificate or in unauthorised motor car.	Summarily.	Level 3 on the standard scale.	—	—	—

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 135	Unregistered instructor using title or displaying badge, etc., prescribed for registered instructor, or employer using such title, etc., in relation to his unregistered instructor or issuing misleading advertisement, etc.	Summarily.	Level 4 on the standard scale.			
RTA section 136	Failure of instructor to surrender to Registrar certificate or licence.	Summarily.	Level 3 on the standard scale.			
RTA section 137	Failing to produce certificate of registration or licence as driving instructor.	Summarily.	Level 3 on the standard scale.			
RTA section 143	Using motor vehicle while uninsured or unsecured against third-party risks.	Summarily.	Level 5 on the standard scale.	Discretionary.	Obligatory.	6–8
[RTA section 144A	Keeping vehicle which does not meet insurance requirements.	Summarily.	Level 3 on the standard scale.			] ⁸⁷
RTA section 147	Failing to surrender certificate of insurance or security to insurer on cancellation or to make statutory declaration of loss or destruction.	Summarily.	Level 3 on the standard scale.			
RTA section 154	Failing to give information, or wilfully making a false statement, as to insurance or security when claim made.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[Regulations under RTA section 160 made by virtue of paragraph 2(1) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal of or interference with immobilisation notice.	Summarily.	Level 2 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(2) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal or attempted removal of immobilisation device.	Summarily.	Level 3 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(3) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) about display of disabled person's badge.	Summarily.	Level 3 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(4) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure release of vehicle from immobilisation device.	(a) Summarily.	(a) The statutory maximum.			] ⁸⁸
		[(b) On indictment.	(b) 2 years or a fine or both.			] ⁸⁸
[Regulations under RTA	Contravention of provision of regulations	(a) Summarily.	(a) The statutory maximum.			] ⁸⁸

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
section 160 made by virtue of paragraph 4 of Schedule 2A	(which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure possession of vehicle in person's custody.	[(b) On indictment.	(b) 2 years or a fine or both.			] ⁸⁸
RTA section 163	Failing to stop motor vehicle or cycle when required [...] ¹⁰⁹ .	Summarily.	[(a) Level 5 on the standard scale if committed by a person driving a mechanically propelled vehicle.] ⁸⁹			
[			(b) Level 3 on the standard scale if committed by a person riding a cycle.			] ⁸⁹
RTA section 164	Failing to produce driving licence [...] ⁵⁴ or to state date of birth, or failing to provide the Secretary of State with evidence of date of birth, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 165	Failing to give certain names and addresses or to produce certain documents.	Summarily.	Level 3 on the standard scale.			
RTA section 168	Refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving or cycling.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 169	Pedestrian failing to give constable his name and address after failing to stop when directed by constable controlling traffic.	Summarily.	Level 1 on the standard scale.			
RTA section 170(4)	Failing to stop after accident and give particulars or report accident.	Summarily.	Six months or level 5 on the standard scale or both	Discretionary.	Obligatory.	5–10
RTA section 170(7)	Failure by driver, in case of accident involving injury to another, to produce evidence of insurance or security or to report accident.	Summarily.	Level 3 on the standard scale.			
RTA section 171	Failure by owner of motor vehicle to give police information for verifying compliance with requirement of compulsory insurance or security.	Summarily.	Level 4 on the standard scale.			
RTA section 172	Failure of person keeping vehicle and others to give police information as to identity of driver, etc., in the case of certain offences.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed otherwise than by virtue of subsection (5) or (11).	Obligatory, if committed otherwise than by virtue of subsection (5) or (11).	[6] ⁹⁵
RTA section 173	Forgery, etc., of licences, [...] ⁵⁴ test certificates, certificates of insurance and other documents and things.	(a) Summarily. (b) On indictment.	(a) The statutory maximum.	(b) 2 years.		

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 174	Making certain false statements, etc., and withholding certain material information.	(a) Summarily (b) On indictment	(a) 6 months or the statutory maximum or both (b) 2 years or a fine or both.			
RTA section 175	Issuing false documents.	Summarily.	Level 4 on the standard scale.			
RTA section 177	Impersonation of, or of person employed by, authorised examiner.	Summarily.	Level 3 on the standard scale.			
RTA section 178	Taking, etc., in Scotland a motor vehicle without authority or, knowing that it has been so taken, driving it or allowing oneself to be carried in it without authority.	(a) Summarily. (b) On indictment.	(a) 3 months or the statutory maximum or both. (b) 12 months or a fine or both.	Discretionary.		
RTA section 180	Failing to attend, give evidence or produce documents to, inquiry held by Secretary of State, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 181	Obstructing inspection of vehicles after accident.	Summarily.	Level 3 on the standard scale.			
RTA Schedule 1 paragraph 6	Applying warranty to equipment, protective helmet, appliance or information in defending proceedings under RTA section 15A, 17 or 18(4) where no warranty given, or applying false warranty.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
Offences under this Act						
Section 25 of this Act.	Failing to give information as to date of birth or sex to court or to provide Secretary of State with evidence of date of birth, etc.	Summarily.	Level 3 on the standard scale.			
Section 26 of this Act.	Failing to produce driving licence [...] ⁵⁴ to court making order for interim disqualification.	Summarily.	Level 3 on the standard scale.			
Section 27 of this Act.	Failing to produce licence [...] ⁵⁴ to court for endorsement on conviction of offence involving obligatory endorsement or on committal for sentence, etc., for offence involving obligatory or discretionary disqualification when no interim disqualification ordered.	Summarily.	Level 3 on the standard scale.			
Section 62 of this Act.	Removing fixed penalty notice fixed to vehicle.	Summarily.	Level 2 on the standard scale.			
Section 67 of this Act.	False statement in response to notice to owner.	Summarily.	Level 5 on the standard scale.			
[Section 90D(6) of this Act.	Driving, etc., vehicle in contravention of prohibition for failure to pay financial penalty deposit, etc.	Summarily.	Level 5 on the standard scale.			] ¹⁰¹

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(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
Offences under the Road Traffic Regulation Act 1984						
RTRA section 5	Contravention of traffic regulation order.	Summarily.	Level 3 on the standard scale.			
RTRA section 8	Contravention of order regulating traffic in Greater London.	Summarily.	Level 3 on the standard scale.			
RTRA section 11	Contravention of experimental traffic order.	Summarily.	Level 3 on the standard scale.			
RTRA section 13	Contravention of experimental traffic scheme in Greater London.	Summarily.	Level 3 on the standard scale.			
RTRA section 16(1)	Contravention of temporary prohibition or restriction.	Summarily.	Level 3 on the standard scale.	[Discretionary if committed in respect of a speed restriction.] ¹	[Obligatory if committed in respect of a speed restriction.] ¹	[3-6 or 3 (fixed penalty)] ¹
[RTRA section 16C(1)]	Contravention of prohibition or restriction relating to relevant event.	Summarily.	Level 3 on the standard scale.	—	—	—] ²

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTRA section 17(4)	Use of special road contrary to scheme or regulations.	Summarily.	Level 4 on the standard scale.	Discretionary if committed in respect of a motor vehicle otherwise than by unlawfully stopping or allowing the vehicle to remain at rest on a part of a special road on which vehicles are in certain circumstances permitted to remain at rest.	Obligatory if committed as mentioned in the entry in column 5.	[3-6 or 3 (fixed penalty) if committed in respect of a speed restriction, 3 in any other case] ³
RTRA section 18(3)	One-way traffic on trunk road.	Summarily.	Level 3 on the standard scale.			
RTRA section 20(5)	Contravention of prohibition or restriction for roads of certain classes.	Summarily.	Level 3 on the standard scale.			
RTRA section 25(5)	Contravention of pedestrian crossing regulations.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3
RTRA section 28(3)	Not stopping at school crossing.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 29(3)	Contravention of order relating to street playground.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	2

[...] ⁴

RTRA [section 35A(1)] ⁵	Contravention of order as to use of parking place.	Summarily.	(a) Level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles or in an off-street parking place reserved for such vehicles, where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle. (b) Level 2 on the standard scale in any other case.			
RTRA [section 35A(2)] ⁶	[Misuse of apparatus for collecting charges or of parking device or connected apparatus] ⁷	Summarily.	Level 3 on the standard scale.			
RTRA [section 35A(5)] ⁸	Plying for hire in parking place.	Summarily.	Level 2 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 43(5)	Unauthorised disclosure of information in respect of licensed parking place.	Summarily.	Level 3 on the standard scale.			
RTRA section 43(10)	Failure to comply with term or conditions of licence to operate parking place.	Summarily.	Level 3 on the standard scale.			
RTRA section 43(12)	Operation of public off-street parking place without licence.	Summarily.	Level 5 on the standard scale.			
RTRA section 47(1)	Contraventions relating to designated parking places.	Summarily.	(a) Level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle. (b) Level 2 in any other case.			
RTRA section 47(3)	Tampering with parking meter.	Summarily.	Level 3 on the standard scale.			
RTRA section 52(1)	Misuse of parking device.	Summarily.	Level 2 on the standard scale.			
RTRA section 53(5)	Contravention of certain provisions of designation orders.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 53(6)	Other contraventions of designation orders.	Summarily.	Level 2 on the standard scale.			
RTRA section 61(5)	Unauthorised use of loading area.	Summarily.	Level 3 on the standard scale.			
RTRA section 88(7)	Contravention of minimum speed limit.	Summarily.	Level 3 on the standard scale.			
RTRA section 89(1)	Exceeding speed limit.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	[3-6 or 3 (fixed penalty)] ⁹
RTRA section 104(5)	Interference with notice as to immobilisation device.	Summarily.	Level 2 on the standard scale.			
RTRA section 104(6)	Interference with immobilisation device.	Summarily.	Level 3 on the standard scale.			
RTRA section 105(5)	Misuse of disabled person's badge (immobilisation devices).	Summarily.	Level 3 on the standard scale.			
RTRA section 108(2) (or that subsection as modified by section 109(2) and (3)).	Non-compliance with notice (excess charge).	Summarily.	Level 3 on the standard scale.			
RTRA section 108(3) (or that subsection as modified by section 109(2) and (3)).	False response to notice (excess charge).	Summarily.	Level 5 on the standard scale.			
RTRA section 112(4)	Failure to give information as to identify of driver.	Summarily.	Level 3 on the standard scale.			
RTRA section 115(1)	Mishandling or faking parking documents.	(a) Summarily. (b) On indictment.	(a) The statutory maximum. (b) 2 years.			

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTRA section 115(2)	False statement for procuring authorisation.	Summarily.	Level 4 on the standard scale.			
RTRA section 116(1)	Non-delivery of suspect document or article.	Summarily.	Level 3 on the standard scale.			
RTRA section 117	Wrongful use of disabled person's badge.	Summarily.	Level 3 on the standard scale.			
RTRA section 129(3)	Failure to give evidence at inquiry.	Summarily.	Level 3 on the standard scale.			
Offences under the Road Traffic Act 1988						
RTA section 1	Causing death by [dangerous] ¹⁰ driving.	On indictment.	[14 years.] ¹¹	Obligatory.	Obligatory.	[3-11] ¹²
[RTA section 1A	Causing serious injury by dangerous driving.	(a) Summarily.	(a) 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3-11] ¹³
[		(b) On indictment.	(b) 5 years or a fine or both.			] ¹³
RTA section 2	[Dangerous] ¹⁴ driving.	(a) Summarily.	(a) 6 months or the statutory maximum or both.	[Obligatory] ¹⁵	Obligatory.	[3-11] ¹⁶

[...]¹⁶

		(b) On indictment.	(b) 2 years or a fine or both.			
[RTA section 2B	Causing death by careless, or inconsiderate, driving.	(a) Summarily.	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.	Obligatory	Obligatory.	3-11] ¹⁷
[		(b) On indictment.	(b) 5 years or a fine or both.			] ¹⁷
RTA section 3	Careless, and inconsiderate, driving.	Summarily.	[Level 5] ¹⁸ on the standard scale.	Discretionary.	Obligatory.	3–9

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
[RTA section 3ZB	Causing death by driving: unlicensed [...] ²⁰ or uninsured drivers.	(a) Summarily.	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.	Obligatory.	Obligatory.	3–11] ¹⁹
[		(b) On indictment.	(b) 2 years or a fine or both.			] ¹⁹
[RTA section 3ZC	Causing death by driving: disqualified drivers.	On indictment.	10 years or a fine or both.	Obligatory.	Obligatory.	3–11.] ²¹
[RTA section 3ZD	Causing serious injury by driving: disqualified drivers.	(a) Summarily.	(a) On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3–11] ²¹
[		(b) On indictment.	(b) 4 years or a fine or both.			] ²¹
[RTA section 3A	Causing death by careless driving when under influence of drink or drugs.	On indictment.	[14 years or a fine or both.] ²³	Obligatory.	Obligatory.	3–11.] ²²
RTA section 4(1)	Driving or attempting to drive when unfit to drive through drink or drugs.	Summarily.	6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	[3–11] ²⁴
RTA section 4(2)	[Being in charge of a mechanically propelled vehicle when unfit to drive through drink or drugs.] ²⁵	Summarily.	3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10
RTA section 5(1)(a)	Driving or attempting to drive with excess alcohol in breath, blood or urine.	Summarily.	6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	[3–11] ²⁶

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 5(1)(b)	Being in charge of a motor vehicle with excess alcohol in breath, blood or urine.	Summarily.	3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10
RTA section 6	[Failing to co-operate with a preliminary test.] ²⁷	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	4
RTA section 7	Failing to provide specimen for analysis or laboratory test.	Summarily.	(a) Where the specimen was required to ascertain ability to drive or proportion of alcohol [or proportion of a specified controlled drug] ²⁸ at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.	(a) Obligatory in case mentioned in column 4(a).	Obligatory.	[(a) 3–11 in case mentioned in column 4(a).] ²⁹
			(b) In any other case, 3 months or level 4 on the standard scale or both.	(b) Discretionary in any other case.		(b) 10 in any other case.
[RTA section 7A	Failing to allow specimen to be subjected to laboratory test	Summarily.	(a) Where the test would be for ascertaining ability to drive or proportion of alcohol [or proportion of a specified controlled drug] ³¹ at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.	(a) Obligatory in the case mentioned in column 4(a)	Obligatory.	3–11, in case mentioned in column 4(a)] ³⁰
[			(b) In any other case, 3 months or level 4 on the standard scale or both	(b) Discretionary in any other case		10, in any other case.] ³⁰

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 12	Motor racing and speed trials on public ways.	Summarily.	Level 4 on the standard scale.	Obligatory.	Obligatory.	[3–11] ³²
RTA section 13	Other unauthorised or irregular competitions or trials on public ways.	Summarily.	Level 3 on the standard scale.			
RTA section 14	Driving or riding in a motor vehicle in contravention of regulations requiring wearing of seat belts.	Summarily.	Level 2 on the standard scale.			
RTA section 15(2)	Driving motor vehicle with child in front not wearing seat belt [or with child in a rear-facing child restraint in front seat with an active air bag] ³³ .	Summarily.	Level 2 on the standard scale.			
RTA section 15(4)	Driving motor vehicle with child in rear not wearing seat belt.	Summarily.	[Level 2] ³⁴ on the standard scale.			
[RTA section 15A(3) or (4)	Selling etc. in certain circumstances equipment as conducive to the safety of children in motor vehicles.	Summarily.	Level 3 on the standard scale.			] ³⁵
[RTA section 15B	Failure to notify bus passengers of the requirement to wear seat belts.	Summarily.	Level 4 on the standard scale.			] ³⁶
RTA section 16	Driving or riding motor cycles in contravention of regulations requiring wearing of protective headgear.	Summarily.	Level 2 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 17	Selling, etc., helmet not of the prescribed type as helmet for affording protection for motor cyclists.	Summarily.	Level 3 on the standard scale.			
RTA section 18(3)	Contravention of regulations with respect to use of head-worn appliances on motor cycles.	Summarily.	Level 2 on the standard scale.			
RTA section 18(4)	Selling, etc., appliance not of prescribed type as approved for use on motor cycles.	Summarily.	Level 3 on the standard scale.			
RTA section 19	Prohibition of parking of heavy commercial vehicles on verges, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 21	Driving or parking on cycle track.	Summarily.	Level 3 on the standard scale.			
RTA section 22	Leaving vehicles in dangerous positions.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3
[RTA section 22A	Causing danger to road-users.	(a) Summarily. (b) On indictment.	(a) 6 months or the statutory maximum or both. (b) 7 years or a fine or both.	—	—	—] ³⁷
RTA section 23	Carrying passenger on motor-cycle contrary to section 23.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	[3] ³⁸
RTA section 24	Carrying passenger on bicycle contrary to section 24.	Summarily.	Level 1 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 25	Tampering with motor vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 26	Holding or getting on to vehicle, etc., in order to be towed or carried.	Summarily.	Level 1 on the standard scale.			
RTA section 27	Dogs on designated roads without being held on lead.	Summarily.	Level 1 on the standard scale.			
RTA section 28	[dangerous cycling.] ³⁹	Summarily.	[Level 4 on the standard scale.] ⁴⁰			
RTA section 29	Careless, and inconsiderate, cycling.	Summarily.	[Level 3 on the standard scale.] ⁴¹			
RTA section 30	Cycling when unfit through drink or drugs.	Summarily.	Level 3 on the standard scale.			
RTA section 31	Unauthorised or irregular cycle racing or trials of speed on public ways.	Summarily.	Level 1 on the standard scale.			
RTA section 32	Contravening prohibition on persons under 14 driving electrically assisted pedal cycles.	Summarily.	Level 2 on the standard scale.			
RTA section 33	Unauthorised motor vehicle trial on footpaths or bridleways.	Summarily.	Level 3 on the standard scale.			
RTA section 34	[Driving mechanically propelled vehicles elsewhere than on roads.] ⁴²	Summarily.	Level 3 on the standard scale.			

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 35	Failing to comply with traffic directions.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed in respect of a motor vehicle by failure to comply with a direction of a constable or traffic warden.	Obligatory if committed as described in column 5.	3
RTA section 36	Failing to comply with traffic signs.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for the purposes of this paragraph in regulations under RTA section 36.	Obligatory if committed as described in column 5.	3
RTA section 37	Pedestrian failing to stop when directed by constable regulating traffic.	Summarily.	Level 3 on the standard scale.			
[RTA Section 40A	Using vehicle in dangerous condition etc.	Summarily.	(a) Level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	[(a) Obligatory if committed within three years of a previous conviction of the offender under section 40A.] ⁴⁴	Obligatory.	3] ⁴³

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
[			(b) Level 4 on the standard scale in any other case.	[(b) Discretionary in any other case.] ⁴⁴		] ⁴³
[RTA section 41A	Breach of requirement as to brakes, steering-gear or tyres.	Summarily.	(a) Level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	Discretionary.	Obligatory.	3] ⁴³
[			(b) Level 4 on the standard scale in any other case.			] ⁴³
[RTA section 41B	Breach of requirement as to weight: goods and passenger vehicles.	Summarily.	Level 5 on the standard scale.	—	—	—] ⁴³
[RTA section 41D	Breach of requirements as to control of vehicle, mobile telephones etc.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	Discretionary.	Obligatory.	3.] ⁴⁵
[			(b) Level 3 on the standard scale in any other case.			] ⁴⁵
[RTA section 42	Breach of other construction and use requirements.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	—	—	—] ⁴³

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
[			(b) Level 3 on the standard scale in any other case.			] ⁴³
RTA section 47	Using, etc., vehicle without required test certificate being in force.	Summarily.	(a) Level 4 on the standard scale in the case of a vehicle adapted to carry more than eight passengers. (b) Level 3 on the standard scale in any other case.			
Regulations under RTA section 49 made by virtue of section 51(2)	Contravention of requirement of regulations (which is declared by regulations to be an offence) that driver of goods vehicle being tested be present throughout test or drive, etc., vehicle as and when directed.	Summarily.	Level 3 on the standard scale.			
RTA section 53(1)	Using, etc., goods vehicle without required plating certificate being in force.	Summarily.	Level 3 on the standard scale.			
RTA section 53(2)	Using, etc., goods vehicle without required goods vehicle test certificate being in force.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 53(3)	Using, etc., goods vehicle where Secretary of State is required by regulations under section 49 to be notified of an alteration to the vehicle or its equipment but has not been notified.	Summarily.	Level 3 on the standard scale.			
Regulations under RTA section 61 made by virtue of subsection (4).	Contravention of requirement of regulations (which is declared by regulations to be an offence) that driver of goods vehicle being tested after notifiable alteration be present throughout test and drive, etc., vehicle as and when directed.	Summarily.	Level 3 on the standard scale.			
RTA section 63(1)	Using, etc., goods vehicle without required certificate being in force showing that it complies with type approval requirements applicable to it.	Summarily.	Level 4 on the standard scale.			
RTA section 63(2)	Using, etc., certain goods vehicles for drawing trailer when plating certificate does not specify maximum laden weight for vehicle and trailer.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 63(3)	Using, etc., goods vehicle where Secretary of State is required to be notified under section 59 of alteration to it or its equipment but has not been notified.	Summarily.	Level 3 on the standard scale.			
RTA section 64	Using goods vehicle with unauthorised weights as well as authorised weights marked on it.	Summarily.	Level 3 on the standard scale.			

[...] ⁴⁶

RTA section 65	Supplying vehicle or vehicle part without required certificate being in force showing that it complies with type approval requirements applicable to it.	Summarily.	Level 5 on the standard scale.			
[RTA section 65A	Light passenger vehicles [and motor cycles] ⁴⁸ not to be sold without EC certificate of conformity.	Summarily.	Level 5 on the standard scale.	—	—	—] ⁴⁷
[RTA section 66C(1)	Impersonating a stopping officer etc. with intent to deceive	Summarily	Level 5 on the standard scale			] ⁴⁹
[RTA section 66C(2)	Resisting or wilfully obstructing a stopping officer	Summarily	One month or level 3 on the standard scale or both			] ⁴⁹

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 67	Obstructing testing of vehicle by examiner on road or failing to comply with requirements of RTA section 67 or Schedule 2.	Summarily.	Level 3 on the standard scale.			
RTA section 68	[Obstructing inspection, etc., of vehicle by examiner or failing to comply with requirement to take vehicle for inspection.] 50	Summarily.	Level 3 on the standard scale.			
RTA section 71	[Driving, etc., vehicle in contravention of prohibition on driving it as being unfit for service, or refusing, neglecting or otherwise failing to comply with direction to remove a vehicle found overloaded.] 50	Summarily.	Level 5 on the standard scale.			
RTA section 74	Contravention of regulations requiring goods vehicle operator to inspect, and keep records of inspection of, goods vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 75	Selling, etc., unroadworthy vehicle or trailer or altering vehicle or trailer so as to make it unroadworthy.	Summarily.	Level 5 on the standard scale.			

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 76(1)	Fitting of defective or unsuitable vehicle parts.	Summarily.	Level 5 on the standard scale.			
RTA section 76(3)	Supplying defective or unsuitable vehicle parts.	Summarily.	Level 4 on the standard scale.			
RTA section 76(8)	Obstructing examiner testing vehicles to ascertain whether defective or unsuitable part has been fitted, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 77	Obstructing examiner testing condition of used vehicles at sale rooms, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 78	Failing to comply with requirement about weighing motor vehicle or obstructing authorised person.	Summarily.	Level 5 on the standard scale.			
RTA section 81	Selling, etc., pedal cycle in contravention of regulations as to brakes, bells, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 83	Selling, etc., wrongly made tail lamps or reflectors.	Summarily.	Level 5 on the standard scale.			
[RTA section 87(1)	Driving otherwise than in accordance with a licence.	Summarily.	Level 3 on the standard scale.	Discretionary in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him.	Obligatory in the case mentioned in column 5.	3–6] ⁵¹

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 87(2)	[Causing or permitting a person to drive otherwise than in accordance with a licence.] ⁵²	Summarily.	Level 3 on the standard scale.			
[RTA section 92(7C)	Failure to deliver licence revoked by virtue of section 92(7A) [...] ⁵⁴ to Secretary of State.	Summarily.	Level 3 on the standard scale.			] ⁵³
[RTA section 92(10)	Driving after making false declaration as to physical fitness.	Summarily.	Level 4 on the standard scale.	Discretionary.	Obligatory.	3-6] ⁵⁵
[RTA section 93(3)	Failure to deliver revoked licence [...] ⁵⁴ to Secretary of State,	Summarily.	Level 3 on the standard scale.			] ⁵³
[RTA section 94(3)] ⁵⁶	Failure to notify Secretary of State of onset of, or deterioration in, relevant or prospective disability [and that subsection as applied by RTA section 99D] ⁵⁷ [or 109C] ⁵⁸ .	Summarily.	Level 3 on the standard scale.			
[RTA section 94(3A)	Driving after such a failure [and that subsection as applied by RTA section 99D(b)] ⁶⁰ [or 109C(c)] ⁶¹ .	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3-6] ⁵⁹

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
[RTA section 94A	[Driving after refusal of licence under section 92(3), revocation under section 93 or service of a notice under section 99C [or 109B] ⁶³ .] ⁶²	Summarily.	6 months or level 5 on the standard scale or both.	Discretionary.	Obligatory.	3-6] ⁵⁹
RTA section 96	Driving with uncorrected defective eyesight, or refusing to submit to test of eyesight.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	[3] ⁶⁴

[...] ⁶⁵

RTA [section 99(5)] ⁶⁶	[Driving licence holder failing to surrender licence [...] ⁵⁴ .]] ⁶⁷	Summarily.	Level 3 on the standard scale.			
[RTA section 99B(11)	Driving after failing to comply with a requirement under section 99B(7) or (10).	Summarily.	Level 3 on the standard scale.	—	—	—] ⁶⁹
[RTA section 99C(4)	Failure to deliver Community licence to Secretary of State when required by notice under section 99C.	Summarily.	Level 3 on the standard scale.	—	—	—] ⁶⁸
RTA section 103(1)(a)	Obtaining driving licence while disqualified.	Summarily.	Level 3 on the standard scale.			
RTA section 103(1)(b)	Driving while disqualified.	(a) Summarily, in England and Wales.	(a) 6 months or level 5 on the standard scale or both.	Discretionary.	Obligatory.	[6] ⁷⁰
		(b) Summarily, in Scotland.	(b) 6 months or the statutory maximum or both.			

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
		(c) On indictment, in Scotland.	(c) 12 months or a fine or both.			
[RTA section 109B(4)]	Failure to deliver Northern Ireland licence to Secretary of State when required by notice under section 109B.	Summarily.	Level 3 on the standard scale.			] ⁷¹

[...] ⁷²[...] ⁷³

[RTA section 114]	[Failing to comply with conditions of LGV, PCV licence or LGV Community licence, or causing or permitting person under 21 to drive LGV or PCV in contravention of such conditions.] ⁷⁵	Summarily.	Level 3 on the standard scale.			] ⁷⁴
[RTA section 115A(4)]	Failure to deliver LGV or PCV Community licence when required by notice under section 115A.	Summarily.	Level 3 on the standard scale.	—	—	—] ⁷⁶
[RTA section 118]	Failing to surrender revoked or suspended LGV or PCV licence [...] ⁵⁴ .	Summarily.	Level 3 on the standard scale.			] ⁷⁴

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
Regulations made by virtue of RTA [section 120(5)] ⁷⁷	Contravention of provision of regulations (which is declared by regulations to be an offence) about [LGV or PCV] ⁷⁸ drivers' licences [or LGV or PCV Community licence] ⁷⁹ .	Summarily.	Level 3 on the standard scale.			
RTA section 123(4)	Giving of paid driving instruction by unregistered and unlicensed persons or their employers.	Summarily.	Level 4 on the standard scale.			
RTA section 123(6)	Giving of paid instruction without there being exhibited on the motor car a certificate of registration or a licence under RTA Part V.	Summarily.	Level 3 on the standard scale.			
[RTA [section 125(2B)] ⁸¹	Failure, on application [to be registered in respect of driving instruction] ⁸² , to notify Registrar of [...] ⁸³ relevant or prospective disability.	Summarily.	Level 3 on the standard scale.	—	—	—] ⁸⁰
[RTA section 133C(4)	Failure by registered or licensed [...] ⁸⁴ driving instructor to notify Registrar of onset of, or deterioration in, relevant or prospective disability.	Summarily.	Level 3 on the standard scale.	—	—	—] ⁸⁰

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[RTA section 133D	Giving of paid driving instruction by [persons required to hold emergency control certificates] ⁸⁵ or their employers without emergency control certificate or in unauthorised motor car.	Summarily.	Level 3 on the standard scale.	—	—	—] ⁸⁰
RTA section 135	Unregistered instructor using title or displaying badge, etc., prescribed for registered instructor, or employer using such title, etc., in relation to his unregistered instructor or issuing misleading advertisement, etc.	Summarily.	Level 4 on the standard scale.			
RTA section 136	Failure of instructor to surrender to Registrar certificate or licence.	Summarily.	Level 3 on the standard scale.			
RTA section 137	Failing to produce certificate of registration or licence as driving instructor.	Summarily.	Level 3 on the standard scale.			
RTA section 143	Using motor vehicle while uninsured or unsecured against third-party risks.	Summarily.	[Level 5 on the standard scale.] ⁸⁶	Discretionary.	Obligatory.	6–8
[RTA section 144A	Keeping vehicle which does not meet insurance requirements.	Summarily.	Level 3 on the standard scale.			] ⁸⁷

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 147	Failing to surrender certificate of insurance or security to insurer on cancellation or to make statutory declaration of loss or destruction.	Summarily.	Level 3 on the standard scale.			
RTA section 154	Failing to give information, or wilfully making a false statement, as to insurance or security when claim made.	Summarily.	Level 4 on the standard scale.			
[Regulations under RTA section 160 made by virtue of paragraph 2(1) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal of or interference with immobilisation notice.	Summarily.	Level 2 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(2) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal or attempted removal of immobilisation device.	Summarily.	Level 3 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(3) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) about display of disabled person's badge.	Summarily.	Level 3 on the standard scale.			] ⁸⁸

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[Regulations under RTA section 160 made by virtue of paragraph 2(4) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure release of vehicle from immobilisation device.	(a) Summarily.	(a) The statutory maximum.			] ⁸⁸
		[(b) On indictment.	(b) 2 years or a fine or both.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 4 of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure possession of vehicle in person's custody.	(a) Summarily.	(a) The statutory maximum.			] ⁸⁸
		[(b) On indictment.	(b) 2 years or a fine or both.			] ⁸⁸
RTA section 163	Failing to stop motor vehicle or cycle when required by constable.	Summarily.	[(a) Level 5 on the standard scale if committed by a person driving a mechanically propelled vehicle.] ⁸⁹			
[			(b) Level 3 on the standard scale if committed by a person riding a cycle.			] ⁸⁹

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 164	[Failing to produce driving licence [...] ⁹⁰ or to state date of birth, or failing to provide the Secretary of State with evidence of date of birth, etc.] ⁹⁰	Summarily.	Level 3 on the standard scale.			
RTA section 165	[Failing to give certain names and addresses or to produce certain documents.] ⁹¹	Summarily.	Level 3 on the standard scale.			
RTA section 168	Refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving or cycling.	Summarily.	Level 3 on the standard scale.			
RTA section 169	Pedestrian failing to give constable his name and address after failing to stop when directed by constable controlling traffic.	Summarily.	Level 1 on the standard scale.			
RTA section 170(4)	Failing to stop after accident and give particulars or report accident.	Summarily.	[Six months or level 5 on the standard scale or both] ⁹²	Discretionary.	Obligatory.	[5–10] ⁹³

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 170(7)	Failure by driver, in case of accident involving injury to another, to produce evidence of insurance or security or to report accident.	Summarily.	Level 3 on the standard scale.			
RTA section 171	Failure by owner of motor vehicle to give police information for verifying compliance with requirement of compulsory insurance or security.	Summarily.	Level 4 on the standard scale.			
RTA section 172	Failure of person keeping vehicle and others to give police information as to identity of driver, etc., in the case of certain offences.	Summarily.	Level 3 on the standard scale.	[Discretionary, if committed otherwise than by virtue of subsection (5) or (11).] ⁹⁴	[Obligatory, if committed otherwise than by virtue of subsection (5) or (11).] ⁹⁴	[6] ⁹⁵
RTA section 173	Forgery, etc., of licences, [...] ⁵⁴ test certificates, certificates of insurance and other documents and things.	(a) Summarily. (b) On indictment.	(a) The statutory maximum.	(b) 2 years.		
RTA section 174	Making certain false statements, etc., and withholding certain material information.	[(a) Summarily (b) On indictment] ⁹⁶	[(a) 6 months or the statutory maximum or both (b) 2 years or a fine or both.] ⁹⁶			
RTA section 175	Issuing false documents.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 177	Impersonation of, or of person employed by, authorised examiner.	Summarily.	Level 3 on the standard scale.			
RTA section 178	Taking, etc., in Scotland a motor vehicle without authority or, knowing that it has been so taken, driving it or allowing oneself to be carried in it without authority.	(a) Summarily. (b) On indictment.	(a) 3 months or the statutory maximum or both. (b) 12 months or a fine or both.	Discretionary.	[...] ⁹⁷	[...] ⁹⁷
RTA section 180	Failing to attend, give evidence or produce documents to, inquiry held by Secretary of State, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 181	Obstructing inspection of vehicles after accident.	Summarily.	Level 3 on the standard scale.			
RTA Schedule 1 paragraph 6	Applying warranty to [equipment, protective helmet, appliance or information in defending proceedings under RTA section 15A, 17 or 18(4)] ⁹⁸ where no warranty given, or applying false warranty.	Summarily.	Level 3 on the standard scale.			
Offences under this Act						
Section 25 of this Act.	Failing to give information as to date of birth or sex to court or to provide Secretary of State with evidence of date of birth, etc.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
Section 26 of this Act.	Failing to produce driving licence[...] ⁵⁴ to court making order for interim disqualification [...] ⁹⁹ .	Summarily.	Level 3 on the standard scale.			
Section 27 of this Act.	Failing to produce licence[...] ⁵⁴ to court for endorsement on conviction of offence involving obligatory endorsement or on committal for sentence, etc., for offence involving obligatory or discretionary disqualification when no interim disqualification ordered.	Summarily.	Level 3 on the standard scale.			

[...] ¹⁰⁰

Section 62 of this Act.	Removing fixed penalty notice fixed to vehicle.	Summarily.	Level 2 on the standard scale.			
Section 67 of this Act.	False statement in response to notice to owner.	Summarily.	Level 5 on the standard scale.			
[Section 90D(6) of this Act.	Driving, etc., vehicle in contravention of prohibition for failure to pay financial penalty deposit, etc.	Summarily.	Level 5 on the standard scale.			] ¹⁰¹

[...] ¹⁰²[\[Back to Top\]](#)

Wales

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(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
Offences under the Road Traffic Regulation Act 1984						
RTRA section 5	Contravention of traffic regulation order.	Summarily.	Level 3 on the standard scale.			
RTRA section 8	Contravention of order regulating traffic in Greater London.	Summarily.	Level 3 on the standard scale.			
RTRA section 11	Contravention of experimental traffic order.	Summarily.	Level 3 on the standard scale.			
RTRA section 13	Contravention of experimental traffic scheme in Greater London.	Summarily.	Level 3 on the standard scale.			
RTRA section 16(1)	Contravention of temporary prohibition or restriction.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a speed restriction.	Obligatory if committed in respect of a speed restriction.	3-6 or 3 (fixed penalty)
RTRA section 16C(1)	Contravention of prohibition or restriction relating to relevant event.	Summarily.	Level 3 on the standard scale.	—	—	—

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 17(4)	Use of special road contrary to scheme or regulations.	Summarily.	Level 4 on the standard scale.	Discretionary if committed in respect of a motor vehicle otherwise than by unlawfully stopping or allowing the vehicle to remain at rest on a part of a special road on which vehicles are in certain circumstances permitted to remain at rest.	Obligatory if committed as mentioned in the entry in column 5.	3-6 or 3 (fixed penalty) if committed in respect of a speed restriction, 3 in any other case
RTRA section 18(3)	One-way traffic on trunk road.	Summarily.	Level 3 on the standard scale.			
RTRA section 20(5)	Contravention of prohibition or restriction for roads of certain classes.	Summarily.	Level 3 on the standard scale.			
RTRA section 25(5)	Contravention of pedestrian crossing regulations.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3
RTRA section 28(3)	Not stopping at school crossing.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 29(3)	Contravention of order relating to street playground.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	2
RTRA section 35A(1)	Contravention of order as to use of parking place.	Summarily.	(a) Level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles or in an off-street parking place reserved for such vehicles, where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle. (b) Level 2 on the standard scale in any other case.			
RTRA section 35A(2)	Misuse of apparatus for collecting charges or of parking device or connected apparatus	Summarily.	Level 3 on the standard scale.			
RTRA section 35A(5)	Plying for hire in parking place.	Summarily.	Level 2 on the standard scale.			
RTRA section 43(5)	Unauthorised disclosure of information in respect of licensed parking place.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 43(10)	Failure to comply with term or conditions of licence to operate parking place.	Summarily.	Level 3 on the standard scale.			
RTRA section 43(12)	Operation of public off-street parking place without licence.	Summarily.	Level 5 on the standard scale.			
RTRA section 47(1)	Contraventions relating to designated parking places.	Summarily.	(a) Level 3 on the standard scale in the case of an offence committed by a person in a street parking place reserved for disabled persons' vehicles where that person would not have been guilty of that offence if the motor vehicle in respect of which it was committed had been a disabled person's vehicle. (b) Level 2 in any other case.			
RTRA section 47(3)	Tampering with parking meter.	Summarily.	Level 3 on the standard scale.			
RTRA section 52(1)	Misuse of parking device.	Summarily.	Level 2 on the standard scale.			
RTRA section 53(5)	Contravention of certain provisions of designation orders.	Summarily.	Level 3 on the standard scale.			
RTRA section 53(6)	Other contraventions of designation orders.	Summarily.	Level 2 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 61(5)	Unauthorised use of loading area.	Summarily.	Level 3 on the standard scale.			
RTRA section 88(7)	Contravention of minimum speed limit.	Summarily.	Level 3 on the standard scale.			
RTRA section 89(1)	Exceeding speed limit.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3-6 or 3 (fixed penalty)
RTRA section 104(5)	Interference with notice as to immobilisation device.	Summarily.	Level 2 on the standard scale.			
RTRA section 104(6)	Interference with immobilisation device.	Summarily.	Level 3 on the standard scale.			
RTRA section 105(5)	Misuse of disabled person's badge (immobilisation devices).	Summarily.	Level 3 on the standard scale.			
[RTRA section 105(6A)	Misuse of recognised badge (immobilisation devices).	Summarily.	Level 3 on the standard scale.			] ¹⁰⁴
RTRA section 108(2) (or that subsection as modified by section 109(2) and (3)).	Non-compliance with notice (excess charge).	Summarily.	Level 3 on the standard scale.			
RTRA section 108(3) (or that subsection as modified by section 109(2) and (3)).	False response to notice (excess charge).	Summarily.	Level 5 on the standard scale.			
RTRA section 112(4)	Failure to give information as to identify of driver.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTRA section 115(1)	Mishandling or faking parking documents.	(a) Summarily. (b) On indictment.	(a) The statutory maximum. (b) 2 years.			
RTRA section 115(2)	False statement for procuring authorisation.	Summarily.	Level 4 on the standard scale.			
RTRA section 116(1)	Non-delivery of suspect document or article.	Summarily.	Level 3 on the standard scale.			
RTRA [section 117(1)] ¹⁰⁴	Wrongful use of disabled person's badge.	Summarily.	Level 3 on the standard scale.			
[RTRA section 117(1A)	Wrongful use of recognised badge.	Summarily.	Level 3 on the standard scale.			] ¹⁰⁴
RTRA section 129(3)	Failure to give evidence at inquiry.	Summarily.	Level 3 on the standard scale.			
Offences under the Road Traffic Act 1988						
RTA section 1	Causing death by dangerous driving.	On indictment.	14 years.	Obligatory.	Obligatory.	3-11
[RTA section 1A	Causing serious injury by dangerous driving.	(a) Summarily.	(a) 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3-11] ¹³
[		(b) On indictment.	(b) 5 years or a fine or both.			] ¹³
RTA section 2	Dangerous driving.	(a) Summarily.	(a) 6 months or the statutory maximum or both.	Obligatory	Obligatory.	3-11
		(b) On indictment.	(b) 2 years or a fine or both.			
[RTA section 2B	Causing death by careless, or inconsiderate, driving.	(a) Summarily.	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.	Obligatory	Obligatory.	3-11] ¹⁷

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
[		(b) On indictment.	(b) 5 years or a fine or both.			] ¹⁷
RTA section 3	Careless, and inconsiderate, driving.	Summarily.	[Level 5] ¹⁸ on the standard scale.	Discretionary.	Obligatory.	3–9
[RTA section 3ZB	Causing death by driving: unlicensed [...] ²⁰ or uninsured drivers.	(a) Summarily.	(a) 12 months (in England and Wales) or 6 months (in Scotland) or the statutory maximum or both.	Obligatory.	Obligatory.	3–11] ¹⁹
[		(b) On indictment.	(b) 2 years or a fine or both.			] ¹⁹
[RTA section 3ZC	Causing death by driving: disqualified drivers.	On indictment.	10 years or a fine or both.	Obligatory.	Obligatory.	3–11.] ²¹
[RTA section 3ZD	Causing serious injury by driving: disqualified drivers.	(a) Summarily.	(a) On conviction in England and Wales: 12 months or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3–11] ²¹
[		(b) On indictment.	(b) 4 years or a fine or both.			] ²¹
RTA section 3A	Causing death by careless driving when under influence of drink or drugs.	On indictment.	14 years or a fine or both.	Obligatory.	Obligatory.	3–11.
RTA section 4(1)	Driving or attempting to drive when unfit to drive through drink or drugs.	Summarily.	6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	3–11
RTA section 4(2)	Being in charge of a mechanically propelled vehicle when unfit to drive through drink or drugs.	Summarily.	3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 5(1)(a)	Driving or attempting to drive with excess alcohol in breath, blood or urine.	Summarily.	6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	3–11
RTA section 5(1)(b)	Being in charge of a motor vehicle with excess alcohol in breath, blood or urine.	Summarily.	3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10
[RTA section 5A(1)(a) and (2)]	Driving or attempting to drive with concentration of specified controlled drug above specified limit.	Summarily.	On conviction in England and Wales: 51 weeks or level 5 on the standard scale or both. On conviction in Scotland: 6 months or level 5 on the standard scale or both.	Obligatory.	Obligatory.	3–11] ¹⁰⁵
[RTA section 5A(1)(b) and (2)]	Being in charge of a motor vehicle with concentration of specified controlled drug above specified limit.	Summarily.	On conviction in England and Wales: 51 weeks or level 4 on the standard scale or both. On conviction in Scotland: 3 months or level 4 on the standard scale or both.	Discretionary.	Obligatory.	10] ¹⁰⁵
RTA section 6	Failing to co-operate with a preliminary test.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	4
RTA section 7	Failing to provide specimen for analysis or laboratory test.	Summarily.	(a) Where the specimen was required to ascertain ability to drive or proportion of alcohol [or proportion of a specified controlled drug] ²⁸ at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.	(a) Obligatory in case mentioned in column 4(a).	Obligatory.	(a) 3–11 in case mentioned in column 4(a).

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
			(b) In any other case, 3 months or level 4 on the standard scale or both.	(b) Discretionary in any other case.		(b) 10 in any other case.
RTA section 7A	Failing to allow specimen to be subjected to laboratory test	Summarily.	(a) Where the test would be for ascertaining ability to drive or proportion of alcohol [or proportion of a specified controlled drug] ³¹ at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.	(a) Obligatory in the case mentioned in column 4(a)	Obligatory.	3–11, in case mentioned in column 4(a)
			(b) In any other case, 3 months or level 4 on the standard scale or both	(b) Discretionary in any other case		10, in any other case.
RTA section 12	Motor racing and speed trials on public ways.	Summarily.	Level 4 on the standard scale.	Obligatory.	Obligatory.	3–11
RTA section 13	Other unauthorised or irregular competitions or trials on public ways.	Summarily.	Level 3 on the standard scale.			
RTA section 14	Driving or riding in a motor vehicle in contravention of regulations requiring wearing of seat belts.	Summarily.	Level 2 on the standard scale.			
RTA section 15(2)	Driving motor vehicle with child in front not wearing seat belt or with child in a rear-facing child restraint in front seat with an active air bag.	Summarily.	Level 2 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 15(4)	Driving motor vehicle with child in rear not wearing seat belt.	Summarily.	[Level 2] ³⁴ on the standard scale.			
RTA section 15A(3) or (4)	Selling etc. in certain circumstances equipment as conducive to the safety of children in motor vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 15B	Failure to notify bus passengers of the requirement to wear seat belts.	Summarily.	Level 4 on the standard scale.			
RTA section 16	Driving or riding motor cycles in contravention of regulations requiring wearing of protective headgear.	Summarily.	Level 2 on the standard scale.			
RTA section 17	Selling, etc., helmet not of the prescribed type as helmet for affording protection for motor cyclists.	Summarily.	Level 3 on the standard scale.			
RTA section 18(3)	Contravention of regulations with respect to use of head-worn appliances on motor cycles.	Summarily.	Level 2 on the standard scale.			
RTA section 18(4)	Selling, etc., appliance not of prescribed type as approved for use on motor cycles.	Summarily.	Level 3 on the standard scale.			
RTA section 19	Prohibition of parking of heavy commercial vehicles on verges, etc.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 21	Driving or parking on cycle track.	Summarily.	Level 3 on the standard scale.			
RTA section 22	Leaving vehicles in dangerous positions.	Summarily.	Level 3 on the standard scale.	Discretionary if committed in respect of a motor vehicle.	Obligatory if committed in respect of a motor vehicle.	3
RTA section 22A	Causing danger to road-users.	(a) Summarily. (b) On indictment.	(a) 6 months or the statutory maximum or both. (b) 7 years or a fine or both.	—	—	—
RTA section 23	Carrying passenger on motor-cycle contrary to section 23.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3
RTA section 24	Carrying passenger on bicycle contrary to section 24.	Summarily.	Level 1 on the standard scale.			
RTA section 25	Tampering with motor vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 26	Holding or getting on to vehicle, etc., in order to be towed or carried.	Summarily.	Level 1 on the standard scale.			
RTA section 27	Dogs on designated roads without being held on lead.	Summarily.	Level 1 on the standard scale.			
RTA section 28	dangerous cycling.	Summarily.	Level 4 on the standard scale.			
RTA section 29	Careless, and inconsiderate, cycling.	Summarily.	Level 3 on the standard scale.			
RTA section 30	Cycling when unfit through drink or drugs.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 31	Unauthorised or irregular cycle racing or trials of speed on public ways.	Summarily.	Level 1 on the standard scale.			
RTA section 32	Contravening prohibition on persons under 14 driving electrically assisted pedal cycles.	Summarily.	Level 2 on the standard scale.			
RTA section 33	Unauthorised motor vehicle trial on footpaths or bridleways.	Summarily.	Level 3 on the standard scale.			
RTA section 34	Driving mechanically propelled vehicles elsewhere than on roads.	Summarily.	Level 3 on the standard scale.			
RTA section 35	Failing to comply with traffic directions.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed in respect of a motor vehicle by failure to comply with a direction of a constable [, traffic officer] ¹⁰⁶ or traffic warden.	Obligatory if committed as described in column 5.	3

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 36	Failing to comply with traffic signs.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed in respect of a motor vehicle by failure to comply with an indication given by a sign specified for the purposes of this paragraph in regulations under RTA section 36.	Obligatory if committed as described in column 5.	3
RTA section 37	Pedestrian failing to stop when directed.	Summarily.	Level 3 on the standard scale.			
RTA Section 40A	Using vehicle in dangerous condition etc.	Summarily.	(a) Level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	[(a) Obligatory if committed within three years of a previous conviction of the offender under section 40A.] ⁴⁴	Obligatory.	3
			(b) Level 4 on the standard scale in any other case.	[(b) Discretionary in any other case.] ⁴⁴		
RTA section 41A	Breach of requirement as to brakes, steering-gear or tyres.	Summarily.	(a) Level 5 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	Discretionary.	Obligatory.	3

(1) Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
			(b) Level 4 on the standard scale in any other case.			
RTA section 41B	Breach of requirement as to weight: goods and passenger vehicles.	Summarily.	Level 5 on the standard scale.	—	—	—
[RTA section 41D	Breach of requirements as to control of vehicle, mobile telephones etc.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	Discretionary.	Obligatory.	3.] ⁴⁵
[			(b) Level 3 on the standard scale in any other case.			] ⁴⁵
RTA section 42	Breach of other construction and use requirements.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers.	—	—	—
			(b) Level 3 on the standard scale in any other case.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 47	Using, etc., vehicle without required test certificate being in force.	Summarily.	(a) Level 4 on the standard scale in the case of a vehicle adapted to carry more than eight passengers. (b) Level 3 on the standard scale in any other case.			
Regulations under RTA section 49 made by virtue of section 51(2)	Contravention of requirement of regulations (which is declared by regulations to be an offence) that driver of goods vehicle being tested be present throughout test or drive, etc., vehicle as and when directed.	Summarily.	Level 3 on the standard scale.			
RTA section 53(1)	Using, etc., goods vehicle without required plating certificate being in force.	Summarily.	Level 3 on the standard scale.			
RTA section 53(2)	Using, etc., goods vehicle without required goods vehicle test certificate being in force.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 53(3)	Using, etc., goods vehicle where Secretary of State is required by regulations under section 49 to be notified of an alteration to the vehicle or its equipment but has not been notified.	Summarily.	Level 3 on the standard scale.			
Regulations under RTA section 61 made by virtue of subsection (4).	Contravention of requirement of regulations (which is declared by regulations to be an offence) that driver of goods vehicle being tested after notifiable alteration be present throughout test and drive, etc., vehicle as and when directed.	Summarily.	Level 3 on the standard scale.			
RTA section 63(1)	Using, etc., goods vehicle without required certificate being in force showing that it complies with type approval requirements applicable to it.	Summarily.	Level 4 on the standard scale.			
RTA section 63(2)	Using, etc., certain goods vehicles for drawing trailer when plating certificate does not specify maximum laden weight for vehicle and trailer.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 63(3)	Using, etc., goods vehicle where Secretary of State is required to be notified under section 59 of alteration to it or its equipment but has not been notified.	Summarily.	Level 3 on the standard scale.			
RTA section 64	Using goods vehicle with unauthorised weights as well as authorised weights marked on it.	Summarily.	Level 3 on the standard scale.			

[...] ⁴⁶

RTA section 65	Supplying vehicle or vehicle part without required certificate being in force showing that it complies with type approval requirements applicable to it.	Summarily.	Level 5 on the standard scale.			
RTA section 65A	Light passenger vehicles and motor cycles not to be sold without EC certificate of conformity.	Summarily.	Level 5 on the standard scale.	—	—	—
[RTA section 66C(1)	Impersonating a stopping officer etc. with intent to deceive	Summarily	Level 5 on the standard scale			] ⁴⁹
[RTA section 66C(2)	Resisting or wilfully obstructing a stopping officer	Summarily	One month or level 3 on the standard scale or both			] ⁴⁹

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 67	Obstructing testing of vehicle by examiner on road or failing to comply with requirements of RTA section 67 or Schedule 2.	Summarily.	Level 3 on the standard scale.			
RTA section 68	Obstructing inspection, etc., of vehicle by examiner or failing to comply with requirement to take vehicle for inspection.	Summarily.	Level 3 on the standard scale.			
RTA section 71	Driving, etc., vehicle in contravention of prohibition on driving it as being unfit for service, or refusing, neglecting or otherwise failing to comply with direction to remove a vehicle found overloaded.	Summarily.	Level 5 on the standard scale.			
RTA section 74	Contravention of regulations requiring goods vehicle operator to inspect, and keep records of inspection of, goods vehicles.	Summarily.	Level 3 on the standard scale.			
RTA section 75	Selling, etc., unroadworthy vehicle or trailer or altering vehicle or trailer so as to make it unroadworthy.	Summarily.	Level 5 on the standard scale.			
RTA section 76(1)	Fitting of defective or unsuitable vehicle parts.	Summarily.	Level 5 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 76(3)	Supplying defective or unsuitable vehicle parts.	Summarily.	Level 4 on the standard scale.			
RTA section 76(8)	Obstructing examiner testing vehicles to ascertain whether defective or unsuitable part has been fitted, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 77	Obstructing examiner testing condition of used vehicles at sale rooms, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 78	Failing to comply with requirement about weighing motor vehicle or obstructing authorised person.	Summarily.	Level 5 on the standard scale.			
RTA section 81	Selling, etc., pedal cycle in contravention of regulations as to brakes, bells, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 83	Selling, etc., wrongly made tail lamps or reflectors.	Summarily.	Level 5 on the standard scale.			
RTA section 87(1)	Driving otherwise than in accordance with a licence.	Summarily.	Level 3 on the standard scale.	Discretionary in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him.	Obligatory in the case mentioned in column 5.	3–6

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 87(2)	Causing or permitting a person to drive otherwise than in accordance with a licence.	Summarily.	Level 3 on the standard scale.			
RTA section 92(7C)	Failure to deliver licence revoked by virtue of section 92(7A) [...] ⁵⁴ to Secretary of State.	Summarily.	Level 3 on the standard scale.			
RTA section 92(10)	Driving after making false declaration as to physical fitness.	Summarily.	Level 4 on the standard scale.	Discretionary.	Obligatory.	3-6
RTA section 93(3)	Failure to deliver revoked licence [...] ⁵⁴ to Secretary of State,	Summarily.	Level 3 on the standard scale.			
RTA section 94(3)	Failure to notify Secretary of State of onset of, or deterioration in, relevant or prospective disability and that subsection as applied by RTA section 99D or 109C.	Summarily.	Level 3 on the standard scale.			
RTA section 94(3A)	Driving after such a failure and that subsection as applied by RTA section 99D(b) or 109C(c).	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3-6
RTA section 94A	Driving after refusal of licence under section 92(3), revocation under section 93 or service of a notice under section 99C or 109B.	Summarily.	6 months or level 5 on the standard scale or both.	Discretionary.	Obligatory.	3-6

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 96	Driving with uncorrected defective eyesight, or refusing to submit to test of eyesight.	Summarily.	Level 3 on the standard scale.	Discretionary.	Obligatory.	3
RTA section 99(5)	Driving licence holder failing to surrender licence [...] ⁵⁴ .	Summarily.	Level 3 on the standard scale.			
[RTA section 99B(11)]	Driving after failing to comply with a requirement under section 99B(7) or (10).	Summarily.	Level 3 on the standard scale.	—	—	—] ⁶⁹
RTA section 99C(4)	Failure to deliver Community licence to Secretary of State when required by notice under section 99C.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 103(1)(a)	Obtaining driving licence while disqualified.	Summarily.	Level 3 on the standard scale.			
RTA section 103(1)(b)	Driving while disqualified.	(a) Summarily, in England and Wales.	(a) 6 months or level 5 on the standard scale or both.	Discretionary.	Obligatory.	6
		(b) Summarily, in Scotland.	(b) 6 months or the statutory maximum or both.			
		(c) On indictment, in Scotland.	(c) 12 months or a fine or both.			
RTA section 109B(4)	Failure to deliver Northern Ireland licence to Secretary of State when required by notice under section 109B.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 114	Failing to comply with conditions of LGV, PCV licence or LGV Community licence, or causing or permitting person under 21 to drive LGV or PCV in contravention of such conditions.	Summarily.	Level 3 on the standard scale.			
RTA section 115A(4)	Failure to deliver LGV or PCV Community licence when required by notice under section 115A.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 118	Failing to surrender revoked or suspended LGV or PCV licence [...] ⁵⁴ .	Summarily.	Level 3 on the standard scale.			
Regulations made by virtue of RTA section 120(5)	Contravention of provision of regulations (which is declared by regulations to be an offence) about LGV or PCV drivers' licences or LGV or PCV Community licence.	Summarily.	Level 3 on the standard scale.			
RTA section 123(4)	Giving of paid driving instruction by unregistered and unlicensed persons or their employers.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 123(6)	Giving of paid instruction without there being exhibited on the motor car a certificate of registration or a licence under RTA Part V.	Summarily.	Level 3 on the standard scale.			
RTA [section 125(2B)] ⁸¹	Failure, on application [to be registered in respect of driving instruction] ⁸² , to notify Registrar of [...] ⁸³ relevant or prospective disability.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 133C(4)	Failure by registered or licensed [...] ⁸⁴ driving instructor to notify Registrar of onset of, or deterioration in, relevant or prospective disability.	Summarily.	Level 3 on the standard scale.	—	—	—
RTA section 133D	Giving of paid driving instruction by [persons required to hold emergency control certificates] ⁸⁵ or their employers without emergency control certificate or in unauthorised motor car.	Summarily.	Level 3 on the standard scale.	—	—	—

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 135	Unregistered instructor using title or displaying badge, etc., prescribed for registered instructor, or employer using such title, etc., in relation to his unregistered instructor or issuing misleading advertisement, etc.	Summarily.	Level 4 on the standard scale.			
RTA section 136	Failure of instructor to surrender to Registrar certificate or licence.	Summarily.	Level 3 on the standard scale.			
RTA section 137	Failing to produce certificate of registration or licence as driving instructor.	Summarily.	Level 3 on the standard scale.			
RTA section 143	Using motor vehicle while uninsured or unsecured against third-party risks.	Summarily.	Level 5 on the standard scale.	Discretionary.	Obligatory.	6–8
[RTA section 144A	Keeping vehicle which does not meet insurance requirements.	Summarily.	Level 3 on the standard scale.			] ⁸⁷
RTA section 147	Failing to surrender certificate of insurance or security to insurer on cancellation or to make statutory declaration of loss or destruction.	Summarily.	Level 3 on the standard scale.			
RTA section 154	Failing to give information, or wilfully making a false statement, as to insurance or security when claim made.	Summarily.	Level 4 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[Regulations under RTA section 160 made by virtue of paragraph 2(1) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal of or interference with immobilisation notice.	Summarily.	Level 2 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(2) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal or attempted removal of immobilisation device.	Summarily.	Level 3 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(3) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) about display of disabled person's badge.	Summarily.	Level 3 on the standard scale.			] ⁸⁸
[Regulations under RTA section 160 made by virtue of paragraph 2(4) of Schedule 2A	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure release of vehicle from immobilisation device.	(a) Summarily.	(a) The statutory maximum.			] ⁸⁸
		[(b) On indictment.	(b) 2 years or a fine or both.			] ⁸⁸
[Regulations under RTA	Contravention of provision of regulations	(a) Summarily.	(a) The statutory maximum.			] ⁸⁸

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
section 160 made by virtue of paragraph 4 of Schedule 2A	(which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure possession of vehicle in person's custody.	[(b) On indictment.	(b) 2 years or a fine or both.			] ⁸⁸
RTA section 163	Failing to stop motor vehicle or cycle when required.	Summarily.	[(a) Level 5 on the standard scale if committed by a person driving a mechanically propelled vehicle.] ⁸⁹			
[			(b) Level 3 on the standard scale if committed by a person riding a cycle.			] ⁸⁹
RTA section 164	Failing to produce driving licence [...] ⁵⁴ or to state date of birth, or failing to provide the Secretary of State with evidence of date of birth, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 165	Failing to give certain names and addresses or to produce certain documents.	Summarily.	Level 3 on the standard scale.			
RTA section 168	Refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving or cycling.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 169	Pedestrian failing to give constable his name and address after failing to stop when directed by constable controlling traffic.	Summarily.	Level 1 on the standard scale.			
RTA section 170(4)	Failing to stop after accident and give particulars or report accident.	Summarily.	Six months or level 5 on the standard scale or both	Discretionary.	Obligatory.	5–10
RTA section 170(7)	Failure by driver, in case of accident involving injury to another, to produce evidence of insurance or security or to report accident.	Summarily.	Level 3 on the standard scale.			
RTA section 171	Failure by owner of motor vehicle to give police information for verifying compliance with requirement of compulsory insurance or security.	Summarily.	Level 4 on the standard scale.			
RTA section 172	Failure of person keeping vehicle and others to give police information as to identity of driver, etc., in the case of certain offences.	Summarily.	Level 3 on the standard scale.	Discretionary, if committed otherwise than by virtue of subsection (5) or (11).	Obligatory, if committed otherwise than by virtue of subsection (5) or (11).	[6] ⁹⁵
RTA section 173	Forgery, etc., of licences, [...] ⁵⁴ test certificates, certificates of insurance and other documents and things.	(a) Summarily. (b) On indictment.	(a) The statutory maximum.	(b) 2 years.		

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
RTA section 174	Making certain false statements, etc., and withholding certain material information.	(a) Summarily (b) On indictment	(a) 6 months or the statutory maximum or both (b) 2 years or a fine or both.			
RTA section 175	Issuing false documents.	Summarily.	Level 4 on the standard scale.			
RTA section 177	Impersonation of, or of person employed by, authorised examiner.	Summarily.	Level 3 on the standard scale.			
RTA section 178	Taking, etc., in Scotland a motor vehicle without authority or, knowing that it has been so taken, driving it or allowing oneself to be carried in it without authority.	(a) Summarily. (b) On indictment.	(a) 3 months or the statutory maximum or both. (b) 12 months or a fine or both.	Discretionary.		
RTA section 180	Failing to attend, give evidence or produce documents to, inquiry held by Secretary of State, etc.	Summarily.	Level 3 on the standard scale.			
RTA section 181	Obstructing inspection of vehicles after accident.	Summarily.	Level 3 on the standard scale.			
RTA Schedule 1 paragraph 6	Applying warranty to equipment, protective helmet, appliance or information in defending proceedings under RTA section 15A, 17 or 18(4) where no warranty given, or applying false warranty.	Summarily.	Level 3 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
Offences under this Act						
Section 25 of this Act.	Failing to give information as to date of birth or sex to court or to provide Secretary of State with evidence of date of birth, etc.	Summarily.	Level 3 on the standard scale.			
Section 26 of this Act.	Failing to produce driving licence [...] ⁵⁴ to court making order for interim disqualification.	Summarily.	Level 3 on the standard scale.			
Section 27 of this Act.	Failing to produce licence [...] ⁵⁴ to court for endorsement on conviction of offence involving obligatory endorsement or on committal for sentence, etc., for offence involving obligatory or discretionary disqualification when no interim disqualification ordered.	Summarily.	Level 3 on the standard scale.			
Section 62 of this Act.	Removing fixed penalty notice fixed to vehicle.	Summarily.	Level 2 on the standard scale.			
Section 67 of this Act.	False statement in response to notice to owner.	Summarily.	Level 5 on the standard scale.			

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Provision creating offence	General nature of offence	Mode of prosecution	Punishment	Disqualification	Endorsement	Penalty points
[Section 90D(6) of this Act.	Driving, etc., vehicle in contravention of prohibition for failure to pay financial penalty deposit, etc.	Summarily.	Level 5 on the standard scale.			] ¹⁰¹

] ¹⁰³[\[Back to Top\]](#)

Notes

1. Words inserted by Road Traffic Act 1991 c. 40 Sch.2 para.2 (July 1, 1992)
2. Entry inserted by Road Traffic Regulation (Special Events) Act 1994 c. 11 s.1(2) (May 3, 1994)
3. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.3 (July 1, 1992)
4. Entry repealed by New Roads and Street Works Act 1991 c. 22 Sch.9 para.1 (November 1, 1991 as SI 1991/2288 in so far as the repeal relates to England and Wales)
5. Word substituted by Parking Act 1989 (c. 16), s. 4, Sch. para. 11(a)
6. Word substituted by Parking Act 1989 (c. 16), s. 4, Sch. para. 11(b)(i)
7. Words substituted by Parking Act 1989 (c. 16), s. 4, Sch. para. 11(b)(ii)
8. Word substituted by Parking Act 1989 (c. 16), s. 4, Sch. para. 11(c)
9. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.4 (July 1, 1992)
10. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.5(a) (July 1, 1992)
11. Words substituted by Criminal Justice Act 2003 c. 44 Pt 12 c.8 s.285(3) (February 27, 2004)
12. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.5(b) (July 1, 1992)
13. Entry inserted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 Pt 3 c.9 s.143(5) (December 3, 2012: insertion has effect in relation to an offence committed before the commencement of 2003 c.44 s.154(1) subject to savings specified in 2012 c.10 s.143(6))
14. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.6(a) (July 1, 1992)
15. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.6(b) (July 1, 1992)
16. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.6(c) (July 1, 1992)
17. Entry inserted by Road Safety Act 2006 c. 49 s.20(4) (August 18, 2008)
18. Words substituted by Road Safety Act 2006 c. 49 s.23 (September 24, 2007)

19. Entry inserted by Road Safety Act 2006 c. 49 s.21(3) (August 18, 2008)
20. Word repealed by Criminal Justice and Courts Act 2015 c. 2 Sch.6 para.9 (April 13, 2015)
21. Entries inserted by Criminal Justice and Courts Act 2015 c. 2 Pt 1 s.29(2) (April 13, 2015: insertion has effect as SI 2015/778 subject to transitional provision specified in 2015 c.2 s.29(5))
22. Entry inserted by Road Traffic Act 1991 c. 40 Sch.2 para.7 (July 1, 1992)
23. Words substituted by Criminal Justice Act 2003 c. 44 Pt 12 c.8 s.285(4) (February 27, 2004)
24. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.8 (July 1, 1992)
25. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.9 (July 1, 1992)
26. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.10 (July 1, 1992)
27. Words substituted by Railways and Transport Safety Act 2003 c. 20 Sch.7 para.8 (March 30, 2004)
28. Words inserted by Crime and Courts Act 2013 (Consequential Amendments) (No.2) Order 2015/733 art.3(2) (April 7, 2015 being 22 days after the day on which 2013 c.22 s.56 comes into force in relation to England and Wales; not yet in force otherwise)
29. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.11 (July 1, 1992)
30. Entry inserted by Police Reform Act 2002 c. 30 Pt 4 c.2 s.56(5) (October 1, 2002)
31. Words inserted by Crime and Courts Act 2013 (Consequential Amendments) (No.2) Order 2015/733 art.3(3) (April 7, 2015 being 22 days after the day on which 2013 c.22 s.56 comes into force in relation to England and Wales; not yet in force otherwise)
32. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.12 (July 1, 1992)
33. Words inserted by Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006/1892 reg.8(a) (September 18, 2006)
34. Words substituted by Road Safety Act 2006 c. 49 s.24 (September 24, 2007)
35. Table entry inserted by Motor Vehicles (Safety Equipment for Children) Act 1991 c. 14 s.3(2) (June 27, 1991: represents law in force as at date shown)
36. Entry inserted by Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006/1892 reg.8(b) (September 18, 2006)
37. Entry inserted by Road Traffic Act 1991 c. 40 Sch.2 para.13 (July 1, 1992)
38. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.14 (July 1, 1992)
39. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.15(a) (July 1, 1992)
40. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.15(b) (July 1, 1992)
41. Words substituted (duplicate substitution in Sch.2 para.27) by Road Traffic Act 1991 c. 40 Sch.2 para.16 (July 1, 1992)
42. Word substituted by Countryside and Rights of Way Act 2000 c. 37 Sch.7 para.8 (January 30, 2001)
43. Entry substituted by Road Traffic Act 1991 c. 40 Sch.2 para.17 (July 1, 1992)
44. Word substituted by Road Safety Act 2006 c. 49 s.25(1) (September 24, 2007)
45. Entry inserted by Road Safety Act 2006 c. 49 s.26(4) (February 27, 2007)
46. Entry repealed by Deregulation Act 2015 c. 20 Sch.23(4) para.22(2)(b) (May 26, 2015)
47. Entry inserted by Motor Vehicles (EC Type Approval) Regulations 1992/3107 Sch.2 para.7(3) (January 1, 1996)
48. Words inserted by Motor Cycles Etc. (EC Type Approval) Regulations 1999/2920 Sch.2 para.5(3) (November 30, 1999)

- 49. Entries inserted by Road Vehicles (Powers to Stop) Regulations 2011/996 Pt 2 reg.3(2) (March 30, 2011)
- 50. Word repealed by Road Traffic Act 1991 c. 40 Sch.2 para.18 (July 1, 1992)
- 51. Entry substituted by Road Traffic Act 1991 c. 40 Sch.2 para.19 (July 1, 1992)
- 52. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.20 (July 1, 1992)
- 53. Entries inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 c. 22), s. 7, Sch. 3 para. 28(a)
- 54. Words repealed by Road Safety Act 2006 c. 49 Sch.7 para.1 (June 8, 2015: repeal has effect as SI 2015/560 subject to transitional provisions specified in SI 2015/560 Pt 3)
- 55. Entry inserted by Road Traffic Act 1991 c. 40 Sch.2 para.21 (July 1, 1992)
- 56. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.22 (July 1, 1992)
- 57. Words inserted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(a) (January 1, 1997)
- 58. Words inserted by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.37(a) (October 11, 2004)
- 59. Entries inserted by Road Traffic Act 1991 c. 40 Sch.2 para.23 (July 1, 1992)
- 60. Words inserted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(b) (January 1, 1997)
- 61. Words inserted by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.37(b) (October 11, 2004)
- 62. Words substituted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(c) (January 1, 1997)
- 63. Words inserted by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.37(c) (October 11, 2004)
- 64. Word substituted by Road Traffic Act 1991 c. 40 Sch.2 para.24 (July 1, 1992)
- 65. Entries repealed by Road Traffic Act 1991 c. 40 Sch.8 para.1 (July 1, 1992 as SI 1992/1286)
- 66. Word inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22), s. 7, Sch. 3 para. 28(b)(i)
- 67. Words substituted by Driving Licences (Community Driving Licence) Regulations 1998/1420 reg.16(3) (July 1, 1998)
- 68. Entries inserted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(d) (January 1, 1997)
- 69. Entry substituted by Road Safety Act 2006 (Consequential Amendments) Order 2015/583 Sch.2(1) para.3(k) (June 8, 2015)
- 70. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.25 (July 1, 1992)
- 71. Entry inserted by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.37(f) (October 11, 2004)
- 72. Entry repealed by Crime (International Co-operation) Act 2003 c. 32 Sch.6 para.1 (October 11, 2004 as SI 2004/2624)
- 73. Entries repealed by Road Traffic (Driver Licensing and Information Systems) Act 1989 c. 22 Sch.6 para.1 (April 1, 1991: June 1, 1990 for repeals specified in SI 1990/802 art.2 and Sch.1; December 1, 1990 for repeals specified in SI 1990/2228 art.2 and Sch.1; April 1, 1991 for repeals specified in SI 1990/2610 art.2 and Sch.1; not yet in force otherwise)
- 74. Entries inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 c. 22 Sch.3 para.28(c) (April 1, 1991)
- 75. Words substituted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(e) (January 1, 1997)
- 76. Entry inserted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(f) (January 1, 1997)
- 77. Words substituted by Road Traffic (Driver Licensing and Information Systems) Act 1989 c. 22 Sch.3 para.28(d)(i) (April 1, 1991)
- 78. Word substituted by Road Traffic (Driver Licensing and Information Systems) Act 1989 c. 22 Sch.3 para.28(d)(ii) (April 1, 1991)

79. Words inserted by Driving Licences (Community Driving Licence) Regulations 1996/1974 Sch.2 para.8(g) (January 1, 1997)
80. Entries inserted by Road Traffic (Driving Instruction by Disabled Persons) Act 1993 c. 31 Sch.1 para.11 (September 9, 1996)
81. Word substituted by Deregulation Act 2015 c. 20 Sch.2(3) para.32(2)(a) (March 26, 2015: substitution has effect subject to transitional provisions specified in SI 2015/994 Sch.1 paras 12-21)
82. Words substituted by Deregulation Act 2015 c. 20 Sch.2(3) para.32(2)(b) (March 26, 2015: substitution has effect subject to transitional provisions specified in SI 2015/994 Sch.1 paras 12-21)
83. Words repealed by Deregulation Act 2015 c. 20 Sch.2(3) para.32(2)(c) (March 26, 2015: repeal has effect subject to transitional provisions specified in SI 2015/994 Sch.1 paras 12-21)
84. Word repealed by Deregulation Act 2015 c. 20 Sch.2(3) para.32(3) (March 26, 2015: repeal has effect subject to transitional provisions specified in SI 2015/994 Sch.1 paras 12-21)
85. Words substituted by Deregulation Act 2015 c. 20 Sch.2(3) para.32(4) (March 26, 2015: substitution has effect subject to transitional provisions specified in SI 2015/994 Sch.1 paras 12-21)
86. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.26 (July 1, 1992)
87. Entry inserted by Road Safety Act 2006 c. 49 s.22(7) (February 4, 2011)
88. Entries inserted by Road Safety Act 2006 c. 49 s.22(8) (May 16, 2011 to the extent to which it relates to 1988 c.52 Sch.2A para.2(1)-(3); not yet in force otherwise)
89. Entry and words substituted by Road Safety Act 2006 c. 49 s.27 (September 24, 2007)
90. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.27 (July 1, 1992)
91. Word repealed by Road Traffic Act 1991 c. 40 Sch.2 para.28 (July 1, 1992)
92. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.29(a) (July 1, 1992)
93. Words substituted by Road Traffic Act 1991 c. 40 Sch.2 para.29(b) (July 1, 1992)
94. Words inserted by Road Traffic Act 1991 c. 40 Sch.2 para.30 (July 1, 1992)
95. Figure substituted by Road Safety Act 2006 c. 49 s.29 (September 24, 2007)
96. Words substituted by Criminal Justice Act 2003 c. 44 Pt 12 c.8 s.286(1) (January 29, 2004)
97. Words repealed by Road Traffic Act 1991 c. 40 Sch.2 para.31 (July 1, 1992)
98. Words substituted by Motor Vehicles (Safety Equipment for Children) Act 1991 c. 14 s.3(3) (June 27, 1991: represents law in force as at date shown)
99. Words repealed by Road Traffic Act 1991 c. 40 Sch.8 para.1 (July 1, 1992 as SI 1992/1286)
100. Entry repealed by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22), s. 16, Sch. 6
101. Entry inserted by Road Safety Act 2006 c. 49 s.11(2) (January 5, 2009)
102. Entries repealed by Statute Law (Repeals) Act 2004 c. 14 Sch.1(14) para.1 (July 22, 2004)
103. Words repealed by Traffic Management Act 2004 c. 18 Sch.12(2) para.1 (October 26, 2006 as SI 2006/2826)
104. Amended by Disability Discrimination Act 2005 c. 13 Sch.1(2) para.45 (March 30, 2008 as SI 2007/3285)
105. Entries inserted by Crime and Courts Act 2013 c. 22 Pt 3 s.56(4) (March 2, 2015: insertion has effect as SI 2014/3268 subject to transitional provisions and savings specified in 2013 c.22 ss 15, 56(5)-(6) and Sch.8)

106. Words inserted by Traffic Management Act 2004 c. 18 Pt 1 s.6(5) (May 1, 2009 as SI 2009/1095)
107. Words inserted by Traffic Management Act 2004 c. 18 Pt 1 s.6(5) (October 4, 2004 as SI 2004/2380)
108. Amended by Disability Discrimination Act 2005 c. 13 Sch.1(2) para.45 (June 30, 2005 as SI 2005/1676)
109. Words repealed by Traffic Management Act 2004 c. 18 Sch.12(2) para.1 (October 4, 2004 as SI 2004/2380)

Road Traffic Offenders Act 1988 c. 53

Schedule 2 PROSECUTION AND PUNISHMENT OF OFFENCES

Part II OTHER OFFENCES

This version in force from: **September 24, 2007** to **present**

(version 4 of 4)

(1) Offence	(2) Disqualification	(3) Endorsement	(4) Penalty points
Manslaughter or, in Scotland, culpable homicide by the driver of a motor vehicle.	Obligatory.	Obligatory.	[3-11] ¹
[An offence under section 35 of the Offences against the Person Act 1861 (furious driving).	Discretionary.	Obligatory if committed in respect of a mechanically propelled vehicle.	3-9] ²
[An offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking).	Obligatory.	Obligatory.	3-11] ³
Stealing or attempting to steal a motor vehicle.	Discretionary.	[...] ⁴	[...] ⁴
An offence or attempt to commit an offence in respect of a motor vehicle under section 12 of the Theft Act 1968 (taking conveyance without consent of owner etc. or, knowing it has been so taken, driving it or allowing oneself to be carried in it).	Discretionary.	[...] ⁴	[...] ⁴
An offence under section 25 of the Theft Act 1968 (going equipped for stealing, etc.) committed with reference to the theft or taking of motor vehicles.	Discretionary	[...] ⁴	[...] ⁴

Notes

1. Figures substituted by Road Traffic Act 1991 c. 40 Sch.2 para.32(2) (July 1, 1992)
2. Entry inserted by Road Safety Act 2006 c. 49 s.28 (September 24, 2007)
3. Table entry inserted by Aggravated Vehicle-Taking Act 1992 c. 11 s.3(1) (April 1, 1992)
4. Entries repealed by Road Traffic Act 1991 c. 40 Sch.2 para.32(3) (July 1, 1992)

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3.8 Animals

3.8.1. Disqualification orders

3.8.1.1. Disqualification from keeping an animal

3.8.1.1.1 Availability

When does the power to disqualify apply?

AWA 2006 s.34¹⁶⁵⁷: Disqualification

s.34(10) - this section applies to an offence under any of sections 4, 5, 6(1) and (2), 7, 8, 9 and 13(6) and subsection (9).

Availability and power to order

AWA 2006 s.34¹⁶⁵⁸: Disqualification

s.34(1) - if a person is convicted of an offence to which this section applies, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order disqualifying him under any one or more of subsections (2) to (4) for such period as it thinks fit.

3.8.1.1.2 What does the order prohibit?

Effect of the order

AWA 2006 s.34¹⁶⁵⁹: Disqualification

s.34(2) - disqualification under this subsection disqualifies a person–

- (a) from owning animals,
- (b) from keeping animals,
- (c) from participating in the keeping of animals, and
- (d) from being party to an arrangement under which he is entitled to control or influence the way in which animals are kept.

s.34(3) - disqualification under this subsection disqualifies a person from dealing in animals.

s.34(4) - disqualification under this subsection disqualifies a person–

- (a) from transporting animals, and
- (b) from arranging for the transport of animals.

¹⁶⁵⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁵⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁵⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Extent of the order

AWA 2006 s.34¹⁶⁶⁰: Disqualification

- s.34(5) - disqualification under subsection (2), (3) or (4) may be imposed in relation to animals generally, or in relation to animals of one or more kinds.

3.8.1.1.3 Making the order

Duty to give reasons when not making an order

AWA 2006 s.34¹⁶⁶¹: Disqualification

- s.34(8) - where a court decides not to make an order under subsection (1) in relation to an offender, it shall–
- (a) give its reasons for the decision in open court, and
 - (b) if it is a magistrates' court, cause them to be entered in the register of its proceedings.

Power to suspend the order

AWA 2006 s.34¹⁶⁶²: Disqualification

- s.34(7) - the court by which an order under subsection (1) is made may–
- (a) suspend the operation of the order pending an appeal, or
 - (b) where it appears to the court that the offender owns or keeps an animal to which the order applies, suspend the operation of the order, and of any order made under section 35 in connection with the disqualification, for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal.

Termination of the order

AWA 2006 s.34¹⁶⁶³: Disqualification

- s.34(6) - the court by which an order under subsection (1) is made may specify a period during which the offender may not make an application under section 43(1) for termination of the order.

¹⁶⁶⁰ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶¹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶³ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.1.1.4 Seizing animals in connection with disqualification

Power to order seizure

AWA 2006 s.35¹⁶⁶⁴: Seizure of animals in connection with disqualification

s.35(1) - where—

- (a) a court makes an order under section 34(1), and
 - (b) it appears to the court that the person to whom the order applies owns or keeps any animal contrary to the disqualification imposed by the order,
- it may order that all animals he owns or keeps contrary to the disqualification be taken into possession.

Power to order when disqualification order breached

AWA 2006 s.35¹⁶⁶⁵: Seizure of animals in connection with disqualification

s.35(2) - where a person is convicted of an offence under section 34(9) because of owning or keeping an animal in breach of disqualification under section 34(2), the court by or before which he is convicted may order that all animals he owns or keeps in breach of the disqualification be taken into possession.

Effect of the order

AWA 2006 s.35¹⁶⁶⁶: Seizure of animals in connection with disqualification

s.35(3) - an order under subsection (1) or (2), so far as relating to any animal owned by the person subject to disqualification, shall have effect as an order for the disposal of the animal.

Animals not owned by the defendant

AWA 2006 s.35¹⁶⁶⁷: Seizure of animals in connection with disqualification

s.35(4) - any animal taken into possession in pursuance of an order under subsection (1) or (2) that is not owned by the person subject to disqualification shall be dealt with in such manner as the appropriate court may order.

s.35(6) - where a court makes an order under subsection (4) for the disposal of an animal, the owner may—

- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;

¹⁶⁶⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

- (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

s.35(7) - in subsection (4), the reference to the appropriate court is to–

- (a) the court which made the order under subsection (1) or (2), or
- (b) in the case of an order made by a magistrates' court, to a magistrates' court for the same local justice area as that court.

Owner of the animal has a right to make representations

AWA 2006 s.35¹⁶⁶⁸: Seizure of animals in connection with disqualification

s.35(5) - a court may not make an order for disposal under subsection (4) unless–

- (a) it has given the owner of the animal an opportunity to be heard, or
- (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

Meaning of “disposal”

AWA 2006 s.35¹⁶⁶⁹: Seizure of animals in connection with disqualification

s.35(8) - in this section, references to disposing of an animal include destroying it.

3.8.1.1.5 Carrying out the seizure order

AWA 2006 s.36¹⁶⁷⁰: Section 35: supplementary

s.36(1) - the court by which an order under section 35 is made may–

- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
- (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
- (c) give directions with respect to the carrying out of the order;
- (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
- (e) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order.

s.36(2) - directions under subsection (1)(c) may–

- (a) specify the manner in which an animal is to be disposed of, or
- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (1)(a).

¹⁶⁶⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁶⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁷⁰ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

- s.36(3) - in determining how to exercise its powers under section 35 and this section, the court shall have regard, amongst other things, to—
- (a) the desirability of protecting the value of any animal to which the order applies, and
 - (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse.
- s.36(4) - in determining how to exercise a power delegated under subsection (2)(b), a person shall have regard, amongst other things, to the things mentioned in subsection (3)(a) and (b).
- s.36(5) - if the owner of an animal ordered to be disposed of under section 35 is subject to a liability by virtue of subsection (1)(e), any amount to which he is entitled as a result of sale of the animal may be reduced by an amount equal to that liability.

3.8.1.1.6 Breach

Offence

AWA 2006 s.34¹⁶⁷¹: Disqualification

- s.34(9) - a person who breaches a disqualification imposed by an order under subsection (1) commits an offence.

Power to order when disqualification order breached

AWA 2006 s.35¹⁶⁷²: Seizure of animals in connection with disqualification

- s.35(2) - where a person is convicted of an offence under section 34(9) because of owning or keeping an animal in breach of disqualification under section 34(2), the court by or before which he is convicted may order that all animals he owns or keeps in breach of the disqualification be taken into possession.

3.8.1.2. Disqualification from having custody of a dog

3.8.1.2.1 Power to make the order

Availability and power to order

DDA 1991 s.4¹⁶⁷³: Destruction and disqualification orders

- s.4(1) - where a person is convicted of an offence under section 1 or 3(1) above or of an offence under an order made under section 2 above the court:
- (a) may order the destruction of any dog in respect of which the offence was committed and, subject to subsection (1A) below, shall do so in the case of an offence under section 1 or an aggravated offence under section 3(1) above; and

¹⁶⁷¹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁷² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁷³ Commencement: 12 August 1991, SI 1991/1742 art.3.

- (b) may order the offender to be disqualified, for such period as the court thinks fit, for having custody of a dog.

Would the dog constitute a danger to public safety?

DDA 1991 s.4¹⁶⁷⁴: Destruction and disqualification orders

- s.4(1A) - nothing in subsection (1)(a) above shall require the court to order the destruction of a dog if the court is satisfied—
 - (a) that the dog would not constitute a danger to public safety; and
 - (b) where the dog was born before 30th November 1991 and is subject to the prohibition in section 1 (3) above, that there is a good reason why the dog has not been exempted from that prohibition.
- s.4(1B) - for the purposes of subsection (1A)(a), when deciding whether a dog would constitute a danger to public safety, the court—
 - (a) must consider—
 - (i) the temperament of the dog and its past behaviour, and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.

Appeals

DDA 1991 s.4¹⁶⁷⁵: Destruction and disqualification orders

- s.4(2) - where a court makes an order under subsection (1)(a) above for the destruction of a dog owned by a person other than the offender, the owner may appeal to the Crown Court against the order.

Order automatically suspended

DDA 1991 s.4¹⁶⁷⁶: Destruction and disqualification orders

- s.4(3) - a dog shall not be destroyed pursuant to an order under subsection (1)(a) above—
 - (a) until the end of the period for giving notice of appeal against the conviction or, against the order; and
 - (b) if notice of appeal is given within that period, until the appeal is determined or withdrawn,

unless the offender and, in a case to which subsection (2) above applies, the owner of the dog give notice to the court that made the order that there is to be no appeal.

¹⁶⁷⁴ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁷⁵ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁷⁶ Commencement: 12 August 1991, SI 1991/1742 art.3.

Ancillary powers when ordering destruction

DDA 1991 s.4¹⁶⁷⁷: Destruction and disqualification orders

- s.4(4) - where a court makes an order under subsection (1)(a) above it may—
- (a) appoint a person to undertake the destruction of the dog and require any person having custody of it to deliver it up for that purpose; and
 - (b) order the offender to pay such sum as the court may determine to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.

An order to pay expenses has the same status as a fine

DDA 1991 s.4¹⁶⁷⁸: Destruction and disqualification orders

- s.4(5) - any sum ordered to be paid under subsection (4)(b) above shall be treated for the purposes of enforcement as if it were a fine imposed on conviction.

Terminating the disqualification

DDA 1991 s.4¹⁶⁷⁹: Destruction and disqualification orders

- s.4(6) - any person who is disqualified for having custody of a dog by virtue of an order under subsection (1)(b) above may, at any time after the end of the period of one year beginning with the date of the order, apply to the court that made it (or a magistrates' court acting in the same local justice area as that court) for a direction terminating the disqualification.

Power to dispose of the application to terminate the disqualification

DDA 1991 s.4¹⁶⁸⁰: Destruction and disqualification orders

- s.4(7) - on an application under subsection (6) above the court may—
- (a) having regard to the applicant's character, his conduct since the disqualification was imposed and any other circumstances of the case, grant or refuse the application; and
 - (b) order the applicant to pay all or any part of the costs of the application;
- and where an application in respect of an order is refused no further application in respect of that order shall be entertained if made before the end of the period of one year beginning with the date of the refusal.

¹⁶⁷⁷ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁷⁸ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁷⁹ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁸⁰ Commencement: 12 August 1991, SI 1991/1742 art.3.

3.8.1.2.2 Breach

DDA 1991 s.4¹⁶⁸¹: Destruction and disqualification orders

s.4(8) - any person who—

- (a) has custody of a dog in contravention of an order under subsection (1)(b) above;
or
- (b) fails to comply with a requirement imposed on him under subsection (4)(a) above,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

¹⁶⁸¹ Commencement: 12 August 1991, SI 1991/1742 art.3.

3.8.2. Destruction orders

3.8.2.1. In the interests of the animal

3.8.2.1.1 Making the order

Power to order and test to apply

AWA 2006 s.37¹⁶⁸²: Destruction in the interests of the animal

- s.37(1) - the court by or before which a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7, 8(1) and (2) and 9 may order the destruction of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by a veterinary surgeon, that it is appropriate to do so in the interests of the animal.

Owner of the animal must be given opportunity to make representations

AWA 2006 s.37¹⁶⁸³: Destruction in the interests of the animal

- s.37(2) - a court may not make an order under subsection (1) unless–
- (a) it has given the owner of the animal an opportunity to be heard, or
 - (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

Power to appoint person to carry out the order

AWA 2006 s.37¹⁶⁸⁴: Destruction in the interests of the animal

- s.37(3) - where a court makes an order under subsection (1), it may–
- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
 - (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
 - (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
 - (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the offender or another person to reimburse the expenses of carrying out the order.

¹⁶⁸² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁸³ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁸⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Interpretation

AWA 2006 s.37¹⁶⁸⁵: Destruction in the interests of the animal

- s.37(6) - in subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 8(1) or (2), an animal which took part in an animal fight in relation to which the offence was committed.

3.8.2.2. Animals involved in fighting

3.8.2.2.1 Power to order

AWA 2006 s.38¹⁶⁸⁶: Destruction of animals involved in fighting offences

- s.38(1) - the court by or before which a person is convicted of an offence under section 8(1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal.

Owner of the animal must be given opportunity to make representations

AWA 2006 s.38¹⁶⁸⁷: Destruction of animals involved in fighting offences

- s.38(2) - a court may not make an order under subsection (1) unless–
- (a) it has given the owner of the animal an opportunity to be heard, or
 - (b) it is satisfied that it is not reasonably practicable to communicate with the owner.

Power to appoint person to carry out the order

AWA 2006 s.38¹⁶⁸⁸: Destruction of animals involved in fighting offences

- s.38(3) - where a court makes an order under subsection (1), it may–
- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
 - (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
 - (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
 - (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the offender or another person to reimburse the expenses of carrying out the order.

¹⁶⁸⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁸⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁸⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁶⁸⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Interpretation

AWA 2006 s.38¹⁶⁸⁹: Destruction of animals involved in fighting offences

- s.38(5) - in subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed.

¹⁶⁸⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.3. Dogs: Destruction orders

3.8.3.1. Post-conviction orders

Note: The provisions below are execrable on conviction. DDA 1991 s.4B contains a civil power to order the destruction of a dog.

Availability and power to order

DDA 1991 s.4¹⁶⁹⁰: Destruction and disqualification orders

- s.4(1) - where a person is convicted of an offence under section 1 or 3(1) above or of an offence under an order made under section 2 above the court:
- (a) may order the destruction of any dog in respect of which the offence was committed and, subject to subsection (1A) below, shall do so in the case of an offence under section 1 or an aggravated offence under section 3(1) above; and
 - (b) may order the offender to be disqualified, for such period as the court thinks fit, for having custody of a dog.

Would the dog constitute a danger to public safety?

DDA 1991 s.4¹⁶⁹¹: Destruction and disqualification orders

- s.4(1A) - nothing in subsection (1)(a) above shall require the court to order the destruction of a dog if the court is satisfied—
- (a) that the dog would not constitute a danger to public safety; and
 - (b) where the dog was born before 30th November 1991 and is subject to the prohibition in section 1 (3) above, that there is a good reason why the dog has not been exempted from that prohibition.
- s.4(1B) - for the purposes of subsection (1A)(a), when deciding whether a dog would constitute a danger to public safety, the court—
- (a) must consider—
 - (i) the temperament of the dog and its past behaviour, and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.

Note: The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 (SI 2015/138) replaced The Dangerous Dogs Compensation and Exemption Schemes Order 1991 (1991 Order) on 3 March 2015. The 2015 Order sets down the new exemption scheme and interim exemption scheme, and provisions for substituting a person in charge of an exempted dog.

¹⁶⁹⁰ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁹¹ Commencement: 12 August 1991, SI 1991/1742 art.3.

Appeals

DDA 1991 s.4¹⁶⁹²: Destruction and disqualification orders

- s.4(2) - where a court makes an order under subsection (1)(a) above for the destruction of a dog owned by a person other than the offender, the owner may appeal to the Crown Court against the order.

Order automatically suspended

DDA 1991 s.4¹⁶⁹³: Destruction and disqualification orders

- s.4(3) - a dog shall not be destroyed pursuant to an order under subsection (1)(a) above—
- (a) until the end of the period for giving notice of appeal against the conviction or, against the order; and
 - (b) if notice of appeal is given within that period, until the appeal is determined or withdrawn,
- unless the offender and, in a case to which subsection (2) above applies, the owner of the dog give notice to the court that made the order that there is to be no appeal.

Ancillary powers when ordering destruction

DDA 1991 s.4¹⁶⁹⁴: Destruction and disqualification orders

- s.4(4) - where a court makes an order under subsection (1)(a) above it may—
- (a) appoint a person to undertake the destruction of the dog and require any person having custody of it to deliver it up for that purpose; and
 - (b) order the offender to pay such sum as the court may determine to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.

An order to pay expenses has the same status as a fine

DDA 1991 s.4¹⁶⁹⁵: Destruction and disqualification orders

- s.4(5) - any sum ordered to be paid under subsection (4)(b) above shall be treated for the purposes of enforcement as if it were a fine imposed on conviction.

¹⁶⁹² Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁹³ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁹⁴ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁹⁵ Commencement: 12 August 1991, SI 1991/1742 art.3.

Determining whether to make a destruction order or a contingent destruction order

R. v Flack [2008] EWCA Crim 204; [2010] 2 Cr. App. R. (S.) 70 (p.395)

The relevant principles that can be made in respect of a dog whose owner has been convicted under s.3(1) of the 1991 Act of failing to keep a dog under control in a public place are that:

- (1) The court is empowered under s.4(1) of the 1991 Act to order the destruction of the dog.
- (2) Nothing in that provision shall require the court to order destruction if the court is satisfied that the dog would not constitute a danger to public safety: s.4(1)(a) of the 1991 Act.
- (3) The court should ordinarily consider, before ordering immediate destruction, whether to exercise the power under s.4(a)(4) of the 1991 Act to order that, unless the owner of the dog keeps it under proper control, the dog shall be destroyed ("a suspended order of destruction").
- (4) A suspended order of destruction under that provision may specify the measures to be taken by the owner for keeping the dog under control whether by muzzling, keeping it on a lead, or excluding it from a specified place or otherwise: see s.4(a)(5) of the 1991 Act.
- (5) A court should not order destruction if satisfied that the imposition of such a condition would mean the dog would not constitute a danger to public safety.
- (6) In deciding what order to make, the court must consider all the relevant circumstances which include the dog's history of aggressive behaviour and the owner's history of controlling the dog concerned in order to determine what order should be made. (Silber J, at [11])

Terminating the disqualification

DDA 1991 s.4¹⁶⁹⁶: Destruction and disqualification orders

- s.4(6) - any person who is disqualified for having custody of a dog by virtue of an order under subsection (1)(b) above may, at any time after the end of the period of one year beginning with the date of the order, apply to the court that made it (or a magistrates' court acting in the same local justice area as that court) for a direction terminating the disqualification.

¹⁶⁹⁶ Commencement: 12 August 1991, SI 1991/1742 art.3.

Power to dispose of the application to terminate the disqualification

DDA 1991 s.4¹⁶⁹⁷: Destruction and disqualification orders

- s.4(7) - on an application under subsection (6) above the court may—
- (a) having regard to the applicant's character, his conduct since the disqualification was imposed and any other circumstances of the case, grant or refuse the application; and
 - (b) order the applicant to pay all or any part of the costs of the application;
- and where an application in respect of an order is refused no further application in respect of that order shall be entertained if made before the end of the period of one year beginning with the date of the refusal.

3.8.3.2. Breach

DDA 1991 s.4¹⁶⁹⁸: Destruction and disqualification orders

- s.4(8) - any person who—
- (a) has custody of a dog in contravention of an order under subsection (1)(b) above; or
 - (b) fails to comply with a requirement imposed on him under subsection (4)(a) above,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

3.8.3.3. Stand-alone orders

Destruction order

DDA 1991 s.4B¹⁶⁹⁹: Destruction orders otherwise than on a conviction

- s.4B(1) - where a dog is seized under section 5(1) or (2) below or in exercise of a power of seizure conferred by any other enactment and it appears to a justice of the peace, or in Scotland a justice of the peace or sheriff—
- (a) that no person has been or is to be prosecuted for an offence under this Act or an order under section 2 above in respect of that dog (whether because the owner cannot be found or for any other reason); or
 - (b) that the dog cannot be released into the custody or possession of its owner without the owner contravening the prohibition in section 1(3) above,
- he may order the destruction of the dog and, subject to subsection (2) below, shall do so if it is one to which section 1 above applies.

¹⁶⁹⁷ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁹⁸ Commencement: 12 August 1991, SI 1991/1742 art.3.

¹⁶⁹⁹ Commencement: 8 June 1997, DD(A)A 1997 s.3(1), SI 1997/1151 art.2.

- s.4B(2) - nothing in subsection (1)(b) above shall require the justice or sheriff to order the destruction of a dog if he is satisfied—
- (a) that the dog would not constitute a danger to public safety; and
 - (b) where the dog was born before 30th November 1991 and is subject to the prohibition in section 1(3) above, that there is a good reason why the dog has not been exempted from that prohibition.
- s.4B(2A) - for the purposes of subsection (2)(a), when deciding whether a dog would constitute a danger to public safety, the justice or sheriff—
- (a) must consider—
 - (i) the temperament of the dog and its past behaviour, and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.

3.8.4. Dogs: Contingent destruction orders

3.8.4.1. Stand-alone orders

Destruction order

DDA 1991 s.4B¹⁷⁰⁰: Destruction orders otherwise than on a conviction

- s.4B(1) - where a dog is seized under section 5(1) or (2) below or in exercise of a power of seizure conferred by any other enactment and it appears to a justice of the peace, or in Scotland a justice of the peace or sheriff—
- (a) that no person has been or is to be prosecuted for an offence under this Act or an order under section 2 above in respect of that dog (whether because the owner cannot be found or for any other reason); or
 - (b) that the dog cannot be released into the custody or possession of its owner without the owner contravening the prohibition in section 1(3) above,
- he may order the destruction of the dog and, subject to subsection (2) below, shall do so if it is one to which section 1 above applies.
- s.4B(2) - nothing in subsection (1)(b) above shall require the justice or sheriff to order the destruction of a dog if he is satisfied—
- (a) that the dog would not constitute a danger to public safety; and
 - (b) where the dog was born before 30th November 1991 and is subject to the prohibition in section 1(3) above, that there is a good reason why the dog has not been exempted from that prohibition.
- s.4B(2A) - for the purposes of subsection (2)(a), when deciding whether a dog would constitute a danger to public safety, the justice or sheriff—
- (a) must consider—
 - (i) the temperament of the dog and its past behaviour, and
 - (ii) whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog, and
 - (b) may consider any other relevant circumstances.

Contingent destruction order

DDA 1991 s.4B¹⁷⁰¹: Destruction orders otherwise than on a conviction

- s.4B(3) - where in a case falling within subsection (1)(b) above the justice or sheriff does not order the destruction of the dog, he shall order that, unless the dog is exempted from the prohibition in section 1(3) above within the requisite period, the dog shall be destroyed.
- s.4B(4) - Subsections (2) to (4) of section 4 above shall apply in relation to an order under subsection (1)(b) or (3) above as they apply in relation to an order under subsection (1)(a) of that section.

¹⁷⁰⁰ Commencement: 8 June 1997, DD(A)A 1997 s.3(1), SI 1997/1151 art.2.

¹⁷⁰¹ Commencement: 8 June 1997, DD(A)A 1997 s.3(1), SI 1997/1151 art.2.

“Requisite period” etc.

DDA 1991 s.4B¹⁷⁰²: Destruction orders otherwise than on a conviction

s.4B(5) - Subsections (2) and (3) of section 4A above shall apply in relation to an order under subsection (3) above as they apply in relation to an order under subsection (1) of that section, except that the reference to the court in subsection (2) of that section shall be construed as a reference to the justice or sheriff.

Note: See R. (Ali) v Chief Constable of Merseyside [2014] EWHC 4772 (Admin): Where the court made a contingent destruction order in respect of a prohibited dog and the owner complied with the contingency by obtaining an exemption from the prohibition in the Dangerous Dogs Act 1991 s.1(3) within the requisite period, the police could not, as they had in the instant cases, summarily destroy the dogs because they believed that the exemption had ceased to exist. Where that was the case, the police would have to apply to the court for a destruction order.

3.8.4.2. Post-conviction orders

Mandatory order

DDA 1991 s.4A¹⁷⁰³: Contingent destruction orders

s.4A(1) - where:

- (a) a person is convicted of an offence under section 1 above or an aggravated offence under section 3(1) above;
- (b) the court does not order the destruction of the dog under section 4(1)(a) above; and
- (c) in the case of an offence under section 1 above, the dog is subject to the prohibition in section 1(3) above.

the court shall order that, unless the dog is exempted from that prohibition within the requisite period, the dog shall be destroyed.

Note: The Dangerous Dogs Exemption Schemes (England and Wales) Order 2015 (SI 2015/138) replaced The Dangerous Dogs Compensation and Exemption Schemes Order 1991 (1991 Order) on 3 March 2015. The 2015 Order sets down the new exemption scheme and interim exemption scheme, and provisions for substituting a person in charge of an exempted dog.

Keeping dogs under proper control: Discretionary order

DDA 1991 s.4A¹⁷⁰⁴: Contingent destruction orders

s.4A(4) - where a person is convicted of an offence under section 3(1) above, the court may order that, unless the owner of the dog keeps it under proper control, the dog shall be destroyed.

¹⁷⁰² Commencement: 8 June 1997, DD(A)A 1997 s.3(1), SI 1997/1151 art.2.

¹⁷⁰³ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷⁰⁴ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

Power to extend the period

DDA 1991 s.4A¹⁷⁰⁵: Contingent destruction orders

- s.4A(2) - where an order is made under subsection (1) above in respect of a dog, and the dog is not exempted from the prohibition in section 1(3) above within the requisite period, the court may extend that period.

The “requisite period”

DDA 1991 s.4A¹⁷⁰⁶: Contingent destruction orders

- s.4A(3) - subject to subsection (2) above, the requisite period for the purposes of such an order is the period of two months beginning with the date of the order.

The contents of the order

DDA 1991 s.4A¹⁷⁰⁷: Contingent destruction orders

- s.4A(5) - an order under subsection (4) above—
- (a) may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise; and
 - (b) if it appears to the court that the dog is a male and would be less dangerous if neutered, may require it to be neutered.

Ancillary powers when ordering destruction

DDA 1991 s.4A¹⁷⁰⁸: Contingent destruction orders

- s.4A(6) - Subsections (2) to (4) of section 4 above shall apply in relation to an order under subsection (1) or (4) above as they apply in relation to an order under subsection (1)(a) of that section.

DDA 1991 s.4¹⁷⁰⁹: Destruction and disqualification orders

- s.4(4) - where a court makes an order under subsection (1)(a) above it may:
- (a) appoint a person to undertake the destruction of the dog and require any person having custody of it to deliver it up for that purpose; and
 - (b) order the offender to pay such sum as the court may determine to be the reasonable expenses of destroying the dog and of keeping it pending its destruction.

¹⁷⁰⁵ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷⁰⁶ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷⁰⁷ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷⁰⁸ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷⁰⁹ Commencement: 12 August 1991, SI 1991/1742 art.3.

Determining whether to make a destruction order or a contingent destruction order

R. v Flack [2008] EWCA Crim 204; [2010] 2 Cr. App. R. (S.) 70 (p.395)

The relevant principles that can be made in respect of a dog whose owner has been convicted under s.3(1) of the 1991 Act of failing to keep a dog under control in a public place are that:

- (1) The court is empowered under s.4(1) of the 1991 Act to order the destruction of the dog.
- (2) Nothing in that provision shall require the court to order destruction if the court is satisfied that the dog would not constitute a danger to public safety: s.4(1)(a) of the 1991 Act.
- (3) The court should ordinarily consider, before ordering immediate destruction, whether to exercise the power under s.4(a)(4) of the 1991 Act to order that, unless the owner of the dog keeps it under proper control, the dog shall be destroyed ("a suspended order of destruction").
- (4) A suspended order of destruction under that provision may specify the measures to be taken by the owner for keeping the dog under control whether by muzzling, keeping it on a lead, or excluding it from a specified place or otherwise: see s.4(a)(5) of the 1991 Act.
- (5) A court should not order destruction if satisfied that the imposition of such a condition would mean the dog would not constitute a danger to public safety.
- (6) In deciding what order to make, the court must consider all the relevant circumstances which include the dog's history of aggressive behaviour and the owner's history of controlling the dog concerned in order to determine what order should be made. (Silber J, at [11])

Appeals

DDA 1991 s.4A¹⁷¹⁰: Contingent destruction orders

- s.4A(6) - Subsections (2) to (4) of section 4 above shall apply in relation to an order under subsection (1) or (4) above as they apply in relation to an order under subsection (1)(a) of that section.

DDA 1991 s.4¹⁷¹¹: Destruction and disqualification orders

- s.4(2) - where a court makes an order under subsection (1)(a) above for the destruction of a dog owned by a person other than the offender, the owner may appeal to the Crown Court against the order.

¹⁷¹⁰ Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷¹¹ Commencement: 12 August 1991, SI 1991/1742 art.3.

Orders suspended pending appeal

DDA 1991 s.4A¹⁷¹²: Contingent destruction orders

- s.4A(6) - Subsections (2) to (4) of section 4 above shall apply in relation to an order under subsection (1) or (4) above as they apply in relation to an order under subsection (1)(a) of that section.

DDA 1991 s.4¹⁷¹³: Destruction and disqualification orders

- s.4(3) - a dog shall not be destroyed pursuant to an order under subsection (1)(a) above—
- (a) until the end of the period for giving notice of appeal against the conviction or, against the order; and
 - (b) if notice of appeal is given within that period, until the appeal is determined or withdrawn,
- unless the offender and, in a case to which subsection (2) above applies, the owner of the dog give notice to the court that made the order that there is to be no appeal.

¹⁷¹² Commencement: 8 June 1997, as inserted by DD(A)A 1997 s.2, SI 1997/1151 art.2.

¹⁷¹³ Commencement: 12 August 1991, SI 1991/1742 art.3.

3.8.5. Payment of costs incurred in keeping the animal

AWA 2006 s.39¹⁷¹⁴: Reimbursement of expenses relating to animals involved in fighting offences

- s.39(1) - the court by or before which a person is convicted of an offence under section 8(1) or (2) may order the offender or another person to reimburse any expenses incurred by the police in connection with the keeping of an animal in relation to which the offence was committed.
- s.39(2) - in subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in a fight in relation to which the offence was committed.

¹⁷¹⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.6. Forfeiture of equipment

Power to order

AWA 2006 s.40¹⁷¹⁵: Forfeiture of equipment used in offences

- s.40(1) - where a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, the court by or before which he is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be—
- (a) forfeited, and
 - (b) destroyed or dealt with in such manner as may be specified in the order.

“Qualifying item”

AWA 2006 s.40¹⁷¹⁶: Forfeiture of equipment used in offences

- s.40(2) - the reference in subsection (1) to any qualifying item is—
- (a) in the case of a conviction for an offence under section 4, to anything designed or adapted for causing suffering to an animal;
 - (b) in the case of a conviction for an offence under section 5, to anything designed or adapted for carrying out a prohibited procedure on an animal;
 - (c) in the case of a conviction for an offence under section 6(1) or (2), to anything designed or adapted for removing the whole or any part of a dog's tail;
 - (d) in the case of a conviction for an offence under section 7, to anything designed or adapted for administering any drug or substance to an animal;
 - (e) in the case of a conviction for an offence under section 8(1) or (2), to anything designed or adapted for use in connection with an animal fight;
 - (f) in the case of a conviction for an offence under section 8(3), to a video recording of an animal fight, including anything on or in which the recording is kept.

Owner must be given opportunity to make representations

AWA 2006 s.40¹⁷¹⁷: Forfeiture of equipment used in offences

- s.40(3) - the court shall not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless he has been given an opportunity to show cause why the order should not be made.

¹⁷¹⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷¹⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷¹⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Interpretation

AWA 2006 s.40¹⁷¹⁸: Forfeiture of equipment used in offences

s.40(4) - an expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

¹⁷¹⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.7. Appeals

Owner of the animal may appeal

AWA 2006 s.37¹⁷¹⁹: Destruction in the interests of the animal

- s.37(4) - where a court makes an order under subsection (1), each of the offender and, if different, the owner of the animal may–
- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
 - (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.
- s.37(5) - subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.

AWA 2006 s.38¹⁷²⁰: Destruction of animals involved in fighting offences

- s.38(4) - where a court makes an order under subsection (1) in relation to an animal which is owned by a person other than the offender, that person may–
- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
 - (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.

Orders suspended until time limit for appeals has expired or appeal concluded

AWA 2006 s.41¹⁷²¹: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(1) - nothing may be done under an order under section 33, 35, 37 or 38 with respect to an animal or an order under section 40 unless–
- (a) the period for giving notice of appeal against the order has expired,
 - (b) the period for giving notice of appeal against the conviction on which the order was made has expired, and
 - (c) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn.

¹⁷¹⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²⁰ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²¹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

No suspension where court orders destruction not to be delayed

AWA 2006 s.41¹⁷²²: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(2) - subsection (1) does not apply to an order under section 37(1) if the order is the subject of a direction under subsection (5) of that section.

Effect of suspension

AWA 2006 s.41¹⁷²³: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(3) - where the effect of an order is suspended under subsection (1)–
- (a) no requirement imposed or directions given in connection with the order shall have effect, but
 - (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.
- s.41(4) - directions under subsection (3)(b) may, in particular–
- (a) authorise the animal to be taken into possession;
 - (b) authorise the removal of the animal to a place of safety;
 - (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
 - (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
 - (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
 - (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
 - (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

Recovery of expenses

AWA 2006 s.41¹⁷²⁴: Orders under section 33, 35, 37, 38 or 40: pending appeals

- s.41(5) - any expenses a person is directed to pay under subsection (4)(g) shall be recoverable summarily as a civil debt.

¹⁷²² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²³ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Breach

AWA 2006 s.41¹⁷²⁵: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(7) - failure to comply with subsection (6) is an offence.

¹⁷²⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.8. Termination of orders

Who may apply?

AWA 2006 s.43¹⁷²⁶: Termination of disqualification under section 34 or 42

- s.43(1) - a person who is disqualified by virtue of an order under section 34 or 42 may apply to the appropriate court for the termination of the order.

No application until 12 months has passed from date of order

AWA 2006 s.43¹⁷²⁷: Termination of disqualification under section 34 or 42

- s.43(2) - no application under subsection (1) may be made–
- (a) before the end of the period of one year beginning with the date on which the order is made,
 - (b) where a previous application under that subsection has been made in relation to the same order, before the end of the period of one year beginning with the date on which the previous application was determined, or
 - (c) before the end of any period specified under section 34(6), 42(3) or subsection (5) below in relation to the order.

Power of the court to dispose of the application

AWA 2006 s.43¹⁷²⁸: Termination of disqualification under section 34 or 42

- s.43(3) - on an application under subsection (1), the court may–
- (a) terminate the disqualification,
 - (b) vary the disqualification so as to make it less onerous, or
 - (c) refuse the application.

Matters to have regard to when considering the application

AWA 2006 s.43¹⁷²⁹: Termination of disqualification under section 34 or 42

- s.43(4) - when determining an application under subsection (1), the court shall have regard to the character of the applicant, his conduct since the imposition of the disqualification and any other circumstances of the case.

¹⁷²⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷²⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Application refused: Power to direct no further application for set period

AWA 2006 s.43¹⁷³⁰: Termination of disqualification under section 34 or 42

- s.43(5) - where the court refuses an application under subsection (1), it may specify a period during which the applicant may not make a further application under that subsection in relation to the order concerned.

Costs

AWA 2006 s.43¹⁷³¹: Termination of disqualification under section 34 or 42

- s.43(6) - the court may order an applicant under subsection (1) to pay all or part of the costs of the application.

Interpretation

AWA 2006 s.43¹⁷³²: Termination of disqualification under section 34 or 42

- s.43(7) - in subsection (1), the reference to the appropriate court is to—
- (a) the court which made the order under section 34 or 42, or
 - (b) in the case of an order made by a magistrates' court, to a magistrates' court acting for the same local justice area as that court.

¹⁷³⁰ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷³¹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷³² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.9. Reimbursement of expenses

Order for expenses recoverable as a civil debt

AWA 2006 s.44¹⁷³³: Orders made on conviction for reimbursement of expenses

- s.44 - where an order is made under section 33(4)(e), 36(1)(e), 37(3)(e), 38(3)(e) or 39(1), the expenses that are required by the order to be reimbursed shall not be regarded for the purposes of the Magistrates' Courts Act 1980 (c. 43) as a sum adjudged to be paid by a summary conviction, but shall be recoverable summarily as a civil debt.

Right of appeal for non-offenders

AWA 2006 s.45¹⁷³⁴: Orders for reimbursement of expenses: right of appeal for non-offenders

- s.45(1) - where a court makes an order to which this section applies, the person against whom the order is made may–
- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
 - (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.
- s.45(2) - this section applies to–
- (a) an order under section 36(1)(e) against a person other than the person subject to disqualification, and
 - (b) an order under section 37(3)(e), 38(3)(e) or 39(1) against a person other than the offender.

¹⁷³³ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷³⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.8.10. Licences

Power to order disqualification from holding a licence or cancellation of licence held

AWA 2006 s.42¹⁷³⁵: Orders with respect to licences

- s.42(1) - if a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7 to 9, 11 and 13(6), the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way–
- (a) make an order cancelling any licence held by him;
 - (b) make an order disqualifying him, for such period as it thinks fit, from holding a licence.

Extent of the order

AWA 2006 s.42¹⁷³⁶: Orders with respect to licences

- s.42(2) - disqualification under subsection (1)(b) may be imposed in relation to licences generally or in relation to licences of one or more kinds.

Termination of the order

AWA 2006 s.42¹⁷³⁷: Orders with respect to licences

- s.42(3) - the court by which an order under subsection (1)(b) is made may specify a period during which the offender may not make an application under section 43(1) for termination of the order.

Order suspended pending appeal

AWA 2006 s.42¹⁷³⁸: Orders with respect to licences

- s.42(4) - the court by which an order under subsection (1) is made may suspend the operation of the order pending an appeal.

¹⁷³⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷³⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷³⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁷³⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Part 3. Sentencing powers and duties

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3.9 Consequences of conviction

3.9.1. Notification

3.9.1.1. Sexual cases

3.9.1.1.1 General

Status of notification

R. v Longworth [2006] UKHL 1; [2006] 2 Cr. App. R. (S.) 62 (p.401)

Notification is not part of the sentence.

Notification orders

Note: SOA 2003 ss.97-103 make provision for a notification order (an order of the court as opposed to an automatic consequence of conviction such as the notification regime under SOA 2003 ss.80 et seq.). The order is a “stand alone” order made on complaint to the magistrates’ court by a chief officer of police where it is believed that an individual is intending to come into his police area and has been convicted of a relevant offence etc. under the law of another country. As it is not a sentencing order, the material is not reproduced here.

3.9.1.1.2 Who is subject to notification?

Offence committed on or after 1 May 2004

SOA 2003 s.80¹⁷³⁹: Persons becoming subject to notification requirements

- s.80(1) - a person is subject to the notification requirements of this Part for the period set out in section 82 (“the notification period”) if–
- (a) he is convicted of an offence listed in Schedule 3;
 - (b) he is found not guilty of such an offence by reason of insanity;
 - (c) he is found to be under a disability and to have done the act charged against him in respect of such an offence; or
 - (d) in England and Wales or Northern Ireland, he is cautioned in respect of such an offence.
- s.80(2) - a person for the time being subject to the notification requirements of this Part is referred to in this Part as a “relevant offender”.

Offence committed between 1 September 1997 and 1 May 2004

SOA 2003 s.81¹⁷⁴⁰: Persons formerly subject to Part 1 of the Sex Offenders Act 1997

- s.81(1) - a person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part–
- (a) he was convicted of an offence listed in Schedule 3;

¹⁷³⁹ Commencement: 1 May 2004, 2004/874 art.2.

¹⁷⁴⁰ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) he was found not guilty of such an offence by reason of insanity;
- (c) he was found to be under a disability and to have done the act charged against him in respect of such an offence; or
- (d) in England and Wales or Northern Ireland, he was cautioned in respect of such an offence.

s.81(2) - subsection (1) does not apply if the notification period ended before the commencement of this Part.

Offence committed before 1 September 1997

SOA 2003 s.81¹⁷⁴¹: Persons formerly subject to Part 1 of the Sex Offenders Act 1997

- s.81(3) - subsection (1)(a) does not apply to a conviction before 1st September 1997 unless, at the beginning of that day, the person–
- (a) had not been dealt with in respect of the offence;
 - (b) was serving a sentence of imprisonment, or was subject to a community order, in respect of the offence;
 - (c) was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence; or
 - (d) was detained in a hospital or was subject to a guardianship order, following the conviction.
- s.81(4) - paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 1st September 1997 unless, at the beginning of that day, the person–
- (a) had not been dealt with in respect of the finding; or
 - (b) was detained in a hospital, following the finding.
- s.81(5) - subsection (1)(d) does not apply to a caution given before 1st September 1997.
- s.81(6) - a person who would have been within subsection (3)(b) or (d) or (4)(b) but for the fact that at the beginning of 1st September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.

Offender subject to restraining order/sex offender order on 30 April 2004

SOA 2003 s.81¹⁷⁴²: Persons formerly subject to Part 1 of the Sex Offenders Act 1997

- s.81(7) - where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect.
- s.81(8) - the provisions are–
- (a) section 5A of the Sex Offenders Act 1997 (c. 51) (restraining orders);

¹⁷⁴¹ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

¹⁷⁴² Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) section 2 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders made in England and Wales);
- (c) section 2A of the Crime and Disorder Act 1998 (interim orders made in England and Wales);
- (d) section 20 of the Crime and Disorder Act 1998 (sex offender orders and interim orders made in Scotland);
- (e) Article 6 of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders made in Northern Ireland);
- (f) Article 6A of the Criminal Justice (Northern Ireland) Order 1998 (interim orders made in Northern Ireland).

Sch.3

SOA 2003 Sch.3¹⁷⁴³: Sexual offences for the purposes of Part 2

- 1 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 2 An offence under section 5 of that Act (intercourse with girl under 13).
- 3 An offence under section 6 of that Act (intercourse with girl under 16), if the offender was 20 or over.
- 4 An offence under section 10 of that Act (incest by a man), if the victim or (as the case may be) other party was under 18.
- 5 An offence under section 12 of that Act (buggery) if–
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 6 An offence under section 13 of that Act (indecentcy between men) if–
 - (a) the offender was 20 or over, and
 - (b) the victim or (as the case may be) other party was under 18.
- 7 An offence under section 14 of that Act (indecent assault on a woman) if–
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 8 An offence under section 15 of that Act (indecent assault on a man) if–
 - (a) the victim or (as the case may be) other party was under 18, or
 - (b) the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to imprisonment for a term of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.

¹⁷⁴³ Commencement: 1 May 2004, SI 2004/874 art.2.

- 9 An offence under section 16 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
- 10 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).
- 11 An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).
- 12 An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under 16 to have incestuous sexual intercourse).
- 13 An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 14 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 15 An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child), if the indecent photographs or pseudo-photographs showed persons under 16 and—
- (a) the conviction, finding or caution was before the commencement of this Part, or
 - (b) the offender—
 - (i) was 18 or over, or
 - (ii) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 16 An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) (abuse of position of trust), if the offender was 20 or over.
- 17 An offence under section 1 or 2 of this Act (rape, assault by penetration).
- 18 An offence under section 3 of this Act (sexual assault) if—
- (a) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months;
 - (b) in any other case—

- (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 19 An offence under any of sections 4 to 6 of this Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).
- 20 An offence under section 7 of this Act (sexual assault of a child under 13) if the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 21 An offence under any of sections 8 to 12 of this Act (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults).
- 22 An offence under section 13 of this Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 23 An offence under section 14 of this Act (arranging or facilitating the commission of a child sex offence) if the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months.
- 24 An offence under section 15 of this Act (meeting a child following sexual grooming etc).
- 25 An offence under any of sections 16 to 19 of this Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 26 An offence under section 25 or 26 of this Act (familial child sex offences) if the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 27 An offence under any of sections 30 to 37 of this Act (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).
- 28 An offence under any of sections 38 to 41 of this Act (care workers for persons with mental disorder) if–
 - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;

- (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment,
 - (ii) detained in a hospital, or
 - (iii) made the subject of a community sentence of at least 12 months.
- 29 An offence under section 47 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29A An offence under section 48 of this Act (causing or inciting child prostitution or pornography) if the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29B An offence under section 49 of this Act (controlling a child prostitute or a child involved in pornography) if the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 29C An offence under section 50 of this Act (arranging or facilitating child prostitution or pornography) if the offender–
 - (a) was 18 or over, or
 - (b) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months.
- 30 An offence under section 61 of this Act (administering a substance with intent).
- 31 An offence under section 62 or 63 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if–
 - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case–
 - (i) the intended offence was an offence against a person under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.
- 32 An offence under section 64 or 65 of this Act (sex with an adult relative) if–
 - (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case, the offender, in respect of the offence or finding, is or has been–

- (i) sentenced to a term of imprisonment, or
- (ii) detained in a hospital.

33 An offence under section 66 of this Act (exposure) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

34 An offence under section 67 of this Act (voyeurism) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case–
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been–
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.

35 An offence under section 69 or 70 of this Act (intercourse with an animal, sexual penetration of a corpse) if–

- (a) where the offender was under 18, he is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been–
 - (i) sentenced to a term of imprisonment, or
 - (ii) detained in a hospital.

35A An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender—

- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.

35B An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children) if the offender—

- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.

35C An offence under section 69 of the Serious Crime Act 2015 (possession of paedophile manual) if the offender—

- (a) was 18 or over, or
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.

3.9.1.1.3 How long is the period?

SOA 2003 s.82¹⁷⁴⁴: The notification period

s.82(1) - the notification period for a person within section 80(1) or 81(1) is the period in the second column of the following Table opposite the description that applies to him.

Description of relevant offender	Notification period
A person who, in respect of the offence, is or has been sentenced to imprisonment for life, to imprisonment for public protection under section 225 of the Criminal Justice Act 2003, to an indeterminate custodial sentence under Article 13(4)(a) of the Criminal Justice (Northern Ireland) Order 2008 or to imprisonment for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence, has been made the subject of an order under section 210F(1) of the Criminal Procedure (Scotland) Act 1995 (order for lifelong restriction)	An indefinite period beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 80(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge or, in Scotland, a community payback order imposing an offender supervision requirement, is made in respect of the offence	The period of conditional discharge or, in Scotland, the specified period for the offender supervision requirement
A person of any other description	5 years beginning with the relevant date

Notification period halved for those under 18

SOA 2003 s.82¹⁷⁴⁵: The notification period

s.82(2) - where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.

s.82(6) - in this Part, “*relevant date*” means–

- (a) in the case of a person within section 80(1)(a) or 81(1)(a), the date of the conviction;

¹⁷⁴⁴ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

¹⁷⁴⁵ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) in the case of a person within section 80(1)(b) or (c) or 81(1)(b) or (c), the date of the finding;
- (c) in the case of a person within section 80(1)(d) or 81(1)(d), the date of the caution;
- (d) in the case of a person within section 81(7), the date which, for the purposes of Part 1 of the Sex Offenders Act 1997 (c. 51), was the relevant date in relation to that person.

Two or more offences

SOA 2003 s.82¹⁷⁴⁶: The notification period

- s.82(3) - subsection (4) applies where a relevant offender within section 80(1)(a) or 81(1)(a) is or has been sentenced, in respect of two or more offences listed in Schedule 3–
 - (a) to consecutive terms of imprisonment; or
 - (b) to terms of imprisonment which are partly concurrent.
- s.82(4) - where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of imprisonment which–
 - (a) in the case of consecutive terms, is equal to the aggregate of those terms;
 - (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.
- s.82(5) - where a relevant offender the subject of a finding within section 80(1)(c) or 81(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.

3.9.1.1.4 The obligations

Initial notification

SOA 2003 s.83¹⁷⁴⁷: Notification requirements: initial notification

- s.83(1) - a relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the police the information set out in subsection (5).
- s.83(2) - subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 80(1) if–
 - (a) immediately before the conviction, finding or caution, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
 - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
 - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

¹⁷⁴⁶ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

¹⁷⁴⁷ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- s.83(3) - subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 81(1) or an order within section 81(7) if the offender complied with section 2(1) of the Sex Offenders Act 1997 in respect of the conviction, finding, caution or order.
- s.83(4) - where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if–
- (a) immediately before the order was made, he was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”),
 - (b) at that time, he had made a notification under subsection (1) in respect of the earlier event, and
 - (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.
- s.83(5) - the information is–
- (a) the relevant offender’s date of birth;
 - (b) his national insurance number;
 - (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
 - (d) his home address on the relevant date;
 - (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
 - (f) his home address on the date on which notification is given;
 - (g) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays;
 - (h) any prescribed information.
- s.83(5A) - in subsection (5)(h) “*prescribed*” means prescribed by regulations made by the Secretary of State.
- s.83(6) - when determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is–
- (a) remanded in or committed to custody by an order of a court or kept in service custody;
 - (b) serving a sentence of imprisonment or a term of service detention;
 - (c) detained in a hospital; or
 - (d) outside the United Kingdom.
- s.83(7) - in this Part, “*home address*” means, in relation to any person–
- (a) the address of his sole or main residence in the United Kingdom, or
 - (b) where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.

Changes

SOA 2003 s.84¹⁷⁴⁸: Notification requirements: changes

- s.84(1) - a relevant offender must, within the period of 3 days beginning with—
- (a) his using a name which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997 (c. 51),
 - (b) any change of his home address,
 - (c) his having resided or stayed, for a qualifying period, at any premises in the United Kingdom the address of which has not been notified to the police under section 83(1), this subsection, or section 2 of the Sex Offenders Act 1997,
 - (ca) any prescribed change of circumstances, or
 - (d) his release from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital,
- notify to the police that name, the new home address, the address of those premises, the prescribed details or (as the case may be) the fact that he has been released, and (in addition) the information set out in section 83(5).
- s.84(2) - a notification under subsection (1) may be given before the name is used, the change of home address or the prescribed change of circumstances occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.
- s.84(3) - if a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).
- s.84(4) - if a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—
- (a) the notification does not affect the duty imposed by subsection (1), and
 - (b) the relevant offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- s.84(5) - Section 83(6) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 83(1).
- s.84(5A) - in this section—
- (a) “*prescribed change of circumstances*” means any change—
 - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 83(5)(h), and
 - (ii) of a description prescribed by regulations made by the Secretary of State;
 - (b) “*the prescribed details*”, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

¹⁷⁴⁸ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- s.84(6) - in this section, “*qualifying period*” means—
- (a) a period of 7 days, or
 - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

Periodic notification

SOA 2003 s.85¹⁷⁴⁹: Notification requirements: periodic notification

- s.85(1) - a relevant offender must, within the applicable period after each event within subsection (2), notify to the police the information set out in section 83(5), unless within that period he has given a notification under section 84(1).
- s.85(2) - the events are—
- (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
 - (b) any notification given by the relevant offender under section 83(1) or 84(1); and
 - (c) any notification given by him under subsection (1).
- s.85(3) - where the applicable period would (apart from this subsection) end whilst subsection (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him.
- s.85(4) - this subsection applies to the relevant offender if he is—
- (a) remanded in or committed to custody by an order of a court or kept in service custody,
 - (b) serving a sentence of imprisonment or a term of service detention,
 - (c) detained in a hospital, or
 - (d) outside the United Kingdom.
- s.85(5) - in this section, “*the applicable period*” means—
- (a) in any case where subsection (6) applies to the relevant offender, such period as may be prescribed by regulations made by the Secretary of State, and
 - (b) in any other case, the period of one year.
- s.85(6) - this subsection applies to the relevant offender if the last home address notified by him under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).

¹⁷⁴⁹ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

Foreign travel

SOA 2003 s.86¹⁷⁵⁰: Notification requirements: travel outside the United Kingdom

- s.86(1) - the Secretary of State may by regulations make provision requiring relevant offenders who leave the United Kingdom, or any description of such offenders–
- (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
 - (b) if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).
- s.86(2) - a notification under this subsection must disclose–
- (a) the date on which the offender will leave the United Kingdom;
 - (b) the country (or, if there is more than one, the first country) to which he will travel and his point of arrival (determined in accordance with the regulations) in that country;
 - (c) any other information prescribed by the regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom.
- s.86(3) - a notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.

Method of notification

SOA 2003 s.87¹⁷⁵¹: Method of notification and related matters

- s.87(1) - a person gives a notification under section 83(1), 84(1) or 85(1) by–
- (a) attending at such police station in his local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them, and
 - (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- s.87(2) - a person giving a notification under section 84(1)–
- (a) in relation to a prospective change of home address, or
 - (b) in relation to premises referred to in subsection (1)(c) of that section,
- may give the notification at a police station that would fall within subsection (1) above if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address.
- s.87(3) - any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Secretary of State may direct.

¹⁷⁵⁰ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

¹⁷⁵¹ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- s.87(4) - where a notification is given under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), allow the officer or person to–
- (a) take his fingerprints,
 - (b) photograph any part of him, or
 - (c) do both these things.
- s.87(5) - the power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender.

SOA 2003 s.88¹⁷⁵²: Section 87: interpretation

- s.88(1) - subsections (2) to (4) apply for the purposes of section 87.
- s.88(2) - “*Photograph*” includes any process by means of which an image may be produced.
- s.88(3) - “*Local police area*” means, in relation to a person–
- (a) the police area in which his home address is situated;
 - (b) in the absence of a home address, the police area in which the home address last notified is situated;
 - (c) in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person in a way mentioned in subsection (4) is situated.
- s.88(4) - the ways are–
- (a) dealing with a person in respect of an offence listed in Schedule 3 or a finding in relation to such an offence;
 - (b) dealing with a person in respect of an offence under section 128 or a finding in relation to such an offence;
 - (c) making, in respect of a person, a notification order, interim notification order, sexual harm prevention order, interim sexual harm prevention order, sexual offences prevention order or interim sexual offences prevention order;
 - (d) making, in respect of a person, an order under section 2, 2A or 20 of the Crime and Disorder Act 1998 (c. 37) (sex offender orders and interim orders made in England and Wales or Scotland) or Article 6 or 6A of the Criminal Justice (Northern Ireland) Order 1998 (S.I. 1998/2839 (N.I. 20)) (sex offender orders and interim orders made in Northern Ireland);
- and in paragraphs (a) and (b), “*finding*” in relation to an offence means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence.
- s.88(5) - subsection (3) applies as if Northern Ireland were a police area.

¹⁷⁵² Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

3.9.1.1.5 Young offenders: Parental directions**Discretion to make parental directions order****SOA 2003 s.89¹⁷⁵³: Young offenders: parental directions**

s.89(1) - where a person within the first column of the following Table (“the young offender”) is under 18 (or, in Scotland, 16) when he is before the court referred to in the second column of the Table opposite the description that applies to him, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for (or, in Scotland, parental responsibilities in relation to) the young offender.

Description of person	Court which may make the direction
A relevant offender within section 80(1)(a) to (c) or 81(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A relevant offender within section 129(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, [sexual harm prevention order, interim sexual harm prevention order,] sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4) (or, in Scotland, the subject of an application under subsection (5))	The court which hears the application

s.89(2) - where this subsection applies–

- (a) the obligations that would (apart from this subsection) be imposed by or under sections 83 to 86 on the young offender are to be treated instead as obligations on the parent, and
- (b) the parent must ensure that the young offender attends at the police station with him, when a notification is being given.

s.89(3) - a direction under subsection (1) takes immediate effect and applies–

- (a) until the young offender attains the age of 18 (or, where a court in Scotland gives the direction, 16); or
- (b) for such shorter period as the court may, at the time the direction is given, direct.

s.89(4) - a chief officer of police may, by complaint to any magistrates’ court whose commission area includes any part of his police area, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”)–

- (a) who resides in his police area, or who the chief officer believes is in or is intending to come to his police area, and
- (b) who the chief officer believes is under 18.

¹⁷⁵³ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

Variation, renewal and discharge

SOA 2003 s.90¹⁷⁵⁴: Parental directions: variations, renewals and discharges

- s.90(1) - a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 89(1).
- s.90(2) - the persons are–
- (a) the young offender;
 - (b) the parent;
 - (c) the chief officer of police for the area in which the young offender resides;
 - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, his police area;
 - (f) where the direction was made on an application under section 89(4), the chief officer of police who made the application;
 - (g) where the direction was made on an application under section 89(5), the chief constable who made the application.
- s.90(3) - an application under subsection (1) may be made–
- (a) where the appropriate court is the Crown Court (or in Scotland a criminal court), in accordance with rules of court;
 - (b) in any other case, by complaint (or, in Scotland, by summary application).
- s.90(4) - on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.
- s.90(5) - in this section, the “*appropriate court*” means–
- (a) where the Court of Appeal made the order, the Crown Court;
 - (b) in any other case, the court that made the direction under section 89(1).

3.9.1.1.6 Reviews of indefinite notification requirements

Note: The following provisions were introduced as a result of the decision in R. (F) v Secretary of State [2010] UKSC 17. The new provisions were unsuccessfully challenged in R. (Prothero) v Secretary of State [2013] EWHC 2830.

England and Wales

Note: Sexual Offences Act 2003 (Remedial) Order 2012 (SI 2012/1883) art.3 inserted ss.91A-91F into the 2003 Act on 30 July 2012.

¹⁷⁵⁴ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

To whom does the review procedure apply?

SOA 2003 s.91A¹⁷⁵⁵: Review of indefinite notification requirements: qualifying relevant offender

- s.91A(1) - a qualifying relevant offender may apply to the relevant chief officer of police for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements (“an application for review”).
- s.91A(2) - a qualifying relevant offender means a relevant offender who, on the date on which he makes an application for review, is—
- (a) subject to the indefinite notification requirements; and
 - (b) not subject to a sexual harm prevention order under section 103A, an interim sexual harm prevention order under section 103F, a sexual offences prevention order under section 104(1) or an interim sexual offences prevention order under section 109(3).
- s.91A(3) - the “*indefinite notification requirements*” mean the notification requirements of this Part for an indefinite period by virtue of—
- (a) section 80(1);
 - (b) section 81(1); or
 - (c) a notification order made under section 97(5).
- s.91A(4) - in this Part, the “*relevant chief officer of police*” means, subject to subsection (5), the chief officer of police for the police area in which a qualifying relevant offender is recorded as residing or staying in the most recent notification given by him under section 84(1) or 85(1).
- s.91A(5) - subsection (6) applies if a qualifying relevant offender is recorded as residing or staying at more than one address in the most recent notification given by him under section 84(1) or 85(1).
- s.91A(6) - if this subsection applies, the “*relevant chief officer of police*” means the chief officer of police for the police area in which, during the relevant period, the qualifying relevant offender has resided or stayed on a number of days which equals or exceeds the number of days on which he has resided or stayed in any other police area.
- s.91A(7) - in subsection (6), “*the relevant period*” means the period of 12 months ending on the day on which the qualifying relevant offender makes an application for review.

Applications

SOA 2003 s.91B¹⁷⁵⁶: Review of indefinite notification requirements: application for review and qualifying dates

- s.91B(1) - an application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.

¹⁷⁵⁵ Commencement: 30 July 2012, SI 2012/1883 art.3.

¹⁷⁵⁶ Commencement: 30 July 2012, SI 2012/1883 art.3.

- s.91B(2) - subject to subsection (7), the qualifying date is—
- (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
 - (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.
- s.91B(3) - subject to subsections (4) to (6), the further qualifying date is the day after the end of the 8 year period beginning with the day on which the relevant chief officer of police makes a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements.
- s.91B(4) - subsection (5) applies if the relevant chief officer of police, when making a determination under section 91C to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual harm posed by a qualifying relevant offender is sufficient to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.
- s.91B(5) - if this subsection applies, the relevant chief officer of police may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.
- s.91B(6) - if subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.
- s.91B(7) - the qualifying date must not be earlier than the expiry of the fixed period specified in a notification continuation order made in relation to a qualifying relevant offender in accordance with sections 88A to 88I.
- s.91B(8) - the relevant chief officer of police within 14 days of receipt of an application for review—
- (a) must give an acknowledgment of receipt of the application to the qualifying relevant offender, and
 - (b) may notify a responsible body that the application has been made.
- s.91B(9) - where a responsible body is notified of the application for review under subsection (8)(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the relevant chief officer of police within 28 days of receipt of the notification.
- s.91B(10) - in this section “*the relevant notification*” means the first notification which the relevant offender gives under section 83, 84 or 85 when he is first released after—
- (a) being remanded in or committed to custody by an order of a court in relation to the conviction for the offence giving rise to the indefinite notification requirements;
 - (b) serving a sentence of imprisonment or a term of service detention in relation to that conviction;
 - (c) being detained in hospital in relation to that conviction.
- s.91B(11) - for the purposes of this Part—
- (a) “*responsible body*” means—

- (i) the probation trust for any area that includes any part of the police area concerned,
 - (ii) in relation to any part of the police area concerned for which there is no probation trust, each provider of probation services which has been identified as a relevant provider of probation services for the purposes of section 325 of the Criminal Justice Act 2003 by arrangements under section 3 of the Offender Management Act 2007,
 - (iii) the Minister of the Crown exercising functions in relation to prisons (and for this purpose “*prison*” has the same meaning as in the Prison Act 1952), and
 - (iv) each body mentioned in section 325(6) of the Criminal Justice Act 2003, but as if the references in that subsection to the relevant area were references to the police area concerned;
- (b) “*risk of sexual harm*” means a risk of physical or psychological harm to the public in the United Kingdom or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences listed in Schedule 3.

Determination of application for review

SOA 2003 s.91C¹⁷⁵⁷: Review of indefinite notification requirements: determination of application for review

- s.91C(1) - the relevant chief officer of police must, within 6 weeks of the latest date on which any body to which a notification has been given under section 91B(8)(b) may give information under section 91B(9)—
- (a) determine the application for review, and
 - (b) give notice of the determination to the qualifying relevant offender.
- s.91C(2) - for the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the relevant chief officer of police that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.
- s.91C(3) - if the relevant chief officer of police determines under this section that the qualifying relevant offender should remain subject to the indefinite notification requirements, the notice of the determination must:
- (a) contain a statement of reasons for the determination, and
 - (b) inform the qualifying relevant offender that he may appeal the determination in accordance with section 91E.
- s.91C(4) If the relevant chief officer of police determines under this section that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of receipt of the notice of determination.
- (5) The Secretary of State may by order amend the period in subsection (1).

¹⁷⁵⁷ Commencement: 30 July 2012, SI 2012/1883 art.3.

SOA 2003 s.91D¹⁷⁵⁸: Review of indefinite notification requirements: factors applying to determination under section 91C

- s.91D(1) - in determining an application for review under section 91C, the relevant chief officer of police must—
- (a) have regard to information (if any) received from a responsible body;
 - (b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and
 - (c) take into account the matters listed in subsection (2).
- s.91D(2) - the matters are—
- (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
 - (b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);
 - (c) where the qualifying relevant offender falls within section 81(1), whether the qualifying relevant offender committed any offence under section 3 of the Sex Offenders Act 1997;
 - (d) whether the qualifying relevant offender has committed any offence under section 91;
 - (e) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
 - (f) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
 - (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;
 - (h) any assessment of the risk posed by the qualifying relevant offender which has been made by a responsible body under the arrangements for managing and assessing risk established under section 325 of the Criminal Justice Act 2003;
 - (i) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
 - (j) any convictions or findings made by a court (including by a court in Scotland, Northern Ireland or countries outside the United Kingdom) in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
 - (k) any caution which the qualifying relevant offender has received for an offence (including for an offence in Northern Ireland or countries outside the United Kingdom) which is listed in Schedule 3;
 - (l) any convictions or findings made by a court in Scotland, Northern Ireland or countries outside the United Kingdom in respect of the qualifying relevant offender for any offence listed in Schedule 5 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;

¹⁷⁵⁸ Commencement: 30 July 2012, SI 2012/1883 art.3.

- (m) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
- (n) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm; and
- (o) any other matter which the relevant chief officer of police considers to be appropriate.

s.91D(3) - in this section, a reference to a conviction, finding or caution for an offence committed in a country outside the United Kingdom means a conviction, finding or caution for an act which—

- (a) constituted an offence under the law in force in the country concerned, and
- (b) would have constituted an offence listed in Schedule 3 or Schedule 5 if it had been done in any part of the United Kingdom.

Appeals

SOA 2003 s.91E¹⁷⁵⁹: Review of indefinite notification requirements: appeals

- s.91E(1) - a qualifying relevant offender may appeal against a determination of the relevant chief officer of police under section 91C.
- s.91E(2) - an appeal under this section may be made by complaint to a magistrates' court within the period of 21 days beginning with the day of receipt of the notice of determination.
- s.91E(3) - a qualifying relevant offender may appeal under this section to any magistrates' court in a local justice area which includes any part of the police area for which the chief officer is the relevant chief officer of police.
- s.91E(4) - if the court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

Guidance issued by Secretary of State

SOA 2003 s.91F¹⁷⁶⁰: Review of indefinite notification requirements: guidance

- s.91F(1) - the Secretary of State must issue guidance to relevant chief officers of police in relation to the determination by them of applications made under section 91B.
- s.91F(2) - the Secretary of State may, from time to time, revise the guidance issued under subsection (1).
- s.91F(3) - the Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.

¹⁷⁵⁹ Commencement: 30 July 2012, SI 2012/1883 art.3.

¹⁷⁶⁰ Commencement: 30 July 2012, SI 2012/1883 art.3.

3.9.1.1.7 Breach

SOA 2003 s.91¹⁷⁶¹: Offences relating to notification

Offences

- s.91(1) - a person commits an offence if he–
- (a) fails, without reasonable excuse, to comply with section 83(1), 84(1), 84(4)(b), 85(1), 87(4) or 89(2)(b) or any requirement imposed by regulations made under section 86(1); or
 - (b) notifies to the police, in purported compliance with section 83(1), 84(1) or 85(1) or any requirement imposed by regulations made under section 86(1), any information which he knows to be false.

Penalties

- s.91(2) - a person guilty of an offence under this section is liable–
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

Interpretation/Clarification

- s.91(3) - a person commits an offence under paragraph (a) of subsection (1) on the day on which he first fails, without reasonable excuse, to comply with section 83(1), 84(1) or 85(1) or a requirement imposed by regulations made under section 86(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

3.9.1.1.8 Certificates of conviction of offence under Sch.3

SOA 2003 s.92¹⁷⁶²: Certificates for purposes of Part 2

- s.92(1) - subsection (2) applies where on any date a person is–
- (a) convicted of an offence listed in Schedule 3;
 - (b) found not guilty of such an offence by reason of insanity; or
 - (c) found to be under a disability and to have done the act charged against him in respect of such an offence.
- s.92(2) - if the court by or before which the person is so convicted or found–
- (a) states in open court–
 - (i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him, and
 - (ii) that the offence in question is an offence listed in Schedule 3, and

¹⁷⁶¹ Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

¹⁷⁶² Commencement: 1 May 2004, SSI 2004/138 art.2 and SI 2004/874 art.2.

- (b) certifies those facts, whether at the time or subsequently, the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- s.92(3) - subsection (4) applies where on any date a person is, in England and Wales or Northern Ireland, cautioned in respect of an offence listed in Schedule 3.
- s.92(4) - if the constable—
 - (a) informs the person that he has been cautioned on that date and that the offence in question is an offence listed in Schedule 3, and
 - (b) certifies those facts, whether at the time or subsequently, in such form as the Secretary of State may by order prescribe,the certificate is, for the purposes of this Part, evidence (or, in Scotland, sufficient evidence) of those facts.
- s.92(4) - proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

3.9.1.2. Terrorism cases

3.9.1.2.1 Introduction

CTA 2008 s.40¹⁷⁶³: Scheme of this Part

- s.40(1) - this Part imposes notification requirements on persons dealt with in respect of certain offences—
 - (a) sections 41 to 43 specify the offences to which this Part applies;
 - (b) sections 44 to 46 make provision as to the sentences or orders triggering the notification requirements;
 - (c) sections 47 to 52 contain the notification requirements; and
 - (d) section 53 makes provision as to the period for which the requirements apply.
- s.40(2) - this Part also provides for—
 - (a) orders applying the notification requirements to persons dealt with outside the United Kingdom for corresponding foreign offences (see section 57 and Schedule 4); and
 - (b) orders imposing restrictions on travel outside the United Kingdom on persons subject to the notification requirements (see section 58 and Schedule 5).
- s.40(3) - Schedule 6 provides for the application of this Part to service offences and related matters.

¹⁷⁶³ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

3.9.1.2.2 Who is liable to notification?

Trigger offences

CTA 2008 s.41¹⁷⁶⁴: Offences to which this Part applies: terrorism offences

s.41(1) - this Part applies to—

- (a) an offence under any of the following provisions of the Terrorism Act 2000 (c. 11)—
 - section 11 or 12 (offences relating to proscribed organisations),
 - sections 15 to 18 (offences relating to terrorist property),
 - section 38B (failure to disclose information about acts of terrorism),
 - section 54 (weapons training),
 - sections 56 to 61 (directing terrorism, possessing things and collecting information for the purposes of terrorism and inciting terrorism outside the United Kingdom);
- (b) an offence in respect of which there is jurisdiction by virtue of any of sections 62 to 63D of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc);
- (c) an offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (use of noxious substances or things);
- (d) an offence under any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
 - sections 1 and 2 (encouragement of terrorism),
 - sections 5, 6 and 8 (preparation and training for terrorism),
 - sections 9, 10 and 11 (offences relating to radioactive devices and material and nuclear facilities);
- (e) an offence in respect of which there is jurisdiction by virtue of section 17 of that Act (extra-territorial jurisdiction in respect of certain offences committed outside the United Kingdom for the purposes of terrorism etc).

s.41(2) - this Part also applies to any ancillary offence in relation to an offence listed in subsection (1).

s.41(3) - the Secretary of State may by order amend subsection (1).

s.41(4) - any such order is subject to affirmative resolution procedure.

s.41(5) - an order adding an offence applies only in relation to offences dealt with after the order comes into force.

s.41(6) - an order removing an offence has effect in relation to offences whenever dealt with, whether before or after the order comes into force.

¹⁷⁶⁴ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- s.41(7) - where an offence is removed from the list, a person subject to the notification requirements by reason of that offence being listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.

CTA 2008 s.42¹⁷⁶⁵: Offences to which this Part applies: offences having a terrorist connection

- s.42(1) - this Part applies to—
- (a) an offence as to which a court has determined under section 30 (sentences for offences with a terrorist connection: England and Wales) that the offence has a terrorist connection, and
 - (b) an offence in relation to which section 31 applies (sentences for offences with terrorist connection: Scotland).
- s.42(2) - a person to whom the notification requirements apply by virtue of such a determination as is mentioned in subsection (1)(a) may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence.
- s.42(3) - if the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence.
- s.42(4) - where an order is made under section 33 removing an offence from the list in Schedule 2, a person subject to the notification requirements by reason of that offence being so listed (and who is not otherwise subject to those requirements) ceases to be subject to them when the order comes into force.

CTA 2008 s.43¹⁷⁶⁶: Offences dealt with before commencement

- s.43(1) - this Part applies to a person dealt with for an offence before the commencement of this Part only if—
- (a) the offence is on the commencement of this Part within section 41(1) or (2) (offences to which this Part applies: terrorism offences), and
 - (b) immediately before the commencement of this Part the person—
 - (i) is imprisoned or detained in pursuance of the sentence passed or order made in respect of the offence,
 - (ii) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or
 - (iii) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence.
- s.43(2) - in relation to a person dealt with for an offence before the commencement of this Part—
- (a) any reference in this Part to a sentence or order under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision;

¹⁷⁶⁵ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁶⁶ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) any reference in this Part to a person being or having been found to be under a disability and to have done the act charged against them in respect of an offence includes a reference to their being or having been found—
 - (i) unfit to be tried for the offence,
 - (ii) insane so that their trial for the offence cannot or could not proceed, or
 - (iii) unfit to be tried and to have done the act charged against them in respect of the offence.

To whom do the notification requirements apply?

CTA 2008 s.44¹⁷⁶⁷: Persons to whom the notification requirements apply

s.44 - the notification requirements apply to a person who—

- (a) is aged 16 or over at the time of being dealt with for an offence to which this Part applies, and
- (b) is made subject in respect of the offence to a sentence or order within section 45 (sentences or orders triggering notification requirements).

CTA 2008 s.45¹⁷⁶⁸: Sentences or orders triggering notification requirements

s.45(1) The notification requirements apply to a person who in England and Wales—

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
 - (i) imprisonment or custody for life,
 - (ii) imprisonment or detention in a young offender institution for a term of 12 months or more,
 - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
 - (iv) detention for life or for a period of 12 months or more under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (offenders under 18 convicted of certain serious offences),
 - (v) a detention and training order for a term of 12 months or more under section 100 of that Act (offenders under age of 18),
 - (vi) detention for public protection under section 226 of the Criminal Justice Act 2003 (serious offences committed by persons under 18), or
 - (via) detention under section 226B of that Act (extended sentence of detention for certain dangerous offenders aged under 18),
 - (vii) detention during Her Majesty's pleasure; or
- (b) has been—
 - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
 - (ii) found not guilty by reason of insanity of such an offence, or

¹⁷⁶⁷ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁶⁸ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (iii) found to be under a disability and to have done the act charged against them in respect of such an offence,
and made subject in respect of the offence to a hospital order.

s.45(2) - the notification requirements apply to a person who in Scotland—

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
 - (i) imprisonment or detention in a young offenders institution for life,
 - (ii) imprisonment or detention in a young offenders institution for a term of 12 months or more,
 - (iii) an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995 (c. 46),
 - (iv) detention without limit of time under section 205(2) of that Act (punishment for murder for offenders under 18), or
 - (v) detention for a period of 12 months or more under section 208 of that Act (detention of children convicted on indictment); or
- (b) has been—
 - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
 - (ii) acquitted of such an offence by reason of the special defence set out in section 51A of that Act (criminal responsibility of persons with mental disorder), or
 - (iii) found, following an examination of facts under section 55 of that Act (examination of facts where person unfit for trial) in relation to such an offence, to have done the act or omission constituting the offence,
and made subject in respect of the offence to a hospital order.

s.45(3) - the notification requirements apply to a person who in Northern Ireland—

- (a) has been convicted of an offence to which this Part applies and sentenced in respect of the offence to—
 - (i) imprisonment for life,
 - (ii) imprisonment or detention in a young offenders centre for a term of 12 months or more,
 - (iii) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)),
 - (iv) an extended custodial sentence under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
 - (v) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) for a period of 12 months or more,
 - (vi) detention during the pleasure of the [Minister in charge of the Department of Justice] ⁴ under Article 45(1) of that Order (punishment of certain grave crimes committed by a child), or
 - (vii) detention under Article 45(2) of that Order for a period of 12 months or more (other serious offences committed by a child); or

- (b) has been—
 - (i) convicted of an offence to which this Part applies carrying a maximum term of imprisonment of 12 months or more,
 - (ii) found not guilty by reason of insanity of such an offence, or
 - (iii) found to be unfit to be tried and to have done the act charged against them in respect of such an offence,and made subject in respect of the offence to a hospital order.

- s.45(4) - the references in this section to an offence carrying a maximum term of imprisonment of 12 months or more—
 - (a) are to an offence carrying such a maximum term in the case of a person who has attained the age of 21 (18 in relation to England and Wales), and
 - (b) include an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment.
- s.45(5) - in relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) subsection (4)(a) above has effect with the omission of the words “(18 in relation to England and Wales)”.

Power to amend sentences etc. to which notification applies

CTA 2008 s.46¹⁷⁶⁹: Power to amend specified terms or periods of imprisonment or detention

- s.46(1) - the Secretary of State may by order amend the provisions of section 45 referring to a specified term or period of imprisonment or detention.
- s.46(2) - an order reducing a specified term or period has effect only in relation to persons dealt with after the order comes into force.
- s.46(3) - where an order increases a specified term or period—
 - (a) it has effect in relation to persons dealt with at any time, whether before or after the order comes into force, and
 - (b) a person who would not have been subject to the notification requirements if the order had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the order comes into force.
- s.46(4) - an order under this section is subject to affirmative resolution procedure.

¹⁷⁶⁹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

3.9.1.2.3 The obligations under the regime

Initial notification

CTA 2008 s.47¹⁷⁷⁰: Initial notification

- s.47(1) - a person to whom the notification requirements apply must notify the following information to the police within the period of three days beginning with the day on which the person is dealt with in respect of the offence in question.
- s.47(2) - the information required is—
- (a) date of birth;
 - (b) national insurance number;
 - (c) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names);
 - (d) home address on that date;
 - (e) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names);
 - (f) home address on the date on which notification is made;
 - (g) address of any other premises in the United Kingdom at which, at the time the notification is made, the person regularly resides or stays;
 - (h) any prescribed information.
- s.47(3) - in subsection (2) “*prescribed*” means prescribed by regulations made by the Secretary of State.
- Such regulations are subject to affirmative resolution procedure.
- s.47(4) - in determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
- (a) remanded in or committed to custody by an order of a court,
 - (b) serving a sentence of imprisonment or detention,
 - (c) detained in a hospital, or
 - (d) detained under the Immigration Acts.
- s.47(5) - this section does not apply to a person who—
- (a) is subject to the notification requirements in respect of another offence (and does not cease to be so subject before the end of the period within which notification is to be made), and
 - (b) has complied with this section in respect of that offence.

¹⁷⁷⁰ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- s.47(6) - in the application of this section to a person dealt with for an offence before the commencement of this Part who, immediately before commencement—
- (a) would be imprisoned or detained in respect of the offence but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal, or
 - (b) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence,
- the reference in subsection (1) to the day on which the person is dealt with in respect of the offence shall be read as a reference to the commencement of this Part.

Changes to circumstances

CTA 2008 s.48¹⁷⁷¹: Notification of changes

- s.48(1) - a person to whom the notification requirements apply who uses a name that has not previously been notified to the police must notify the police of that name.
- s.48(2) - if there is a change of the home address of a person to whom the notification requirements apply, the person must notify the police of the new home address.
- s.48(3) - a person to whom the notification requirements apply who resides or stays at premises in the United Kingdom the address of which has previously not been notified to the police—
- (a) for a period of 7 days, or
 - (b) for two or more periods, in any period of 12 months, that taken together amount to 7 days,
- must notify the police of the address of those premises.
- s.48(4) - a person to whom the notification requirements apply who is released—
- (a) from custody pursuant to an order of a court,
 - (b) from imprisonment or detention pursuant to a sentence of a court,
 - (c) from detention in a hospital, or
 - (d) from detention under the Immigration Acts,
- must notify the police of that fact.
- This does not apply if the person is at the same time required to notify the police under section 47 (initial notification).
- s.48(5) - a person who is required to notify information within section 47(2)(h) (prescribed information) must notify the police of the prescribed details of any prescribed changes in that information.
- s.48(6) - in subsection (5) “*prescribed*” means prescribed by regulations made by the Secretary of State.
- Such regulations are subject to affirmative resolution procedure.

¹⁷⁷¹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- s.48(7) - notification under this section must be made before the end of the period of three days beginning with the day on which the event in question occurs. Where subsection (3) applies that is the day with which the period referred to in paragraph (a) or (b) (as the case may be) ends.
- s.48(8) - in determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
- (a) remanded in or committed to custody by an order of a court,
 - (b) serving a sentence of imprisonment or detention,
 - (c) detained in a hospital, or
 - (d) detained under the Immigration Acts.
- s.48(9) - references in this section to previous notification are to previous notification by the person under section 47 (initial notification), this section, section 49 (periodic re-notification) or section 56 (notification on return after absence from UK).
- s.48(10) - notification under this section must be accompanied by re-notification of the other information mentioned in section 47(2).

Re-notification

CTA 2008 s.49¹⁷⁷²: Periodic re-notification

- s.49(1) - a person to whom the notification requirements apply must, within the period of one year after last notifying the police in accordance with—
- (a) section 47 (initial notification),
 - (b) section 48 (notification of change),
 - (c) this section, or
 - (d) section 56 (notification on return after absence from UK),
- re-notify to the police the information mentioned in section 47(2).
- s.49(2) - subsection (1) does not apply if the period referred to in that subsection ends at a time when the person is—
- (a) remanded in or committed to custody by an order of a court,
 - (b) serving a sentence of imprisonment or detention,
 - (c) detained in a hospital, or
 - (d) detained under the Immigration Acts.
- s.49(3) - in that case section 48(4) and (10) (duty to notify of release and to re-notify other information) apply when the person is released.

¹⁷⁷² Commencement: 1 October 2009, SI 2009/1493 art.2(a).

Method of notification

CTA 2008 s.50¹⁷⁷³: Method of notification and related matters

- s.50(1) - this section applies to notification under—
- (a) section 47 (initial notification),
 - (b) section 48 (notification of change),
 - (c) section 49 (periodic re-notification), or
 - (d) section 56 (notification on return after absence from UK).
- s.50(2) - notification must be made by the person—
- (a) attending at a police station in the person's local police area, and
 - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- s.50(3) - a person making a notification under section 48 (notification of change) in relation to premises referred to in subsection (3) of that section may make the notification at a police station that would fall within subsection (2)(a) above if the address of those premises were the person's home address.
- s.50(4) - the notification must be acknowledged.
- s.50(5) - the acknowledgement must be in writing, and in such form as the Secretary of State may direct.
- s.50(6) - the person making the notification must, if requested to do so by the police officer or person to whom the notification is made, allow the officer or person to—
- (a) take the person's fingerprints,
 - (b) photograph any part of the person, or
 - (c) do both these things,
- for the purpose of verifying the person's identity.

CTA 2008 s.51¹⁷⁷⁴: Meaning of "local police area"

- s.51(1) - for the purposes of section 50(2) (method of notification) a person's "*local police area*" means—
- (a) the police area in which the person's home address is situated;
 - (b) in the absence of a home address, the police area in which the home address last notified is situated;
 - (c) in the absence of a home address and of any such notification, the police area in which the court of trial was situated.
- s.51(2) - in subsection (1)(c) "*the court of trial*" means—
- (a) the court by or before which the conviction or finding was made by virtue of which the notification requirements apply to the person, or

¹⁷⁷³ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁷⁴ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) if that conviction or finding was one substituted on an appeal or reference, the court by or before which the proceedings were taken from which the appeal or reference was brought.

s.51(3) - this section and section 50(2) apply in relation to Northern Ireland as if Northern Ireland were a police area.

s.51(4) - this section and section 50(2) apply in relation to Scotland as if Scotland were a police area.

3.9.1.2.4 For how long do the notification requirements apply?

CTA 2008 s.53¹⁷⁷⁵: Period for which notification requirements apply

s.53(1) - the period for which the notification requirements apply is—

- (a) 30 years in the case of a person who—
 - (i) is aged 18 or over at the time of conviction for the offence, and
 - (ii) receives in respect of the offence a sentence within subsection (2);
- (b) 15 years in the case of a person who—
 - (i) is aged 18 or over at the time of conviction for the offence, and
 - (ii) receives in respect of the offence a sentence within subsection (3);
- (c) 10 years in any other case.

s.53(2) - the sentences in respect of which a 30 year period applies are—

- (a) in England and Wales—
 - (i) imprisonment or custody for life,
 - (ii) imprisonment or detention in a young offender institution for a term of 10 years or more,
 - (iii) imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (c. 44),
 - (iv) detention during Her Majesty's pleasure;
 - (iv) an extended custodial sentence for a term of 10 years or more under Article 14(5) of that Order (offenders under 21 convicted of certain offences),
 - (v) detention during the pleasure of the Minister in charge of the Department of Justice under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)).

s.53(3) - the sentences in respect of which a 15 year period applies are—

- (a) in England and Wales, imprisonment or detention in a young offender institution for a term of 5 years or more but less than 10 years;

(3)(b)(iii) (finding of disability, etc) is subsequently tried for the offence, the period resulting from that finding ends—

- (a) if the person is acquitted, at the conclusion of the trial;

¹⁷⁷⁵ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) if the person is convicted, when the person is again dealt with in respect of the offence.

s.53(6) - for the purposes of determining the length of the period—

- (a) a person who has been sentenced in respect of two or more offences to which this Part applies to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms; and
- (b) a person who has been sentenced in respect of two or more such offences to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z.

s.53(7) - in determining whether the period has expired, there shall be disregarded any period when the person was—

- (a) remanded in or committed to custody by an order of a court,
- (b) serving a sentence of imprisonment or detention,
- (c) detained in a hospital, or
- (d) detained under the Immigration Acts.

3.9.1.2.5 Absence from UK

CTA 2008 s.52¹⁷⁷⁶: Travel outside the United Kingdom

s.52(1) - the Secretary of State may by regulations make provision requiring a person to whom the notification requirements apply who leaves the United Kingdom—

- (a) to notify the police of their departure before they leave, and
- (b) to notify the police of their return if they subsequently return to the United Kingdom.

s.52(2) - notification of departure must disclose—

- (a) the date on which the person intends to leave the United Kingdom;
- (b) the country (or, if there is more than one, the first country) to which the person will travel;
- (c) the person's point of arrival (determined in accordance with the regulations) in that country;
- (d) any other information required by the regulations.

s.52(3) - notification of return must disclose such information as is required by the regulations about the person's return to the United Kingdom.

s.52(4) - notification under this section must be given in accordance with the regulations.

s.52(5) - regulations under this section are subject to affirmative resolution procedure.

¹⁷⁷⁶ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009 (SI 2009/2493)

1.— Citation, commencement, interpretation and application

- (1) These Regulations may be cited as the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009 and shall come into force twenty-one days after the day on which they are made.
- (2) In these Regulations—
 - (a) a reference to section 52 is a reference to section 52 of the Counter-Terrorism Act 2008, and
 - (b) “the 2008 Act” means the Counter-Terrorism Act 2008.

2.— Determination of point of arrival

- (1) For the purposes of section 52(2)(c) and these Regulations, a person’s point of arrival is to be determined in accordance with this regulation.
- (2) Where a person will arrive in a country by rail, sea or air, the point of arrival is the station, port or airport at which the person will first disembark.
- (3) Where a person will arrive in a country by any other means, the point of arrival is the place at which the person will first enter the country.

3.— Notification of departure: requirement and content

- (1) This regulation applies to a person to whom the notification requirements in Part 4 of the 2008 Act apply and who intends to leave the United Kingdom for a period of three days or more.
- (2) A person to whom this regulation applies must notify the required information to the police.
- (3) For the purposes of this and the following regulation, the “required information” is—
 - (a) the information that must be disclosed in accordance with section 52(2)(a) to (c), and
 - (b) so much of the following information as the person holds—
 - (i) where the person intends to travel to more than one country outside the United Kingdom, the person’s point of arrival in each such country (other than the point of arrival specified in section 52(2)(c)),
 - (ii) the name of the carrier the person intends to use to leave the United Kingdom and to return to the United Kingdom,
 - (iii) the name of any carrier the person intends to use to travel between countries while outside the United Kingdom,
 - (iv) the address or other place at which the person intends to stay for their first night outside the United Kingdom,
 - (v) where the person intends to return to the United Kingdom on a particular date, that date, and
 - (vi) where the person intends to return to the United Kingdom at a particular point of arrival, that point of arrival.

4.— Notification of departure: timing

- (1) Where a person knows any of the required information more than seven days before the date of their intended departure, the person must notify such of the required information as the person holds—
 - (a) not less than seven days before that date (“the seven day notification requirement”), or
 - (b) if the person has a reasonable excuse for not complying with the seven day notification requirement, as soon as practicable but in any event not less than twenty-four hours before that date.
- (2) Where the person has notified the police in accordance with paragraph (1) but—
 - (a) the information so notified does not contain all the required information, or
 - (b) at any time prior to their intended departure, the information so notified becomes inaccurate,the person must notify to the police the remaining required information or the changes to the required information as the case may be in accordance with the rule in paragraph (4).
- (3) Where a person does not know any of the required information more than seven days before the date of their intended departure, the person must notify the required information to the police in accordance with the rule in paragraph (4).
- (4) The rule is that the person must make the notification—
 - (a) not less than twenty-four hours before the date of their intended departure (“the twenty-four hour notification requirement”), or
 - (b) if the person has a reasonable excuse for not complying with the twenty-four hour notification requirement, as soon as practicable but in any event before the person’s departure from the United Kingdom.

5.— Notification of return

- (1) This regulation applies to a person to whom the notification requirements in Part 4 of the 2008 Act apply and who returns to the United Kingdom after leaving the United Kingdom for a period of three days or more.
- (2) Subject to paragraph (4), a person to whom this regulation applies must notify the following information to the police within the period of three days beginning with the day on which the person returns to the United Kingdom.
- (3) The information is—
 - (a) the date of the person’s return to the United Kingdom, and
 - (b) the person’s point of arrival in the United Kingdom.
- (4) Paragraph (2) does not apply to a person who notified to the police in accordance with regulation 4 a date and a point of arrival as specified in regulation 3(3)(b)(v) and (vi), and whose return to the United Kingdom was on that date and at that point of arrival.

6.— Method of notification

- (1) Notification in accordance with regulation 4(1) or 5(2) must be made by the person—
 - (a) attending at a police station in the person's local police area; and
 - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- (2) Notification in accordance with regulation 4(2) or 4(3) must be made by the person—
 - (a) attending at a police station, and
 - (b) making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station.
- (3) The person making a notification in accordance with these Regulations must inform the police officer or person to whom the notification is made of their—
 - (a) name,
 - (b) home address, and
 - (c) date of birth.
- (4) A person making a notification in accordance with regulation 4(2) must also inform the police officer or person to whom the notification is made of the police station at which the person made a notification in accordance with regulation 4(1) in respect of the intended departure.

7.— Transitional provision

These Regulations do not apply to a person—

- (a) whose intended date of departure from the United Kingdom is less than eight days before the date on which these Regulations come into force, or
- (b) who is outside the United Kingdom on the date on which these Regulations come into force,

in respect of that absence from the United Kingdom.

CTA 2008 s.55¹⁷⁷⁷: Effect of absence abroad

- s.55(1) - if a person to whom the notification requirements apply is absent from the United Kingdom for any period the following provisions apply.
- s.55(2) - during the period of absence the period for which the notification requirements apply continues to run.
- s.55(3) - the period of absence does not affect the obligation under section 47 (initial notification).
This is subject to subsection (4).
- s.55(4) - Section 47 does not apply if—
 - (a) the period of absence begins before the end of the period within which notification must be made under that section, and

¹⁷⁷⁷ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) the person's absence results from the person's removal from the United Kingdom.

s.55(5) - Section 48 (notification of changes)—

- (a) applies in relation to an event that occurs before the period of absence, but
 - (b) does not apply in relation to an event that occurs during the period of absence.
- Paragraph (a) is subject to subsection (6).

s.55(6) - Section 48 does not apply in relation to an event that occurs before the period of absence if:

- (a) the period of absence begins before the end of the period within which notification must be made under that section, and
- (b) the person's absence results from the person's removal from the United Kingdom.

s.55(7) - Section 49 (periodic re-notification) does not apply if the period referred to in subsection (1) of that section ends during the period of absence.

s.55(8) - Section 53(7) (disregard of period of custody etc) applies in relation to the period of absence as if it referred to any period when the person was—

- (a) remanded in or committed to custody by an order of a court outside the United Kingdom,
- (b) serving a sentence of imprisonment or detention imposed by such a court,
- (c) detained in a hospital pursuant to an order of such a court that is equivalent to a hospital order, or
- (d) subject to a form of detention outside the United Kingdom that is equivalent to detention under the Immigration Acts.

s.55(9) - references in this section and section 56 to a person's removal from the United Kingdom include:

- (a) the person's removal from the United Kingdom in accordance with the Immigration Acts,
- (b) the person's extradition from the United Kingdom, or
- (c) the person's transfer from the United Kingdom to another country pursuant to a warrant under section 1 of the Repatriation of Prisoners Act 1984 (c. 47).

CTA 2008 s.56¹⁷⁷⁸: Notification on return after absence from UK

s.56(1) - this section applies if, before the end of the period for which the notification requirements apply, a person to whom the requirements apply returns to the United Kingdom after a period of absence and—

- (a) the person was not required to make a notification under section 47 (initial notification),

¹⁷⁷⁸ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) there has been a change to any of the information last notified to the police in accordance with—
 - (i) section 47,
 - (ii) section 48 (notification of changes),
 - (iii) section 49 (periodic re-notification), or
 - (iv) this section, or
 - (c) the period referred to in section 49(1) (period after which re-notification required) ended during the period of absence.
- s.56(2) - the person must notify or (as the case may be) re-notify to the police the information mentioned in section 47(2) within the period of three days beginning with the day of return.
- s.56(3) - in determining the period within which notification is to be made under this section, there shall be disregarded any time when the person is—
 - (a) remanded in or committed to custody by an order of a court,
 - (b) serving a sentence of imprisonment or detention,
 - (c) detained in a hospital, or
 - (d) detained under the Immigration Acts.
- s.56(4) - this section does not apply if—
 - (a) the person subsequently leaves the United Kingdom,
 - (b) the period of absence begins before the end of the period within which notification must be made under this section, and
 - (c) the person's absence results from the person's removal from the United Kingdom.
- s.56(5) - the obligation under this section does not affect any obligation to notify information under section 52(3) (regulations requiring notification of return etc).

3.9.1.2.6 Breach

CTA 2008 s.54¹⁷⁷⁹: Offences relating to notification

- s.54(1) - a person commits an offence who—
 - (a) fails without reasonable excuse to comply with—
 - section 47 (initial notification),
 - section 48 (notification of changes),
 - section 49 (periodic re-notification),
 - section 50(6) (taking of fingerprints or photographs),
 - any regulations made under section 52(1) (travel outside United Kingdom), or
 - section 56 (notification on return after absence from UK); or

¹⁷⁷⁹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (b) notifies to the police in purported compliance with—
 - section 47 (initial notification),
 - section 48 (notification of changes),
 - section 49 (periodic re-notification),
 - any regulations made under section 52(1) (travel outside United Kingdom), or
 - section 56 (notification on return after absence from UK),
 - any information that the person knows to be false.

s.54(2) - a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

s.54(3) - in the application of subsection (2)(a)—

- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
 - (b) in Northern Ireland,
- for “12 months” substitute “6 months”.

s.54(4) - a person—

- (a) commits an offence under subsection (1)(a) above on the day on which the person first fails without reasonable excuse to comply with—
 - section 47 (initial notification),
 - section 48 (notification of changes),
 - section 49 (periodic re-notification),
 - any regulations made under section 52(1) (travel outside United Kingdom), or
 - section 56 (notification on return after absence from UK), and
 - (b) continues to commit it throughout any period during which the failure continues.
- But a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

s.54(5) - proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

3.9.1.2.7 Notification orders: Offences outside the UK

CTA 2008 s.57¹⁷⁸⁰: Notification orders

s.57 - Schedule 4 makes provision for notification orders applying the notification requirements of this Part to persons who have been dealt with outside the United Kingdom in respect of a corresponding foreign offence.

What is a notification order?

CTA 2008 Sch.4¹⁷⁸¹: Notification orders

para.1 - a “notification order” is an order applying the notification requirements of this Part to a person who has been dealt with outside the United Kingdom in respect of a corresponding foreign offence.

What is a “corresponding foreign offence”?

CTA 2008 Sch.4¹⁷⁸²: Notification orders

para.2(1) - a “corresponding foreign offence” means an act that—

- (a) constituted an offence under the law in force in a country outside the United Kingdom, and
- (b) corresponds to an offence to which this Part applies.

para.2(2) For this purpose an act punishable under the law in force in a country outside the United Kingdom is regarded as constituting an offence under that law however it is described in that law.

para.2(3) - an act corresponds to an offence to which this Part applies if—

- (a) it would have constituted an offence to which this Part applies by virtue of section 41 if it had been done in any part of the United Kingdom, or
- (b) it was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism.

para.2(4) - on an application for a notification order the condition in sub-paragraph (3)(a) or (b) is to be taken to be met unless—

- (a) the defendant serves on the applicant, not later than rules of court may provide, a notice—
 - (i) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met,
 - (ii) showing the defendant’s grounds for that opinion, and
 - (iii) requiring the applicant to prove that the condition is met; or
- (b) the court permits the defendant to require the applicant to prove that the condition is met without service of such a notice.

¹⁷⁸⁰ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁸¹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁸² Commencement: 1 October 2009, SI 2009/1493 art.2(a).

What are the conditions for making a notification order?

CTA 2008 Sch.4¹⁷⁸³: Notification orders

para.3(1) - the conditions for making a notification order in respect of a person are as follows.

para.3(2) - the first condition is that under the law in force in a country outside the United Kingdom—

- (a) the person has been convicted of a corresponding foreign offence and has received in respect of the offence a sentence equivalent to a sentence mentioned in section 45(1)(a), (2)(a) or (3)(a), or
- (b) a court exercising jurisdiction under that law has, in respect of a corresponding foreign offence—
 - (i) convicted the person or made a finding in relation to the person equivalent to a finding mentioned in section 45(1)(b)(ii) or (iii), (2)(b)(ii) or (iii) or (3)(b)(ii) or (iii) (finding of insanity or disability), and
 - (ii) made the person subject to an order equivalent to a hospital order.

para.3(3) - this condition is not met if there was a flagrant denial of the person's right to a fair trial.

para.3(4) - the second condition is that—

- (a) the sentence was imposed or order made after the commencement of this Part, or
- (b) the sentence was imposed or order made before the commencement of this Part and immediately before that time the person—
 - (i) was imprisoned or detained in pursuance of the sentence or order,
 - (ii) would have been so imprisoned or detained but for being unlawfully at large or otherwise unlawfully absent, lawfully absent on a temporary basis or on bail pending an appeal, or
 - (iii) had been released on licence, or was subject to an equivalent form of supervision, having served the whole or part of a sentence of imprisonment for the offence.

para.3(5) - the third condition is that the period for which the notification requirements would apply in respect of the offence (in accordance with section 53 as modified by paragraph 8(e)) has not expired.

para.3(6) - if on an application for a notification order it is proved that the conditions in sub-paragraphs (2), (4) and (5) are met, the court must make the order.

¹⁷⁸³ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

Applications

CTA 2008 Sch.4¹⁷⁸⁴: Notification orders

para.4(1) - in England and Wales an application for a notification order in respect of a person may only be made by a chief officer of police.

para.4(2) - an application may only be made if—

- (a) the person resides in the chief officer's police area, or
- (b) the chief officer believes that the person is in, or is intending to come to, that area.

para.4(3) - the application must be made to the High Court.

The effect of a notification order

CTA 2008 Sch.4¹⁷⁸⁵: Notification orders

para.7 - the effect of a notification order is that the notification requirements of this Part apply to the person in respect of whom it is made.

Modifications

CTA 2008 Sch.4¹⁷⁸⁶: Notification orders

para.8 - the provisions of this Part have effect with the following adaptations in relation to foreign proceedings and cases where the notification requirements apply because a notification order has been made—

- (a) in section 61(1) (references to dealing with an offence) for “being sentenced, or made subject to a hospital order” substitute “being made subject by the foreign court to a sentence or order within paragraph 3(2)(a) or (b) of Schedule 4”;
- (b) in section 61(2) (references to time when person dealt with for an offence) for paragraphs (a) to (c) substitute “by the foreign court of first instance”;
- (c) for the purposes of section 47 (initial notification) the period within which notification is to be made begins with the date of service of the notification order;
- (d) in section 51 (meaning of “local police area”) the reference in subsection (1)(c) to the court of trial shall be read as a reference to the court by which the notification order was made;
- (e) in section 53 (period for which notification requirements apply) a reference to a sentence or order of any description is to be read as a reference to an equivalent sentence or order of the foreign court.

¹⁷⁸⁴ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁸⁵ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁸⁶ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

3.9.1.2.8 Foreign travel restriction orders

CTA 2008 s.58¹⁷⁸⁷: Foreign travel restriction orders

- s.58 - Schedule 5 makes provision for foreign travel restriction orders prohibiting persons to whom the notification requirements apply from—
- (a) travelling to a country outside the United Kingdom named or described in the order,
 - (b) travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - (c) travelling to any country outside the United Kingdom.

What is a foreign travel restriction order?

CTA 2008 Sch.5¹⁷⁸⁸: Foreign travel restriction orders

- para.1 - a foreign travel restriction order is an order prohibiting the person to whom it applies from doing whichever of the following is specified in the order—
- (a) travelling to a country outside the United Kingdom named or described in the order;
 - (b) travelling to any country outside the United Kingdom other than a country named or described in the order;
 - (c) travelling to any country outside the United Kingdom.

Conditions for making an order

CTA 2008 Sch.5¹⁷⁸⁹: Foreign travel restriction orders

- para.2(1) - the conditions for making a foreign travel restriction order in respect of a person are as follows.
- para.2(2) - the first condition is that the notification requirements apply to the person.
- para.2(3) - the second condition is that the person's behaviour since the person was dealt with for the offence by virtue of which those requirements apply makes it necessary for a foreign travel restriction order to be made to prevent the person from taking part in terrorism activity outside the United Kingdom.
- para.2(4) - if the person was dealt with for the offence before the commencement of this Part, the condition in sub-paragraph (3) is not met unless the person has acted in that way since the commencement of this Part.
- para.2(5) - if on an application for a foreign travel restriction order the court is satisfied that the conditions in sub-paragraphs (2) and (3) are met, it may make a foreign travel restriction order.

¹⁷⁸⁷ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁸⁸ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁸⁹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

Applications: England and Wales

CTA 2008 Sch.5¹⁷⁹⁰: Foreign travel restriction orders

para.3(1) - in England and Wales an application for a foreign travel restriction order in respect of a person may only be made by a chief officer of police.

para.3(2) - an application may only be made if—

- (a) the person resides in the chief officer's police area, or
- (b) the chief officer believes that the person is in, or is intending to come to, that area.

para.3(3) - the application must be made by complaint to a magistrates' court whose commission area includes any part of the chief officer's police area.

The extent of the order

CTA 2008 Sch.5¹⁷⁹¹: Foreign travel restriction orders

para.6(1) - a foreign travel restriction order may prohibit the person to whom it applies—

- (a) from travelling to any country outside the United Kingdom named or described in the order; or
- (b) from travelling to any country outside the United Kingdom other than a country named or described in the order; or
- (c) from travelling to any country outside the United Kingdom.

para.6(2) - the order must only impose such prohibitions as are necessary for the purpose of preventing the person from taking part in terrorism activity outside the United Kingdom.

para.6(3) - a foreign travel restriction order containing a prohibition within sub-paragraph (1)(c) must require the person to whom it applies to surrender all that person's passports, at a police station specified in the order—

- (a) on or before the date when the prohibition takes effect, or
- (b) within a period specified in the order.

para.6(4) - any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel restriction order containing such a prohibition.

Length of the order

CTA 2008 Sch.5¹⁷⁹²: Foreign travel restriction orders

para.7(1) - a foreign travel restriction order has effect for a fixed period of not more than 6 months.

para.7(2) - the period must be specified in the order.

¹⁷⁹⁰ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁹¹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁹² Commencement: 1 October 2009, SI 2009/1493 art.2(a).

para.7(3) - a foreign travel restriction order ceases to have effect if a court (whether the same or another court) makes another foreign travel restriction order in relation to the person to whom the earlier order applies.

Variation, renewal, discharge: England and Wales

CTA 2008 Sch.5¹⁷⁹³: Foreign travel restriction orders

para.8(1) - in England and Wales an application for an order varying, renewing or discharging a foreign travel restriction order may be made by:

- (a) the person subject to the order;
- (b) the chief officer of police on whose application the order was made;
- (c) the chief officer of police for the area in which the person subject to the order resides; or
- (d) a chief officer of police who believes that the person subject to the order is in, or is intending to come to, the officer's police area.

para.8(2) - the application must be made by complaint to—

- (a) a magistrates' court for the same area as the court that made the order,
- (b) a magistrates' court for the area in which the person subject to the order resides, or
- (c) where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of that chief officer's police area.

para.8(3) - on an application under this paragraph the court may make such order varying, renewing or discharging the foreign travel restriction order as it considers appropriate.

para.8(4) - before doing so it must hear the person making the application and (if they wish to be heard) the other persons mentioned in sub-paragraph (1).

Variation, renewal, discharge: Adding prohibitions

CTA 2008 Sch.5¹⁷⁹⁴: Foreign travel restriction orders

para.11(1) - a foreign travel restriction order may be renewed, or varied so as to impose additional prohibitions, but only if it is necessary to do so for the purpose of preventing the person subject to the order from taking part in terrorism activities outside the United Kingdom.

para.11(2) - any renewed or varied order must contain only the prohibitions necessary for that purpose.

Appeals: England and Wales

CTA 2008 Sch.5¹⁷⁹⁵: Foreign travel restriction orders

para.12(1) - in England and Wales—

¹⁷⁹³ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁹⁴ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁹⁵ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (a) a person against whom a foreign travel restriction order is made may appeal against the making of the order;
- (b) a person subject to a foreign travel restriction order may appeal against—
 - (i) an order under paragraph 8 varying or renewing the order, or
 - (ii) a refusal to make an order under that paragraph varying or discharging the order.

para.12(2) - the appeal lies to the Crown Court.

para.12(3) - on an appeal under this paragraph the court may make—

- (a) such orders as it considers necessary to give effect to its determination of the appeal, and
- (b) such incidental and consequential orders as appear to it to be just.

Breach

CTA 2008 Sch.5¹⁷⁹⁶: Foreign travel restriction orders

para.15(1) - a person commits an offence who, without reasonable excuse—

- (a) does anything they are prohibited from doing by a foreign travel restriction order, or
- (b) fails to comply with a requirement imposed on them by such an order.

para.15(2) - a person guilty of an offence under this paragraph is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

para.15(3) - in the application of sub-paragraph (2)(a)—

- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), or
 - (b) in Northern Ireland,
- for “12 months” substitute “6 months”.

para.15(4) - where a person is convicted of an offence under this paragraph, it is not open to the court by or before which they are convicted—

- (a) in England and Wales or Northern Ireland, to make an order for conditional discharge in respect of the offence;
- (b) in Scotland, to make a probation order in respect of the offence.

¹⁷⁹⁶ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

Interpretation

CTA 2008 Sch.5¹⁷⁹⁷: Foreign travel restriction orders

para.16 - in this Schedule “*terrorism activity*” means anything that—

- (a) if done in any part of the United Kingdom, would constitute an offence to which this Part applies by virtue of section 41, or
- (b) is, or takes place in the course of, an act of terrorism or is for the purposes of terrorism.

3.9.1.2.10 Interpretation

CTA 2008 s.60¹⁷⁹⁸: Minor definitions for Part 4

s.60 - In this Part—

“*country*” includes a territory;

“*detained in a hospital*” means detained in a hospital under—

- (a) Part 3 of the Mental Health Act 1983 (c. 20),
- (b) Part 6 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or
- (c) Part 3 of the Mental Health (Northern Ireland) Order (S.I. 1986/ 595 (N.I. 4));

“*home address*” means, in relation to a person—

- (a) the address of the person’s sole or main residence in the United Kingdom, or
- (b) where the person has no such residence, the address or location of a place in the United Kingdom where the person can regularly be found and, if there is more than one such place, such one of those places as the person may select;

“*hospital order*” means—

- (a) a hospital order within the meaning of the Mental Health Act 1983,
- (b) an order under Part 6 of the Criminal Procedure (Scotland) Act 1995, or
- (c) a hospital order within the meaning of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));

“*passport*” means—

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77), or
- (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom or by or on behalf of an international organisation,
and includes any document that can be used (in some or all circumstances) instead of a passport;

“*photograph*” includes any process by means of which an image may be produced;

“*release*” from imprisonment or detention includes release on licence but not temporary release.

¹⁷⁹⁷ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

¹⁷⁹⁸ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

CTA 2008 s.61¹⁷⁹⁹: References to a person being “dealt with” for an offence

- s.61(1) - references in this Part to a person being dealt with for or in respect of an offence are to their being sentenced, or made subject to a hospital order, in respect of the offence.
- References in this Part to an offence being dealt with are to a person being dealt with in respect of the offence.
- s.61(2) - subject to the following provisions of this section, references in this Part to the time at which a person is dealt with for an offence are to the time at which they are first dealt with—
- (a) in England and Wales, by a magistrates' court or the Crown Court;
- This is referred to below as “*the original decision*”.
- s.61(3) - where the original decision is varied (on appeal or otherwise), then—
- (a) if the result is that the conditions for application of the notification requirements to a person in respect of an offence cease to be met (and paragraph (c) below does not apply), the notification requirements are treated as never having applied to that person in respect of that offence;
 - (b) if the result is that the conditions for application of the notification requirements to a person in respect of an offence are met where they were not previously met (and paragraph (c) below does not apply)—
 - (i) the person is treated as dealt with for the offence when the variation takes place, and
 - (ii) the notification requirements apply accordingly;
 - (c) if—
 - (i) a conviction of, or finding in relation to, a different offence is substituted, and
 - (ii) the conditions for application of the notification requirements were met in respect of the original offence and are also met in respect of the substituted offence,the person is treated as if they had been dealt with for the substituted offence at the time of the original decision;
 - (d) if the sentence is varied so as to become one by virtue of which the notification requirements would apply for a different period, the period for which those requirements apply shall be determined as if the sentence as varied had been imposed at the time of the original decision;
 - (e) in any other case, the variation is disregarded.
- s.61(4) - for the purposes of—
- (a) section 41(5) (effect of order adding offence to list of terrorism offences),
 - (b) section 44(a) or paragraph 4(a) of Schedule 6 (persons subject to notification requirements: age when dealt with for offence),
 - (c) section 46(2) or paragraph 6(2) of Schedule 6 (effect of order reducing term or period triggering notification requirements),

¹⁷⁹⁹ Commencement: 1 October 2009, SI 2009/1493 art.2(a).

- (d) section 53(5)(b) or paragraph 7(5)(b) of Schedule 6 (period for which notification requirements apply: ending of period resulting from finding of disability etc where person subsequently tried), and
- (e) paragraph 2(3) of Schedule 5 (conditions for making foreign travel restriction order: behaviour since offence dealt with),

a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded.

s.61(5) - for the purposes of—

- (a) section 43(1) and (2) or paragraph 3(1) and (2) of Schedule 6 (application of Part to offences dealt with before commencement), and
- (b) paragraph 2(4) of Schedule 5 (conditions for making foreign travel restriction order where offence dealt with before commencement),

a person is dealt with for an offence before the commencement of this Part if the time of the original decision falls before the commencement of this Part.

Where in such a case subsection (3) above applies for the purposes of any provision of this Part, that subsection has effect as if the provisions of this Part had been in force at all material times.

s.61(6) - in section 47(6) (adaptation of initial notification requirements in case of offence dealt with before commencement)—

- (a) the reference in the opening words to an offence dealt with before the commencement of this Part is to an offence where the time of the original decision falls before the commencement of this Part, and
- (b) the reference in the closing words to when the offence is dealt with has the same meaning as in subsection (1) of that section.

s.61(7) - references in this section to the variation of a decision include any proceedings by which the decision is altered, set aside or quashed, or in which a further decision is come to following the setting aside or quashing of the decision.

3.9.2. Barring

Note: Disqualification is now automatic upon conviction for a listed offence.

3.9.2.1. Introduction

Note: There are three ways in which a person can be barred: (a) a conviction for a listed offence, (b) where the DBS determines that it is appropriate for a person to be placed onto a barred list, and (c) a third party can refer a person to the DBS for inclusion on a barred list.

As only the first relates to sentencing only the details of this method are listed.

3.9.2.2. The lists

SVGA 2006 s.2¹⁸⁰⁰: Barred lists

- s.2(1) - DBS must maintain–
 - (a) the children's barred list;
 - (b) the adults' barred list.
- s.2(2) - Part 1 of Schedule 3 applies for the purpose of determining whether an individual is included in the children's barred list.
- s.2(3) - Part 2 of that Schedule applies for the purpose of determining whether an individual is included in the adults' barred list.
- s.2(4) - Part 3 of that Schedule contains supplementary provision.
- s.2(5) - in respect of an individual who is included in a barred list, DBS must keep other information of such description as is prescribed.

Note: There are two lists; the adults list and the children's list. There are four sets of offences: for each list, there is a list with a right to make representations and a list without the right to make representations. These can be found as set out below:

Children's list (no right to make representations): SI 2009/37 reg 3 and Sch. para.1

Children's list (right to make representations): SI 2009/37 reg 4 and Sch. para.2

Adult's list (no right to make representations): SI 2009/37 reg 5 and Sch. para.3

Adult's list (right to make representations): SI 2009/37 reg 6 and Sch. para.4

¹⁸⁰⁰ Commencement: Section 2(2) and (3) in force 31 December 2007 so far as they relate to SVGA 2006 Sch.3 paras.(1)(1), 2(1), 7(1) and 8(1) for the purposes of making regulations, SI 2007/3545 art.2(a) and (j). Section 2(4) in force 31 December 2007 in so far as it relates to SVGA 2006 Sch.3 paras.15(1) and (2), 18(3)(b) and (6) and 24(1), (2) and (9), SI 2007/3545 art.2(b) and (k). Section 2(5) in force 31 December 2007 for the purposes of making regulations, SI 2007/3545 art.2(c). Section 2 in force 11 February 2008 so far as necessary for the exercise of functions to be conferred on IBB under SVGA 2006 Sch.8 (transitional provisions), SI 2007/3545 art.4(a). Section 2(4) in force 19 May 2008 for the purposes of making regulations, SI 2008/1320 art.4(v). Section 2 in force 20 January 2009 for the purposes of the Safeguarding Vulnerable Groups Act 2006 (Transitory Provisions) Order 2009 (SI 2009/12), SI 2009/39 art.2(1)(a). Section 2 otherwise in force 12 October 2009, SI 2009/2611 art.2 and Sch.1. Section 2(2), (3) and (4) in force 19 May 2008, for the purpose of making orders, SI 2008/1320 art.5(o).

3.9.2.3. Who is barred?

SVGA 2006 s.3¹⁸⁰¹: Barred persons

- s.3(1) - a reference to a person being barred from regulated activity must be construed in accordance with this section.
- s.3(2) - a person is barred from regulated activity relating to children if he is—
- (a) included in the children's barred list;
 - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children's barred list.
- s.3(3) - a person is barred from regulated activity relating to vulnerable adults if he is—
- (a) included in the adults' barred list;
 - (b) included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults' barred list.

3.9.2.4. Children's list - Part 1

Automatic inclusion

SVGA 2006 Sch.3: Barred lists

- para.1(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- para.1(2) - if DBS is satisfied that this paragraph applies to a person, it must include the person in the children's barred list.

Inclusion subject to consideration of representations

SVGA 2006 Sch.3: Barred lists

- para.2(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- para.2(2) - sub-paragraph (4) applies if it appears to DBS that—
- (a) this paragraph applies to a person, and
 - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children.
- para.2(4) - DBS must give the person the opportunity to make representations as to why the person should not be included in the children's barred list.

¹⁸⁰¹ Commencement: Section 3(1) and (2)(a) in force 19 May 2008 for the purposes of regulations made under Childcare Act 2006 s.75 (disqualification from registration), SI 2008/1320 art.2(a). Section 3(2)(b) and (3)(b) in force 19 May 2008 for the purposes of making orders, SI 2008/1320 art.5(a). Otherwise in force 12 October 2009, SI 2009/2611 art.2 and Sch.1

para.2(5) - sub-paragraph (6) applies if—

- (a) the person does not make representations before the end of any time prescribed for the purpose, or
- (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

para.2(6) - if DBS—

- (a) is satisfied that this paragraph applies to the person, and
 - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,
- it must include the person in the list.

para.2(7) - sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

para.2(8) - if DBS—

- (a) is satisfied that this paragraph applies to the person,
 - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
 - (c) is satisfied that it is appropriate to include the person in the children's barred list,
- it must include the person in the list.

3.9.2.5. Adult's list - Part 2

Automatic inclusion

SVGA 2006 Sch.3: Barred lists

para.7(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

para.7(2) - if DBS is satisfied that this paragraph applies to a person, it must include the person in the adults' barred list.

Inclusion subject to consideration of representations

SVGA 2006 Sch.3: Barred lists

para.8(1) - this paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

para.8(2) - sub-paragraph (4) applies if it appears to DBS that—

- (a) this paragraph applies to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.

para.8(4) - DBS must give the person the opportunity to make representations as to why the person should not be included in the adults' barred list.

para.8(5) - sub-paragraph (6) applies if—

- (a) the person does not make representations before the end of any time prescribed for the purpose, or
- (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).

para.8(6) - if DBS —

- (a) is satisfied that this paragraph applies to the person, and
 - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- it must include the person in the list.

para.8(7) - sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.

para.8(8) - if DBS—

- (a) is satisfied that this paragraph applies to the person,
 - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and
 - (c) is satisfied that it is appropriate to include the person in the adults' barred list,
- it must include the person in the list.

3.9.2.6. Duty of the court to tell defendant he/she is barred

SVGA 2006 Sch.3: Barred lists

para.24(1) - the criteria which may be prescribed for the purposes of paragraphs 1, 2, 7 and 8 are—

- (a) that a person has been convicted of, or cautioned in relation to, an offence of a specified description;
- (b) that an order of a specified description requiring the person to do or not to do anything has been made against him;
- (c) that a person is included in a specified list maintained for the purposes of a country or territory outside the United Kingdom;
- (d) that an order or direction of a specified description requiring the person to do or not to do anything has been made against him for the purposes of a country or territory outside the United Kingdom.

para.25(1) - a court by or before which a person is convicted of an offence of a description specified for the purposes of paragraph 24(1)(a), or which makes an order of a description specified for the purposes of paragraph 24(1)(b), must inform the person at the time he is convicted or the order is made that DBS will or (as the case may be) may include him in the barred list concerned.

para.25(2) - this paragraph does not apply to convictions by or before a court in a country or territory outside England and Wales.

3.9.2.7. The trigger offences - the “prescribed criteria”

***Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37)*¹⁸⁰²**

reg.1(1) - these Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 and come into force seven days after the day on which they are made.

reg.1(2) - in these Regulations—

“the Act” means the Safeguarding Vulnerable Groups Act 2006;

“the 2002 Act” means the Education Act 2002;

“the 2003 Regulations” means the Education (Prohibition from Teaching or Working with Children) Regulations 2003;

“connected offence” means, in relation to an offence specified in the Schedule, an offence of—

(a) attempting, conspiring or incitement to commit that offence, or

(b) aiding, abetting, counselling or procuring, the commission of that offence;

“disqualification order” means an order of the court under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000;

“relevant circumstances” means—

(a) in relation to an offence specified in—

(i) sub-paragraph (a) or (b) of paragraph 1,

(ii) sub-paragraph (b)(ii) to (v), (c) or (d)(ii) of paragraph 2, or

(iii) sub-paragraph (b)(ii) to (vii), (c) or (d)(ii) of paragraph 4

of the Schedule the circumstances described in the relevant sub-paragraph which relate to the commission of that offence, and

(b) in relation to an offence specified in—

(i) sub-paragraph (c), (e) or (g)(i) of paragraph 1,

(ii) sub-paragraph (e), (g) or (i)(i) of paragraph 2, or

(iii) sub-paragraph (e), (g) or (i)(i) of paragraph 4

of the Schedule the circumstances referred to in the relevant sub-paragraph in relation to the commission of that offence;

“relevant date” means the date on which these Regulations come into force.

reg.1(3) - in regulation 3 a reference to an offence specified in paragraph 1(a) to (c), (e) or (g)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

reg.1(4) - in regulation 4 a reference to an offence specified in paragraph 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.

¹⁸⁰² Commencement: 20 January 2009, SI 2009/37 reg.1(1).

- reg.1(5) - in regulation 6 a reference to an offence specified in paragraph 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule is a reference to that offence only where it was committed in relevant circumstances.
- reg.1(6) - in regulations 3 to 6—
- (a) a reference to an offence, A, specified in the Schedule includes a reference to an offence, B, which in relation to offence A is a connected offence, and
 - (b) a reference to being convicted of an offence specified in the Schedule includes a reference to being convicted of—
 - (i) an Islands offence, or
 - (ii) a relevant foreign offence.
- reg.1(7) - in paragraph (6)(b), an Islands offence is an offence satisfying the criteria in paragraph (7A) and a relevant foreign offence is an offence satisfying the criteria in paragraph (8).
- reg.1(7A) - the criteria are that—
- (a) the offence is one under the law in force in the Isle of Man or any of the Channel Islands;
 - (b) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an equivalent offence which is specified in the Schedule; and
 - (c) where the equivalent offence is one specified in paragraph 1(a) to (c), (e) or (g)(i), 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) or 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule, the offence was committed in relevant circumstances relating to the equivalent offence.
- reg.1(8) - the criteria are that—
- (a) the offence is one under the law in force in a country or territory outside the British Islands;
 - (b) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an equivalent offence which is specified in the Schedule;
 - (c) where the equivalent offence is one specified in paragraph 1(a) to (c), (e) or (g)(i), 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) or 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule, the offence was committed in relevant circumstances relating to the equivalent offence.
- reg.1(8A) - for the purposes of paragraph (7A), an act punishable under the law in force in the Isle of Man or any of the Channel Islands constitutes an offence under that law however it is described in that law.
- reg.1(9) - for the purposes of paragraph (8) an act punishable under the law in force in a country or territory outside the British Islands constitutes an offence under that law however it is described in that law.
- reg.2(1) - where the condition in paragraph (2) is met, the offences referred to in regulations 3 to 6 do not include any offence which a person has committed against a child before the commencement (for all purposes) of section 2 of the Act.
- reg.2(2) - the condition is that the court, having considered whether to make a disqualification order in connection with the commission of the offence, decided not to.
- reg.2(3) - in this regulation the reference to an offence committed against a child must be construed in accordance with Part 2 of the Criminal Justice and Court Services Act 2000.

- reg.3(1) - the criteria prescribed for the purposes of paragraph 1(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (4).
- reg.3(2) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been made subject to a disqualification order, and
 - (b) condition C in the 2003 Regulations was satisfied in relation to the person, and
 - (c) regulation 8 of those Regulations applied to the person, and
 - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.3(3) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been convicted of, or cautioned in relation to, an offence specified in Part 2 of Schedule 2 to the 2003 Regulations, and
 - (b) condition C in those Regulations was satisfied in relation to the person, and
 - (c) regulation 8 of those Regulations applied to the person, and
 - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.3(4) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 1 of the Schedule.
- reg.4(1) - the criteria prescribed for the purposes of paragraph 2(1) of Schedule 3 to the Act are the criteria set out in paragraphs (2) to (6).
- reg.4(2) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been made subject to a disqualification order, and
 - (b) condition C in the 2003 Regulations was not satisfied in relation to the person, and
 - (c) regulation 8 of those Regulations applied to the person, and
 - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.4(3) - the criterion set out in this paragraph is that before the relevant date—
- (a) the person had been convicted of, or cautioned in relation to, an offence specified in Parts 2 to 5 of Schedule 2 to the 2003 Regulations, and
 - (b) any of conditions D to F in those Regulations was satisfied in relation to the person, and
 - (c) regulation 8 of those Regulations applied to the person, and
 - (d) the Secretary of State had not made a direction under section 142(1)(a) of the 2002 Act in relation to that person.
- reg.4(4) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003 or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
- reg.4(5) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 2 of the Schedule.

- reg.4(6) - the criterion set out in this paragraph is that the person has, on or after the relevant date, been made subject to a disqualification order and the person does not meet any other criteria prescribed in regulation 3 or in this regulation.
- reg.5 - the criterion prescribed for the purposes of paragraph 7(1) of Schedule 3 to the Act is that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 3 of the Schedule.
- reg.6 - the criteria prescribed for the purposes of paragraph 8(1) of Schedule 3 to the Act are—
- (a) that the person has, on or after the relevant date, been made subject to a risk of sexual harm order within the meaning of section 123 of the Sexual Offences Act 2003 or section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
 - (b) that the person has, on or after the relevant date, been convicted of, or cautioned in relation to, an offence specified in paragraph 4 of the Schedule.
- reg.7(1) - in regulation 8 of the Education (Provision of Information by Independent Schools) (England) Regulations 2003—
- (a) omit paragraphs (1)(a)(ii) and (2);
 - (b) in paragraph (1) for “Secretary of State” substitute “ “ [Independent Safeguarding Authority] established under section 1 of the Safeguarding Vulnerable Groups Act 2006” ”.
- reg.7(2) - after regulation 10 of those Regulations, insert:
- “10A. Provision of information
- The Independent Safeguarding Authority established under section 1 of the Safeguarding Vulnerable Groups Act 2006 must, at the request of the Secretary of State, inform the Secretary of State whether the Independent Safeguarding Authority has received information from the proprietor of a specified school in relation to a specified person pursuant to regulation 8.”.
- reg.7(3) - in Part 5 of the Schedule to those Regulations, in paragraph 20 for “of the Secretary of State’s functions under section 142 of the 2002 Act” substitute “ “by the Independent Safeguarding Authority established under section 1 of the Safeguarding Vulnerable Groups Act 2006 of its functions under Schedule 3 to that Act””.
- reg.8(1) - The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 is amended as follows.
- reg.8(2) - after article 2(1)(a), insert—
- “(aa) who does not meet any of the criteria prescribed for the purposes of paragraph 1 or 2 of Schedule 3 to the Act under the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009;”.

Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) Sch.1¹⁸⁰³

para.1 - the offences specified in this paragraph are—

- (a) [Scotland]
- (b) [Northern Ireland]
- (c) any offence contrary to a provision specified in the first column of Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (d) any offence contrary to a provision specified in Part 2 of that table;
- (e) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (f) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
- (g) any offence contrary to section 42 of the Armed Forces Act 2006 where—
 - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or
 - (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

¹⁸⁰³ Commencement: 20 January 2009, SI 2009/37 reg.1(1).

Table**Part 1**

Provision	Circumstances
Part 1	
Sexual Offences Act 1956, section 1	The offence was committed against a child
Mental Health Act 1959, section 128	The offence was committed against a child
Sexual Offences Act 2003, section 1	The offence was committed against a child
Sexual Offences Act 2003, section 2	The offence was committed against a child
Sexual Offences Act 2003, section 30	The offence was committed against a child
Sexual Offences Act 2003, section 31	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 32	The person who was present or in a place from which the person committing the offence could be seen was a child
Sexual Offences Act 2003, section 33	The person caused to watch the sexual activity in question was a child
Sexual Offences Act 2003, section 34	The offence was committed against a child
Sexual Offences Act 2003, section 35	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 36	The person who agreed to be present or in a place from which the person committing the offence could be observed was a child
Sexual Offences Act 2003, section 37	The person induced, threatened or deceived was a child
Sexual Offences Act 2003, section 38	The offence was committed against a child
Sexual Offences Act 2003, section 39	The person caused or incited to engage in sexual activity was a child
Sexual Offences Act 2003, section 40	The person who was present or in a place from which the person committing the offence could be seen was a child
Sexual Offences Act 2003, section 41	The person caused to watch the sexual activity was a child
Part 2	
Criminal Law Amendment Act 1885, section 4	
Sexual Offences Act 1956, section 5	
Sexual Offences Act 2003, section 5	
Sexual Offences Act 2003, section 6	
Sexual Offences Act 2003, section 7	
Sexual Offences Act 2003, section 8	

para.2 - the offences specified in this paragraph are—

- (a) the offences contrary to the common law of England and Wales of—
 - (i) murder,
 - (ii) kidnapping,
 - (iii) infanticide;
- (b) the offences contrary to the common law of Scotland of—
 - (i) murder,
 - (ii) rape, where the offence was committed against an adult,
 - (iii) sodomy, unless every person involved in the offence was aged 16 or over and was a willing participant,

- (iv) indecent assault, where the offence was committed against a child,
 - (v) clandestine injury to women, where the offence was committed against a child,
 - (vi) abduction of a woman or a girl with intent to rape,
 - (vii) assault with intent to rape or ravish;
- (c) an offence contrary to the common law of Scotland involving lewd, indecent or libidinous behaviour or practices, where the offence was committed against or involving a child under the age of 16;
- (d) the offence contrary to the common law of Northern Ireland of—
 - (i) murder,
 - (ii) rape, where the offence was committed against an adult,
 - (iii) kidnapping,
 - (iv) infanticide;
- (e) any offence contrary to a provision specified in Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (f) any offence contrary to a provision specified in Part 2 of that table;
- (g) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (h) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
- (i) any offence contrary to section 42 of the Armed Forces Act 2006 where—
 - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or
 - (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

Provision	Circumstances
Part 1	
Offences Against the Person Act 1861, section 61	The person with whom the offence was committed was under the age of 16 or did not consent to the act
Offences Against the Person Act 1861, section 62	The person with whom the offence was committed was under the age of 16 or did not consent to the act
Criminal Law Amendment Act 1885, section 11	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Punishment of Incest Act 1908, section 1	The offence was committed against a child
Punishment of Incest Act 1908, section 2	The offence was committed against a child
Sexual Offences Act 1956, section 1	The offence was committed against an adult
Sexual Offences Act 1956, section 10	The offence was committed against a child
Sexual Offences Act 1956, section 11	The offence was committed against a child
Sexual Offences Act 1956, section 12	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Sexual Offences Act 1956, section 13	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Theft Act 1968, section 9(1)(a)	The offence was committed with intent to commit rape before section 9(1)(a) was amended by the Sexual Offences Act 2003
Misuse of Drugs Act 1971, section 4(3)	The person to whom controlled drugs were supplied or offered to be supplied was a child
Customs and Excise Management Act 1979, section 170	The relevant goods were goods which were prohibited to be imported or brought into the United Kingdom, pursuant to section 42 of the Customs Consolidation Act 1876
Female Genital Mutilation Act 2003, section 1	The offence was committed against a child
Female Genital Mutilation Act 2003, section 2	The offence was committed against a child
Female Genital Mutilation Act 2003, section 3	The offence was committed against a child
Sexual Offences Act 2003, section 1	The offence was committed against an adult
Sexual Offences Act 2003, section 2	The offence was committed against an adult
Sexual Offences Act 2003, section 30	The offence was committed against an adult
Sexual Offences Act 2003, section 31	The person caused or incited to engage in sexual activity was an adult
Sexual Offences Act 2003, section 32	The person who was present or in a place from which the person committing the offence could be observed was an adult
Sexual Offences Act 2003, section 33	The person caused to watch the sexual activity in question was an adult
Sexual Offences Act 2003, section 34	The offence was committed against an adult
Sexual Offences Act 2003, section 35	The person induced, threatened or deceived was an adult

Provision	Circumstances
Sexual Offences Act 2003, section 36	The person who agreed to be present or in a place from which the person committing the offence could be observed was an adult
Sexual Offences Act 2003, section 37	The person induced, threatened or deceived was an adult
Sexual Offences Act 2003, section 38	The offence was committed against an adult
Sexual Offences Act 2003, section 39	The person caused or incited to engage in sexual activity was an adult
Sexual Offences Act 2003, section 40	The person who was present or in a place from which the person committing the offence could be observed was an adult
Sexual Offences Act 2003, section 41	The person caused to watch the sexual activity in question was an adult
Sexual Offences Act 2003, section 62	The relevant sexual offence was one specified in this Schedule and was intended to be committed in relevant circumstances, if any, specified in this Schedule in relation to that offence
Sexual Offences Act 2003, section 63	The relevant sexual offence was one specified in this Schedule and was intended to be committed in relevant circumstances, if any, specified in this Schedule in relation to that offence
Sexual Offences Act 2003, section 66	The offence was committed against a child under the age of 16
Sexual Offences Act 2003, section 67	The offence was committed against a child under the age of 16
Sexual Offences Act 2003, section 72	The offence committed corresponds to an offence which would lead to automatic inclusion in the children's barred list with the right to make representations
Part 2	
Offences Against the Person Act 1861, section 21	
Offences Against the Person Act 1861, section 52	
Offences Against the Person Act 1861, section 53	
Offences Against the Person Act 1861, section 54	
Offences Against the Person Act 1861, section 55	
Criminal Law Amendment Act 1885, section 2	
Criminal Law Amendment Act 1885, section 3	
Criminal Law Amendment Act 1885, section 5	
Criminal Law Amendment Act 1885, section 6	
Criminal Law Amendment Act 1885, section 7	
Criminal Law Amendment Act 1885, section 8	
Vagrancy Act 1898, section 1	
Children and Young Persons Act 1933, section 1	
Infanticide Act 1938, section 1	
Sexual Offences Act 1956, section 2	
Sexual Offences Act 1956, section 3	
Sexual Offences Act 1956, section 4	
Sexual Offences Act 1956, section 6	
Sexual Offences Act 1956, section 7	

Provision	Circumstances
Sexual Offences Act 1956, section 9	
Sexual Offences Act 1956, section 14	
Sexual Offences Act 1956, section 15	
Sexual Offences Act 1956, section 16	
Sexual Offences Act 1956, section 17	
Sexual Offences Act 1956, section 19	
Sexual Offences Act 1956, section 20	
Sexual Offences Act 1956, section 21	
Sexual Offences Act 1956, section 22	
Sexual Offences Act 1956, section 23	
Sexual Offences Act 1956, section 24	
Sexual Offences Act 1956, section 25	
Sexual Offences Act 1956, section 26	
Sexual Offences Act 1956, section 27	
Sexual Offences Act 1956, section 28	
Sexual Offences Act 1956, section 29	
Sexual Offences Act 1956, section 30	
Sexual Offences Act 1956, section 31	
Mental Health Act 1959, section 128	
Indecency with Children Act 1960, section 1	
Sexual Offences Act 1967, section 4	
Sexual Offences Act 1967, section 5	
Criminal Law Act 1977, section 54	
Protection of Children Act 1978, section 1	
Mental Health Act 1983, section 127	
Child Abduction Act 1984, section 1	
Child Abduction Act 1984, section 2	
Child Abduction Act 1984, section 6	
Criminal Justice Act 1988, section 160	
Sexual Offences (Amendment) Act 2000, section 3	
Nationality, Immigration and Asylum Act 2002, section 145	
Sexual Offences Act 2003, section 3	
Sexual Offences Act 2003, section 4	
Sexual Offences Act 2003, section 4(1)(a)	
Sexual Offences Act 2003, section 9	
Sexual Offences Act 2003, section 10	
Sexual Offences Act 2003, section 11	
Sexual Offences Act 2003, section 12	
Sexual Offences Act 2003, section 14	
Sexual Offences Act 2003, section 15	
Sexual Offences Act 2003, section 16	
Sexual Offences Act 2003, section 17	
Sexual Offences Act 2003, section 18	
Sexual Offences Act 2003, section 19	
Sexual Offences Act 2003, section 20	
Sexual Offences Act 2003, section 25	
Sexual Offences Act 2003, section 26	
Sexual Offences Act 2003, section 47	
Sexual Offences Act 2003, section 48	
Sexual Offences Act 2003, section 49	
Sexual Offences Act 2003, section 50	
Sexual Offences Act 2003, section 52	

Provision	Circumstances
Sexual Offences Act 2003, section 53	
Sexual Offences Act 2003, section 57	
Sexual Offences Act 2003, section 58	
Sexual Offences Act 2003, section 59	
Sexual Offences Act 2003, section 59A	
Sexual Offences Act 2003, section 61	
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4	
Domestic Violence, Crime and Victims Act 2004, section 5	
Mental Capacity Act 2005, section 44	
Criminal Justice and Immigration Act 2008, section 63	
Coroners and Justice Act 2009, section 62	
Modern Slavery Act 2015, section 2;	

para.3 - the offences specified in this paragraph are—

- (a) any offence contrary to a provision specified in the table set out in this paragraph;
- (b) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,
which corresponds to an offence contrary to any provision specified in that table; and
- (c) any offence contrary to section 42 of the Armed Forces Act 2006, where the corresponding offence under the law of England and Wales is one contrary to a provision specified in that table.

Provision
Sexual Offences Act 2003, section 30
Sexual Offences Act 2003, section 31
Sexual Offences Act 2003, section 32
Sexual Offences Act 2003, section 33
Sexual Offences Act 2003, section 34
Sexual Offences Act 2003, section 35
Sexual Offences Act 2003, section 36
Sexual Offences Act 2003, section 37
Sexual Offences Act 2003, section 38
Sexual Offences Act 2003, section 39
Sexual Offences Act 2003, section 40
Sexual Offences Act 2003, section 41

para.4 - the offences specified in this paragraph are—

- (a) the offences contrary to the common law of England and Wales of—
 - (i) murder,
 - (ii) kidnapping,
 - (iii) infanticide;
- (b) the offences contrary to the common law of Scotland of—
 - (i) murder,

- (ii) rape, where the offence was committed against a child,
 - (iii) sodomy, unless every person involved in the offence was aged 16 or over and was a willing participant,
 - (iv) indecent assault, where the offence was committed against a child,
 - (v) clandestine injury to women, where the offence was committed against a child,
 - (vi) abduction of a woman or a girl with intent to rape, where the offence was committed against a child,
 - (vii) assault with intent to rape or ravish, where the offence was committed against a child;
- (c) an offence contrary to the common law of Scotland involving lewd, indecent or libidinous behaviour or practices, where the offence was committed against a child under the age of 16;
- (d) the offences contrary to the common law of Northern Ireland of—
 - (i) murder,
 - (ii) rape, where the offence was committed against a child,
 - (iii) kidnapping,
 - (iv) infanticide;
- (e) any offence contrary to a provision specified in the first column of Part 1 of the table set out in this paragraph, where it was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (f) any offence contrary to a provision specified in Part 2 of that table;
- (g) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in the first column of Part 1 of that table and which was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table;
- (h) any offence contrary to—
 - (i) section 70 of the Army Act 1955,
 - (ii) section 70 of the Air Force Act 1955, or
 - (iii) section 42 of the Naval Discipline Act 1957,which corresponds to an offence contrary to any provision specified in Part 2 of that table; and
- (i) any offence contrary to section 42 of the Armed Forces Act 2006 where—
 - (i) the corresponding offence under the law of England and Wales is one contrary to a provision specified in the first column of Part 1 of that table, and the offence under the Armed Forces Act 2006 was committed in circumstances specified in the entry in the second column of that Part of that table that corresponds to the relevant entry in the first column of that Part of that table, or

- (ii) the corresponding offence under the law of England and Wales is one contrary to a provision specified in Part 2 of that table.

Provision	Circumstances
Part 1	
Offences Against the Person Act 1861, section 61	The person with whom the offence was committed was under the age of 16 or did not consent to the act
Criminal Law Amendment Act 1885, section 11	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Punishment of Incest Act 1908, section 1	The offence was committed against a child or the other party to the offence did not consent to the act
Punishment of Incest Act 1908, section 2	The offence was committed against a child or the other party to the offence did not consent to the act
Sexual Offences Act 1956, section 10	The offence was committed against a child or the other party to the offence did not consent to the act
Sexual Offences Act 1956, section 11	The offence was committed against a child or the other party to the offence did not consent to the act
Sexual Offences Act 1956, section 12	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Sexual Offences Act 1956, section 13	The person with whom the offence was committed was under the age of 16 or did not consent to the act and the conviction or caution is not a disregarded conviction or caution within the meaning of Chapter 4 of Part 5 of the Protection of Freedoms Act 2012
Theft Act 1968, section 9(1)(a)	The offence was committed with intent to commit rape before section 9(1)(a) was amended by the Sexual Offences Act 2003
Misuse of Drugs Act 1971, section 4(3)	The person to whom controlled drugs were supplied or offered to be supplied was a child
Customs and Excise Management Act 1979, section 170	The relevant goods were goods which were prohibited to be imported or brought into the United Kingdom, pursuant to section 42 of the Customs Consolidation Act 1876
Female Genital Mutilation Act 2003, section 1	The offence was committed against a child
Female Genital Mutilation Act 2003, section 2	The offence was committed against a child
Female Genital Mutilation Act 2003, section 3	The offence was committed against a child
Sexual Offences Act 2003, section 66	The offence was committed against a child under the age of 16

Provision	Circumstances
Sexual Offences Act 2003, section 67	The offence was committed against a child under the age of 16
Sexual Offences Act 2003, section 72	The offence committed corresponds to an offence leading to automatic inclusion in the adults' barred list with the right to make representations
Part 2	
Offences Against the Person Act 1861, section 21	
Offences Against the Person Act 1861, section 52	
Offences Against the Person Act 1861, section 53	
Offences Against the Person Act 1861, section 54	
Offences Against the Person Act 1861, section 55	
Offences Against the Person Act 1861, section 62	
Criminal Law Amendment Act 1885, section 2	
Criminal Law Amendment Act 1885, section 3	
Criminal Law Amendment Act 1885, section 4	
Criminal Law Amendment Act 1885, section 5	
Criminal Law Amendment Act 1885, section 6	
Criminal Law Amendment Act 1885, section 7	
Criminal Law Amendment Act 1885, section 8	
Vagrancy Act 1898, section 1	
Children and Young Persons Act 1933, section 1	
Infanticide Act 1938, section 1	
Sexual Offences Act 1956, section 1	
Sexual Offences Act 1956, section 2	
Sexual Offences Act 1956, section 3	
Sexual Offences Act 1956, section 4	
Sexual Offences Act 1956, section 5	
Sexual Offences Act 1956, section 6	
Sexual Offences Act 1956, section 7	
Sexual Offences Act 1956, section 9	
Sexual Offences Act 1956, section 14	
Sexual Offences Act 1956, section 15	
Sexual Offences Act 1956, section 16	
Sexual Offences Act 1956, section 17	
Sexual Offences Act 1956, section 19	
Sexual Offences Act 1956, section 20	
Sexual Offences Act 1956, section 21	
Sexual Offences Act 1956, section 22	
Sexual Offences Act 1956, section 23	
Sexual Offences Act 1956, section 24	
Sexual Offences Act 1956, section 25	
Sexual Offences Act 1956, section 26	
Sexual Offences Act 1956, section 27	
Sexual Offences Act 1956, section 28	
Sexual Offences Act 1956, section 29	
Sexual Offences Act 1956, section 30	
Sexual Offences Act 1956, section 31	
Mental Health Act 1959, section 128	
Indecency with Children Act 1960, section 1	
Sexual Offences Act 1967, section 4	
Sexual Offences Act 1967, section 5	
Criminal Law Act 1977, section 54	
Protection of Children Act 1978, section 1	

Provision	Circumstances
Mental Health Act 1983, section 127	
Child Abduction Act 1984, section 1	
Child Abduction Act 1984, section 2	
Child Abduction Act 1984, section 6	
Criminal Justice Act 1988, section 160	
Sexual Offences (Amendment) Act 2000, section 3	
Nationality, Immigration and Asylum Act 2002, section 145	
Sexual Offences Act 2003, section 1	
Sexual Offences Act 2003, section 2	
Sexual Offences Act 2003, section 3	
Sexual Offences Act 2003, section 4	
Sexual Offences Act 2003, section 4(1)(a)	
Sexual Offences Act 2003, section 5	
Sexual Offences Act 2003, section 6	
Sexual Offences Act 2003, section 7	
Sexual Offences Act 2003, section 8	
Sexual Offences Act 2003, section 9	
Sexual Offences Act 2003, section 10	
Sexual Offences Act 2003, section 11	
Sexual Offences Act 2003, section 12	
Sexual Offences Act 2003, section 14	
Sexual Offences Act 2003, section 15	
Sexual Offences Act 2003, section 16	
Sexual Offences Act 2003, section 17	
Sexual Offences Act 2003, section 18	
Sexual Offences Act 2003, section 19	
Sexual Offences Act 2003, section 20	
Sexual Offences Act 2003, section 25	
Sexual Offences Act 2003, section 26	
Sexual Offences Act 2003, section 47	
Sexual Offences Act 2003, section 48	
Sexual Offences Act 2003, section 49	
Sexual Offences Act 2003, section 50	
Sexual Offences Act 2003, section 52	
Sexual Offences Act 2003, section 53	
Sexual Offences Act 2003, section 57	
Sexual Offences Act 2003, section 58	
Sexual Offences Act 2003, section 59	
Sexual Offences Act 2003, section 59A	
Sexual Offences Act 2003, section 61	
Sexual Offences Act 2003, section 62	
Sexual Offences Act 2003, section 63	
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4	
Domestic Violence, Crime and Victims Act 2004, section 5	
Mental Capacity Act 2005, section 44	
Criminal Justice and Immigration Act 2008, section 63	
Coroners and Justice Act 2009, section 62	
Modern Slavery Act 2015, section 2	

3.9.2.8. Persons aged under 18

SVGA 2006 Sch.3: Barred lists

para.24(4) - for the purposes of determining whether any of the criteria is satisfied in relation to a person, ignore–

- (a) any offence committed before he attained the age of 18;
- (b) any order or direction made before that time.

para.24(7) - for the purposes of sub-paragraph (4) an offence committed over a period of time must be treated as committed on the last day of the period.

3.9.2.9. Appeals

SVGA 2006 s.4¹⁸⁰⁴: Appeals

- s.4(1) - an individual who is included in a barred list may appeal to the Upper Tribunal against–
 - (b) a decision under paragraph 2, 3, 5, 8, 9 or 11 of Schedule 3 to include him in the list;
 - (c) a decision under paragraph 17, 18 or 18A of that Schedule not to remove him from the list.
- s.4(2) - an appeal under subsection (1) may be made only on the grounds that DBS has made a mistake–
 - (a) on any point of law;
 - (b) in any finding of fact which it has made and on which the decision mentioned in that subsection was based.
- s.4(3) - for the purposes of subsection (2), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.
- s.4(4) - an appeal under subsection (1) may be made only with the permission of the Upper Tribunal.
- s.4(5) - unless the Upper Tribunal finds that DBS has made a mistake of law or fact, it must confirm the decision of DBS.
- s.4(6) - if the Upper Tribunal finds that DBS has made such a mistake it must–
 - (a) direct DBS to remove the person from the list, or
 - (b) remit the matter to DBS for a new decision.
- s.4(7) - if the Upper Tribunal remits a matter to DBS under subsection (6)(b)–
 - (a) the Upper Tribunal may set out any findings of fact which it has made (on which DBS must base its new decision); and
 - (b) the person must be removed from the list until DBS makes its new decision, unless the Upper Tribunal directs otherwise.

¹⁸⁰⁴ Commencement: Section 4(8) in force 31 December 2007, SI 2007/3545 art.2(d). Otherwise in force 19 May 2008, SI 2008/1320 art.2(b).

3.9.2.10. Breach

SVGA 2006 s.7¹⁸⁰⁵: Barred person not to engage in regulated activity

- s.7(1) - an individual commits an offence if he–
- (a) seeks to engage in regulated activity from which he is barred;
 - (b) offers to engage in regulated activity from which he is barred;
 - (c) engages in regulated activity from which he is barred.
- s.7(2) - a person guilty of an offence under subsection (1) is liable–
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- s.7(3) - it is a defence for a person charged with an offence under subsection (1) to prove that he did not know, and could not reasonably be expected to know, that he was barred from that activity.
- s.7(4) - it is a defence for a person charged with an offence under subsection (1) to prove–
- (a) that he reasonably thought that it was necessary for him to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
 - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
 - (c) that he engaged in the activity for no longer than was necessary for that purpose.
- s.7(5) - for the purposes of this section, Schedule 4 is modified as follows–
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded.
- s.7(6) - in relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (2)(b) to 12 months must be taken to be a reference to six months.

SVGA 2006 s.9¹⁸⁰⁶: Use of barred person for regulated activity

- s.9(1) - a person commits an offence if–
- (a) he permits an individual (B) to engage in regulated activity from which B is barred,
 - (b) he knows or has reason to believe that B is barred from that activity, and
 - (c) B engages in the activity.

¹⁸⁰⁵ Commencement: 12 October 2009, SI 2009/2611 art.2 and Sch.1.

¹⁸⁰⁶ Commencement: 12 October 2009, SI 2009/2611 art.2 and Sch.1.

- s.9(2) - a personnel supplier commits an offence if–
- (a) he supplies an individual (B) to another (P),
 - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
 - (c) he knows or has reason to believe that B is barred from that activity.
- s.9(3) - a person guilty of an offence under this section is liable–
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- s.9(4) - it is a defence for a person charged with an offence under this section to prove–
- (a) that he reasonably thought that it was necessary for the barred person to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
 - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
 - (c) that the barred person engaged in the activity for no longer than was necessary for that purpose.
- s.9(5) - for the purposes of this section, Schedule 4 is modified as follows–
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded.
- s.9(6) - in relation to an offence committed before the commencement of section 282(3) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (3)(b) to 12 months must be taken to be a reference to six months.

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3.10 Deportation

3.10.1. Automatic liability for deportation

3.10.1.1. The duty to make a deportation order

Duty to make deportation order

UKBA 2007 s.32¹⁸⁰⁷: Automatic deportation

- s.32(1) - in this section “*foreign criminal*” means a person–
- (a) who is not a British citizen,
 - (b) who is convicted in the United Kingdom of an offence, and
 - (c) to whom Condition 1 or 2 applies.
- s.32(2) - condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
- s.32(3) - condition 2 is that–
- (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and
 - (b) the person is sentenced to a period of imprisonment.
- s.32(4) - for the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.
- s.32(5) - the Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).
- s.32(6) - the Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless–
- (a) he thinks that an exception under section 33 applies,
 - (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
 - (c) section 34(4) applies.
- s.32(7) - subsection (5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

¹⁸⁰⁷ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

Exceptions to the duty to make an order

UKBA 2007 s.33¹⁸⁰⁸: Exceptions

- s.33(1) - Section 32(4) and (5)–
- (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
 - (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
- s.33(2) - exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
- (a) a person's Convention rights, or
 - (b) the United Kingdom's obligations under the Refugee Convention.
- s.33(3) - exception 2 is where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction.
- s.33(4) - exception 3 is where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order would breach rights of the foreign criminal under the [EU] treaties.
- s.33(5) - exception 4 is where the foreign criminal–
- (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
 - (b) is in custody pursuant to arrest under section 5 of that Act,
 - (c) is the subject of a provisional warrant under section 73 of that Act,
 - (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
 - (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.
- s.33(6) - exception 5 is where any of the following has effect in respect of the foreign criminal–
- (a) a hospital order or guardianship order under section 37 of the Mental Health Act 1983 (c. 20),
 - (b) a hospital direction under section 45A of that Act,
 - (c) a transfer direction under section 47 of that Act,
 - (e) a guardianship order under section 58 of that Act,
 - (f) a hospital direction under section 59A of that Act,
- s.33(6A) - exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005).

¹⁸⁰⁸ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

s.33(7) - the application of an exception–

- (a) does not prevent the making of a deportation order;
- (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;

but section 32(4) applies despite the application of Exception 1 or 4.

R. v Kluxen [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249)

No useful purpose would be served in making a recommendation where automatic deportation applies.

Rearranging sentences to avoid deportation

R. v Hakimzadeh [2009] EWCA Crim 959; [2010] 1 Cr. App. R. (S.) 10 (p.49)

Note: This is an example of a case where the defence suggested the sentences be rearranged to avoid the deportation provisions and having regard to the age of the offending and the fact that “deportation was never in the judge’s mind”, the Court of Appeal acceded to the request.

R. v Mintchev [2011] EWCA Crim 499

As a matter of principle it would not be right to reduce an otherwise appropriate sentence so as to avoid the provisions of the UK Borders Act 2007 because: (a) sentences are intended to be commensurate with the seriousness of the offence, (b) when passing sentence a judge is neither entitled not obliged to reach a contrived result so as to avoid the operation of a statutory provision and (c) automatic deportation provisions are not a penalty included in the sentence. They are instead a consequence of the sentence.

Deportation order may not be made while appeal pending

UKBA 2007 s.34¹⁸⁰⁹: Timing

s.34(1) - Section 32(5) requires a deportation order to be made at a time chosen by the Secretary of State.

s.34(2) - a deportation order may not be made under section 32(5) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made–

- (a) has been instituted and neither withdrawn nor determined, or
- (b) could be brought.

s.34(3) - for the purpose of subsection (2)(b)–

- (a) the possibility of an appeal out of time with permission shall be disregarded, and
- (b) a person who has informed the Secretary of State in writing that the person does not intend to appeal shall be treated as being no longer able to appeal.

¹⁸⁰⁹ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

Secretary of State may withdraw decision or revoke order

UKBA 2007 s.34¹⁸¹⁰: Timing

- s.34(4) - the Secretary of State may withdraw a decision that section 32(5) applies, or revoke a deportation order made in accordance with section 32(5), for the purpose of–
- (a) taking action under the Immigration Acts or rules made under section 3 of the Immigration Act 1971 (c. 77) (immigration rules), and
 - (b) subsequently taking a new decision that section 32(5) applies and making a deportation order in accordance with section 32(5).

Detention pending deportation

UKBA 2007 s.36¹⁸¹¹: Detention

- s.36(1) - a person who has served a period of imprisonment may be detained under the authority of the Secretary of State–
- (a) while the Secretary of State considers whether section 32(5) applies, and
 - (b) where the Secretary of State thinks that section 32(5) applies, pending the making of the deportation order.
- s.36(2) - where a deportation order is made in accordance with section 32(5) the Secretary of State shall exercise the power of detention under paragraph 2(3) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending removal) unless in the circumstances the Secretary of State thinks it inappropriate.
- s.36(3) - a court determining an appeal against conviction or sentence may direct release from detention under subsection (1) or (2).
- s.36(4) - provisions of the Immigration Act 1971 which apply to detention under paragraph 2(3) of Schedule 3 to that Act shall apply to detention under subsection (1) (including provisions about bail).
- s.36(5) - Paragraph 2(5) of Schedule 3 to that Act (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under subsection (1).

Family members of the “foreign criminal”

UKBA 2007 s.37¹⁸¹²: Family

- s.37(1) - where a deportation order against a foreign criminal states that it is made in accordance with section 32(5) (“the automatic deportation order”) this section shall have effect in place of the words from “A deportation order” to “after the making of the deportation order against him” in section 5(3) of the Immigration Act 1971 (period during which family members may also be deported).

¹⁸¹⁰ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

¹⁸¹¹ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

¹⁸¹² Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

- s.37(2) - a deportation order may not be made against a person as belonging to the family of the foreign criminal after the end of the relevant period of 8 weeks.
- s.37(3) - in the case of a foreign criminal who has not appealed in respect of the automatic deportation order, the relevant period begins when an appeal can no longer be brought (ignoring any possibility of an appeal out of time with permission).
- s.37(4) - in the case of a foreign criminal who has appealed in respect of the automatic deportation order, the relevant period begins when the appeal is no longer pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002 (c. 41)).

IA 1971 s.5¹⁸¹³: Procedure for, and further provisions as to, deportation

- s.5(3) - a deportation order shall not be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left the United Kingdom after the making of the deportation order against him; and a deportation order made against a person on [the ground that they belong to the family of another person] shall cease to have effect if he ceases to belong to the family of the other person, or if the deportation order made against the other person ceases to have effect.

Note: The wording underlined in s.5(3) is the wording removed by s.37(1).¹⁸¹⁴

3.10.1.2. Appeals

UKBA 2007 s.35¹⁸¹⁵: Appeal

- s.35(1) - the Nationality, Immigration and Asylum Act 2002 (c. 41) is amended as follows.
- s.35(2) - at the end of section 79 (no deportation order pending appeal) add–
 - “(3) This section does not apply to a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007.
 - (4) But a deportation order made in reliance on subsection (3) does not invalidate leave to enter or remain, in accordance with section 5(1) of the Immigration Act 1971, if and for so long as section 78 above applies.”

¹⁸¹³ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸¹⁴ s.37 is only partially in force (see footnote 12 above) and so it is necessary to retain IA 1971 s.5 and the underlined text as that text is only removed where s.37 applies.

¹⁸¹⁵ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

3.10.1.3. Interpretation etc.

Interpretation

UKBA 2007 s.38¹⁸¹⁶: Interpretation

- s.38(1) - in section 32(2) the reference to a person who is sentenced to a period of imprisonment of at least 12 months–
- (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect),
 - (b) does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to more than 12 months,
 - (c) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for at least 12 months, and
 - (d) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for 12 months).
- s.38(2) - in section 32(3)(b) the reference to a person who is sentenced to a period of imprisonment–
- (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and
 - (b) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders).
- s.38(3) - for the purposes of section 32 a person subject to an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c. 84) (insanity, &c.) has not been convicted of an offence.
- s.38(4) - in sections 32 and 33–
- (a) “*British citizen*” has the same meaning as in section 3(5) of the Immigration Act 1971 (c. 77) (and section 3(8) (burden of proof) shall apply),
 - (b) “*Convention rights*” has the same meaning as in the Human Rights Act 1998 (c. 42),
 - (c) “*deportation order*” means an order under section 5, and by virtue of section 3(5), of the Immigration Act 1971, and
 - (d) “*the Refugee Convention*” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

¹⁸¹⁶ Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

Consequential amendments

UKBA 2007 s.39¹⁸¹⁷: Consequential amendments

- s.39(1) - this section amends section 72(11)(b) of the Nationality, Immigration and Asylum Act 2002 (removal: serious criminal: interpretation).
- s.39(2) - in sub-paragraph (i) for “(unless at least two years of the sentence are not suspended)” substitute “(unless a court subsequently orders that the sentence or any part of it is to take effect)”.
- s.39(3) - after sub-paragraph (i) insert–
“(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,”.

¹⁸¹⁷ Commencement: 1 August 2008, SI 2008/1818 art.2(b).

3.10.2. Recommendation for deportation

3.10.2.1. General

The use of other powers to deport foreign criminals

R. (Dragoman) v Camberwell Green Magistrates' Court [2012] EWHC 4105 (Admin)

The court imposed a community order with a requirement for the defendant to leave the UK for 12 months. The High Court held that there was no such power. The suggestion was that other powers should not be used to “ban” individuals from the UK.

Automatic deportation applies: Do not make a recommendation

R. v Kluxen [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249)

No useful purpose would be served in making a recommendation where automatic deportation applies.

Recommendations should now be rare

R. v Kluxen [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249)

[...] [I]t will rarely be that either [the *Nazari*¹⁸¹⁸ and *Bouchereau*¹⁸¹⁹ tests are] satisfied in the case of an offender none of whose offences merits a custodial sentence of 12 months or more. An offender who repeatedly commits minor offences could conceivably do so, as could a person who commits a single offence involving for example the possession or use of false identity documents for which he receives a custodial sentence of less than 12 months [...] But we repeat that such cases will be rare; and we observe that even if a court makes no recommendation for an offender's deportation, the Secretary of State may nevertheless deport him if he deems this conducive to the public good. (Maddison J, at [27], giving the judgment of the court)

R. v Carmona [2006] EWCA Crim 508; [2006] 2 Cr. App. R. (S.) (p.662)

A recommendation does not form part of the punishment of the offender. A reduction in sentence is not due just because a recommendation has been made.

¹⁸¹⁸ *R. v Nazari* [1980] 1 W.L.R. 1366; [1980] 3 All E.R. 880: The test was “does the potential detriment to this country justify the recommendation for deportation of this appellant?”. In *R. v Kluxen* [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249) it was said that the domestic courts have since viewed the *Nazari* and *Bouchereau* tests as being, for all practical purposes, the same.

¹⁸¹⁹ *R. v Bouchereau* [1978] Q.B. 732: The test was “whether or not a full enquiry into the circumstances reveals that a genuine and sufficiently serious threat to the requirements of public policy has affected the fundamental interests of society.” In *R. v Kluxen* [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249) it was said that the domestic courts have since viewed the *Nazari* and *Bouchereau* tests as being, for all practical purposes, the same.

3.10.2.2. When can an order be made?

Availability

IA 1971 s.3¹⁸²⁰: General provisions for regulation and control

- s.3(6) - without prejudice to the operation of subsection (5) (liability to deportation where SoS deems it conducive to public good etc.), a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

IA 1971 s.6¹⁸²¹: Recommendations by court for deportation

- s.6(3) - for purposes of section 3(6) above—
- (a) a person shall be deemed to have attained the age of seventeen at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a recommendation for deportation; and
 - (b) the question whether an offence is one for which a person is punishable with imprisonment shall be determined without regard to any enactment restricting the imprisonment of young offenders or persons who have not previously been sentenced to imprisonment;
- and for purposes of deportation a person who on being charged with an offence is found to have committed it shall, notwithstanding any enactment to the contrary and notwithstanding that the court does not proceed to conviction, be regarded as a person convicted of the offence, and references to conviction shall be construed accordingly.

Exceptions and exemptions

IA 1971 s.7¹⁸²²: Exemption from deportation for certain existing residents

- s.7(1) - notwithstanding anything in section 3(5) or (6) above but subject to the provisions of this section, a Commonwealth citizen or citizen of the Republic of Ireland who was such a citizen at the coming into force of this Act and was then ordinarily resident in the United Kingdom—
- (b) shall not be liable to deportation under section 3(5) if at the time of the Secretary of State's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;
 - (c) shall not on conviction of an offence be recommended for deportation under section 3(6) if at the time of the conviction he had for the last five years been ordinarily resident in the United Kingdom and Islands.
- s.7(2) - a person who has at any time become ordinarily resident in the United Kingdom or in any of the Islands shall not be treated for the purposes of this section as having ceased to be so by reason only of his having remained there in breach of the immigration laws.

¹⁸²⁰ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸²¹ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸²² Commencement: 1 January 1973, SI 1972/1514 art.2.

- s.7(3) - the “last five years” before the material time under subsection (1)(b) or (c) above is to be taken as a period amounting in total to five years exclusive of any time during which the person claiming exemption under this section was undergoing imprisonment or detention by virtue of a sentence passed for an offence on a conviction in the United Kingdom and Islands, and the period for which he was imprisoned or detained by virtue of the sentence amounted to six months or more.
- s.7(4) - for purposes of subsection (3) above—
- (a) “sentence” includes any order made on conviction of an offence; and
 - (b) two or more sentences for consecutive (or partly consecutive) terms shall be treated as a single sentence; and
 - (c) a person shall be deemed to be detained by virtue of a sentence—
 - (i) at any time when he is liable to imprisonment or detention by virtue of the sentence, but is unlawfully at large; and
 - (ii) (unless the sentence is passed after the material time) during any period of custody by which under any relevant enactment the term to be served under the sentence is reduced.
- In paragraph (c)(ii) above “*relative enactment*” means section 240, 240ZA or 240A of the Criminal Justice Act 2003 (or, before that section operated, section 17(2) of the Criminal Justice Administration Act 1962) and any similar enactment which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands.
- s.7(5) - nothing in this section shall be taken to exclude the operation of section 3(8) above in relation to an exemption under this section.

IA 1971 s.8: Exceptions for seamen, aircrews and other special cases

- s.8(2) - the Secretary of State may by order exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of this Act relating to those who are not British citizens.
- An order under this subsection, if made with respect to a class of persons, shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.8(3) - subject to subsection (3A) below, the provisions of this Act relating to those who are not British citizens shall not apply to any person so long as he is a member of a mission (within the meaning of the Diplomatic Privileges Act 1964), a person who is a member of the family and forms part of the household of such a member, or a person otherwise entitled to the like immunity from jurisdiction as is conferred by that Act on a diplomatic agent.
- s.8(3A) - for the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1964 Act) is not to count as a member of a mission unless—
- (a) he was resident outside the United Kingdom, and was not in the United Kingdom, when he was offered a post as such a member; and
 - (b) he has not ceased to be such a member after having taken up the post.
- s.8(5A) - an order under subsection (2) above may, as regards any person or class of persons to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in the United Kingdom for the purposes of section 1(1) of the British Nationality Act 1981.

Power to order

IA 1971 s.6¹⁸²³: Recommendations by court for deportation

- s.6(1) - where under section 3(6) above a person convicted of an offence is liable to deportation on the recommendation of a court, he may be recommended for deportation by any court having power to sentence him for the offence unless the court commits him to be sentenced or further dealt with for that offence by another court:

Proof of being a British citizen

IA 1971 s.3¹⁸²⁴: General provisions for regulation and control

- s.3(8) - when any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

3.10.2.3. Making the order

Defendant must be given seven days notice

IA 1971 s.6¹⁸²⁵: Recommendations by court for deportation

- s.6(2) - a court shall not recommend a person for deportation unless he has been given not less than seven days notice in writing stating that a person is not liable to deportation if he is a British citizen, describing the persons who are British citizens and stating (so far as material) the effect of section 3(8) above and section 7 below; but the powers of adjournment conferred by section 10(3) of the Magistrates' Courts Act 1980, section 179 or 380 of the Criminal Procedure (Scotland) Act 1975 or any corresponding enactment for the time being in force in Northern Ireland shall include power to adjourn, after convicting an offender, for the purpose of enabling a notice to be given to him under this subsection or, if a notice was so given to him less than seven days previously, for the purpose of enabling the necessary seven days to elapse.

Human Rights Act 1998

R. v Carmona [2006] EWCA Crim 508; [2006] 2 Cr. App. R. (S.) (p.662)

There is now no need for a sentencing court to consider the Convention rights of an offender whose offence justifies a recommendation for deportation. The offender's Convention rights will be considered if the Home Secretary makes an order for deportation against which the offender appeals to the Tribunal.

Giving reasons

R. v Bozat [1997] 1 Cr. App. R. (S.) 270

It is imperative for the judge to spell out the reasons for making a recommendation.

¹⁸²³ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸²⁴ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸²⁵ Commencement: 1 January 1973, SI 1972/1514 art.2.

R. v Carmona [2006] EWCA Crim 508; [2006] 2 Cr. App. R. (S.) 102 (p.662)

A failure to give adequate or any reasons will not necessarily lead to [the recommendation] being quashed but will require [the Court of Appeal] to reconsider the recommendation. (Stanley Burnton J, at [12])

3.10.2.4. European Union's Directive

Directive 2004/38/EC of the European Parliament and of the Council

Article 27:

1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.
2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.
3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.
4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

3.10.2.5. Interaction with other sentencing orders

Conditional discharge

R. v Akan (1972) 56 Cr. App. R. 716

A recommendation for deportation can be made with a conditional discharge.

Imprisonment

R. v G [2011] EWCA Crim 3321

The provisions described as “automatic deportation” do not necessarily lead to deportation, they lead to a liability for deportation. Judges should not therefore impose a shorter sentence or sentence in a different nature from they would otherwise have passed on the basis that they have been informed that the offender is liable to automatic deportation.

Life imprisonment

IA 1971 s.6¹⁸²⁶: Recommendations by court for deportation

- s.6(4) - notwithstanding any rule of practice restricting the matters which ought to be taken into account in dealing with an offender who is sentenced to imprisonment, a recommendation for deportation may be made in respect of an offender who is sentenced to imprisonment for life.

3.10.2.6. Appeals

Recommendation is a sentence for purpose of appeals

IA 1971 s.6¹⁸²⁷: Recommendations by court for deportation

- s.6(5) - where a court recommends or purports to recommend a person for deportation, the validity of the recommendation shall not be called in question except on an appeal against the recommendation or against the conviction on which it is made; but—
the recommendation shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence

Order suspended where appeal pending

IA 1971 s.6¹⁸²⁸: Recommendations by court for deportation

- s.6(6) - a deportation order shall not be made on the recommendation of a court so long as an appeal or further appeal is pending against the recommendation or against the conviction on which it was made; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal

Appeal from magistrates' court to Crown Court

Senior Courts Act 1981 s.48: Appeals to Crown Court

- s.48(2) - On the termination of the hearing of an appeal the Crown Court:
- (a) may confirm, reverse or vary the decision appealed against any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence; or
 - (b) may remit the matter with its opinion thereon to the authority whose decision is appealed against; or
 - (c) may make such other order in the matter as the court thinks just, and by such order exercise any power which the said authority might have exercised.
- s48(3) - subsection (2) has effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the court on the appeal.

¹⁸²⁶ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸²⁷ Commencement: 1 January 1973, SI 1972/1514 art.2.

¹⁸²⁸ Commencement: 1 January 1973, SI 1972/1514 art.2.

- s.48(4) - subject to section 11(6) of the Criminal Appeal Act 1995, if the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the magistrates' court whose decision is appealed against, if that is a punishment which that magistrates' court might have awarded.
- s.48(5) - this section applies whether or not the appeal is against the whole of the decision.
- s.48(6) - in this section "*sentence*" includes any order made by a court when dealing with an offender, including—
- [...]
- (b) a recommendation for deportation made when dealing with an offender.

Note: Schedule 3 contains supplementary provisions as to deportation.

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3.11 Mental health

3.11.1 Guardianship orders

Availability and power to order

MHA 1983 s.37¹⁸²⁹: Powers of courts to order hospital admission or guardianship

s.37(1) - where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

Test to apply

MHA 1983 s.37¹⁸³⁰: Powers of courts to order hospital admission or guardianship

s.37(2) - the conditions referred to in subsection (1) above are that—

- (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental disorder and that either—
 - (i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him; or
 - (ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and
- (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

¹⁸²⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

Power to order: Unfit to plead

MHA 1983 s.37¹⁸³¹: Powers of courts to order hospital admission or guardianship

- s.37(3) - where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

Authority or person must be willing to receive individual

MHA 1983 s.37¹⁸³²: Powers of courts to order hospital admission or guardianship

- s.37(6) - an order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as "*a guardianship order*") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

Effect of guardianship order

MHA 1983 s.40¹⁸³³: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(2) - a guardianship order shall confer on the authority or person named in the order as guardian the same powers as a guardianship application made and accepted under Part II of this Act.
- s.40(4) - a patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part I of Schedule 1 to this Act as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part II of this Act, but subject to any modifications of those provisions specified in that Part of that Schedule.
- s.40(5) - where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

¹⁸³¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³² Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³³ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

Information from social services etc.

MHA 1983 s.39A¹⁸³⁴: Information to facilitate guardianship orders

- s.39A - where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—
- (a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and
 - (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;
- and that authority shall comply with any such request.

¹⁸³⁴ Commencement: 1 October 1992, as inserted by CJA 1991 s.27(1), SI 1992/333 art.2(2) and Sch.2 para.1

3.11.2. Hospital orders

3.11.2.1. Powers of the court

Availability and power to order

MHA 1983 s.37¹⁸³⁵: Powers of courts to order hospital admission or guardianship

- s.37(1) - where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

C(S)A 1997 s.47¹⁸³⁶: Power to specify hospital units

- s.47(1) - subject to subsection (2) below, any power to specify a hospital which is conferred by—
- (a) section 37 of the 1983 Act (hospital orders);
 - (b) section 45A of that Act (hospital and limitation directions);
 - (c) section 47 of that Act (transfer directions),
- includes power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.
- s.47(2) - in subsection (1) above—
- (a) paragraph (a) shall not apply unless the court also makes an order under section 41 of the 1983 Act (restriction orders);
 - (b) paragraph (c) shall not apply unless the Secretary of State also gives a direction under section 49 of that Act (restriction directions).
- s.47(3) - in this section—
- “hospital”, in relation to any exercise of a power, has the same meaning as in the enactment which confers the power;
- “hospital unit” means any part of a hospital which is treated as a separate unit.
- s.47(4) - a reference in this section to section 37 or 41 of the 1983 Act includes a reference to that section as it applies by virtue of—
- (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
 - (b) section 6 or 14 of the Criminal Appeal Act 1968, or
 - (c) Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968).

¹⁸³⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁶ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(i).

Power to order: Unfit to plead

MHA 1983 s.37¹⁸³⁷: Powers of courts to order hospital admission or guardianship

- s.37(3) - where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case, then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

Power to order where individual committed under Vagrancy Act 1824

MHA 1983 s.43¹⁸³⁸: Power of magistrates' courts to commit for restriction order

- s.43(5) - the power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

Attendance of defendant not required where interim order in place

MHA 1983 s.38¹⁸³⁹: Interim hospital orders

- s.38(2) - in the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

Mandatory and required sentences

MHA 1983 s.37¹⁸⁴⁰: Powers of courts to order hospital admission or guardianship

- s.37(1A) - in the case of an offence the sentence for which would otherwise fall to be imposed:
- (za) under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953,
 - (a) under section 51A(2) of the Firearms Act 1968,
 - (aa) under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988,
 - (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (ba) under section 224A of the Criminal Justice Act 2003,
 - (c) under section 225(2) or 226(2) of the Criminal Justice Act 2003, or
 - (d) under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon).
- nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

¹⁸³⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸³⁹ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁴⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

- s.37(1B) - references in subsection (1A) above to a sentence falling to be imposed under any of the provisions mentioned in that subsection are to be read in accordance with section 305(4) of the Criminal Justice Act 2003.

Requirement for medical evidence

MHA 1983 s.37¹⁸⁴¹: Powers of courts to order hospital admission or guardianship

- s.37(4) - an order for the admission of an offender to a hospital (in this Act referred to as “a hospital order”) shall not be made under this section unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, given such directions as it thinks fit for his conveyance to and detention in a place of safety.

MHA 1983 s.54A¹⁸⁴²: Reduction of period for making hospital orders

- s.54A(1) - the Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.
- s.54A(2) - an order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.

3.11.2.2. Making the order

Power to request information

MHA 1983 s.39¹⁸⁴³: Information as to hospitals

- s.39(1) - where a court is minded to make a hospital order or interim hospital order in respect of any person it may request—
- (a) the clinical commissioning group or Local Health Board for the area in which that person resides or last resided; or
 - (b) the National Health Service Commissioning Board or the National Assembly for Wales or any other clinical commissioning group or Local Health Board that appears to the court to be appropriate,
- to furnish the court with such information as that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales shall comply with any such request.

¹⁸⁴¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁴² Commencement: 1 October 1992, as inserted by CJA 1991 s.27(2), SI 1992/333 art.2(2) and Sch.2 para.1.

¹⁸⁴³ Commencement: 30 September 1983, MHA 1983 s.149(2).

- s.39(1ZA) - a request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.
- s.39(1A) - in relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.
- s.39(1B) - where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

Test to apply

MHA 1983 s.37¹⁸⁴⁴: Powers of courts to order hospital admission or guardianship

- s.37(2) - the conditions referred to in subsection (1) above are that—
- (a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental disorder and that either—
 - (i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him; or
 - (ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and
 - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

3.11.2.3. Effect of a hospital order

Constable etc. to convey individual to specified hospital

MHA 1983 s.40¹⁸⁴⁵: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(1) - a hospital order shall be sufficient authority—
- (a) for a constable, an approved mental health professional or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of 28 days; and
 - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.

¹⁸⁴⁴ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁴⁵ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

Modifications to Part 2 of the Act

MHA 1983 s.40¹⁸⁴⁶: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(4) - a patient who is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, shall, subject to the provisions of this subsection, be treated for the purposes of the provisions of this Act mentioned in Part I of Schedule 1 to this Act as if he had been so admitted or placed on the date of the order in pursuance of an application for admission for treatment or a guardianship application, as the case may be, duly made under Part II of this Act, but subject to any modifications of those provisions specified in that Part of that Schedule.

Previous orders

MHA 1983 s.40¹⁸⁴⁷: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(5) - where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

Absence without leave

MHA 1983 s.40¹⁸⁴⁸: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(6) - where—
- (a) a patient admitted to a hospital in pursuance of a hospital order is absent without leave;
 - (b) a warrant to arrest him has been issued under section 72 of the Criminal Justice Act 1967; and
 - (c) he is held pursuant to the warrant in any country or territory other than the United Kingdom, any of the Channel Islands and the Isle of Man,
- he shall be treated as having been taken into custody under section 18 above on first being so held.

¹⁸⁴⁶ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

¹⁸⁴⁷ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

¹⁸⁴⁸ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

3.11.2.4. After the order is made

Not practicable for patient to be received into hospital

MHA 1983 s.37¹⁸⁴⁹: Powers of courts to order hospital admission or guardianship

- s.37(5) - if within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified; and where such directions are given—
- (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
 - (b) the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

¹⁸⁴⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.3. Restriction orders

3.11.3.1. Power of magistrates' court to commit to Crown Court for restriction order

Availability and power to commit

MHA 1983 s.43¹⁸⁵⁰: Power of magistrates' courts to commit for restriction order

- s.43(1) - if in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—
- (a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but
 - (b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made a restriction order should also be made,
- the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.

Crown Court to inquire into the case

MHA 1983 s.43¹⁸⁵¹: Power of magistrates' courts to commit for restriction order

- s.43(2) - where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—
- (a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;
 - (b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.

Powers of the court

MHA 1983 s.43¹⁸⁵²: Power of magistrates' courts to commit for restriction order

- s.43(3) - the Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.

¹⁸⁵⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵² Commencement: 30 September 1983, MHA 1983 s.149(2).

Other committal powers

MHA 1983 s.43¹⁸⁵³: Power of magistrates' courts to commit for restriction order

- s.43(4) - the powers of a magistrates' court under section 3 or 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.
- s.43(5) - the power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

Power to have defendant detained in hospital instead of committed in custody

MHA 1983 s.44¹⁸⁵⁴: Committal to hospital under s. 43

- s.44(1) - where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for his production from the hospital to attend the Crown Court by which his case is to be dealt with.

Evidence required for detention in hospital

MHA 1983 s.44¹⁸⁵⁵: Committal to hospital under s. 43

- s.44(2) - the evidence required by subsection (1) above shall be given by the approved clinician who would have overall responsibility for the offender's case or by some other person representing the managers of the hospital in question.

Power to give directions

MHA 1983 s.44¹⁸⁵⁶: Committal to hospital under s. 43

- s.44(3) - the power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order

¹⁸⁵³ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁴ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁶ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.3.2. Making a restriction order

Power to order and test to apply

MHA 1983 s.41¹⁸⁵⁷: Power of higher courts to restrict discharge from hospital

- s.41(1) - where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section; and an order under this section shall be known as “a restriction order”.

Medical evidence

MHA 1983 s.41¹⁸⁵⁸: Power of higher courts to restrict discharge from hospital

- s.41(2) - a restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

Effect of the restriction

MHA 1983 s.41¹⁸⁵⁹: Power of higher courts to restrict discharge from hospital

- s.41(3) - the special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—
- (a) none of the provisions of Part II of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;
 - (aa) none of the provisions of Part II of this Act relating to community treatment orders and community patients shall apply;
 - (b) no application shall be made to the appropriate tribunal in respect of a patient under section 66 or 69(1) below;
 - (c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—
 - (i) power to grant leave of absence to the patient under section 17 above;
 - (ii) power to transfer the patient in pursuance of regulations under section 19 above or in pursuance of subsection (3) of that section; and
 - (iii) power to order the discharge of the patient under section 23 above;and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the responsible clinician; and

¹⁸⁵⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁵⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

- (d) the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;

and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.

- s.41(6) - while a person is subject to a restriction order the responsible clinician shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

Effect of restriction order on hospital order

MHA 1983 s.41¹⁸⁶⁰: Power of higher courts to restrict discharge from hospital

- s.41(4) - a hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.
- s.41(5) - where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 40 above and Part I of Schedule 1 to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

Termination of the order

MHA 1983 s.42¹⁸⁶¹: Powers of Secretary of State in respect of patients subject to restriction orders

- s.42(1) - if the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above shall apply accordingly.
- s.42(2) - at any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.

¹⁸⁶⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁸⁶¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.3.3. Powers of Secretary of State in relation to restriction orders

MHA 1983 s.42¹⁸⁶²: Powers of Secretary of State in respect of patients subject to restriction orders

- s.42(1) - if the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above shall apply accordingly.
- s.42(2) - at any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- s.42(3) - the Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) above by warrant recall the patient to such hospital as may be specified in the warrant.
- s.42(4) - where a patient is recalled as mentioned in subsection (3) above—
 - (a) if the hospital specified in the warrant is not the hospital from which the patient was conditionally discharged, the hospital order and the restriction order shall have effect as if the hospital specified in the warrant were substituted for the hospital specified in the hospital order;
 - (b) in any case, the patient shall be treated for the purposes of section 18 above as if he had absented himself without leave from the hospital specified in the warrant.
- s.42(5) - if a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under this section, the patient shall, unless previously recalled under subsection (3) above, be deemed to be absolutely discharged on the date when the order ceases to have effect, and shall cease to be liable to be detained by virtue of the relevant hospital order accordingly.
- s.42(6) - the Secretary of State may, if satisfied that the attendance at any place in Great Britain of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

¹⁸⁶² Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.4. “Hybrid orders” - Directions under s.45A

3.11.4.1. Availability

R. v Fort [2013] EWCA Crim 2332; [2014] 2 Cr. App. R. (S.) 24 (p.167)

A section 45A direction was not available for persons under the age of 21 at the time of conviction.

3.11.4.2. Making the order

Applicability

MHA 1983 s.45A¹⁸⁶³: Power of higher courts to direct hospital admission

s.45A(1) - this section applies where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law—

- (a) the conditions mentioned in subsection (2) below are fulfilled; and
- (b) the court considers making a hospital order in respect of him before deciding to impose a sentence of imprisonment (“the relevant sentence”) in respect of the offence.

Test to apply

MHA 1983 s.45A¹⁸⁶⁴: Power of higher courts to direct hospital admission

s.45A(2) - the conditions referred to in subsection (1) above are that the court is satisfied, on the written or oral evidence of two registered medical practitioners—

- (a) that the offender is suffering from mental disorder;
- (b) that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
- (c) that appropriate medical treatment is available for him.

¹⁸⁶³ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁴ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

Discretionary power to order

MHA 1983 s.45A¹⁸⁶⁵: Power of higher courts to direct hospital admission

s.45A(3) - the court may give both of the following directions, namely—

- (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (in this Act referred to as a “*hospital direction*”); and
- (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a “*limitation direction*”).

C(S)A 1997 s.47¹⁸⁶⁶: Power to specify hospital units

s.47(1) - subject to subsection (2) below, any power to specify a hospital which is conferred by—

- (a) section 37 of the 1983 Act (hospital orders);
- (b) section 45A of that Act (hospital and limitation directions);
- (c) section 47 of that Act (transfer directions),

includes power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

s.47(2) - in subsection (1) above—

- (a) paragraph (a) shall not apply unless the court also makes an order under section 41 of the 1983 Act (restriction orders);
- (b) paragraph (c) shall not apply unless the Secretary of State also gives a direction under section 49 of that Act (restriction directions).

s.47(3) - in this section—

“*hospital*”, in relation to any exercise of a power, has the same meaning as in the enactment which confers the power;

“*hospital unit*” means any part of a hospital which is treated as a separate unit.

s.47(4) - a reference in this section to section 37 or 41 of the 1983 Act includes a reference to that section as it applies by virtue of—

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
- (b) section 6 or 14 of the Criminal Appeal Act 1968, or
- (c) Schedule 4 to the Armed Forces Act 2006 (including as applied by section 16(2) of the Court Martial Appeals Act 1968).

¹⁸⁶⁵ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁶ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(i).

Evidence

MHA 1983 s.45A¹⁸⁶⁷: Power of higher courts to direct hospital admission

- s.45A(4) - a hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under subsection (2) above has given evidence orally before the court.
- s.45A(5) - a hospital direction and a limitation direction shall not be given in relation to an offender unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for his case, or of some other person representing the managers of the hospital that arrangements have been made—
- (a) for his admission to that hospital; and
 - (b) for his admission to it within the period of 28 days beginning with the day of the giving of such directions;
- and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

Length of order

MHA 1983 s.45A¹⁸⁶⁸: Power of higher courts to direct hospital admission

- s.45A(8) - Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.

MHA 1983 s.38¹⁸⁶⁹: Interim hospital orders

- s.38(5) - an interim hospital order—
- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible clinician, that the continuation of the order is warranted;
- but no such order shall continue in force for more than twelve months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the responsible clinician to deal with the offender in some other way.

¹⁸⁶⁷ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁸ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁶⁹ Commencement: 1 October 1984, SI 1984/1357 art.2

Power to request information

MHA 1983 s.45A¹⁸⁷⁰: Power of higher courts to direct hospital admission

s.45A(8) - Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.

MHA 1983 s.39¹⁸⁷¹: Information as to hospitals

s.39(1) - where a court is minded to make a hospital order or interim hospital order in respect of any person it may request—

- (a) the clinical commissioning group or Local Health Board for the area in which that person resides or last resided; or
- (b) the National Health Service Commissioning Board or the National Assembly for Wales or any other clinical commissioning group or Local Health Board that appears to the court to be appropriate,

to furnish the court with such information as that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales shall comply with any such request.

s.39(1ZA) - a request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.

s.39(1A) - in relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.

s.39(1B) - where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

¹⁸⁷⁰ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁷¹ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.4.3. Effect of s.45A direction

MHA 1983 s.45B: Effect of hospital and limitation directions

- s.45B(1) - a hospital direction and a limitation direction shall be sufficient authority—
- (a) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction within a period of 28 days; and
 - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.
- s.45B(2) - with respect to any person—
- (a) a hospital direction shall have effect as a transfer direction; and
 - (b) a limitation direction shall have effect as a restriction direction.
- s.45B(3) - while a person is subject to a hospital direction and a limitation direction the responsible clinician shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

3.11.4.4. After the direction has been given

Not practicable for defendant to be received into hospital

MHA 1983 s.45A¹⁸⁷²: Power of higher courts to direct hospital admission

- s.45A(6) - if within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified.
- s.45A(7) - where such instructions are given—
- (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
 - (b) the hospital direction shall have effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction.

¹⁸⁷² Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

3.11.4.5. Power to make interim s.45A direction

MHA 1983 s.45A¹⁸⁷³: Power of higher courts to direct hospital admission

s.45A(8) - Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.

MHA 1983 s.38¹⁸⁷⁴: Interim hospital orders

s.38(1) - where a person is convicted before the Crown Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment and the court before or by which he is convicted is satisfied, on the written or oral evidence of two registered medical practitioners—

- (a) that the offender is suffering from mental disorder; and
- (b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (in this Act referred to as "*an interim hospital order*") authorising his admission to such hospital as may be specified in the order and his detention there in accordance with this section.

¹⁸⁷³ Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

¹⁸⁷⁴ Commencement: 1 October 1984, SI 1984/1357 art.2

3.11.5. Interim hospital orders

3.11.5.1. Making the order

Availability and power to order

MHA 1983 s.38¹⁸⁷⁵: Interim hospital orders

s.38(1) - where a person is convicted before the Crown Court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment and the court before or by which he is convicted is satisfied, on the written or oral evidence of two registered medical practitioners—

- (a) that the offender is suffering from mental disorder; and
- (b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (in this Act referred to as "*an interim hospital order*") authorising his admission to such hospital as may be specified in the order and his detention there in accordance with this section.

The evidence

MHA 1983 s.38¹⁸⁷⁶: Interim hospital orders

s.38(3) - at least one of the registered medical practitioners whose evidence is taken into account under subsection (1) above shall be employed at the hospital which is to be specified in the order.

Arrangement must be made for defendant's admission

MHA 1983 s.38¹⁸⁷⁷: Interim hospital orders

s.38(4) - an interim hospital order shall not be made for the admission of an offender to a hospital unless the court is satisfied, on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of 28 days beginning with the date of the order; and if the court is so satisfied the court may, pending his admission, given directions for his conveyance to and detention in a place of safety.

¹⁸⁷⁵ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁷⁶ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁷⁷ Commencement: 1 October 1984, SI 1984/1357 art.2

MHA 1983 s.54A¹⁸⁷⁸: Reduction of period for making hospital orders

- s.54A(1) - the Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.
- s.54A(2) - an order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.

Length of the order

MHA 1983 s.38¹⁸⁷⁹: Interim hospital orders

- s.38(5) - an interim hospital order—
- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible clinician, that the continuation of the order is warranted;
- but no such order shall continue in force for more than twelve months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the responsible clinician to deal with the offender in some other way.

Power to request information

MHA 1983 s.39¹⁸⁸⁰: Information as to hospitals

- s.39(1) - where a court is minded to make a hospital order or interim hospital order in respect of any person it may request—
- (a) the clinical commissioning group or Local Health Board for the area in which that person resides or last resided; or
 - (b) the National Health Service Commissioning Board or the National Assembly for Wales or any other clinical commissioning group or Local Health Board that appears to the court to be appropriate,
- to furnish the court with such information as that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales have or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order, and that clinical commissioning group or Local Health Board or the National Health Service Commissioning Board or the National Assembly for Wales shall comply with any such request.
- s.39(1ZA) - a request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges.

¹⁸⁷⁸ Commencement: 1 October 1992, as inserted by CJA 1991 s.27(2), SI 1992/333 art.2(2) and Sch.2 para.1.

¹⁸⁷⁹ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁸⁸⁰ Commencement: 30 September 1983, MHA 1983 s.149(2).

- s.39(1A) - in relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.
- s.39(1B) - where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.

3.11.5.2. Effect of an interim hospital order

MHA 1983 s.40¹⁸⁸¹: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(3) - where an interim hospital order is made in respect of an offender—
- (a) a constable or any other person directed to do so by the court shall convey the offender to the hospital specified in the order within the period mentioned in section 38(4) above; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of section 38 above.

3.11.5.3. After the order has been made

Renewing the order

MHA 1983 s.38¹⁸⁸²: Interim hospital orders

- s.38(5) - an interim hospital order—
- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible clinician, that the continuation of the order is warranted;
- but no such order shall continue in force for more than twelve months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the responsible clinician to deal with the offender in some other way.
- s.38(6) - the power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

¹⁸⁸¹ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

¹⁸⁸² Commencement: 1 October 1984, SI 1984/1357 art.2

Power of arrest where defendant absconds

MHA 1983 s.38¹⁸⁸³: Interim hospital orders

- s.38(7) - if an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court that made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

¹⁸⁸³ Commencement: 1 October 1984, SI 1984/1357 art.2

3.11.6. Remand for medical reports etc.

3.11.6.1. Magistrates' Courts

Power to order and test to apply

PCC(S)A 2000 s.11¹⁸⁸⁴: Remand by magistrates' court for medical examination

- s.11(1) - if, on the trial by a magistrates' court of an offence punishable on summary conviction with imprisonment, the court—
- (a) is satisfied that the accused did the act or made the omission charged, but
 - (b) is of the opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined,
- the court shall adjourn the case to enable a medical examination and report to be made, and shall remand him.

Time limits

PCC(S)A 2000 s.11¹⁸⁸⁵: Remand by magistrates' court for medical examination

- s.11(2) - an adjournment under subsection (1) above shall not be for more than three weeks at a time where the court remands the accused in custody, nor for more than four weeks at a time where it remands him on bail.

Bail

PCC(S)A 2000 s.11¹⁸⁸⁶: Remand by magistrates' court for medical examination

- s.11(3) - where on an adjournment under subsection (1) above the accused is remanded on bail, the court shall impose conditions under paragraph (d) of section 3(6) of the Bail Act 1976 and the requirements imposed as conditions under that paragraph shall be or shall include requirements that the accused—
- (a) undergo medical examination by a registered medical practitioner or, where the inquiry is into his mental condition and the court so directs, two such practitioners; and
 - (b) for that purpose attend such an institution or place, or on such practitioner, as the court directs and, where the inquiry is into his mental condition, comply with any other directions which may be given to him for that purpose by any person specified by the court or by a person of any class so specified.

¹⁸⁸⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁸⁸⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁸⁸⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.11.6.2. Crown Court

Availability

MHA 1983 s.35¹⁸⁸⁷: Remand to hospital for report on accused's mental condition

s.35(2) - for the purposes of this section an accused person is—

- (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
- (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.

Power

MHA 1983 s.35¹⁸⁸⁸: Remand to hospital for report on accused's mental condition

s.35(1) - subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.

Evidence

MHA 1983 s.35¹⁸⁸⁹: Remand to hospital for report on accused's mental condition

s.35(3) - subject to subsection (4) below, the powers conferred by this section may be exercised if—

- (a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the accused person is suffering from mental disorder; and
- (b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

s.35(4) - the court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the approved clinician who would be responsible for making the report or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

¹⁸⁸⁷ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁸⁸ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁸⁹ Commencement: 1 October 1984, SI 1984/1357 art.2.

Further remand

MHA 1983 s.35¹⁸⁹⁰: Remand to hospital for report on accused's mental condition

- s.35(5) - where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the approved clinician responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.
- s.35(6) - the power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

Time limits

MHA 1983 s.35¹⁸⁹¹: Remand to hospital for report on accused's mental condition

- s.35(7) - an accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

Entitlement to independent report

MHA 1983 s.35¹⁸⁹²: Remand to hospital for report on accused's mental condition

- s.35(8) - an accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.

Power to convey individual to hospital

MHA 1983 s.35¹⁸⁹³: Remand to hospital for report on accused's mental condition

- s.35(9) - where an accused person is remanded under this section—
- (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.

¹⁸⁹⁰ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹¹ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹² Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹³ Commencement: 1 October 1984, SI 1984/1357 art.2.

Power of arrest where individual absconds

MHA 1983 s.35¹⁸⁹⁴: Remand to hospital for report on accused's mental condition

- s.35(10) - if an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

3.11.6.3. Remand for medical treatment

Power to order

MHA 1983 s.36¹⁸⁹⁵: Remand of accused person to hospital for treatment

- s.36(1) - subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that
- (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
 - (b) appropriate medical treatment is available for him.

Availability

MHA 1983 s.36¹⁸⁹⁶: Remand of accused person to hospital for treatment

- s.36(2) - for the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.

Evidence

MHA 1983 s.36¹⁸⁹⁷: Remand of accused person to hospital for treatment

- s.36(3) - the court shall not remand an accused person under this section to a hospital unless it is satisfied, on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.

¹⁸⁹⁴ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁵ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁶ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁷ Commencement: 1 October 1984, SI 1984/1357 art.2.

Further remand

MHA 1983 s.36¹⁸⁹⁸: Remand of accused person to hospital for treatment

- s.36(4) - where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible clinician, that a further remand is warranted.
- s.36(5) - the power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

Time limits

MHA 1983 s.36¹⁸⁹⁹: Remand of accused person to hospital for treatment

- s.36(6) - an accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

Entitlement to independent report

MHA 1983 s.36¹⁹⁰⁰: Remand of accused person to hospital for treatment

- s.36(7) - an accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.

Power to convey individual to hospital

MHA 1983 s.36¹⁹⁰¹: Remand of accused person to hospital for treatment

- s.36(8) - Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

MHA 1983 s.35¹⁹⁰²: Remand to hospital for report on accused's mental condition

- s.35(9) - where an accused person is remanded under this section—
- (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.

¹⁸⁹⁸ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁸⁹⁹ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰⁰ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰¹ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰² Commencement: 1 October 1984, SI 1984/1357 art.2.

Power of arrest where individual absconds

MHA 1983 s.36¹⁹⁰³: Remand of accused person to hospital for treatment

s.36(8) - Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

MHA 1983 s.35¹⁹⁰⁴: Remand to hospital for report on accused's mental condition

s.35(10) - if an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

¹⁹⁰³ Commencement: 1 October 1984, SI 1984/1357 art.2.

¹⁹⁰⁴ Commencement: 1 October 1984, SI 1984/1357 art.2.

3.11.7. Requirements as to medical evidence

Must be approved practitioner

MHA 1983 s.54¹⁹⁰⁵: Requirements as to medical evidence

- s.54(1) - the registered medical practitioner whose evidence is taken into account under section 35(3)(a) above and at least one of the registered medical practitioners whose evidence is taken into account under sections 36(1), 37(2)(a), 38(1)45A(2) and 51(6)(a) above and whose reports are taken into account under sections 47(1) and 48(1) above shall be a practitioner approved for the purposes of section 12 above by the Secretary of State or by another person by virtue of section 12ZA or 12ZB above, as having special experience in the diagnosis or treatment of mental disorder.

Court acting upon written report without proof of signature etc.

MHA 1983 s.54¹⁹⁰⁶: Requirements as to medical evidence

- s.54(2) - for the purposes of any provision of this Part of this Act under which a court may act on the written evidence of any person, a report in writing purporting to be signed by that person may, subject to the provisions of this section, be received in evidence without proof of the following—
- (a) the signature of the person; or
 - (b) his having the requisite qualifications or approval or authority or being of the requisite description to give the report.

Report writer may be required to give oral evidence

MHA 1983 s.54¹⁹⁰⁷: Requirements as to medical evidence

- s.54(2A) - but the court may require the signatory of any such report to be called to give oral evidence.

Copies of the reports etc.

MHA 1983 s.54¹⁹⁰⁸: Requirements as to medical evidence

- s.54(3) - where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—
- (a) if that person is represented by an authorised person, a copy of the report shall be given to that authorised person;
 - (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child or young person, to his parent or guardian if present in court; and
 - (c) except where the report relates only to arrangements for his admission to a hospital, that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

¹⁹⁰⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹⁰⁶ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹⁰⁷ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹⁰⁸ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.8. Interaction with other sentencing orders

Bind over of parent/guardian, community orders, fines, imprisonment, referral order, YRO

MHA 1983 s.37¹⁹⁰⁹: Powers of courts to order hospital admission or guardianship

- s.37(8) - where an order is made under this section, the court shall not:
- (a) pass sentence of imprisonment or impose a fine or make a community order (within the meaning of Part 12 of the Criminal Justice Act 2003 or a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008))¹⁹¹⁰ in respect of the offence,
 - (b) if the order under this section is a hospital order, make a referral order (within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000) in respect of the offence, or
 - (c) make in respect of the offender an order under section 150 of that Act (binding over of parent or guardian),
- but the court may make any other order which it has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.

Court may make hospital order without defendant present where interim order in place

MHA 1983 s.38¹⁹¹¹: Interim hospital orders

- s.38(2) - in the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

Section 45A directions and other sentences of imprisonment

MHA 1983 s.45A¹⁹¹²: Power of higher courts to direct hospital admission

- s.45A(9) - a hospital direction and a limitation direction given in relation to an offender shall have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion.

¹⁹⁰⁹ Commencement: 30 September 1983, MHA 1983 s.149(2).

¹⁹¹⁰ The final closing bracket appears to be in the wrong place here, it should be placed immediately after “CJA 2003”.

¹⁹¹¹ Commencement: 1 October 1984, SI 1984/1357 art.2

¹⁹¹² Commencement: 1 October 1997, as inserted by C(S)A 1997 s.46, SI 1997/2200 art.2(1)(i). The insertion is of no effect where the offence in question was committed before 1st October 1997, SI 1997/2200 art.5(1)(a).

Existing hospital order or guardianship order

MHA 1983 s.40¹⁹¹³: Effect of hospital orders, guardianship orders and interim hospital orders

- s.40(5) - where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect; but if the first-mentioned order, or the conviction on which it was made, is quashed on appeal, this subsection shall not apply and section 22 above shall have effect as if during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that section.

¹⁹¹³ Commencement: Section 40(1), (2), (4) and (5) in force 30 September 1983, MHA 1983 s.149(2). Section 40(3) in force 1 October 1984, SI 1984/1357 art.2. Section 40(6) in force 1 April 1996, as inserted by Mental Health (Patients in the Community) Act 1995 s.2(4), MH(PC)A 1995 s.7(2).

3.11.9. Appeals

Order imposed without conviction: Same right of appeal as if order imposed on conviction

MHA 1983 s.45¹⁹¹⁴: Appeals from magistrates' courts

- s.45(1) - where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.
- s.45(2) - an appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

No hospital available

R. v Jones [1977] Crim LR 158

Where a hospital order is suitable but no hospital is available, it is not appropriate for an appeal to come before the Court of Appeal as the only purpose to be served is to give the issue publicity. There is no reason to suppose the court will be able to make a hospital order.

Fresh evidence

R. v Beesley [2011] EWCA Crim 1021; [2012] 1 Cr. App. R. (S.) 15 (p.71)

Where a defendant wishes to rely on a medical report to suggest that a hospital order should be imposed, the rule for the admission of fresh evidence under CAA 1968 s.23 had to be applied.

R. v Fort [2013] EWCA Crim 2332; [2014] 2 Cr. App. R. (S.) 24 (p.167)

[Where an appellant suffers from a mental disorder], the aim of any “fresh evidence” that this appellant wishes the court to receive on appeal pursuant to s.23 of the Criminal Appeal Act 1968 (as amended) must be to assist in satisfying the burden upon him that: (i) at the time of sentence he was suffering from a mental disorder that was susceptible to treatment; (ii) the reason for the offence was the appellant's mental disorder; (iii) the appellant does not pose a significant risk of serious harm to members of the public occasioned by the commission of serious offences if his mental disorder were to be cured or substantially alleviated; so that (iv) the sentence of custody for life was wrong in principle.

In the context of conviction appeals, this court has emphasised that fresh expert evidence (which in many cases concerns the mental state of the appellant), will not automatically be received by the court pursuant to s.23 of the Criminal Appeal Act 1968: see *R. v Erskine*; *R. v Williams [2010] 1 W.L.R. 183*. Reception will depend on the facts and circumstances of the particular case. Whilst the court must have regard to the matters set out in s.23(2), ultimately the test is the broad one set out in s.23(1), viz. whether this court thinks it “necessary or expedient in the interests of justice” to receive the proposed “fresh” evidence. (Aikens LJ, at [65] - [66])

¹⁹¹⁴ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.10. Interpretation of MHA 1983 Part 3

MHA 1983 s.55¹⁹¹⁵: Interpretation of Part III

s.55(1) - in this Part of this Act—

“authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act);

“child” and *“young person”* have the same meaning as in the Children and Young Persons Act 1933;

“civil prisoner” has the meaning given to it by section 48(2)(c) above;

“guardian”, in relation to a child or young person, has the same meaning as in the Children and Young Persons Act 1933;

“place of safety”, in relation to a person who is not a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person has the same meaning as in the Children and Young Persons Act 1933;

“responsible clinician”, in relation to a person liable to be detained in a hospital within the meaning of Part 2 of this Act, means the approved clinician with overall responsibility for the patient’s case.

s.55(2) - any reference in this Part of this Act to an offence punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment relating to the imprisonment of young offenders.

s.55(4) - any reference to a hospital order, a guardianship order or a restriction order in section 40(2), (4) or (5), section 41(3) to (5), or section 42 above or section 69(1) below shall be construed as including a reference to any order or direction under this Part of this Act having the same effect as the first-mentioned order; and the exceptions and modifications set out in Schedule 1 to this Act in respect of the provisions of this Act described in that Schedule accordingly include those which are consequential on the provisions of this subsection.

s.55(5) - Section 34(2) above shall apply for the purposes of this Part of this Act as it applies for the purposes of Part II of this Act.

s.55(6) - references in this Part of this Act to persons serving a sentence of imprisonment shall be construed in accordance with section 47(5) above.

s.55(7) - Section 99 of the Children and Young Persons Act 1933 (which relates to the presumption and determination of age) shall apply for the purposes of this Part of this Act as it applies for the purposes of that Act.

¹⁹¹⁵ Commencement: 30 September 1983, MHA 1983 s.149(2).

3.11.11. Unfitness to plead

3.11.11.1. Orders capable of being imposed upon finding that accused did the act or made the omission charged

CP(I)A 1964 s.5¹⁹¹⁶: Powers to deal with persons not guilty by reason of insanity or unfit to plead etc.

- s.5(1) - this section applies where–
- (a) a special verdict is returned that the accused is not guilty by reason of insanity; or
 - (b) findings have been made that the accused is under a disability and that he did the act or made the omission charged against him.
- s.5(2) - the court shall make in respect of the accused–
- (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- s.5(3) - where–
- (a) the offence to which the special verdict or the findings relate is an offence the sentence for which is fixed by law, and
 - (b) the court have power to make a hospital order,
- the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- s.5(4) - in this section–
- “hospital order”* has the meaning given in section 37 of the Mental Health Act 1983;
“restriction order” has the meaning given to it by section 41 of that Act;
“supervision order” has the meaning given in Part 1 of Schedule 1A to this Act.

CP(I)A 1964 s.5A¹⁹¹⁷: Orders made under or by virtue of section 5

- s.5A(1) - in relation to the making of an order by virtue of subsection (2)(a) of section 5 above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if–
- (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies;
 - (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
 - (c) for subsections (4) and (5) there were substituted–
- “(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”

¹⁹¹⁶ Commencement: 31 August 1964 CP(I)A 1964 s.8(3).

¹⁹¹⁷ Commencement: 31 August 1964 CP(I)A 1964 s.8(3).

- s.5A(2) - in relation to a case where section 5 above applies but the court have not yet made one of the disposals mentioned in subsection (2) of that section–
- (a) section 35 of the 1983 Act (remand to hospital for report on accused's mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);
 - (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words "(other than an offence the sentence for which is fixed by law)" in subsection (2);
 - (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
 - (d) section 38 of that Act (interim hospital orders) shall have effect as if–
 - (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies; and
 - (ii) the words "(other than an offence the sentence for which is fixed by law)" in that subsection were omitted.
- s.5A(3) - in relation to the making of any order under the 1983 Act by virtue of this Act, references in the 1983 Act to an offender shall be construed as including references to a person in whose case section 5 above applies, and references to an offence shall be construed accordingly.
- s.5A(4) - where–
- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 5(1)(b) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with the responsible clinician that the person can properly be tried, may remit the person for trial, either to the court of trial or to a prison.
- On the person's arrival at the court or prison, the hospital order and the restriction order shall cease to have effect.
- s.5A(5) - Schedule 1A to this Act (supervision orders) has effect with respect to the making of supervision orders under subsection (2)(b) of section 5 above, and with respect to the revocation and amendment of such orders.
- s.5A(6) - in relation to the making of an order under subsection (2)(c) of section 5 above, section 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute and conditional discharge) shall have effect as if–
- (a) the reference to a person being convicted by or before a court of such an offence as is there mentioned included a reference to the case where section 5 above applies; and
 - (b) the reference to the court being of opinion that it is inexpedient to inflict punishment included a reference to it thinking that an order for absolute discharge would be most suitable in all the circumstances of the case.

3.11.11.2. Supervision orders

CP(I)A 1964 Sch.1A¹⁹¹⁸: Supervision Orders

- para.1(1) - in this Schedule “*supervision order*” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of a social worker, an officer of a local probation board [or an officer of a provider of probation services (“the supervising officer”) for a period specified in the order of not more than two years .
- para.1(2) - a supervision order may, in accordance with paragraph 4 or 5 below, require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner.
- para.1(3) - the Secretary of State may by order direct that sub-paragraph (1) above shall be amended by substituting, for the period for the time being specified there, such period as may be specified in the order.
- para.1(4) - an order under sub-paragraph (3) above may make in paragraph 11(2) below any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.
- para.1(5) - the power of the Secretary of State to make orders under sub-paragraph (3) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

3.11.12.2.1 Making and effect of supervision orders

Circumstances in which orders may be made

CP(I)A 1964 Sch.1A¹⁹¹⁹: Supervision Orders

- para.2(1) - the court shall not make a supervision order unless it is satisfied that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the accused or appellant.
- para.2(2) - the court shall not make a supervision order unless it is also satisfied–
- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
 - (b) that arrangements have been made for the treatment intended to be specified in the order.

¹⁹¹⁸ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

¹⁹¹⁹ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

Requirements as to residence

CP(I)A 1964 Sch.1A¹⁹²⁰: Supervision Orders

para.3(1) - a supervision order shall either–

- (a) specify the local social services authority area in which the supervised person resides or will reside, and require him to be under the supervision of a social worker of the local social services authority for that area; or
- (b) specify the local justice area in which that person resides or will reside, and require him to be under the supervision of an officer of a local probation board appointed for or assigned to that area, or (as the case may be) an officer of a provider of probation services acting in that area.

para.3(2) - before making such an order, the court shall explain to the supervised person in ordinary language–

- (a) the effect of the order (including any requirements proposed to be included in the order in accordance with paragraph 4, 5 or 8 below); and
- (b) that a magistrates' court has power under paragraphs 9 to 11 below to review the order on the application either of the supervised person or of the supervising officer.

para.3(3) - after making such an order, the court shall forthwith give copies of the order to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court, and he shall give a copy–

- (a) to the supervised person; and
- (b) to the supervising officer.

para.3(4) - after making such an order, the court shall also send to the designated officer for the local justice area in which the supervised person resides or will reside ("the local justice area concerned")–

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

para.3(5) - where such an order is made, the supervised person shall keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

¹⁹²⁰ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

Requirements as to medical treatment

CP(I)A 1964 Sch.1A¹⁹²¹: Supervision Orders

- para.4(1) - a supervision order may, if the court is satisfied as mentioned in sub-paragraph (2) below, include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of his mental condition.
- para.4(2) - the court may impose such a requirement only if satisfied on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly registered, that the mental condition of the supervised person–
- (a) is such as requires and may be susceptible to treatment; but
 - (b) is not such as to warrant the making of a hospital order within the meaning of the Mental Health Act 1983.
- para.4(3) - the treatment required under this paragraph by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say–
- (a) treatment as a non-resident patient at such institution or place as may be specified in the order; and
 - (b) treatment by or under the direction of such registered medical practitioner as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- para.5(1) - this paragraph applies where the court is satisfied on the written or oral evidence of two or more registered medical practitioners that–
- (a) because of his medical condition, other than his mental condition, the supervised person is likely to pose a risk to himself or others; and
 - (b) the condition may be susceptible to treatment.
- para.5(2) - the supervision order may (whether or not it includes a requirement under paragraph 4 above) include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the condition.
- para.5(3) - the treatment required under this paragraph by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say–
- (a) treatment as a non-resident patient at such institution or place as may be specified in the order; and
 - (b) treatment by or under the direction of such registered medical practitioner as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

¹⁹²¹ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

- para.6(1) - where the medical practitioner by whom or under whose direction the supervised person is being treated in pursuance of a requirement under paragraph 4 or 5 above is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which–
- (a) is not specified in the order, and
 - (b) is one in or at which the treatment of the supervised person will be given by or under the direction of a registered medical practitioner,
- he may, with the consent of the supervised person, make arrangements for him to be treated accordingly.
- para.6(2) - such arrangements may provide for the supervised person to receive part of his treatment as a resident patient in an institution or place of any description.
- para.6(3) - where any such arrangements are made for the treatment of a supervised person–
- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervising officer, specifying the institution or place in or at which the treatment is to be carried out; and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision order.
- para.7 - while the supervised person is under treatment as a resident patient in pursuance of arrangements under paragraph 6 above, the supervising officer shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.
- para.8(1) - subject to sub-paragraph (2) below, a supervision order may include requirements as to the residence of the supervised person.
- para.8(2) - before making such an order containing any such requirement, the court shall consider the home surroundings of the supervised person.

3.11.12.2.2 Revocation and amendment of supervision orders

Revocation

CP(I)A 1964 Sch.1A¹⁹²²: Supervision Orders

- para.9(1) - where a supervision order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to a magistrates' court acting for the local justice area concerned that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.
- para.9(2) - the court by which a supervision order was made may of its own motion revoke the order if, having regard to circumstances which have arisen since the order was made, it considers that it would be inappropriate for the order to continue.

¹⁹²² Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

Amendment of order by reason of change of residence

- para.10(1) - this paragraph applies where, at any time while a supervision order is in force in respect of any person, a magistrates' court acting for the local justice area concerned is satisfied that the supervised person proposes to change, or has changed, his residence from the area specified in the order to another local social services authority area or local justice area.
- para.10(2) - subject to sub-paragraph (3) below, the court may, and on the application of the supervising officer shall, amend the supervision order by substituting the other area for the area specified in the order.
- para.10(3) - the court shall not amend under this paragraph a supervision order which contains requirements which, in the opinion of the court, cannot be complied with unless the supervised person continues to reside in the area specified in the order unless, in accordance with paragraph 11 below, it either–
- (a) cancels those requirements; or
 - (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area.

Amendment of requirements of order

CP(I)A 1964 Sch.1A¹⁹²³: Supervision Orders

- para.11(1) - without prejudice to the provisions of paragraph 10 above, but subject to sub-paragraph (2) below, a magistrates' court for the local justice area concerned may, on the application of the supervised person or the supervising officer, by order amend a supervision order–
- (a) by cancelling any of the requirements of the order; or
 - (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.
- para.11(2) - the power of a magistrates' court under sub-paragraph (1) above shall not include power to amend an order by extending the period specified in it beyond the end of two years from the day of the original order.

Amendment of requirements in pursuance of medical report

CP(I)A 1964 Sch.1A¹⁹²⁴: Supervision Orders

- para.12(1) - where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of any requirement of a supervision order–
- (a) is of the opinion mentioned in sub-paragraph (2) below, or
 - (b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,

¹⁹²³ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

¹⁹²⁴ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

he shall make a report in writing to that effect to the supervising officer and that officer shall apply under paragraph 11 above to a magistrates' court for the local justice area concerned for the variation or cancellation of the requirement.

para.12(2) - the opinion referred to in sub-paragraph (1) above is–

- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision order;
- (b) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
- (c) that the supervised person is not susceptible to treatment; or
- (d) that the supervised person does not require further treatment.

Supplemental

CP(I)A 1964 Sch.1A¹⁹²⁵: Supervision Orders

para.13(1) - on the making under paragraph 9 above of an order revoking a supervision order, the designated officer for the local justice area concerned, or (as the case may be) the Crown Court, shall forthwith give copies of the revoking order to the supervising officer.

para.13(2) - a supervising officer to whom in accordance with sub-paragraph (1) above copies of a revoking order are given shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is residing.

para.14(1) - on the making under paragraph 10 or 11 above of any order amending a supervision order, the designated officer for the local justice area concerned shall forthwith–

- (a) if the order amends the supervision order otherwise than by substituting a new area or a new place for the one specified in the supervision order, give copies of the amending order to the supervising officer;
- (b) if the order amends the supervision order in the manner excepted by paragraph (a) above, send to the designated officer for the new local justice area concerned–
 - (i) copies of the amending order; and
 - (ii) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in exercising its functions in relation to the order;

and in a case falling within paragraph (b) above, the designated officer for that area shall give copies of the amending order to the supervising officer.

para.14(2) - where the designated officer for the court making the order is also the designated officer for the new local justice area–

- (a) sub-paragraph (1)(b) above does not apply; but
- (b) the designated officers shall give copies of the amending order to the supervising officer.

¹⁹²⁵ Commencement: 31 March 2005, as inserted by DVCVA 2004 Sch.2 para.1, SI 2005/579 art.3(b).

para.14(3) - where in accordance with sub-paragraph (1) or (2) above copies of an order are given to the supervising officer, he shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is or was residing.

3.11.11.3. Appeals

CAA 1968 s.16A¹⁹²⁶: Right of appeal against hospital order etc.

s.16A(1) - a person in whose case the Crown Court–

- (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
 - (b) makes a supervision order under section 5 of that Act,
- may appeal to the Court of Appeal against the order.

s.16A(2) - an appeal under this section lies only–

- (a) with the leave of the Court of Appeal; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

CAA 1968 s.16B¹⁹²⁷: Disposal of appeal under s.16A

s.16B(1) - if on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him–

- (a) they may quash any order which is the subject of the appeal; and
- (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.

s.16B(2) - the fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.

s.16B(4) - the fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.

s.16B(5) - where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.

¹⁹²⁶ Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

¹⁹²⁷ Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

Part 3. Sentencing powers and duties

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3.12 Judge recommending licence conditions

Power to make recommendation

CJA 2003 s.238¹⁹²⁸: Power of court to recommend licence conditions for certain prisoners

s.238(1) - a court which sentences an offender to a term of imprisonment or detention in a young offender institution of twelve months or more in respect of any offence may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under this Chapter on his release from prison.

Duty of Secretary of State to have regard to judicial recommendation

CJA 2003 s.238¹⁹²⁹: Power of court to recommend licence conditions for certain prisoners

s.238(2) - in exercising his powers under section 250(4)(b) in respect of an offender, the Secretary of State must have regard to any recommendation under subsection (1).

Recommendation is not a sentence

CJA 2003 s.238¹⁹³⁰: Power of court to recommend licence conditions for certain prisoners

s.238(3) - a recommendation under subsection (1) is not to be treated for any purpose as part of the sentence passed on the offender.

Exclusion of certain youth sentences

CJA 2003 s.238¹⁹³¹: Power of court to recommend licence conditions for certain prisoners

s.238(4) - this section does not apply in relation to a sentence of detention under section 91 of the Sentencing Act or section 226B of this Act.

Other sources

Licence Conditions, NOMS PI 07/2011¹⁹³²

¹⁹²⁸ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.19. The commencement of s.238 is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4 April 2005, SI 2005/950 Sch.2 para.15.

¹⁹²⁹ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.19. The commencement of s.238 is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4 April 2005, SI 2005/950 Sch.2 para.15.

¹⁹³⁰ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.19. The commencement of s.238 is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4 April 2005, SI 2005/950 Sch.2 para.15.

¹⁹³¹ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.19. The commencement of s.238 is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4 April 2005, SI 2005/950 Sch.2 para.15.

¹⁹³² This document expired on 26 April 2015.

Judicial recommendations

- 2.21 The Criminal Justice Act 2003 introduced a power for sentencers, when passing sentences on those who have committed offences on or after 4 April 2005, to recommend to the Secretary of State the inclusion of specific additional licence conditions. The Secretary of State is required to give due regard to any such recommendation. There is a presumption that wherever possible, all such recommendations will be included when releasing a prisoner on licence. However, it is accepted that in some cases, the circumstances of the offender may have changed to such a degree that the concerns leading to the judicial recommendation are no longer relevant or that the condition may be detrimental to managing the offender's risk.
- 2.22 The Governor of the holding prison will send information on any judicial recommendations to the relevant Probation Trust shortly after the prisoner has been received after sentencing into custody using a copy of the record sheet 5089. Chief Executives of Probation Trusts have been advised to record locally any court-recommended condition(s) and ensure that it is considered prior to ANY type of release under Chapter 6 of the Criminal Justice Act 2003 occurring.
- 2.23 If the OM assesses the recommended instructions as not being necessary or proportionate to managing the risk of the offender in the community, they must consult with PPCS to seek authority to omit such conditions from the licence. In cases where PPCS feels it to be detrimental or inappropriate to include the court-recommended licence condition in the licence, it will write to the sentencing judge to advise him/her of the decision and will provide reasons, and will also inform the Governor of the holding prison so that it may be recorded.

Part 4. Guidelines

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4.1 Statutory provisions about the Council

4.1.1. Creation of the Council

CJA 2009 s.118¹⁹³³: Sentencing Council for England and Wales

s.118(1) - there is to be a Sentencing Council for England and Wales.

s.118(2) - Schedule 15 makes provision about the Council.

CJA 2009 Sch.15¹⁹³⁴: The Sentencing Council for England and Wales

Constitution of the Council

para.1 The Council is to consist of—

- (a) 8 members appointed by the Lord Chief Justice with the agreement of the Lord Chancellor (“judicial members”);
- (b) 6 members appointed by the Lord Chancellor with the agreement of the Lord Chief Justice (“non-judicial members”).

Appointment of a person to chair the Council etc

para.2 The Lord Chief Justice must, with the agreement of the Lord Chancellor, appoint—

- (a) a judicial member to chair the Council (“the chairing member”), and
- (b) another judicial member to chair the Council in the absence of the chairing member.

Appointment of judicial members

para.3 (1) A person is eligible for appointment as a judicial member if the person is—

- (a) a judge of the Court of Appeal,
 - (b) a puisne judge of the High Court,
 - (c) a Circuit judge,
 - (d) a District Judge (Magistrates' Courts), or
 - (e) a lay justice.
- (2) The judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.
- (3) When appointing judicial members, the Lord Chief Justice must have regard to the desirability of the judicial members including at least one person who appears to the Lord Chief Justice to have responsibilities relating to the training of judicial office-holders who exercise criminal jurisdiction in England and Wales.

¹⁹³³ Commencement: Section 118(1) in force 6 April 2010, SI 2010/816 art.2 and Sch.1 para.7. Section 118(2) in force 1 February 2010, so far as it relates to the provisions specified in SI 2010/145 Sch.1 para.23, SI 2010/145 art.2(2) and Sch.1 para.9, otherwise, in force 6 April 2010, SI 2010/816 art.2 and Sch.1 para.7.

¹⁹³⁴ Commencement: Sch.15 paras.1-4 and 6-9 and paras.5, 7 and 10 for the purposes of making appointments, in force 1 February 2010, SI 2010/145 Sch.1 para.23, otherwise, in force 6 April 2010, SI 2010/816 art.2 and Sch.1 para.7.

- (4) “*Judicial office-holder*” has the meaning given by section 109(4) of the Constitutional Reform Act 2005 (c. 4).

Appointment of non-judicial members

- para.4(1) A person is eligible for appointment as a non-judicial member if the person appears to the Lord Chancellor to have experience in one or more of the following areas—
- (a) criminal defence;
 - (b) criminal prosecution;
 - (c) policing;
 - (d) sentencing policy and the administration of justice;
 - (e) the promotion of the welfare of victims of crime;
 - (f) academic study or research relating to criminal law or criminology;
 - (g) the use of statistics;
 - (h) the rehabilitation of offenders.
- para.4(2) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.

President of the Council

- para.5(1) The Lord Chief Justice is to have the title of President of the Sentencing Council for England and Wales.
- para.5(2) The President is not a member of the Council.

Lord Chancellor's representative

- para.6(1) The Lord Chancellor may appoint a person to attend and speak at any meeting of the Council.
- para.6(2) The person appointed under sub-paragraph (1) must be a person appearing to the Lord Chancellor to have experience of sentencing policy.

Terms of appointment

- para.7(1) 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 Lord Chancellor to remove a judicial member from office, with the agreement of the Lord Chief Justice, on the grounds of incapacity or misbehaviour;
 - (c) enabling the Lord Chancellor to remove a non-judicial member from office on the grounds of incapacity or misbehaviour.
- para.7(2) The following provisions apply to an order under sub-paragraph (1)—
- (a) if the order includes provision falling within sub-paragraph (1)(a), the Lord Chancellor must consult the Lord Chief Justice about that provision before making the order;
 - (b) if the order includes provision falling within sub-paragraph (1)(b), the order may not be made unless the Lord Chief Justice agrees to the inclusion of that provision.

Vacancies etc

- para.8 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 paragraph 2, 3 or 4.

Remuneration etc

- para.9(1) 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 the Lord Chancellor may determine, and
 - (b) to any other judicial member, such expenses as the Lord Chancellor may determine.
- para.9(2) The Lord Chancellor may pay to any non-judicial member such remuneration or expenses as the Lord Chancellor may determine (except that, where the Director of Public Prosecutions is such a member, no remuneration may be paid to the Director).

Interpretation

- para.10 In this Schedule “*lay justice*” means a justice of the peace who is not a District Judge (Magistrates' Courts).

Annual report

CJA 2009 s.119¹⁹³⁵: Annual report

- s.119(1) - the Council must, as soon as practicable after the end of each financial year, make to the Lord Chancellor a report on the exercise of the Council's functions during the year.
- s.119(2) - the Lord Chancellor must lay a copy of the report before Parliament.
- s.119(3) - the Council must publish the report once a copy has been so laid.
- s.119(4) - Sections 128(3), 130 and 131 make further provision about the content of reports under this section.
- s.119(5) - if section 118 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.

CJA 2009 s.128¹⁹³⁶: Monitoring

- s.128(1) - the Council must—
- (a) monitor the operation and effect of its sentencing guidelines, and
 - (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a).
- s.128(2) - the Council must, in particular, discharge its duty under subsection (1)(a) with a view to drawing conclusions about—

¹⁹³⁵ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹³⁶ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (a) the frequency with which, and extent to which, courts depart from sentencing guidelines;
- (b) the factors which influence the sentences imposed by courts;
- (c) the effect of the guidelines on the promotion of consistency in sentencing;
- (d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

s.128(3) - when reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include—

- (a) a summary of the information obtained under subsection (1)(a), and
- (b) a report of any conclusions drawn by the Council under subsection (1)(b).

CJA 2009 s.130¹⁹³⁷: Resources: effect of sentencing practice

s.130(1) - the annual report for a financial year must contain a sentencing factors report.

s.130(2) - a sentencing factors report is an assessment made by the Council, using the information available to it, of the effect which any changes in the sentencing practice of courts are having or are likely to have on each of the following—

- (a) the resources required for the provision of prison places;
- (b) the resources required for probation provision;
- (c) the resources required for the provision of youth justice services.

CJA 2009 s.131¹⁹³⁸: Resources: effect of factors not related to sentencing

s.131(1) - the annual report for a financial year must contain a non-sentencing factors report.

s.131(2) - the Council may, at any other time, provide the Lord Chancellor with a non-sentencing factors report, and may publish that report.

s.131(3) - a non-sentencing factors report is a report by the Council of any significant quantitative effect (or any significant change in quantitative effect) which non-sentencing factors are having or are likely to have on the resources needed or available for giving effect to sentences imposed by courts in England and Wales.

s.131(4) - non-sentencing factors are factors which do not relate to the sentencing practice of the courts, and include—

- (a) the recalling of persons to prison;
- (b) breaches of orders within subsection (5);
- (c) patterns of re-offending;
- (d) decisions or recommendations for release made by the Parole Board;
- (e) the early release under discretionary powers of persons detained in prison;
- (f) the remanding of persons in custody.

¹⁹³⁷ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹³⁸ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

s.131(5) - the orders within this subsection are—

- (a) community orders (within the meaning of section 177 of the Criminal Justice Act 2003 (c. 44)),
- (b) suspended sentence orders (within the meaning of section 189(7) of that Act),
and
- (c) youth rehabilitation orders (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008 (c. 4)).

4.1.2. Creation of guidelines

CJA 2009 s.120¹⁹³⁹: Sentencing guidelines

- s.120(1) - in this Chapter “*sentencing guidelines*” means guidelines relating to the sentencing of offenders.
- s.120(2) - a sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender.
- s.120(3) - the Council must prepare—
 - (a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas), and
 - (b) sentencing guidelines about the application of any rule of law as to the totality of sentences.
- s.120(4) - the Council may prepare sentencing guidelines about any other matter.
- s.120(5) - where the Council has prepared guidelines under subsection (3) or (4), it must publish them as draft guidelines.
- s.120(6) - the Council must consult the following persons about the draft guidelines—
 - (a) the Lord Chancellor;
 - (b) such persons as the Lord Chancellor may direct;
 - (c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
 - (d) such other persons as the Council considers appropriate.
- s.120(7) - in the case of guidelines within subsection (3), the Council must, after making any amendments of the guidelines which it considers appropriate, issue them as definitive guidelines.
- s.120(8) - in any other case, the Council may, after making such amendments, issue them as definitive guidelines.
- s.120(9) - the Council may, from time to time, review the sentencing guidelines issued under this section, and may revise them.
- s.120(10) - subsections (5), (6) and (8) apply to a revision of the guidelines as they apply to their preparation (and subsection (8) applies even if the guidelines being revised are within subsection (3)).
- s.120(11) - when exercising functions under this section, the Council must have regard to the following matters—
 - (a) the sentences imposed by courts in England and Wales for offences;
 - (b) the need to promote consistency in sentencing;
 - (c) the impact of sentencing decisions on victims of offences;
 - (d) the need to promote public confidence in the criminal justice system;

¹⁹³⁹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (e) the cost of different sentences and their relative effectiveness in preventing re-offending;
- (f) the results of the monitoring carried out under section 128.

CJA 2009 s.121¹⁹⁴⁰: Sentencing ranges

- s.121(1) - when exercising functions under section 120, the Council is to have regard to the desirability of sentencing guidelines which relate to a particular offence being structured in the way described in subsections (2) to (9).
- s.121(2) - the guidelines should, if reasonably practicable given the nature of the offence, describe, by reference to one or more of the factors mentioned in subsection (3), different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed.
- s.121(3) - those factors are—
 - (a) the offender's culpability in committing the offence;
 - (b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;
 - (c) such other factors as the Council considers to be particularly relevant to the seriousness of the offence in question.
- s.121(4) - the guidelines should—
 - (a) specify the range of sentences ("the offence range") which, in the opinion of the Council, it may be appropriate for a court to impose on an offender convicted of that offence, and
 - (b) if the guidelines describe different categories of case in accordance with subsection (2), specify for each category the range of sentences ("the category range") within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category.
- s.121(5) - the guidelines should also—
 - (a) specify the sentencing starting point in the offence range, or
 - (b) if the guidelines describe different categories of case in accordance with subsection (2), specify the sentencing starting point in the offence range for each of those categories.
- s.121(6) - the guidelines should—
 - (a) (to the extent not already taken into account by categories of case described in accordance with subsection (2)) list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating factors which the Council considers are relevant to such a consideration,
 - (b) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence, and

¹⁹⁴⁰ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (c) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within paragraph (a) or (b) as the Council considers to be of particular significance in relation to the offence or the offender.

s.121(7) - for the purposes of subsection (6)(b) the following are to be disregarded—

- (a) the requirements of section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas);
- (b) sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence;
- (c) any rule of law as to the totality of sentences.

s.121(8) - the provision made in accordance with subsection (6)(c) should be framed in such manner as the Council considers most appropriate for the purpose of assisting the court, when sentencing an offender for the offence, to determine the appropriate sentence within the offence range.

s.121(9) - the provision made in accordance with subsections (2) to (8) may be different for different circumstances or cases involving the offence.

s.121(10) - the sentencing starting point in the offence range—

- (a) for a category of case described in the guidelines in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for cases within that category—
 - (i) before taking account of the factors mentioned in subsection (6), and
 - (ii) assuming the offender has pleaded not guilty, and
- (b) where the guidelines do not describe categories of case in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for the offence—
 - (i) before taking account of the factors mentioned in subsection (6), and
 - (ii) assuming the offender has pleaded not guilty.

CJA 2009 s.122¹⁹⁴¹: Allocation guidelines

s.122(1) - in this Chapter “*allocation guidelines*” means guidelines relating to decisions by a magistrates’ court under section 19 of the Magistrates’ Courts Act 1980 (c. 43), or the Crown Court under paragraph 7(7) or 8(2)(d) of Schedule 3 to the Crime and Disorder Act 1998 (c. 37), as to whether an offence is more suitable for summary trial or trial on indictment.

s.122(2) - the Council may prepare allocation guidelines.

- (3) - Where the Council has prepared guidelines under subsection (2), it must publish them as draft guidelines.

¹⁹⁴¹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- s.122(4) - the Council must consult the following persons about the draft guidelines—
- (a) the Lord Chancellor;
 - (b) such persons as the Lord Chancellor may direct;
 - (c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
 - (d) such other persons as the Council considers appropriate.
- s.122(5) - the Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines.
- s.122(6) - the Council may, from time to time, review the allocation guidelines issued under this section, and may revise them.
- s.122(7) - subsections (3) to (5) apply to a revision of the guidelines as they apply to their preparation.
- s.122(8) - when exercising functions under this section, the Council must have regard to—
- (a) the need to promote consistency in decisions of the kind mentioned in subsection (1), and
 - (b) the results of the monitoring carried out under section 128.

CJA 2009 s.123¹⁹⁴²: Preparation or revision of guidelines in urgent cases

- s.123(1) - this section applies where the Council—
- (a) decides to prepare or revise sentencing guidelines or allocation guidelines, and
 - (b) is of the opinion that the urgency of the case makes it impractical to comply with the procedural requirements of section 120 or (as the case may be) section 122.
- s.123(2) - the Council may prepare or revise the guidelines without complying with—
- (a) in the case of sentencing guidelines, section 120(5), and
 - (b) in the case of allocation guidelines, section 122(3).
- s.123(3) - the Council may—
- (a) in the case of sentencing guidelines, amend and issue the guidelines under section 120(7) or (8) without having complied with the requirements of section 120(6)(b) to (d), and
 - (b) in the case of allocation guidelines, amend and issue the guidelines under section 122(5) without having complied with the requirements of section 122(4)(b) to (d).
- s.123(4) - the guidelines or revised guidelines must—
- (a) state that the Council was of the opinion mentioned in subsection (1)(b), and
 - (b) give the Council's reasons for that opinion.

¹⁹⁴² Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

CJA 2009 s.124¹⁹⁴³: Proposals by Lord Chancellor or Court of Appeal

- s.124(1) - the Lord Chancellor may propose to the Council—
- (a) that sentencing guidelines be prepared or revised by the Council under section 120—
 - (i) in relation to a particular offence, particular category of offence or particular category of offenders, or
 - (ii) in relation to a particular matter affecting sentencing;
 - (b) that allocation guidelines be prepared or revised by the Council under section 122.
- s.124(2) - subsection (3) applies where the criminal division of the Court of Appeal (“the appeal court”) is seised of an appeal against, or a reference under section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) with respect to, the sentence passed for an offence (“the relevant offence”).
- s.124(3) - the appeal court may propose to the Council that sentencing guidelines be prepared or revised by the Council under section 120—
- (a) in relation to the relevant offence, or
 - (b) in relation to a category of offences within which the relevant offence falls.
- s.124(4) - a proposal under subsection (3) may be included in the appeal court's judgment in the appeal.
- s.124(5) - if the Council receives a proposal under subsection (1) or (3) to prepare or revise any guidelines, it must consider whether to do so.
- s.124(6) - for the purposes of this section, the appeal court is seised of an appeal against a sentence if—
- (a) the court or a single judge has granted leave to appeal against the sentence under section 9 or 10 of the Criminal Appeal Act 1968 (c. 19) (appeals against sentence), or
 - (b) in a case where the judge who passed the sentence granted a certificate of fitness for appeal under section 9 or 10 of that Act, notice of appeal has been given,
- and the appeal has not been abandoned or disposed of.
- s.124(7) - for the purposes of this section, the appeal court is seised of a reference under section 36 of the Criminal Justice Act 1988 (reviews of sentencing) if it has given leave under subsection (1) of that section and the reference has not been disposed of.
- s.124(8) - this section is without prejudice to any power of the appeal court to provide guidance relating to the sentencing of offenders in a judgment of the court.

¹⁹⁴³ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.1.3. Other functions and duties of the Council

CJA 2009 s.127¹⁹⁴⁴: Resource implications of guidelines

- s.127(1) - this section applies where the Council—
- (a) publishes draft guidelines under section 120 or 122, or
 - (b) issues guidelines as definitive guidelines under either of those sections.
- s.127(2) - the Council must publish a resource assessment in respect of the guidelines.
- s.127(3) - a resource assessment in respect of any guidelines is an assessment by the Council of the likely effect of the guidelines on—
- (a) the resources required for the provision of prison places,
 - (b) the resources required for probation provision, and
 - (c) the resources required for the provision of youth justice services.
- s.127(4) - the resources assessment must be published—
- (a) in a case within subsection (1)(a), at the time of publication of the draft guidelines;
 - (b) in a case within subsection (1)(b), at the time the guidelines are issued or, where the guidelines are issued by virtue of section 123, as soon as reasonably practicable after the guidelines are issued.
- s.127(5) - the Council must keep under review any resource assessment published under this section, and, if the assessment is found to be inaccurate in a material respect, publish a revised resource assessment.

CJA 2009 s.128¹⁹⁴⁵: Monitoring

- s.128(1) - the Council must—
- (a) monitor the operation and effect of its sentencing guidelines, and
 - (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a).
- s.128(2) - the Council must, in particular, discharge its duty under subsection (1)(a) with a view to drawing conclusions about—
- (a) the frequency with which, and extent to which, courts depart from sentencing guidelines;
 - (b) the factors which influence the sentences imposed by courts;
 - (c) the effect of the guidelines on the promotion of consistency in sentencing;
 - (d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

¹⁹⁴⁴ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁴⁵ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- s.128(3) - when reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include—
- (a) a summary of the information obtained under subsection (1)(a), and
 - (b) a report of any conclusions drawn by the Council under subsection (1)(b).

CJA 2009 s.129¹⁹⁴⁶: Promoting awareness

- s.129(1) - the Council must publish, at such intervals as it considers appropriate—
- (a) in relation to each local justice area, information regarding the sentencing practice of the magistrates' courts acting in that area, and
 - (b) in relation to each location at which the Crown Court sits, information regarding the sentencing practice of the Crown Court when it sits at that location.
- s.129(2) - the Council may promote awareness of matters relating to the sentencing of offenders by courts in England and Wales, including, in particular—
- (a) the sentences imposed by courts in England and Wales;
 - (b) the cost of different sentences and their relative effectiveness in preventing re-offending;
 - (c) the operation and effect of guidelines under this Chapter.
- s.129(3) - for the purposes of subsection (2), the Council may, in particular, publish any information obtained or produced by it in connection with its functions under section 128(1).

CJA 2009 s.132¹⁹⁴⁷: Duty to assess impact of policy and legislative proposals

- s.132(1) - this section applies where the Lord Chancellor refers to the Council any government policy proposal, or government proposal for legislation, which the Lord Chancellor considers may have a significant effect on one or more of the following—
- (a) the resources required for the provision of prison places;
 - (b) the resources required for probation provision;
 - (c) the resources required for the provision of youth justice services.
- s.132(2) - for the purposes of subsection (1)—
- “government policy proposal”* includes a policy proposal of the Welsh Ministers;
- “government proposal for legislation”* includes a proposal of the Welsh Ministers for legislation.
- s.132(3) - the Council must assess the likely effect of the proposal on the matters mentioned in paragraphs (a) to (c) of subsection (1).
- s.132(4) - the Council must prepare a report of the assessment and send the report—
- (a) to the Lord Chancellor, and
 - (b) if the report relates to a proposal of the Welsh Ministers, to the Welsh Ministers.
- s.132(5) - a single report may be prepared of the assessments relating to 2 or more proposals.

¹⁹⁴⁶ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁴⁷ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- s.132(6) - if the Lord Chancellor receives a report under subsection (4) the Lord Chancellor must, unless it relates only to a proposal of the Welsh Ministers, lay a copy of it before each House of Parliament.
- s.132(7) - if the Welsh Ministers receive a report under subsection (4) they must lay a copy of it before the National Assembly for Wales.
- s.132(8) - the Council must publish a report which has been laid in accordance with subsections (6) and (7).
- s.132(9) - in this section “*legislation*” means—
 - (a) an Act of Parliament if, or to the extent that, it extends to England and Wales;
 - (b) subordinate legislation made under an Act of Parliament if, or to the extent that, the subordinate legislation extends to England and Wales;
 - (c) a Measure or Act of the National Assembly for Wales or subordinate legislation made under such a Measure or Act.

4.1.4. Interpretation

CJA 2009 s.136¹⁹⁴⁸: Interpretation of this Chapter

- s.136 - in this Chapter, except where the context otherwise requires—
- “allocation guidelines”* has the meaning given by section 122;
 - “annual report”* means a report made under section 119;
 - “the category range”* has the meaning given by section 121(4)(b);
 - “the Council”* means the Sentencing Council for England and Wales;
 - “definitive sentencing guidelines”* means sentencing guidelines issued by the Council under section 120 as definitive guidelines, as revised by any subsequent guidelines so issued;
 - “financial year”* means a period of 12 months ending with 31 March;
 - “the offence range”* has the meaning given by section 121(4)(a);
 - “prison”—*
 - (a) includes any youth detention accommodation within the meaning of section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention and training orders), but
 - (b) does not include any naval, military or air force prison;
 - “probation provision”* has the meaning given by section 2 of the Offender Management Act 2007 (c. 21);
 - “sentence”*, in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offender's offence, and
 - “sentencing”* is to be construed accordingly;
 - “sentencing guidelines”* has the meaning given by section 120;
 - “the sentencing starting point”*, in relation to the offence range, has the meaning given by section 121(10);
 - “youth justice services”* has the meaning given by section 38(4) of the Crime and Disorder Act 1998 (c. 37).

¹⁹⁴⁸ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.2 Using and applying the guidelines

4.2.1. Duty to follow sentencing guidelines

Duty of court to follow sentencing guidelines

CJA 2009 s.125¹⁹⁴⁹: Sentencing guidelines: duty of court

s.125(1) - every court—

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.

Offence ranges: No duty to sentence within category range

CJA 2009 s.125¹⁹⁵⁰: Sentencing guidelines: duty of court

s.125(2) - subsections (3) and (4) apply where—

- (a) a court is deciding what sentence to impose on a person (“P”) who is guilty of an offence, and
- (b) sentencing guidelines have been issued in relation to that offence which are structured in the way described in section 121(2) to (5) (“the offence specific guidelines”).

s.125(3) - the duty imposed on a court by subsection (1)(a) to follow any sentencing guidelines which are relevant to the offender's case includes—

- (a) in all cases, a duty to impose on P, in accordance with the offence specific guidelines, a sentence which is within the offence range, and
- (b) where the offence-specific guidelines describe categories of case in accordance with section 121(2), a duty to decide which of the categories most resembles P's case in order to identify the sentencing starting point in the offence range;

but nothing in this section imposes on the court a separate duty, in a case within paragraph (b), to impose a sentence which is within the category range.

No category suitable

CJA 2009 s.125¹⁹⁵¹: Sentencing guidelines: duty of court

s.125(2) - subsections (3) and (4) apply where—

- (a) a court is deciding what sentence to impose on a person (“P”) who is guilty of an offence, and
 - (b) sentencing guidelines have been issued in relation to that offence which are structured in the way described in section 121(2) to (5) (“the offence specific guidelines”).
- s.125(4) - subsection (3)(b) does not apply if the court is of the

¹⁹⁴⁹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵⁰ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵¹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles P's case.

Reductions in sentence

CJA 2009 s.125¹⁹⁵²: Sentencing guidelines: duty of court

s.125(5) - subsection (3)(a) is subject to—

- (a) section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas),
- (b) sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (c. 15) (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence, and
- (c) any rule of law as to the totality of sentences.

Duty is subject to statutory restrictions etc.

CJA 2009 s.125¹⁹⁵³: Sentencing guidelines: duty of court

s.125(6) - the duty imposed by subsection (1) is subject to the following provisions—

- (a) section 148(1) and (2) of the Criminal Justice Act 2003 (restrictions on imposing community sentences);
- (b) section 152 of that Act (restrictions on imposing discretionary custodial sentences);
- (c) section 153 of that Act (custodial sentence must be for shortest term commensurate with seriousness of offence);
- (d) section 164(2) of that Act (fine must reflect seriousness of offence);
- (da) section 224A of that Act (life sentence for second listed offence for certain dangerous offenders);
- (e) section 269 of and Schedule 21 to that Act (determination of minimum term in relation to mandatory life sentence);
- (ea) sections 1(2B) and 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (f) section 51A of the Firearms Act 1968 (c. 27) (minimum sentence for certain offences under section 5 etc);
- (fa) sections 139(6B), 139A(5B) and 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);
- (g) sections 110(2) and 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (minimum sentences for certain drug trafficking and burglary offences);
- (h) section 29(4) and (6) of the Violent Crime Reduction Act 2006 (c. 38) (minimum sentences for certain offences involving firearms).

¹⁹⁵² Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵³ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

Orders under the Mental Health Act 1983

CJA 2009 s.125¹⁹⁵⁴: Sentencing guidelines: duty of court

s.125(7) - nothing in this section or section 126 is to be taken as restricting any power (whether under the Mental Health Act 1983 (c. 20) or otherwise) which enables a court to deal with a mentally disordered offender in the manner it considers to be most appropriate in all the circumstances.

Interpretation

CJA 2009 s.125¹⁹⁵⁵: Sentencing guidelines: duty of court

s.125(8) - in this section—

“mentally disordered”, in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983;

“sentencing guidelines” means definitive sentencing guidelines.

¹⁹⁵⁴ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵⁵ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.2.2. Duty to have regard to sentencing guidelines

Offence committed on/after 6 April 2010

Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 (SI 2010/816)¹⁹⁵⁶

- art.7(1) - existing guidelines which have effect immediately before the coming into force, by virtue of article 2 and paragraph 8 of the Schedule, of section 125(1) of the 2009 Act (sentencing guidelines: duty of court) are to be treated as guidelines issued by the Sentencing Council for England and Wales under section 120 of the 2009 Act (sentencing guidelines).
- art.7(5) - in this article, “existing guidelines” has the meaning given in paragraph 28(2) of Schedule 22 to the 2009 Act.

Offences committed before 6 April 2010

CJA 2009 Sch.22 para.27¹⁹⁵⁷

- para.27(1) - nothing in section 125 or 126 has effect in relation to the sentencing of persons for offences committed before the commencement of the section in question.
- para.27(2) - where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of sub-paragraph (1) to have been committed on the last of those days.

Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 (SI 2010/816)¹⁹⁵⁸

- art.7(2) - the repeal of section 172 of the Criminal Justice Act 2003 (duty of court to have regard to sentencing guidelines), which takes effect by virtue of article 2 and paragraph 22(b)(iv) of the Schedule, shall have no effect where a court is sentencing an offender for, or exercising any other function relating to the sentencing of offenders in respect of, an offence committed before 6th April 2010; and for these purposes “guidelines” in section 172(2) shall be treated as including definitive sentencing guidelines within the meaning of section 136 of the 2009 Act.

¹⁹⁵⁶ Commencement: 16 March 2010

¹⁹⁵⁷ Commencement: 6 April 2010, CJA 2009 s.182(4) and SI 2010/816 art.2 and Sch.1 para.21(d).

¹⁹⁵⁸ Commencement: 16 March 2010

4.3 Interaction with other sentencing orders

Discretionary life and extended determinate sentences

CJA 2009 s.126¹⁹⁵⁹: Determination of tariffs etc.

- s.126(1) - Section 125(3) (except as applied by virtue of subsection (3) below) is subject to any power a court has to impose—
- (c) an extended sentence of imprisonment by virtue of section 226A of the Criminal Justice Act 2003;
 - (d) an extended sentence of detention by virtue of section 226B of that Act.
- s.126(2) - subsection (3) applies where a court determines the notional determinate term for the purpose of determining in any case—
- (a) the order to be made under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence: determination of tariffs),
 - (c) the appropriate custodial term for the purposes of 226A(6) of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over), or
 - (d) the appropriate term for the purposes of section 226B(4) of that Act (extended sentence for certain violent or sexual offences: persons under 18).
- s.126(3) - Subsections (2) to (5) of section 125 apply for the purposes of determining the notional determinate term in relation to an offence as they apply for the purposes of determining the sentence for an offence.

Interpretation

CJA 2009 s.126¹⁹⁶⁰: Determination of tariffs etc.

- s.126(4) - in this section references to the notional determinate term are to the determinate sentence that would have been passed in the case if the need to protect the public and the potential danger of the offender had not required the court to impose a life sentence (in circumstances where the sentence is not fixed by law) or, as the case may be, an extended sentence of imprisonment or detention.
- s.126(5) - in subsection (4) “*life sentence*” means a sentence mentioned in subsection (2) of section 34 of the Crime (Sentences) Act 1997 other than a sentence mentioned in paragraph (d) or (e) of that subsection.

¹⁹⁵⁹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁶⁰ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.4 Functions/powers of the Secretary of State and the Lord Chancellor

Secretary of State's powers

CJA 2009 Sch.22 para.28¹⁹⁶¹

para.28(1) - without prejudice to the generality of section 177, an order under subsection (3) of that section made by the Lord Chancellor may provide—

- (a) for the Sentencing Council for England and Wales to exercise any function conferred on the Sentencing Guidelines Council by any provision of Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) pending the repeal of the provision in question by this Act;
- (b) for existing guidelines which have effect immediately before the coming into force of section 125(1) to be treated as guidelines issued by the Sentencing Council for England and Wales under this Act;
- (c) that, in relation to the sentencing of persons for offences committed before the coming into force of section 125(1), any provision of Chapter 1 of Part 12 of the Criminal Justice Act 2003 repealed by this Act continues to have effect with such modifications as are specified in the order.

para.28(2) - “Existing guidelines” means—

- (a) sentencing or allocation guidelines issued as definitive guidelines under section 170 of the Criminal Justice Act 2003;
- (b) guidelines with respect to sentencing which were included in any judgment of the Court of Appeal given before 27 February 2004 and have not been superseded by sentencing guidelines so issued.

Lord Chancellor's functions etc.

Note: The Lord Chancellor has the power to make requests to the Council under CJA 2009 ss.124 and 132.

CJA 2009 s.133¹⁹⁶²: Assistance by the Lord Chancellor

s.133 - the Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions.

CJA 2009 s.134¹⁹⁶³: Entrenchment of Lord Chancellor's functions

s.134 - in Schedule 7 to the Constitutional Reform Act 2005 (c. 4) (protected functions of the Lord Chancellor), in Part A of paragraph 4—

- (a) for the entry for the Criminal Justice Act 2003 (c. 44) substitute—
“Criminal Justice Act 2003 (c. 44)
Section 174(4)
Section 269(6) and (7)”, and

¹⁹⁶¹ Commencement: 1 February 2010, CJA 2009 s.184(4)(f) and SI 2010/145 art.2 and Sch.1 para.26(d).

¹⁹⁶² Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁶³ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (b) after the entry for the Tribunals, Courts and Enforcement Act 2007 (c. 15)
insert—
 - “Coroners and Justice Act 2009 (c. 25)
 - Section 119(1) and (2)
 - Section 120(6)
 - Section 122(4)
 - Section 124(1)
 - Section 131(2)
 - Section 132(1), (4) and (6)
 - Section 133
 - Schedule 15”.

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5.1 Variation

5.1.1. Statutory power

5.1.1.1. Crown Court

Power

PCC(S)A 2000 s.155¹⁹⁶⁴: Alteration of Crown Court sentence

s.155(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 56 days beginning with the day on which the sentence or other order was imposed or made, within the time allowed by that subsection.

Sentence may not be varied or rescinded where appeal or application for leave has been determined

PCC(S)A 2000 s.155¹⁹⁶⁵: Alteration of Crown Court sentence

s.155(1A) - the power conferred by subsection (1) may not be exercised in relation to any sentence or order if an appeal, or an application for leave to appeal, against that sentence or order has been determined.

Same judge must vary or rescind the order

PCC(S)A 2000 s.155¹⁹⁶⁶: Alteration of Crown Court sentence

s.155(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.

Varied sentence takes effect from day original order was imposed

PCC(S)A 2000 s.155¹⁹⁶⁷: Alteration of Crown Court sentence

s.155(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.

¹⁹⁶⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁹⁶⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁹⁶⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁹⁶⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Appeal time limits

PCC(S)A 2000 s.155¹⁹⁶⁸: Alteration of Crown Court sentence

s.155(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.

Co-defendant exception: Time limits

PCC(S)A 2000 s.155¹⁹⁶⁹: Alteration of Crown Court sentence

s.155(7) Criminal Procedure 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.

Criminal procedure rules

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.28.4(1) This rule—

- (a) applies where a magistrates' court or the Crown Court can vary or rescind a sentence or order, other than an order to which rule 24.18 applies (Setting aside a conviction or varying a costs etc. order); and
- (b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—
 - (i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and
 - (ii) one is sentenced before another is acquitted or sentenced.

rule.28.4(2) The court may exercise its power—

- (a) on application by a party, or on its own initiative;
- (b) at a hearing, in public or in private, or without a hearing.

rule.28.4(3) A party who wants the court to exercise that power must—

- (a) apply in writing as soon as reasonably practicable after—
 - (i) the sentence or order that that party wants the court to vary or rescind, or

¹⁹⁶⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁹⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party; and
- (c) in the application—
 - (i) explain why the sentence should be varied or rescinded,
 - (ii) specify the variation that the applicant proposes, and
 - (iii) if the application is late, explain why.

rule.28.4(4) The court must not exercise its power in the defendant's absence unless—

- (a) the court makes a variation—
 - (i) which is proposed by the defendant, or
 - (ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or
- (b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

rule.28.4(5) The court may—

- (a) extend (even after it has expired) the time limit under paragraph (3), unless the court's power to vary or rescind the sentence cannot be exercised;
- (b) allow an application to be made orally.

*Note.*¹⁹⁷⁰ Under section 142 of the Magistrates' Courts Act 1980(a), in some cases a magistrates' court can vary or rescind a sentence or other order that it has imposed or made, if that appears to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order. See also rule 24.18 (Setting aside a conviction or varying a costs etc. order), which governs the exercise by a magistrates' court of the power conferred by section 142 of the 1980 Act in the circumstances to which that rule applies.

Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000(b), the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—

- (a) after the period of 56 days beginning with the sentence or order (but see the note below); or
- (b) if an appeal or application for permission to appeal against that sentence or order has been determined.

Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.

¹⁹⁷⁰ The note appears in the procedure rules.

Interpretation

PCC(S)A 2000 s.155¹⁹⁷¹: Alteration of Crown Court sentence

s.155(8) - in this section—

“sentence” includes a recommendation for deportation made when dealing with an offender;

“order” does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

5.1.1.2. Magistrates’ Court

Power

MCA 1980 s.142¹⁹⁷²: Power of magistrates’ court to re-open cases to rectify mistakes etc.

s.142(1) - a magistrates’ court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

Sentence may not be varied or rescinded where Crown Court has determined appeal or High Court determined case stated

MCA 1980 s.142¹⁹⁷³: Power of magistrates’ court to re-open cases to rectify mistakes etc.

s.142(1A) - the power conferred on a magistrates’ court by subsection (1) above shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if—

- (a) the Crown Court has determined an appeal against—
 - (i) that sentence or order;
 - (ii) the conviction in respect of which that sentence or order was imposed or made; or
 - (iii) any other sentence or order imposed or made by the magistrates’ court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or
- (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

¹⁹⁷¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁹⁷² Commencement: 6 July 1981, SI 1981/457 art.2.

¹⁹⁷³ Commencement: 6 July 1981, SI 1981/457 art.2.

Power to direct that case should be heard by different justices

MCA 1980 s.142¹⁹⁷⁴: Power of magistrates' court to re-open cases to rectify mistakes etc.

- s.142(2) - where a person is convicted by a magistrates' court and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different justices, the court may so direct.
- s.142(2A) - the power conferred on a magistrates' court by subsection (2) above shall not be exercisable in relation to a conviction if—
- (a) the Crown Court has determined an appeal against—
 - (i) the conviction; or
 - (ii) any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction; or
 - (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.
- s.142(3) - where a court gives a direction under subsection (2) above—
- (a) the conviction and any sentence or other order imposed or made in consequence thereof shall be of no effect; and
 - (b) section 10(4) above shall apply as if the trial of the person in question had been adjourned.

Varied sentence takes effect from day it was originally imposed

MCA 1980 s.142¹⁹⁷⁵: Power of magistrates' court to re-open cases to rectify mistakes etc.

- s.142(5) - where a sentence or order is varied under subsection (1) above, 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.

Criminal Procedure Rules

Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.

5.1.1.3. Extent of the power

Note: Save for some minor differences between the two powers (e.g. there is no time limit in the Magistrates' Court) there appears no reason to treat the powers differently.

R. v May (1981) 3 Cr. App. R. (S.) 165

There must be a hearing in open court and the defendant is entitled to be present at all stages of the sentencing procedure.

Note: This is subject to the Criminal Procedure Rules rule 28.4(4).

R. v Hart (1983) 5 Cr. App. R. (S.) 25

The power may be used to increase or reduce the sentence.

¹⁹⁷⁴ Commencement: 6 July 1981, SI 1981/457 art.2.

¹⁹⁷⁵ Commencement: 6 July 1981, SI 1981/457 art.2.

R. v Nodjoumi (1985) 7 Cr. App. R. (S.) 183

Cases probably have occurred—they certainly could occur—when the sentence having been passed, the grateful defendant then refuses to give evidence [for the prosecution against co-defendants]. In such a case it might be just that the sentence should be reviewed. Subject to that kind of case, in our judgment, trial judges should not after an interval of days, and after thinking over what they have done by way of sentence, decide that their sentence has been over-lenient. (Lawton LJ, at p.190)

R. v Crozier (1990) 12 Cr. App. R. (S.) 206

There are also, we think, very good reasons why, when a change is considered to be necessary, it should not usually be markedly radical as it undoubtedly was in the present case. A rare circumstance only, unknown at the time of sentencing, could warrant a departure from that well understood principle or practice. Increasing a sentence by variation, though not unknown in the past, should be carefully avoided. (Watkins LJ, at p.211)

Holmes v Liverpool Justices [2004] EWHC 3131 (Admin)

If it is appropriate for the powers under section 142 to be used, and if they in truth extend to cover this sort of situation where an increase in sentence is intended [which the Court later held they did, albeit only in “very rare circumstances” – see para [43]], then the power must be exercised very speedily. (Collins J, at [26])

R. v Reynolds [2007] EWCA Crim 538; [2007] 2 Cr. App. R. (S.) 87 (p.553)

...this Court has made it clear that the power to increase the sentence should be exercised with care: see *Woop* [2002] 2 Cr. App. R. (S.) 65 (p.281). But in our view, the power to increase the sentence would be properly exercised if the mistake was that the court had failed to appreciate for example that the “specified” offence was a “serious” offence, so that the mandatory provisions of s.225 or 227¹⁹⁷⁶ required an indeterminate sentence as opposed to an extended sentence. Equally the power could be exercised where the mistake was a failure to recognise the offence as a “specified” offence, as a result of which an ordinary determinate sentence or other disposal has been imposed. Whatever inhibition there may be on increasing sentences cannot apply if the court is merely seeking to comply with its statutory obligations. (Latham J, at [7])

R. v Reynolds [2007] EWCA Crim 538; [2007] 2 Cr. App. R. (S.) 87 (p.553)

The consequence of rescinding a sentence is that the convicted offender is, as a result of the quashing of his sentence, back before the court as a convicted but unsentenced defendant. It seems to us to follow that the court is then in the same position as it was at the time that the original sentence was imposed. It, accordingly, has all the powers it had at that time. It is difficult, therefore, to see why the court should not have jurisdiction, in accordance with *R v Annesley* [1976] 1 WLR 106, to adjourn sentence, having quashed the original sentence, if the justice of the case so requires. (Latham J, at [14])

R. v Perkins [2013] EWCA Crim 323; [2013] 2 Cr. App. R. (S.) 72 (p.461)

...[the s 155 PCC(S)A variation hearing] should be listed so that all the interested parties, not only the defendant, but the victims, and the public and the media may be present if they wish. This variation hearing undoubtedly took place in open court, but if no one with a direct interest in the case had any idea that it was to be listed, for those most closely concerned the hearing was effectively a private hearing. That should not happen. (Lord Judge CJ, at [32])

¹⁹⁷⁶ This example is obviously no longer relevant however it serves to demonstrate the type of “mistake” that the court considered it permissible to use the power to vary a sentence to increase it.

5.1.2. Common law power: Variations after the statutory time limit has expired

5.1.2.1. Existence of the power

Lawrie v Lees (1881) 7 App. Cas 19 (HL)

There is an inherent power within every court to vary its own orders to carry out its own meaning.

R. v Michael [1976] QB 414¹⁹⁷⁷

The cases show that the court can have an inherent jurisdiction to amend or rectify the order recorded in its record to make such record accord with the order intended by the court.

5.1.2.2. The extent of the power

R. v Michael [1976] QB 414¹⁹⁷⁸

The cases show that the court has an inherent jurisdiction to amend or rectify the order recorded in its record to make such record accord with the order intended by the court.

Customs and Excise Commissioners v Menocal [1980] AC 598 (HL)

[what is now s 155 PCC(S)A 2000] lays down very clearly that any sentence or other order may be varied or rescinded by the Crown Court within 28 days (as it then was) beginning with the day on which the sentence or other order was made. There is however no power in the Crown Court to vary or rescind a sentence or any other order after the expiry of that period. (Lord Salmon, at p.607)

R. v Saville (1980) 2 Cr. App. R. (S.) 26

The judge imposed a criminal bankruptcy order but omitted to specify the amount of loss or damage arising from the offence, as required by statute. After the time limit expired, the error was drawn to the judge's attention and he made the necessary specification. The defence contended that the order was defective and it was too late to vary the order. The Court of Appeal distinguished *Customs v Menocal* (above) and were reinforced by the decision in *Michael* (above). The Lord Chief Justice said, at p.209:

Having regard to the existence of the power, having regard to the total unimportance of the alteration performed, we think that that distinguishes this case from the earlier authorities to the contrary to which I have referred. We consider the learned judge properly made the adjustment which he made and it can properly be regarded as an adjustment of an inchoate order which at that moment existed.

¹⁹⁷⁷ Note that this was a first instance decision.

¹⁹⁷⁸ Note that this was a first instance decision.

R. v TD [2014] EWCA Crim 2340; [2015] 1 Cr. App. R. (S.) 23 (p.168)

The defendant had been sentenced to an extended sentence but the way in which the sentence had been articulated by the judge did not comply with the requirements of the relevant legislation. The judge then sought to vary the order outside of the permitted period, relying on *Michael* and *Saville* (both above). The defendant appealed. The Court of Appeal found that the judge had not been entitled to adjust the sentence outside of the 56-day period permitted by the Powers of Criminal Courts (Sentencing) Act 2000 s.155, notwithstanding the fact that the appellant would not have been adversely affected by the adjustment. *Customs v Menocal* (above) made clear that “any variation of substance made after the expiration of the time limit of 56 days will be of no effect” (Sir Brian Leveson PQBD, at [17]). Additionally, the variation was made without the defendant present, contrary to authority.

5.2 Commencement of sentence

Sentences cannot be backdated

PCC(S)A 2000 s.154¹⁹⁷⁹: Commencement of Crown Court sentence

s.154(1) - a sentence imposed...by the Crown Court when dealing with a defendant shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

R. v Gilbert [1974] 60 Cr. App. R. 220

[the authorities] lead us to the conclusion that courts of assize and quarter session did not have power to ante-date their sentences. If there was such a power, there would have been no need to resort to the legal fiction under which sentences were ordered to run from the first day. There was, and there is today, no need for the existence of a power to ante-date in order to fulfil the intention of the court in relation to sentence....in our judgment, the words of [the materially identical predecessor to s 154] do not give to the Crown Court any greater powers in relation to the date from which sentences are made to run than existed by virtue of the same words used in the earlier Acts. (James LJ, at p.224-225)

Sentences to take effect from specified point in future

R. v Salmon [2002] EWCA Crim 2088; [2003] 1 Cr. App. R. (S.) 85 (p.441)

...there is no power either to antedate a sentence (*Gilbert* [above]), or to make a sentence begin at some uncertain time in the future otherwise than on the expiry of another sentence. (Rix LJ, at [11])

¹⁹⁷⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

5.3 HDC (Home Detention Curfew)

5.3.1. “Fixed-term prisoner”

CJA 2003 s.237¹⁹⁸⁰: Meaning of “fixed-term prisoner” etc

s.237(1) - in this Chapter “fixed-term prisoner” means—

- (a) a person serving a sentence of imprisonment for a determinate term, or
 - (b) a person serving a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act,
- and “fixed-term sentence” means a sentence falling within paragraph (a) or (b)

s.237(1B) - in this Chapter—

- (a) references to a sentence of imprisonment include such a sentence passed by a service court;
- (b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;
- (ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
- (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;
- (c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006;
- (d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.

s.237(1C) - nothing in subsection (1B) has the effect that section 240ZA or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or section 240A applies to a service court.

s.237(2) - in this Chapter, unless the context otherwise requires, “prisoner” includes a person serving a sentence falling within subsection (1)(b); and “prison” includes any place where a person serving such a sentence is liable to be detained.

s.237(3) - in this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 226A, 227 or 236A of this Act are references to a sentence of detention in a young offender institution.

¹⁹⁸⁰ Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2, otherwise, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

5.3.2. Power to release on HDC tag

Power

CJA 2003 s.246¹⁹⁸¹: Power to release prisoners on licence before required to do so

- s.246(1) - subject to subsections (2) to (4), the Secretary of State may—
- (a) release on licence under this section a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.

Who is eligible?

CJA 2003 s.246¹⁹⁸²: Power to release prisoners on licence before required to do so

- s.246(2) - subsection (1)(a) does not apply in relation to a prisoner unless—
- (a) the length of the requisite custodial period is at least 6 weeks, and
 - (b) he has served—
 - (i) at least 4 weeks of that period, and
 - (ii) at least one-half of that period.

Exclusions

CJA 2003 s.246¹⁹⁸³: Power to release prisoners on licence before required to do so

- s.246(4) - subsection (1) does not apply where—
- (a) the sentence is imposed under section 226A, 227, 228 or 236A,
 - (aa) the sentence is for a term of 4 years or more,
 - (b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16),
 - (c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983 (c. 20),
 - (d) the sentence was imposed by virtue of paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 in a case where the prisoner has failed to comply with a curfew requirement of a community order,

¹⁹⁸¹ Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

¹⁹⁸² Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

¹⁹⁸³ Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

- (e) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42),
- (f) the prisoner is liable to removal from the United Kingdom,
- (g) the prisoner has been released on licence under this section at any time, and has been recalled to prison under section 255(1)(a) (and the revocation has not been cancelled under section 255(3)),
- (ga) the prisoner has at any time been released on licence under section 34A of the Criminal Justice Act 1991 and has been recalled to prison under section 38A(1)(a) of that Act (and the revocation of the licence has not been cancelled under section 38A(3) of that Act);
- (h) the prisoner has been released on licence under section 248 during the currency of the sentence, and has been recalled to prison under section 254,
- (ha) the prisoner has at any time been returned to prison under section 40 of the Criminal Justice Act 1991 or section 116 of the Sentencing Act, or
- (i) in the case of a prisoner to whom section 240ZA applies or a direction under section 240A relates, the interval between the date on which the sentence was passed and the date on which the prisoner will have served the requisite custodial period is less than 14 days.

s.246(4ZA) - where subsection (4)(aa) applies to a prisoner who is serving two or more terms of imprisonment, the reference to the term of the sentence is—

- (a) if the terms are partly concurrent, a reference to the period which begins when the first term begins and ends when the last term ends;
- (b) if the terms are to be served consecutively, a reference to the aggregate of the terms.

s.246(4A) - in subsection (4)–

- (a) the reference in paragraph (d) to a community order includes a service community order or overseas community order under the Armed Forces Act 2006; and
- (b) the reference in paragraph (i) to section 240ZA includes section 246 of that Act.

s.246(5) - the Secretary of State may by order—

- (a) amend the number of days for the time being specified in subsection (1)(a) or (4)(i),
- (b) amend the number of weeks for the time being specified in subsection (2)(a) or (b)(i), and
- (c) amend the fraction for the time being specified in subsection (2)(b)(ii).

Interpretation

CJA 2003 s.246¹⁹⁸⁴: Power to release prisoners on licence before required to do so

s.246(6) - in this section—

“the requisite custodial period” in relation to a person serving any sentence, has the meaning given by paragraph (a) or (b) of section 243A(3) or (as the case may be) paragraph (a) or (d) of section 244(3);

“term of imprisonment” includes a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act.

¹⁹⁸⁴ Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

5.4 Release

5.4.1. “Fixed-term prisoner”

CJA 2003 s.237¹⁹⁸⁵: Meaning of “fixed-term prisoner” etc

s.237(1) - in this Chapter “fixed-term prisoner” means—

- (a) a person serving a sentence of imprisonment for a determinate term, or
 - (b) a person serving a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act,
- and “fixed-term sentence” means a sentence falling within paragraph (a) or (b)

s.237(1B) - in this Chapter—

- (a) references to a sentence of imprisonment include such a sentence passed by a service court;
- (b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;
- (ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
- (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;
- (c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006;
- (d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.

s.237(1C) - nothing in subsection (1B) has the effect that section 240ZA or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or section 240A applies to a service court.

s.237(2) - in this Chapter, unless the context otherwise requires, “prisoner” includes a person serving a sentence falling within subsection (1)(b); and “prison” includes any place where a person serving such a sentence is liable to be detained.

s.237(3) - in this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 226A, 227 or 236A of this Act are references to a sentence of detention in a young offender institution.

¹⁹⁸⁵ Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2, otherwise, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

5.4.2. Unconditional release

Applicability

CJA 2003 s.243A¹⁹⁸⁶: Duty to release certain prisoners serving less than 12 months

s.243A(1) - this section applies to a fixed-term prisoner if—

- (a) the prisoner is serving a sentence which is for a term of 1 day, or
- (b) the prisoner—
 - (i) is serving a sentence which is for a term of less than 12 months, and
 - (ii) is aged under 18 on the last day of the requisite custodial period.

(1A) This section also applies to a fixed-term prisoner if—

- (a) the prisoner is serving a sentence which is for a term of less than 12 months, and
- (b) the sentence was imposed in respect of an offence committed before the day on which section 1 of the Offender Rehabilitation Act 2014 came into force.

s.243A(2) - as soon as a prisoner to whom this section applies has served the requisite custodial period for the purposes of this section, it is the duty of the Secretary of State to release that person unconditionally.

s.243A(3) - for the purposes of this section “*the requisite custodial period*” is—

- (a) in relation to a person serving one sentence, one-half of the sentence, and
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).

s.243A(4) - this section is subject to—

- (a) section 256B (supervision of young offenders after release), and
- (b) paragraph 8 of Schedule 20B (transitional cases).

5.4.3. Release on licence: Determinate sentences

CJA 2003 s.244¹⁹⁸⁷: Duty to release prisoners

s.244(1) - as soon as a fixed-term prisoner, other than a prisoner to whom section 243A, 244A, 246A or 247 applies, has served the requisite custodial period for the purposes of this section, it is the duty of the Secretary of State to release him on licence under this section.

s.244(1A) - subsection (1) does not apply if the prisoner has been released on licence under section 246 or 248 and recalled under section 254 (provision for the release of such persons being made by sections 255B and 255C).

¹⁹⁸⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.111(1), SI 2012/2906 art.2(d).

¹⁹⁸⁷ Commencement: Section 244(1), (2) and (3)(c) and (d) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 244(1), (2) and (3)(a) and (d) otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2. Otherwise not in force.

- s.244(3) - for the purposes of this section “*the requisite custodial period*” means—
- (a) in relation to a prisoner serving one sentence, one-half of his sentence,
 - (d) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).
- s.244(4) - this section is subject to paragraphs 5, 6, 8, 25 and 28 of Schedule 20B (transitional cases).

5.4.4. Release on licence: Extended sentences

Extended determinate sentences

CJA 2003 s.246A¹⁹⁸⁸: Release on licence of prisoners serving extended sentence under section 226A or 226B

- s.246A(1) - this section applies to a prisoner (“P”) who is serving an extended sentence imposed under section 226A or 226B.
- s.246A(2) - it is the duty of the Secretary of State to release P on licence under this section as soon as P has served the requisite custodial period for the purposes of this section if—
- (a) the sentence was imposed before the coming into force of section 4 of the Criminal Justice and Courts Act 2015,
 - (b) the appropriate custodial term is less than 10 years, and
 - (c) the sentence was not imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B or in respect of offences that include one or more offences listed in those Parts of that Schedule.
- s.246A(3) - in any other case, it is the duty of the Secretary of State to release P on licence in accordance with subsections (4) to (7).
- s.246A(4) - the Secretary of State must refer P’s case to the Board—
- (a) as soon as P has served the requisite custodial period, and
 - (b) where there has been a previous reference of P’s case to the Board under this subsection and the Board did not direct P’s release, not later than the second anniversary of the disposal of that reference.
- s.246A(5) - it is the duty of the Secretary of State to release P on licence under this section as soon as—
- (a) P has served the requisite custodial period, and
 - (b) the Board has directed P’s release under this section.
- s.246A(6) - the Board must not give a direction under subsection (5) unless—
- (a) the Secretary of State has referred P’s case to the Board, and
 - (b) the Board is satisfied that it is no longer necessary for the protection of the public that P should be confined.

¹⁹⁸⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.125(3), SI 2012/2906 art.2(e).

s.246A(7) - it is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by section 255C).

(8) For the purposes of this section—

“appropriate custodial term” means the term determined as such by the court under section 226A or 226B (as appropriate);

“the requisite custodial period” means—

- (a) in relation to a person serving one sentence, two-thirds of the appropriate custodial term, and
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).

Note: This section was amended by CJA 2015 s.4. There was a previous release regime for extended sentences under CJA 2003 ss.226A and 226B. That section has not been included in this document.

Extended sentences under the 2003 Act

CJA 2003 s.247¹⁹⁸⁹: Release on licence of prisoner serving extended sentence under section 227 or 228

s.247(1) - this section applies to a prisoner who is serving an extended sentence imposed under section 227 or 228.

s.247(2) - as soon as—

- (a) a prisoner to whom this section applies has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence.

s.247(7) - in this section—

“the appropriate custodial term” means the period determined by the court as the appropriate custodial term under section 227 or 228;

“the requisite custodial period” means—

- (a) in relation to a person serving one sentence, one half of the appropriate custodial term, and
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).

s.247(8) - in its application to a person serving a sentence imposed before 14 July 2008, this section is subject to the modifications set out in paragraph 15 of Schedule 20B (transitional cases).

¹⁹⁸⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

5.4.5. Release on licence: Offenders of particular concern

CJA 2003 s.244A¹⁹⁹⁰: Release on licence of prisoners serving sentence under section 236A

s.244A(1) - this section applies to a prisoner ("P") who is serving a sentence imposed under section 236A.

s.244A(2) - the Secretary of State must refer P's case to the Board—

- (a) as soon as P has served the requisite custodial period, and
- (b) where there has been a previous reference of P's case to the Board under this subsection and the Board did not direct P's release, not later than the second anniversary of the disposal of that reference.

s.244A(3) - it is the duty of the Secretary of State to release P on licence under this section as soon as—

- (a) P has served the requisite custodial period, and
- (b) the Board has directed P's release under this section.

s.244A(4) - the Board must not give a direction under subsection (3) unless—

- (a) the Secretary of State has referred P's case to the Board, and
- (b) the Board is satisfied that it is not necessary for the protection of the public that P should be confined.

s.244A(5) - it is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by sections 255A to 255C).

s.244A(6) - for the purposes of this section—

"the appropriate custodial term" means the term determined as such by the court under section 236A;

"the requisite custodial period" means—

- (a) in relation to a person serving one sentence, one-half of the appropriate custodial term, and
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).

5.4.6. Release on licence: Life sentences

C(S)A 1997 s.28¹⁹⁹¹: Duty to release certain life prisoners

s.28(1A) - this section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner's sentence is a reference to the part of the sentence specified in the order.

s.28(1B) - but if a life prisoner is serving two or more life sentences—

- (a) this section does not apply to him unless a minimum term order has been made in respect of each of those sentences; and

¹⁹⁹⁰ Commencement: 13 April 2015, SI 2015/778 art.3 and Sch.1 para.72.

¹⁹⁹¹ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

- (b) the provisions of subsections (5) to (8) below do not apply in relation to him until he has served the relevant part of each of them.

s.28(5) - as soon as—

- (a) a life prisoner to whom this section applies has served the relevant part of his sentence,
 - (b) the Parole Board has directed his release under this section,
- it shall be the duty of the Secretary of State to release him on licence.

s.28(6) - the Parole Board shall not give a direction under subsection (5) above with respect to a life prisoner to whom this section applies unless—

- (a) the Secretary of State has referred the prisoner's case to the Board; and
- (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

s.28(7) - a life prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board at any time—

- (a) after he has served the relevant part of his sentence; and
- (b) where there has been a previous reference of his case to the Board, after the end of the period of two years beginning with the disposal of that reference; and
- (c) where he is also serving a sentence of imprisonment or detention for a term, after he has served one-half of that sentence;

and in this subsection "*previous reference*" means a reference under subsection (6) above or section 32(4) below.

s.28(8) - in determining for the purpose of subsection (5) or (7) above whether a life prisoner to whom this section applies has served the relevant part of his sentence, no account shall be taken of any time during which he was unlawfully at large within the meaning of section 49 of the Prison Act 1952.

s.28(8A) - in this section "*minimum term order*" means an order under—

- (a) subsection (2) of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in respect of life sentence that is not fixed by law), or
- (b) subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in respect of mandatory life sentence).

C(S)A 1997 s.34¹⁹⁹²: Interpretation of Chapter II

s.34(1) - in this Chapter "*life prisoner*" means a person serving one or more life sentences and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003

s.34(2) - in this section "*life sentence*" means any of the following imposed for an offence, whether committed before or after the commencement of this Chapter, namely—

- (a) a sentence of imprisonment for life;
- (b) a sentence of detention during Her Majesty's pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000; and

¹⁹⁹² Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

- (c) a sentence of custody for life under section 93 or 94 of that Act
- (d) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006),
- (e) a sentence of detention for public protection under section 226 of that Act (including one passed as a result of section 221 of the Armed Forces Act 2006);
- (f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;
- (g) a sentence under section 218 of that Act (detention at Her Majesty's pleasure).

s.34(4) - where a person has been sentenced to one or more life sentences and to one or more terms of imprisonment, nothing in this Chapter shall require the Secretary of State to release the person in respect of any of the life sentences unless and until the Secretary of State is required to release him in respect of each of the terms.

5.4.7. Release on licence: Compassionate grounds

Fixed term prisoners

CJA 2003 s.237¹⁹⁹³: Meaning of “fixed-term prisoner” etc

s.237(1) - in this Chapter “fixed-term prisoner” means—

- (a) a person serving a sentence of imprisonment for a determinate term, or
 - (b) a person serving a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act,
- and “fixed-term sentence” means a sentence falling within paragraph (a) or (b)

s.237(1B) - in this Chapter—

- (a) references to a sentence of imprisonment include such a sentence passed by a service court;
- (b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;
- (ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
- (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;
- (c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006;
- (d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act [, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.

s.237(1C) - nothing in subsection (1B) has the effect that section 240ZA or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or section 240A applies to a service court.

¹⁹⁹³ Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2, otherwise, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

- s.237(2) - in this Chapter, unless the context otherwise requires, “*prisoner*” includes a person serving a sentence falling within subsection (1)(b); and “*prison*” includes any place where a person serving such a sentence is liable to be detained.
- s.237(3) - in this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 226A, 227 or 236A of this Act are references to a sentence of detention in a young offender institution.

CJA 2003 s.248¹⁹⁹⁴: Power to release prisoners on compassionate grounds

- s.248(1) - the Secretary of State may at any time release a fixed-term prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner’s release on compassionate grounds.

Life prisoners

C(S)A 1997 s.34¹⁹⁹⁵: Interpretation of Chapter II

- s.34(1) - in this Chapter “*life prisoner*” means a person serving one or more life sentences and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003
- s.34(2) - in this section “*life sentence*” means any of the following imposed for an offence, whether committed before or after the commencement of this Chapter, namely—
- (a) a sentence of imprisonment for life;
 - (b) a sentence of detention during Her Majesty’s pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000; and
 - (c) a sentence of custody for life under section 93 or 94 of that Act
 - (d) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006),
 - (e) a sentence of detention for public protection under section 226 of that Act (including one passed as a result of section 221 of the Armed Forces Act 2006);
 - (f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;
 - (g) a sentence under section 218 of that Act (detention at Her Majesty’s pleasure).
- s.34(4) - where a person has been sentenced to one or more life sentences and to one or more terms of imprisonment, nothing in this Chapter shall require the Secretary of State to release the person in respect of any of the life sentences unless and until the Secretary of State is required to release him in respect of each of the terms.

C(S)A 1997 s.30¹⁹⁹⁶: Power to release life prisoners on compassionate grounds

- s.30(1) - the Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner’s release on compassionate grounds.

¹⁹⁹⁴ Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

¹⁹⁹⁵ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

¹⁹⁹⁶ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

- s.30(2) - before releasing a life prisoner under subsection (1) above, the Secretary of State shall consult the Parole Board, unless the circumstances are such as to render such consultation impracticable.

5.4.8. Release on licence: Transitional cases

CJA 2003 Sch.20B¹⁹⁹⁷: Modifications Of Chapter 6 Of Part 12 In Certain Transitional Cases

Part 1 Introductory

Interpretation

- para.1(1) - the following provisions apply for the purposes of this Schedule.
- para.1(2) - “*The commencement date*” means the date on which section 121 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.
- para.1(3) - “*The 1967 Act*” means the Criminal Justice Act 1967.
- para.1(4) - “*The 1991 Act*” means the Criminal Justice Act 1991.
- para.1(5) - a “*section 85 extended sentence*” means an extended sentence under section 85 of the Sentencing Act and includes (in accordance with paragraph 1(3) of Schedule 11 to that Act) a sentence under section 58 of the Crime and Disorder Act 1998.
- para.1(6) - in relation to a section 85 extended sentence, “*the custodial term*” and “*the extension period*” have the meaning given by that section.
- para.1(7) - references to section 86 of the Sentencing Act include (in accordance with paragraph 1(3) of Schedule 11 to that Act) section 44 of the 1991 Act as originally enacted.
- para.1(8) - a “*1967 Act sentence*” is a sentence imposed before 1 October 1992.
- para.1(9) - a “*1991 Act sentence*” is a sentence which is—
- (a) imposed on or after 1 October 1992 but before 4 April 2005, or
 - (b) imposed on or after 4 April 2005 but before the commencement date and is either—
 - (i) imposed in respect of an offence committed before 4 April 2005, or
 - (ii) for a term of less than 12 months.
- para.1(10) - a “*2003 Act sentence*” is a sentence which is—
- (a) imposed on or after the commencement date, or
 - (b) imposed on or after 4 April 2005 but before the commencement date and is both—
 - (i) imposed in respect of an offence committed on or after 4 April 2005, and
 - (ii) for a term of 12 months or more.
- para.1(11) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is to be taken for the purposes of this Schedule to have been committed on the last of those days.

¹⁹⁹⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.17 para.10.

Explanation of dates

para.2 - the following dates (which are mentioned in this Schedule) are dates on which changes to the law relating to the release and recall of prisoners came into force—

1 October 1992 is the date on which Part 2 of the 1991 Act came into force;

30 September 1998 is the date on which certain provisions of the Crime and Disorder Act 1998 came into force;

4 April 2005 is the date on which this Chapter came into force;

9 June 2008 is the date on which section 26 of the Criminal Justice and Immigration Act 2008 came into force;

14 July 2008 is the date on which certain other provisions of that Act came into force;

2 August 2010 is the date on which section 145 of the Coroners and Justice Act 2009 came into force.

Part 2 Prisoners Serving 1991 Act Sentences Etc

para.3(1) - this Part applies to certain persons serving a 1991 Act sentence.

para.3(2) - this Part also applies to a person serving a 2003 Act sentence which is—

- (a) a section 85 extended sentence, or
- (b) an extended sentence imposed under section 227 or 228 before 14 July 2008.

para.3(3) - but this Part does not apply to a person who—

- (a) has been released on licence under Part 2 of the 1991 Act,
- (b) has been recalled to prison, and
- (c) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date.

Duty to release on licence at two-thirds of sentence

para.4(1) - this paragraph applies to a person in relation to whom—

- (a) all the conditions in sub-paragraph (2) are met, and
- (b) the condition in any one or more of sub-paragraphs (3) to (5) is met.

para.4(2) - the conditions in this sub-paragraph are that—

- (a) the person has been convicted of an offence committed before 4 April 2005,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before the commencement date,
- (c) the sentence or (in the case of a section 85 extended sentence) the custodial term is for a term of 4 years or more, and
- (d) the person has not previously been released from prison on licence in respect of that sentence.

para.4(3) - the condition in this sub-paragraph is that the offence (or one of the offences) in respect of which the sentence was imposed is—

- (a) an offence specified in Schedule 15 (specified violent offences and specified sexual offences) as it had effect on 4 April 2005,
- (b) an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 63 of the Terrorism Act 2000,

- (c) an offence under any of sections 47, 50 and 113 of the Antiterrorism, Crime and Security Act 2001,
- (d) an offence under section 12 of the Sexual Offences Act 1956,
- (e) an offence of aiding, abetting counselling, procuring or inciting the commission of an offence listed in any of paragraphs (b) to (d), or
- (f) an offence of conspiring or attempting to commit an offence listed in any of paragraphs (b) to (d).

para.4(4) - the condition in this sub-paragraph is that the person has served one-half of the sentence or (in the case of a section 85 extended sentence) of the custodial term before 9 June 2008.

para.4(5) - the condition in this sub-paragraph is that—

- (a) the person is serving the sentence by virtue of having been transferred to the United Kingdom in pursuance of a warrant under section 1 of the Repatriation of Prisoners Act 1984,
- (b) the warrant was issued before 9 June 2008, and
- (c) the offence (or one of the offences) for which the person is serving the sentence corresponds to murder or to any offence specified in Schedule 15 as it had effect on 4 April 2005.

para.5(1) - as soon as a person to whom paragraph 4 applies has served two-thirds of the sentence, it is the duty of the Secretary of State to release the person on licence under this paragraph.

para.5(2) - if the person is serving a section 85 extended sentence, the reference in sub-paragraph (1) to two-thirds of the sentence is a reference to two-thirds of the custodial term.

para.5(3) - sub-paragraphs (1) and (2) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

Duty to release on direction of Parole Board

para.6(1) After a person to whom paragraph 4 applies has served one-half of the sentence, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.

para.6(2) - the Board must not give a direction under sub-paragraph (1) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.6(3) - if the person is serving a section 85 extended sentence, the reference in sub-paragraph (1) to one-half of the sentence is a reference to one-half of the custodial term.

para.6(4) - sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

Release on licence at one-half of sentence: section 85 extended sentence prisoners

para.7(1) - this paragraph applies to a person if—

- (a) the person has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,

- (b) the person is serving a section 85 extended sentence in respect of that offence,
- (c) the person has not previously been released from prison on licence in respect of that sentence, and
- (d) paragraph 4 does not apply to the person.

para.8(1) - as soon as a person to whom paragraph 7 applies has served one half of the custodial term, it is the duty of the Secretary of State to release the person on licence under this paragraph.

para.8(2) - sub-paragraph (1) applies in place of section 243A or 244, as the case may be (release of prisoners serving less than 12 months, or serving 12 months or more).

Duty to release unconditionally at three-quarters of sentence

para.9(1) - this paragraph applies to a person if—

- (a) the person has been convicted of an offence committed before 30 September 1998,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992,
- (c) the sentence is for a term of 12 months or more,
- (d) the person has been released on licence under Part 2 of the 1991 Act, and
- (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.9(2) - but this paragraph does not apply if the court by which the person was sentenced ordered that section 86 of the Sentencing Act (extension of periods in custody and on licence in the case of certain sexual offences) should apply.

para.10 - as soon as a person to whom paragraph 9 applies would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State to release the person unconditionally.

Duty to release on licence at three-quarters of sentence

para.11(1) - this paragraph applies to a person who—

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
- (b) is serving a sentence of imprisonment for a term of 12 months or more imposed in respect of that offence,
- (c) has been released on licence under Part 2 of the 1991 Act, and
- (d) has been recalled before 14 July 2008 (and has not been recalled after that date).

para.11(2) - but this paragraph does not apply if the person has been released and recalled more than once.

para.11(3) - nor does this paragraph apply if the sentence is a section 85 extended sentence (paragraph 13 applying to such a case instead).

para.12 - as soon as a person to whom paragraph 11 applies would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State to release the person on licence.

Release on licence: re-release of section 85 extended sentence prisoners

para.13(1) - this paragraph applies to a person who—

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
- (b) is serving a section 85 extended sentence imposed in respect of that offence,
- (c) has been released on licence under Part 2 of the 1991 Act, and
- (d) has been recalled before 14 July 2008 (and has not been recalled after that date).

para.13(2) - but this paragraph does not apply if the person has been released and recalled more than once.

para.14(1) - if a person to whom paragraph 13 applies is serving a sentence with a custodial term of less than 12 months, it is the duty of the Secretary of State to release the person on licence as soon as the person would (but for the earlier release) have served the period found by adding—

- (a) one-half of the custodial term, and
- (b) the extension period.

para.14(2) - if a person to whom paragraph 13 applies is serving a sentence with a custodial term of 12 months or more, it is the duty of the Secretary of State to release the person on licence as soon as the person would (but for the earlier release) have served the period found by adding—

- (a) three-quarters of the custodial term, and
- (b) the extension period.

Release of section 227 or 228 extended sentence prisoners: Parole Board direction

para.15(1) - this paragraph applies to a person ("P") who is serving an extended sentence imposed under section 227 or 228 before 14 July 2008.

para.15(2) - section 247 (release of prisoner on licence) applies to P with the following modifications.

para.15(3) - the Secretary of State must not release P under subsection (2) of that section unless the Board has directed P's release under that subsection.

para.15(4) - the Board must not give a direction under sub-paragraph (3) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.15(5) - as soon as P has served the appropriate custodial term, the Secretary of State must release P on licence, unless P has previously been recalled under section 254.

Licence to remain in force to three-quarters of sentence

para.16(1) - this paragraph applies to a person to whom paragraph 4 applies.

para.16(2) - this paragraph also applies to a person if—

- (a) the person has been convicted of an offence committed before 4 April 2005,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before the commencement date,

- (c) that sentence is for a term of 12 months or more but less than 4 years, and
- (d) the person has not previously been released from prison on licence in respect of that sentence.

para.16(3) - this paragraph also applies to a person if—

- (a) the person has been convicted of an offence committed before 4 April 2005,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992,
- (c) that sentence is for a term of 12 months or more,
- (d) the person has been released on licence under Part 2 of the 1991 Act, and
- (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.16(4) - but this paragraph does not apply if the person has been released and recalled more than once.

para.16(5) - nor does this paragraph apply if—

- (a) the person is serving a section 85 extended sentence, or
- (b) the court by which the person was sentenced ordered that section 86 of the Sentencing Act (extension of periods in custody and on licence in the case of certain sexual offences) should apply.

para.16(6) - if a person has been—

- (a) released under section 34A of the 1991 Act or section 246 (home detention curfew), and
- (b) recalled under section 38A(1)(b) of the 1991 Act or section 255(1)(b) (no longer possible to monitor curfew),

the release and recall are to be disregarded for the purposes of this paragraph.

para.17(1) - where a person to whom paragraph 16 applies is released on licence under section 244 or paragraph 5 or 6, the licence shall remain in force until the date on which the person would (but for the release) have served three-quarters of the sentence.

para.17(2) - sub-paragraph (1) is subject to any revocation under section 254.

para.17(3) - sub-paragraphs (1) and (2) apply in place of section 249 (duration of licence).

Period for which licence to remain in force: section 85 extended sentence prisoners

para.18 - this paragraph applies to a person who—

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
- (b) is serving a section 85 extended sentence imposed in respect of that offence, and
- (c) has not previously been released from prison on licence in respect of that sentence.

para.19(1) - where a person to whom paragraph 18 applies is released on licence and the custodial term is less than 12 months, the licence shall remain in force until the end of the period found by adding—

- (a) one-half of the custodial term, and
- (b) the extension period.

para.19(2) - where a person to whom paragraph 18 applies is released on licence and the custodial term is 12 months or more, the licence shall remain in force until the end of the period found by adding—

- (a) three-quarters of the custodial term, and
- (b) the extension period.

para.19(3) - sub-paragraphs (1) and (2) are subject to any revocation under section 254.

para.19(4) - sub-paragraphs (1) to (3) apply in place of section 249 (duration of licence).

Concurrent or consecutive terms

para.20 - paragraphs 21 and 22 apply where a person ("P") is serving two or more sentences of imprisonment imposed on or after 1 October 1992 and—

- (a) the sentences were passed on the same occasion, or
- (b) where they were passed on different occasions, the person has not been released under Part 2 of the 1991 Act or under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

para.21(1) - this paragraph applies if each of the sentences is a 1991 Act sentence.

para.21(2) - sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences.

para.21(3) - for the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served, the terms are to be treated as a single term.

para.21(4) - if one or more of the sentences is a section 85 extended sentence—

- (a) for the purpose of determining the single term mentioned in sub-paragraph (3), the extension period or periods is or are to be disregarded, and
- (b) the period for which P is to be on licence in respect of the single term is to be increased in accordance with sub-paragraph (5).

para.21(5) - that period is to be increased—

- (a) if only one of the sentences is a section 85 extended sentence, by the extension period;
- (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods;
- (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods.

para.22(1) - this paragraph applies where two or more sentences are to be served consecutively on each other and—

- (a) one or more of those sentences is a 1991 Act sentence, and
- (b) one or more of them is a 2003 Act sentence.

para.22(2) - section 264 does not affect the length of the period which P must serve in prison in respect of the 1991 Act sentence or sentences.

para.22(3) - nothing in this Chapter requires the Secretary of State to release P until P has served a period equal in length to the aggregate of the length of the periods which P must serve in relation to each of the sentences mentioned in sub-paragraph (1).

para.22(4) - if P is also serving one or more 1967 Act sentences, paragraphs 32 and 33 apply instead of this paragraph.

Part 3 Prisoners Serving 1967 Act Sentences

para.23(1) - this Part applies to certain persons serving a 1967 Act sentence.

para.23(2) - but this Part does not apply to a person who—

- (a) has been released on licence,
- (b) has been recalled to prison, and
- (c) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date.

para.23(3) - in this Part, references to release under Part 2 of the 1991 Act include release under section 60 of the 1967 Act.

Sentence of more than 12 months imposed before 1 October 1992

para.24(1) - this paragraph applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months, and
- (c) the person has not previously been released from prison on licence in respect of that sentence.

para.24(2) - this paragraph also applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months,
- (c) the person has been released on licence under Part 2 of the 1991 Act, and
- (d) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.24(3) - but this paragraph does not apply if, on the passing of the sentence, an extended sentence certificate was issued (see paragraph 27).

para.24(4) - if a person has been—

- (a) released under section 34A of the 1991 Act or section 246 (home detention curfew), and
- (b) recalled under section 38A(1)(b) of the 1991 Act or section 255(1)(b) (no longer possible to monitor curfew),

the release and recall are to be disregarded for the purposes of this paragraph.

para.25(1) - it is the duty of the Secretary of State to release a person to whom paragraph 24 applies unconditionally under this paragraph—

- (a) in the case of a person falling within paragraph 24(1), as soon as the person has served two-thirds of the sentence;

- (b) in the case of a person falling within paragraph 24(2), as soon as the person would (but for the earlier release) have served two-thirds of the sentence.

para.25(2) - after a person falling within paragraph 24(1) has served one-third of the sentence or six months, whichever is longer, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.

para.25(3) - the Board must not give a direction under sub-paragraph (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.25(4) - sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

para.26(1) - where a person to whom paragraph 24 applies is released on licence under paragraph 25(2), the licence shall remain in force until the date on which the person would (but for the release) have served two-thirds of the sentence.

para.26(2) - sub-paragraph (1) is subject to any revocation under section 254.

para.26(3) - sub-paragraphs (1) and (2) apply in place of section 249 (duration of licence).

Extended sentence of more than 12 months imposed before 1 October 1992

para.27(1) - this paragraph applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months,
- (c) on the passing of the sentence an extended sentence certificate was issued, and
- (d) the person has not previously been released from prison on licence in respect of that sentence.

para.27(2) - this paragraph also applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months,
- (c) on the passing of the sentence an extended sentence certificate was issued,
- (d) the person has been released on licence under Part 2 of the 1991 Act, and
- (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.27(3) - in this paragraph “*extended sentence certificate*” means a certificate was issued under section 28 of the Powers of Criminal Courts Act 1973 (punishment of persistent offenders) stating that an extended term of imprisonment was imposed on the person under that section.

para.28(1) - it is the duty of the Secretary of State to release a person to whom paragraph 27 applies on licence under this paragraph—

- (a) in the case of a person falling within paragraph 27(1), as soon as the person has served two-thirds of the sentence;
- (b) in the case of a person falling within paragraph 27(2), as soon as the person would (but for the earlier release) have served two-thirds of the sentence.

para.28(2) - after a person falling within paragraph 27(1) has served one-third of the sentence or six months, whichever is longer, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.

para.28(3) - the Board must not give a direction under sub-paragraph (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.28(4) - sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving twelve months or more).

Additional days

para.29(1) - prison rules made by virtue of section 257 may include provision for applying any provisions of this Chapter, in relation to any person falling within sub-paragraph (2), as if the person had been awarded such number of additional days as may be determined by or under the rules.

para.29(2) - a person falls within this sub-paragraph if—

- (a) the person was released on licence under section 60 of the 1967 Act before 1 October 1992 and the licence was in force on that date, or
 - (b) the person was, on that date, serving a custodial sentence,
- and (in either case) the person has forfeited any remission of the sentence.

Concurrent or consecutive terms

para.30 - paragraphs 31 to 33 apply where a person (“P”) is serving two or more sentences of imprisonment and—

- (a) the sentences were passed on the same occasion, or
- (b) where they were passed on different occasions, the person has not been released under Part 2 of the 1991 Act or under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

para.31(1) - this paragraph applies where each of the sentences is a 1967 Act sentence.

para.31(2) - sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences.

para.31(3) - for the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served, the terms are to be treated as a single term.

para.32(1) - this paragraph applies where—

- (a) one or more of the sentences is a 1967 Act sentence, and
- (b) one or more of them is a 1991 Act sentence.

para.32(2) - sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences mentioned in sub-paragraph (1).

para.32(3) - for the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served—

- (a) the terms mentioned in sub-paragraph (1) are to be treated as a single term, and

- (b) that single term is to be treated as if it were a 1967 Act sentence.

para.32(4) - if one or more of the sentences is a section 85 extended sentence—

- (a) for the purpose of determining the single term mentioned in sub-paragraph (3), the extension period or periods is or are to be disregarded, and
- (b) the period for which P is to be on licence in respect of the single term is to be increased in accordance with sub-paragraph (5).

para.32(5) - that period is to be increased—

- (a) if only one of the sentences is a section 85 extended sentence, by the extension period;
- (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods;
- (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods.

para.32(6) - if P is also serving a 2003 Act sentence, sub-paragraph (3) is to be applied before the period mentioned in section 263(2)(c) (concurrent terms) or paragraph 33(3) (consecutive terms) is calculated.

para.33(1) - this paragraph applies where two or more sentences are to be served consecutively on each other and—

- (a) one or more of those sentences is a 1967 Act sentence, and
- (b) one or more of them is a 2003 Act sentence.

para.33(2) - section 264 does not affect the length of the period which P must serve in prison in respect of the 1967 Act sentence or sentences.

para.33(3) - nothing in this Chapter requires the Secretary of State to release P until P has served a period equal in length to the aggregate of the length of the periods which P must serve in relation to each of the sentences mentioned in sub-paragraph (1).

Part 4 Provisions Applying Generally

Licence conditions

para.34(1) - this paragraph applies to any licence (a “Parole Board licence”) which falls within sub-paragraph (2) or (3).

para.34(2) - a licence falls within this sub-paragraph if—

- (a) it is or was granted to a person (“P”) on P’s release (at any time) on the recommendation or direction of the Board, and
- (b) P has not been released otherwise than on such a recommendation or direction.

para.34(3) - a licence falls within this sub-paragraph if—

- (a) it is or was granted to a person (“P”) on P’s release (at any time), and
- (b) condition A or condition B is met.

para.34(4) - condition A is that, before 2 August 2010, the Board exercised the function under section 37(5) of the 1991 Act of making recommendations as to any condition to be included or inserted as a condition in a licence granted to P (including by making a recommendation that no condition should be included in such a licence).

para.34(5) - condition B is that, before 2 August 2010—

- (a) P was released on licence under section 33(2), (3) or (3A) or 35(1) of the 1991 Act, and
- (b) the Board exercised the function under section 37(5) of that Act of—
 - (i) making recommendations as to the inclusion or insertion of a condition in a licence granted to P (including by making a recommendation that no condition should be included in such a licence), or
 - (ii) making recommendations as to the variation or cancellation of any such condition (including a recommendation that the condition should not be varied or cancelled).

para.34(6) - the Secretary of State must not—

- (a) include on release, or subsequently insert, a condition in a Parole Board licence, or
- (b) vary or cancel any such condition,
except in accordance with directions of the Board.

Fine defaulters and contemnors

para.35(1) - this paragraph applies to any person if—

- (a) the person has been committed to prison or to be detained under section 108 of the Sentencing Act—
 - (i) in default of payment of a sum adjudged to be paid by a conviction, or
 - (ii) for contempt of court or any kindred offence,
- (b) the person was so committed or detained before 4 April 2005, and
- (c) the term for which the person was committed or detained is 12 months or more.

para.35(2) - as soon as a person to whom this paragraph applies has served two-thirds of the term, it is the duty of the Secretary of State to release the person unconditionally.

para.35(3) - sub-paragraph (2) applies in place of section 258(2) (early release of fine defaulters and contemnors).

Early removal of prisoners liable to removal from UK

para.36(1) - this paragraph applies to any person who—

- (a) has served one-half of a sentence of imprisonment, and
- (b) has not been released on licence under this Chapter.

para.36(2) - the reference in sub-paragraph (1)(a) to one-half of a sentence is—

- (a) in the case of a section 85 extended sentence, a reference to one-half of the custodial term;
- (b) in the case of an extended sentence imposed under section 227 or 228, a reference to one-half of the appropriate custodial term.

para.37(1) - if a person to whom paragraph 36 applies—

- (a) is liable to removal from the United Kingdom, and
- (b) has not been removed from prison under section 260 during the period mentioned in subsection (1) of that section,

the Secretary of State may remove the person from prison under that section at any time after the end of that period.

para.37(2) - sub-paragraph (1) applies whether or not the Board has directed the person's release under paragraph 6, 15, 25 or 28.

5.4.9. Supervision and the licence period

5.4.9.1. Fixed term prisoners

Licence period

CJA 2003 s.249¹⁹⁹⁸: Duration of licence

s.249(1) - subject to subsection (3), where a fixed-term prisoner, other than one to whom section 243A applies, is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force for the remainder of his sentence.

s.249(1A) - where a prisoner to whom section 243A applies is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force until the date on which, but for the release, the prisoner would have served one-half of the sentence.

This is subject to subsection (3).

s.249(3) - subsections (1) and (1A) have effect subject to section 263(2) (concurrent terms) and sections 264(3C)(a) and 264B (consecutive terms).

s.249(5) - this section is subject to paragraphs 17, 19 and 26 of Schedule 20B (transitional cases).

CJA 2003 s.250¹⁹⁹⁹: Licence conditions

s.250(1) - in this section—

(a) “*the standard conditions*” means such conditions as may be prescribed for the purposes of this section as standard conditions, and

(b) “*prescribed*” means prescribed by the Secretary of State by order.

s.250(4) - any licence under this Chapter in respect of a prisoner serving a sentence of imprisonment or detention in a young offender institution (including a sentence imposed under section 226A, 227 or 236A) or any sentence of detention under section 91 or 96 of the Sentencing Act or section 226A, 226B, 227, 228 or 236A of this Act—

(a) must include the standard conditions, and

(b) may include—

¹⁹⁹⁸ Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

¹⁹⁹⁹ Commencement: Section 250(1) to (3) and (5) to (8) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 250(1), (2)(b)(ii), (4)(b)(ii) and (8) in force so far as not already in force 7 March 2005, SI 2005/373 art.2(n). Section 250(1) and (4) to (7) in force so far as not already in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

- (i) any condition authorised by section 62, 64 or 64A of the Criminal Justice and Court Services Act 2000 or section 28 of the Offender Management Act 2007, and
- (ii) such other conditions of a kind prescribed by the Secretary of State for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.

s.250(5) - a licence under section 246 must also include a curfew condition complying with section 253.

s.250(5A) - subsection (5B) applies to a licence granted, either on initial release or after recall to prison, to—

- (a) a prisoner serving an extended sentence imposed under section 226A or 226B, other than a sentence that meets the conditions in section 246A(2) (release without direction of the Board), or
- (b) a prisoner serving a sentence imposed under section 236A.

s.250(5B) - the Secretary of State must not—

- (a) include a condition referred to in subsection (4)(b)(ii) in the licence, either on release or subsequently, or
 - (b) vary or cancel any such condition included in the licence,
- unless the Board directs the Secretary of State to do so.

s.250(8) - in exercising his powers to prescribe standard conditions or the other conditions referred to in subsection (4)(b)(ii), the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence under this Chapter—

- (a) the protection of the public,
- (b) the prevention of re-offending, and
- (c) securing the successful re-integration of the prisoner into the community.

CJA 2003 s.252²⁰⁰⁰: Duty to comply with licence conditions

s.252(1) - a person subject to a licence under this Chapter must comply with such conditions as may for the time being be specified in the licence.

s.252(2) - but where—

- (a) the licence relates to a sentence of imprisonment passed by a service court, and
- (c) the person is residing outside the British Islands,

the conditions specified in the licence apply to him only so far as it is practicable for him to comply with them where he is residing.

²⁰⁰⁰ Commencement: In force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

Supervision

CJA 2003 s.256AA²⁰⁰¹: Supervision after end of sentence of prisoners serving less than 2 years

- s.256AA(1) - this section applies where a person (“the offender”) has served a fixed term sentence which was for a term of more than 1 day but less than 2 years, except where—
- (a) the offender was aged under 18 on the last day of the requisite custodial period (as defined in section 243A(3)),
 - (b) the sentence was an extended sentence imposed under section 226A or 226B,
 - (ba) the sentence was imposed under section 236A, or
 - (c) the sentence was imposed in respect of an offence committed before the day on which section 2(2) of the Offender Rehabilitation Act 2014 came into force.
- s.256AA(2) - the offender must comply with the supervision requirements during the supervision period, except at any time when the offender is—
- (a) in legal custody,
 - (b) subject to a licence under this Chapter or Chapter 2 of Part 2 of the 1997 Act, or
 - (c) subject to DTO supervision.
- s.256AA(3) - the supervision requirements are the requirements for the time being specified in a notice given to the offender by the Secretary of State (but see the restrictions in section 256AB).
- s.256AA(4) - “*The supervision period*” is the period which—
- (a) begins on the expiry of the sentence, and
 - (b) ends on the expiry of the period of 12 months beginning immediately after the offender has served the requisite custodial period (as defined in section 244(3)).
- s.256AA(5) - the purpose of the supervision period is the rehabilitation of the offender.
- s.256AA(6) - the Secretary of State must have regard to that purpose when specifying requirements under this section.
- s.256AA(7) - the supervisor must have regard to that purpose when carrying out functions in relation to the requirements.
- s.256AA(8) - in this Chapter, “*the supervisor*”, in relation to a person subject to supervision requirements under this section, means a person who is for the time being responsible for discharging the functions conferred by this Chapter on the supervisor in accordance with arrangements made by the Secretary of State.
- s.256AA(9) - in relation to a person subject to supervision requirements under this section following a sentence of detention under section 91 of the Sentencing Act, the supervisor must be—
- (a) an officer of a provider of probation services, or
 - (b) a member of the youth offending team established by the local authority in whose area the offender resides for the time being.

²⁰⁰¹ Commencement: 1 February 2015, as inserted by ORA 2015 s.2, SI 2015/40 art.2(b).

s.256AA(10) - in relation to any other person, the supervisor must be an officer of a provider of probation services.

s.256AA(11) - in this section “*DTO supervision*” means supervision under—

- (a) a detention and training order (including an order under section 211 of the Armed Forces Act 2006), or
- (b) an order under section 104(3)(aa) of the Powers of Criminal Courts (Sentencing) Act 2002 (breach of supervision requirements of detention and training order).

s.256AA(12) - this section has effect subject to section 264(3C)(b) and (3D).

CJA 2003 s.256AB²⁰⁰²: Supervision requirements under section 256AA

s.256AB(1) - the only requirements that the Secretary of State may specify in a notice under section 256AA are—

- (a) a requirement to be of good behaviour and not to behave in a way which undermines the purpose of the supervision period;
- (b) a requirement not to commit any offence;
- (c) a requirement to keep in touch with the supervisor in accordance with instructions given by the supervisor;
- (d) a requirement to receive visits from the supervisor in accordance with instructions given by the supervisor;
- (e) a requirement to reside permanently at an address approved by the supervisor and to obtain the prior permission of the supervisor for any stay of one or more nights at a different address;
- (f) a requirement not to undertake work, or a particular type of work, unless it is approved by the supervisor and to notify the supervisor in advance of any proposal to undertake work or a particular type of work;
- (g) a requirement not to travel outside the British Islands, except with the prior permission of the supervisor or in order to comply with a legal obligation (whether or not arising under the law of any part of the British Islands);
- (h) a requirement to participate in activities in accordance with any instructions given by the supervisor;
- (i) a drug testing requirement (see section 256D);
- (j) a drug appointment requirement (see section 256E).

s.256AB(2) - where a requirement is imposed under subsection (1)(h), section 200A(5) to (10) apply in relation to the requirement (reading references to the responsible officer as references to the supervisor).

s.256AB(3) - paragraphs (i) and (j) of subsection (1) have effect subject to the restrictions in sections 256D(2) and 256E(2).

s.256AB(4) - the Secretary of State may by order—

- (a) add requirements that may be specified in a notice under section 256AA,
- (b) remove or amend such requirements,

²⁰⁰² Commencement: 1 February 2015, as inserted by ORA 2015 Sch.1 para.1, SI 2015/40 art.2(s).

- (c) make provision about such requirements, including about the circumstances in which they may be imposed, and
- (d) make provision about instructions given for the purposes of such requirements.

s.256AB(5) - an order under subsection (4) may amend this Act.

s.256AB(6) - in this section “work” includes paid and unpaid work.

CJA 2003 s.256AC²⁰⁰³: Breach of supervision requirements imposed under section 256AA

s.256AC(1) - where it appears on information to a justice of the peace that a person has failed to comply with a supervision requirement imposed under section 256AA, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in the summons, or
- (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

s.256AC(2) - any summons or warrant issued under this section must direct the person to appear or be brought—

- (a) before a magistrates' court acting for the local justice area in which the offender resides, or
- (b) if it is not known where the person resides, before a magistrates' court acting for the same local justice area as the justice who issued the summons or warrant.

s.256AC(3) - where the person does not appear in answer to a summons issued under subsection (1)(a), the court may issue a warrant for the person's arrest.

s.256AC(4) - if it is proved to the satisfaction of the court that the person has failed without reasonable excuse to comply with a supervision requirement imposed under section 256AA, the court may—

- (a) order the person to be committed to prison for a period not exceeding 14 days (subject to subsection (7)),
- (b) order the person to pay a fine not exceeding level 3 on the standard scale, or
- (c) make an order (a “supervision default order”) imposing on the person—
 - (i) an unpaid work requirement (as defined by section 199), or
 - (ii) a curfew requirement (as defined by section 204).

s.256AC(5) - section 177(3) (obligation to impose electronic monitoring requirement) applies in relation to a supervision default order that imposes a curfew requirement as it applies in relation to a community order that imposes such a requirement.

s.256AC(6) - if the court deals with the person under subsection (4), it must revoke any supervision default order which is in force at that time in respect of that person.

s.256AC(7) - where the person is under the age of 21—

- (a) an order under subsection (4)(a) in respect of the person must be for committal to a young offender institution instead of to prison, but

²⁰⁰³ Commencement: 1 February 2015, as inserted by ORA 2015 s.3(1), SI 2015/40 art.2(c).

- (b) the Secretary of State may from time to time direct that a person committed to a young offender institution by such an order is to be detained in a prison or remand centre instead.

s.256AC(8) - a person committed to prison or a young offender institution by an order under subsection (4)(a) is to be regarded as being in legal custody.

s.256AC(9) - a fine imposed under subsection (4)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

s.256AC(10) - in Schedule 19A (supervision default orders)—

- (a) Part 1 makes provision about requirements of supervision default orders, and
- (b) Part 2 makes provision about the breach, revocation and amendment of supervision default orders.

s.256AC(11) - a person dealt with under this section may appeal to the Crown Court against —

- (a) the order made by the court under this section, and
- (b) an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when dealing with the person under this section.

CJA 2003 s.256B²⁰⁰⁴: Supervision after release of certain young offenders serving less than 12 months

s.256B(1) - this section applies where a person (“the offender”) is released under this Chapter if—

- (a) the person is, at the time of the release, serving a sentence of detention under section 91 of the Sentencing Act which is for a term of less than 12 months, and
- (b) the person is aged under 18 on the last day of the requisite custodial period (as defined in section 243A(3)).

s.256B(1A) - this section also applies where a person (“the offender”) is released under this Chapter if—

- (a) the person is, at the time of the release, serving a sentence of detention under section 91 or 96 of the Sentencing Act which is for a term of less than 12 months, and
- (b) the sentence was imposed in respect of an offence committed before the day on which section 1 of the Offender Rehabilitation Act 2014 came into force.

s.256B(2) - the offender is to be under the supervision of—

- (a) an officer of a provider of probation services,
- (b) a social worker of a local authority, or
- (c) a member of the youth offending team.

s.256B(3) - where the supervision is to be provided by an officer of a provider of probation services, the officer must be an officer acting in the local justice area in which the offender resides for the time being.

²⁰⁰⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.115, SI 2012/2906 art.2(d).

s.256B(4) - where the supervision is to be provided by—

- (a) a social worker of a local authority, or
- (b) a member of a youth offending team,

the social worker or member must be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.

s.256B(5) - the supervision period begins on the offender's release and ends three months later (whether or not the offender is detained under section 256C or otherwise during that period).

s.256B(6) - during the supervision period, the offender must comply with such requirements, if any, as may for the time being be specified in a notice from the Secretary of State.

s.256B(7) - the requirements that may be specified in a notice under subsection (6) include—

- (a) requirements to submit to electronic monitoring of the offender's compliance with any other requirements specified in the notice;
- (b) requirements to submit to electronic monitoring of the offender's whereabouts (otherwise than for the purpose of securing compliance with requirements specified in the notice);
- (c) where the offender is aged 18 or over—
 - (i) drug testing requirements (see section 256D);
 - (ii) drug appointment requirements (see section 256E).

s.256B(7A) - paragraph (c)(i) and (ii) of subsection (7) have effect subject to the restrictions in sections 256D(2) and 256E(2).

s.256B(9) - the Secretary of State may make rules about the requirements that may be imposed by virtue of subsection (7)(a) or (b).

CJA 2003 s.256C²⁰⁰⁵: Breach of supervision requirements imposed under section 256B

s.256C(1) - where an offender is under supervision under section 256B and it appears on information to a justice of the peace that the offender has failed to comply with requirements under section 256B(6), the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in the summons, or
- (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

s.256C(2) - any summons or warrant issued under this section must direct the offender to appear or be brought—

- (a) before a court acting for the local justice area in which the offender resides, or
- (b) if it is not known where the offender resides, before a court acting for same local justice area as the justice who issued the summons or warrant.

s.256C(3) - where the offender does not appear in answer to a summons issued under subsection (1)(a), the court may issue a warrant for the offender's arrest.

²⁰⁰⁵ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.115, SI 2012/2906 art.2(d).

- s.256C(4) - if it is proved to the satisfaction of the court that the offender has failed to comply with requirements under section 256B(6), the court may—
- (a) order the offender to be detained, in prison or such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding 30 days, as the court may specify, or
 - (b) order the offender to pay a fine not exceeding level 3 on the standard scale.
- s.256C(5) - an offender detained in pursuance of an order under subsection (4)(a) is to be regarded as being in legal custody.
- s.256C(6) - a fine imposed under subsection (4)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- s.256C(7) - an offender may appeal to the Crown Court against any order made under subsection (4)(a) or (b).
- s.256C(8) - in this section “*court*” means—
- (a) if the offender has attained the age of 18 years at the date of release, a magistrates’ court other than a youth court;
 - (b) if the offender is under the age of 18 years at the date of release, a youth court.

CJA 2003 s.256D²⁰⁰⁶: Drug testing requirements

- s.256D(1) - “*Drug testing requirement*”, in relation to an offender subject to supervision under this Chapter, means a requirement that, when instructed to do so by the supervisor, the offender provide a sample mentioned in the instruction for the purpose of ascertaining whether the offender has a specified Class A drug or a specified Class B drug in his or her body.
- s.256D(2) - a drug testing requirement may be imposed on an offender subject to supervision under this Chapter only if—
- (a) the Secretary of State is satisfied of the matters in subsection (3), and
 - (b) the requirement is being imposed for the purpose of determining whether the offender is complying with any other supervision requirement.
- s.256D(3) - those matters are—
- (a) that the misuse by the offender of a specified class A drug or a specified class B drug caused or contributed to an offence of which the offender has been convicted or is likely to cause or contribute to the commission of further offences by the offender, and
 - (b) that the offender is dependent on, or has a propensity to misuse, a specified class A drug or a specified class B drug.
- s.256D(4) - an instruction given for the purpose of a drug testing requirement must be given in accordance with guidance given from time to time by the Secretary of State.
- s.256D(5) - the Secretary of State may make rules regulating the provision of samples in accordance with such an instruction.
- s.256D(6) - in this section, “*specified Class A drug*” and “*specified Class B drug*” have the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

²⁰⁰⁶ Commencement: 1 February 2015, as inserted by ORA 2015 Sch.1 para.2, SI 2015/40 art.2(s).

CJA 2003 s.256E²⁰⁰⁷: Drug appointment requirements

- s.256E(1) - “*Drug appointment requirement*”, in relation to an offender subject to supervision under this Chapter, means a requirement that the offender, in accordance with instructions given by the supervisor, attend appointments with a view to addressing the offender’s dependency on, or propensity to misuse, a controlled drug.
- s.256E(2) - a drug appointment requirement may be imposed on an offender subject to supervision under this Chapter only if—
- (a) the supervisor has recommended to the Secretary of State that such a requirement be imposed on the offender, and
 - (b) the Secretary of State is satisfied of the matters in subsection (3).
- s.256E(3) - those matters are—
- (a) that the misuse by the offender of a controlled drug caused or contributed to an offence of which the offender has been convicted or is likely to cause or contribute to the commission of further offences by the offender,
 - (b) that the offender is dependent on, or has a propensity to misuse, a controlled drug,
 - (c) that the dependency or propensity requires, and may be susceptible to, treatment, and
 - (d) that arrangements have been made, or can be made, for the offender to have treatment.
- s.256E(4) - the requirement must specify—
- (a) the person with whom the offender is to meet or under whose direction the appointments are to take place, and
 - (b) where the appointments are to take place.
- s.256E(5) - the person specified under subsection (4)(a) must be a person who has the necessary qualifications or experience.
- s.256E(6) - the only instructions that the supervisor may give for the purposes of the requirement are instructions as to—
- (a) the duration of each appointment, and
 - (b) when each appointment is to take place.
- s.256E(7) - for the purposes of this section, references to a requirement to attend an appointment do not include a requirement to submit to treatment.
- s.256E(8) - in this section, “*controlled drug*” has the same meaning as in the Misuse of Drugs Act 1971.

²⁰⁰⁷ Commencement: 1 February 2015, as inserted by ORA 2015 Sch.1 para.2, SI 2015/40 art.2(s).

Curfew

CJA 2003 s.253²⁰⁰⁸: Curfew condition to be included in licence under section 246, 255B or 255C

- s.253(1) - for the purposes of this Chapter, a curfew condition is a condition which—
- (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified (which may be premises approved by the Secretary of State under section 13 of the Offender Management Act 2007 (c.21)), and
 - (b) includes a requirement, imposed under section 62 of the Criminal Justice and Court Services Act 2000, to submit to electronic monitoring of his whereabouts during the periods for the time being so specified.
- s.253(2) - the curfew condition may specify different places or different periods for different days, but may not specify periods which amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).
- s.253(3) - the curfew condition is to remain in force until the date when the released person would (but for his release) fall to be released unconditionally under section 243A or on licence under section 244.
- s.253(6) - nothing in this section is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of released persons' whereabouts in any particular part of England and Wales.

5.4.9.2. Life sentence prisoners

C(S)A 1997 s.31²⁰⁰⁹: Duration and conditions of licences

- s.31(1) - where a life prisoner, other than a prisoner to whom section 31A below applies, is released on licence, the licence shall, unless previously revoked under section 32 below, remain in force until his death.
- s.31(1A) - where a prisoner to whom section 31A below applies is released on licence, the licence shall remain in force until his death unless—
- (a) it is previously revoked under section 32(1) or (2) below; or
 - (b) it ceases to have effect in accordance with an order made by the Secretary of State under section 31A below.
- s.31(2) - a life prisoner subject to a licence shall comply with such conditions as may for the time being be specified in the licence; and the Secretary of State may make rules for regulating the supervision of any description of such persons.

²⁰⁰⁸ Commencement: Section 253 in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 253(5) otherwise in force 7 March 2005, SI 2005/373 art.2(o). Section 253 otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

²⁰⁰⁹ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f) and 5(3)(a).

- s.31(2A) - the conditions so specified shall include on the prisoner's release conditions as to his supervision by—
- (a) an officer of a local probation board appointed for or assigned to the local justice area within which the prisoner resides for the time being, or (as the case may be) an officer of a provider of probation services acting in the local justice area within which the prisoner resides for the time being;
 - (b) where the prisoner is under the age of 22, a social worker of the local authority within whose area the prisoner resides for the time being; or
 - (c) where the prisoner is under the age of 18, a member of a youth offending team established by that local authority under section 39 of the Crime and Disorder Act 1998.
- s.31(3) - the Secretary of State must not include a condition in a life prisoner's licence on release, insert a condition in such a licence or vary or cancel a condition of such a licence except—
- (a) in accordance with recommendations of the Parole Board, or
 - (b) where required to do so by an order under section 62A of the Criminal Justice and Court Services Act 2000 (compulsory electronic monitoring conditions).
- s.31(5) - the power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.31(6) - in relation to a life prisoner who is liable to removal from the United Kingdom (within the meaning given by section 259 of the Criminal Justice Act 2003), subsection (2) above shall have effect as if subsection (2A) above were omitted.

C(S)A 1997 s.31A²⁰¹⁰: Imprisonment or detention for public protection: termination of licences

- s.31(1) - this section applies to a prisoner who—
- (a) is serving one or more preventive sentences, and
 - (b) is not serving any other life sentence.
- s.31(2) - where—
- (a) the prisoner has been released on licence under this Chapter; and
 - (b) the qualifying period has expired,
- the Secretary of State shall, if directed to do so by the Parole Board, order that the licence is to cease to have effect.
- s.31(3) - where—
- (a) the prisoner has been released on licence under this Chapter;
 - (b) the qualifying period has expired; and
 - (c) if he has made a previous application under this subsection, a period of at least twelve months has expired since the disposal of that application,
- the prisoner may make an application to the Parole Board under this subsection.

²⁰¹⁰ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.18 para.2, SI 2005/950 art.2 and Sch.1 para.40.

- s.31(4) - where an application is made under subsection (3) above, the Parole Board—
- (a) shall, if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force, direct the Secretary of State to make an order that the licence is to cease to have effect;
 - (b) shall otherwise dismiss the application.

- s.31(5) - in this section—

“preventive sentence” means a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 or a sentence of detention for public protection under section 226 of that Act (including such a sentence of imprisonment or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006);

“the qualifying period”, in relation to a prisoner who has been released on licence, means the period of ten years beginning with the date of his release.

5.5 Recall and re-release

5.5.1. Fixed term prisoners

5.5.1.1. Recall

Power to recall prisoner

CJA 2003 s.254²⁰¹¹: Recall of prisoners while on licence

- s.254(1) - the Secretary of State may, in the case of any prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.
- s.254(2) - a person recalled to prison under subsection (1)—
- (a) may make representations in writing with respect to his recall, and
 - (b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations.
- s.254(2A) - the Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.
- s.254(2B) - the Secretary of State may cancel a revocation under subsection (2A) only if satisfied that the person recalled has complied with all the conditions specified in the licence.
- s.254(2C) - where the revocation of a person's licence is cancelled under subsection (2A), the person is to be treated as if the recall under subsection (1) had not happened.
- s.254(6) - on the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.
- s.254(7) - nothing in this section applies in relation to a person recalled under section 255.

Power to recall prisoners released on HDC

CJA 2003 s.255²⁰¹²: Recall of prisoners released early under section 246

- s.255(1) - if it appears to the Secretary of State, as regards a person released on licence under section 246—
- (a) that he has failed to comply with the curfew condition included in the licence, or
 - (b) that his whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in his licence,
- the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison under this section.

²⁰¹¹ Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

²⁰¹² Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

- s.255(2) - a person whose licence under section 246 is revoked under this section—
- (a) may make representations in writing with respect to the revocation, and
 - (b) on his return to prison, must be informed of the reasons for the revocation and of his right to make representations.
- s.255(3) - the Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.
- s.255(4) - where the revocation of a person's licence is cancelled under subsection (3), the person is to be treated for the purposes of section 246 as if he had not been recalled to prison under this section.
- s.255(5) - on the revocation of a person's licence under section 246, he is liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.

Offence of remaining at large after recall

CJA 2003 s.255ZA²⁰¹³: Offence of remaining unlawfully at large after recall

- s.255ZA(1) - a person recalled to prison under section 254 or 255 commits an offence if the person—
- (a) has been notified of the recall orally or in writing, and
 - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- s.255ZA(2) - a person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) written notice of the recall has been delivered to an appropriate address, and
 - (b) a period specified in the notice has elapsed.
- s.255ZA(3) - in subsection (2) "*an appropriate address*" means—
- (a) an address at which, under the person's licence, the person is permitted to reside or stay, or
 - (b) an address nominated, in accordance with the person's licence, for the purposes of this section.
- s.255ZA(4) - a person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) the person's licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
 - (b) the person has failed to comply with such an instruction, and
 - (c) the person has not complied with such an instruction for at least 6 months.
- s.255ZA(5) - a person who is guilty of an offence under this section is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).

²⁰¹³ Commencement: 13 April 2015, as inserted by CJA 2015 s.12(2), SI 2015/778 art.3 and Sch.1 para.8.

- s.255ZA(6) - in relation to an offence committed before section 154(1) comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
- s.255ZA(7) - in relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

5.5.1.2. Re-release

CJA 2003 s.255A²⁰¹⁴: Further release after recall: introductory

- s.255A(1) - this section applies for the purpose of identifying which of sections 255B and 255C governs the further release of a person who has been recalled under section 254.
- s.255A(2) - the Secretary of State must, on recalling a person other than an extended sentence prisoner, consider whether the person is suitable for automatic release.
- s.255A(4) - a person is suitable for automatic release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of [the automatic release period].
- s.255A(5) - the person must be dealt with—
- (a) in accordance with section 255B if suitable for automatic release;
 - (b) in accordance with section 255C otherwise,
- but that is subject, where applicable, to section 243A(2) (unconditional release).
- s.255A(6) - for the purposes of this section, a person returns to custody when that person, having been recalled, is detained (whether or not in prison) in pursuance of the sentence.
- s.255A(7) - an “*extended sentence prisoner*” is a prisoner serving an extended sentence imposed under—
- (a) section 226A, 226B, 227 or 228 of this Act, or
 - (b) section 85 of the Sentencing Act;
- and paragraph (b) includes (in accordance with paragraph 1(3) of Schedule 11 to the Sentencing Act) a reference to section 58 of the Crime and Disorder Act 1998.
- s.255A(8) - “*Automatic release*” means release at the end of the automatic release period.
- s.255A(9) - in the case of a person recalled under section 254 while on licence under a provision of this Chapter other than section 246, “*the automatic release period*” means—
- (a) where the person is serving a sentence of less than 12 months, the period of 14 days beginning with the day on which the person returns to custody;
 - (b) where the person is serving a sentence of 12 months or more, the period of 28 days beginning with that day.
- s.255A(10) - in the case of a person recalled under section 254 while on licence under section 246, “*the automatic release period*” means whichever of the following ends later—
- (a) the period described in subsection (9)(a) or (b) (as appropriate);

²⁰¹⁴ Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

- (b) the requisite custodial period which the person would have served under section 243A or 244 but for the earlier release.

CJA 2003 s.255B²⁰¹⁵: Automatic release

s.255B(1) - a prisoner who is suitable for automatic release ("P") must—

- (a) on return to prison, be informed that he or she will be released under this section (subject to subsections (8) and (9)), and
- (b) at the end of the automatic release period (as defined in section 255A(9) and (10)), be released by the Secretary of State on licence under this Chapter (unless P is released before that date under subsection (2) or (5)).

s.255B(2) - the Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.

s.255B(3) - the Secretary of State must not release P under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that P should remain in prison until the end of the period mentioned in subsection (1)(b).

s.255B(4) - if P makes representations under section 254(2) before the end of that period, the Secretary of State must refer P's case to the Board on the making of those representations.

s.255B(5) - where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction.

s.255B(6) - subsection (7) applies if P is recalled before the date on which P would (but for the earlier release) have served the requisite custodial period for the purposes of section 243A or (as the case may be) section 244.

s.255B(7) - where this subsection applies—

- (a) if P is released under this section before that date, P's licence must include a curfew condition complying with section 253, and
- (b) P is not to be so released (despite subsections (1)(b) and (5)) unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with.

s.255B(8) - subsection (9) applies if, after P has been informed that he or she will be released under this section, the Secretary of State receives further information about P (whether or not relating to any time before P was recalled).

s.255B(9) - if the Secretary of State determines, having regard to that and any other relevant information, that P is not suitable for automatic release—

- (a) the Secretary of State must inform P that he or she will not be released under this section, and
- (b) section 255C applies to P as if the Secretary of State had determined, on P's recall, that P was not suitable for automatic release.

²⁰¹⁵ Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

CJA 2003 s.255C²⁰¹⁶: Extended sentence prisoners and those not suitable for automatic release

- s.255C(1) - this section applies to a prisoner ("P") who—
- (a) is an extended sentence prisoner, or
 - (b) is not considered to be suitable for automatic release.
- s.255C(2) - the Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.
- s.255C(3) - the Secretary of State must not release P under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that P should remain in prison.
- s.255C(4) - the Secretary of State must refer P's case to the Board—
- (a) if P makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which P returns to custody, on the making of those representations, or
 - (b) if, at the end of that period, P has not been released under subsection (2) and has not made such representations, at that time.
- s.255C(5) - where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction.
- s.255C(6) - subsection (7) applies if P is recalled before the date on which P would (but for the earlier release) have served the requisite custodial period for the purposes of section 243A or (as the case may be) section 244.
- s.255C(7) - where this subsection applies—
- (a) if P is released under this section before that date, P's licence must include a curfew condition complying with section 253, and
 - (b) P is not to be so released (despite subsection (5)) unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with.
- s.255C(8) - for the purposes of this section, P returns to custody when P, having been recalled, is detained (whether or not in prison) in pursuance of the sentence.

CJA 2003 s.256²⁰¹⁷: Review by the Board

- s.256(1) - where on a reference under section 255B(4) or 255C(4) in relation to any person, the Board does not direct his immediate release on licence under this Chapter, the Board must either—
- (a) fix a date for the person's release on licence, or
 - (b) determine the reference by making no [direction] as to his release.
- s.256(2) - any date fixed under subsection (1)(a) must not be later than the first anniversary of the date on which the decision is taken.

²⁰¹⁶ Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

²⁰¹⁷ Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

s.256(4) - where the Board has fixed a date under subsection (1)(a), it is the duty of the Secretary of State to release him on licence on that date.

CJA 2003 s.256A²⁰¹⁸: Further review

s.256A(1) - the Secretary of State must, not later than the first anniversary of a determination by the Board under section 256(1) or subsection (4) below, refer the person's case to the Board.

s.256A(2) - the Secretary of State may, at any time before that anniversary, refer the person's case to the Board.

s.256A(3) - the Board may at any time recommend to the Secretary of State that a person's case be referred under subsection (2).

s.256A(4) - on a reference under subsection (1) or (2), the Board must determine the reference by—

- (a) directing the person's immediate release on licence under this Chapter,
- (b) fixing a date for his release on licence, or
- (c) making no direction as to his release.

s.256A(5) - the Secretary of State—

- (a) where the Board makes a direction under subsection (4)(a) for the person's immediate release on licence, must give effect to the direction; and
- (b) where the Board fixes a release date under subsection (4)(b), must release the person on licence on that date.

Note: There is a power to amend the test for re-release following recall contained in the uncommenced section 256AZA.

5.5.2. Life sentence prisoners

Power to recall prisoner released on licence

C(S)A 1997 s.32²⁰¹⁹: Recall of life prisoners while on licence

s.32(1) - the Secretary of State may, in the case of any life prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.

s.32(3) - a life prisoner recalled to prison under this section —

- (a) may make representations in writing with respect to his recall; and
- (b) on his return to prison, shall be informed of the reasons for his recall and of his right to make representations.

s.32(4) - the Secretary of State shall refer to the Parole Board—
the case of a life prisoner recalled under this section.

²⁰¹⁸ Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

²⁰¹⁹ Commencement: 1 October 1997, SI 1997/2200 art. 2(1)(f).

- s.32(5) - where on a reference under subsection (4) above the Parole Board directs the immediate release on licence under this section of the life prisoner, the Secretary of State shall give effect to the direction.
- s.32(6) - on the revocation of the licence of any life prisoner under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

Offence of remaining at large after recall

CJA 2003 s.32ZA²⁰²⁰: Offence of remaining unlawfully at large after recall

- s.32ZA(1) - a person recalled to prison under section 32 commits an offence if the person—
- (a) has been notified of the recall orally or in writing, and
 - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- s.32ZA(2) - a person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) written notice of the recall has been delivered to an appropriate address, and
 - (b) a period specified in the notice has elapsed.
- s.32ZA(3) - in subsection (2) “*an appropriate address*” means—
- (a) an address at which, under the person’s licence, the person is permitted to reside or stay, or
 - (b) an address nominated, in accordance with the person’s licence, for the purposes of this section.
- s.32ZA(4) - a person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
- (a) the person’s licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
 - (b) the person has failed to comply with such an instruction, and
 - (c) the person has not complied with such an instruction for at least 6 months.
- s.32ZA(5) - a person who is guilty of an offence under this section is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
- s.32ZA(6) - in relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
- s.32ZA(7) - in relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

²⁰²⁰ Commencement: 13 April 2015, as inserted by CJA 2015 s.12(1), SI 2015/778 art.3 and Sch.1 para.8.

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6.1 From the magistrates' courts

6.1.1. Right of appeal

General power

MCA 1980 s.108²⁰²¹: Right of appeal to the Crown Court

- s.108(1) - a person convicted by a magistrates' court may appeal to the Crown Court—
- (a) if he pleaded guilty, against his sentence;
 - (b) if he did not, against the conviction or sentence.
- s.108(1A) - Section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (under which a conviction of an offence for which an order for conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Act, whether against conviction or otherwise.
- s.108(2) - a person sentenced by a magistrates' court for an offence in respect of which an order for conditional discharge has been previously made may appeal to the Crown Court against the sentence.
- s.108(4) - subsection (3)(d) above does not prevent an appeal against a surcharge imposed under section 161A of the Criminal Justice Act 2003.
- s.108(3) - in this section “*sentence*” includes any order made on conviction by a magistrates' court, not being—
- (b) an order for the payment of costs;
 - (c) an order under section 37(1) of the Animal Welfare Act 2006 (which enables a court to order the destruction of an animal); or
 - (d) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or its terms
- and also includes a declaration of relevance, within the meaning of section 23 of the Football Spectators Act 1989.

Mental Health Act 1983

MHA 1983 s.45²⁰²²: Appeals from magistrates' courts

- s.45(1) - where on the trial of an information charging a person with an offence a magistrates' court makes a hospital order or guardianship order in respect of him without convicting him, he shall have the same right of appeal against the order as if it had been made on his conviction; and on any such appeal the Crown Court shall have the same powers as if the appeal had been against both conviction and sentence.
- s.45(2) - an appeal by a child or young person with respect to whom any such order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

²⁰²¹ Commencement: 6 July 1981, SI 1981/457 art. 2

²⁰²² Commencement: 30 September 1983, MHA 1983 s.149(2).

Re-sentencing after revocation of community order etc.

CJA 2003 Sch.8 para.9²⁰²³: Powers of magistrates' court

para.9(1) - if it is proved to the satisfaction of a magistrates' court before which an offender appears or is brought under paragraph 7 that he has failed without reasonable excuse to comply with any of the requirements of the community order, the court must deal with him in respect of the failure in any one of the following ways—

- (a) by amending the terms of the community order so as to impose more onerous requirements which the court could include if it were then making the order;
- (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
- (b) where the community order was made by a magistrates' court, by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence;
- (c) where—
 - (i) the community order was made by a magistrates' court,
 - (ii) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (iii) the offender is aged 18 or over, and
 - (iv) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months.

para.9(8) - a person sentenced under sub-paragraph (1)(b) or (c) for an offence may appeal to the Crown Court against the sentence.

CJA 2003 Sch.8 para.13²⁰²⁴: Revocation of order with or without re-sentencing: powers of magistrates' court

para.13(1) - this paragraph applies where a community order, other than an order made by the Crown Court and falling within paragraph 14(1)(a), is in force and on the application of the offender or an officer of a provider of probation services it appears to the appropriate magistrates' court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) for the order to be revoked, or
- (b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.

para.13(2) - the appropriate magistrates' court may—

- (a) revoke the order, or
- (b) both—

²⁰²³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect in relation to an offence committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

²⁰²⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect in relation to an offence committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

- (i) revoke the order, and
- (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.

para.13(5) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

Vagrancy Act 1824

Vagrancy Act 1824 s.14: any person aggrieved by any Act or determination of any justice or justices of the peace out of sessions, in or concerning the execution of this Act, may appeal to the Crown Court.

Other appeals to the Crown Court

Note: Where a specific right of appeal is provided for by statute, that provision has been included in the relevant section, e.g. for the power to appeal against a bind over, see the bind overs section. However, the Criminal Procedure Rules rule 34.1 provides a useful list of other powers:

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.1(1) This Part applies where—

- (a) a defendant wants to appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980,
 - (ii) section 45 of the Mental Health Act 1983,
 - (iii) paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, or paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003,
 - (iv) section 42 of the Counter Terrorism Act 2008;
- (b) the Criminal Cases Review Commission refers a defendant's case to the Crown Court under section 11 of the Criminal Appeal Act 1995(f);
- (c) a prosecutor wants to appeal under—
 - (i) section 14A(5A) of the Football Spectators Act 1989, or
 - (ii) section 147(3) of the Customs and Excise Management Act 1979; or
- (d) a person wants to appeal under—
 - (i) section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956,
 - (ii) section 12(5) of the Contempt of Court Act 1981,
 - (iii) regulation 3C or 3H of the Costs in Criminal Cases (General) Regulations 1986,
 - (iv) section 22 of the Football Spectators Act 1989, or
 - (v) section 10(4) or (5) of the Crime and Disorder Act 1998.

rule.34.1(2) A reference to an 'appellant' in this Part is a reference to such a party or person.

*Note.*²⁰²⁵ An appeal to the Crown Court is by way of re-hearing: see section 79(3) of the Senior Courts Act 1981. For the powers of the Crown Court on an appeal, see section 48 of that Act.

²⁰²⁵ The note is contained within the Crim PR.

A defendant may appeal from a magistrates' court to the Crown Court—

- (a) under section 108 of the Magistrates' Courts Act 1980, against sentence after a guilty plea and after a not guilty plea against conviction, against a finding of guilt or against sentence;*
- (b) under section 45 of the Mental Health Act 1983, where the magistrates' court makes a hospital order or guardianship order without convicting the defendant;*
- (c) under paragraph 10 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000, or under paragraphs 9(8) or 13(5) of Schedule 8 to the Criminal Justice Act 2003, where the magistrates' court revokes a community order and deals with the defendant in another way;*
- (d) under section 42 of the Counter Terrorism Act 2008, where the magistrates' court decides that an offence has a terrorist connection.*

See section 13 of the Criminal Appeal Act 1995 for the circumstances in which the Criminal Cases Review Commission may refer a conviction or sentence to the Crown Court.

Under section 14A(5A) of the Football Spectators Act 1989, a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order.

Under section 147(3) of the Customs and Excise Management Act 1979, a prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under any Act relating to customs or excise.

Under section 1 of the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956, a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court.

Under section 12(5) of the Contempt of Court Act 1981, a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court.

Under regulation 3C of the Costs in Criminal Cases (General) Regulations 1986, a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court.

Under regulation 3H of the Costs in Criminal Cases (General) Regulations 1986, a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court.

Under section 22 of the Football Spectators Act 1989, any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court.

Under section 10(4) or (5) of the Crime and Disorder Act 1998, a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court.

Football Banning Orders

Football Spectators Act 1989 s.14A(5A): a prosecutor may appeal to the Crown Court against a failure by a magistrates' court to make a football banning order

Football Spectators Act 1989 s.22: any person aggrieved by the decision of a magistrates' court making a football banning order may appeal to the Crown Court

Customs and Excise Management Act 1979

s.147(3) - the prosecutor may appeal to the Crown Court against any decision of a magistrates' court in proceedings for an offence under the customs and excise Acts

Bind overs

Magistrates' Courts (Appeals from Binding Over Orders) Act 1956 s.1: a person bound over to keep the peace or be of good behaviour by a magistrates' court may appeal to the Crown Court

Contempt of court

Contempt of Court Act 1981 s.12(5): a person detained, committed to custody or fined by a magistrates' court for insulting a member of the court or another participant in the case, or for interrupting the proceedings, may appeal to the Crown Court

Wasted costs

Costs in Criminal Cases (General) Regulations 1986 reg.3C: a legal representative against whom a magistrates' court makes a wasted costs order under section 19A of the Prosecution of Offences Act 1985 and regulation 3B may appeal against that order to the Crown Court

Third party costs

Costs in Criminal Cases (General) Regulations 1986 reg.3H: a third party against whom a magistrates' court makes a costs order under section 19B of the Prosecution of Offences Act 1985 and regulation 3F may appeal against that order to the Crown Court

Parenting order

Crime and Disorder Act 1998 s.10(4) and (5): a person in respect of whom a magistrates' court makes a parenting order may appeal against that order to the Crown Court

Power of the CCRC to refer a case to the Crown Court:

CAA 1995 s.13²⁰²⁶: Conditions for making of references

- s.13(1) - a reference of a conviction, verdict, finding or sentence shall not be made under any of section 9 to 12B unless—
- (a) the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,
 - (b) the Commission so consider—
 - (i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or
 - (ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
 - (c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
- s.13(2) - nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.

²⁰²⁶ Commencement: 31 March 1997, SI 1997/402 art.3(c) and art.4

6.1.2. Abandonment

MCA 1980 s.109²⁰²⁷: Abandonment of appeal

- s.109(1) - where notice to abandon an appeal has been duly given by the appellant—
- (a) the court against whose decision the appeal was brought may issue process for enforcing that decision, subject to anything already suffered or done under it by the appellant; and
 - (b) the said court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given to that party.
- s.109(2) - in this section “*appeal*” means an appeal from a magistrates’ court to the Crown Court, and the reference to a notice to abandon an appeal is a reference to a notice shown to the satisfaction of the magistrates’ court to have been given in accordance with rules of court.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.9(1) - The appellant—

- (a) may abandon an appeal without the Crown Court’s permission, by serving a notice of abandonment on—
 - (i) the magistrates’ court officer,
 - (ii) the Crown Court officer, and
 - (iii) every other partybefore the hearing of the appeal begins; but
 - (b) after the hearing of the appeal begins, may only abandon the appeal with the Crown Court’s permission.
- (2) - A notice of abandonment must be signed by or on behalf of the appellant. (3) Where an appellant who is on bail pending appeal abandons an appeal—
- (a) the appellant must surrender to custody as directed by the magistrates’ court officer; and
 - (b) any conditions of bail apply until then.

*Note.*²⁰²⁸ *The Practice Direction sets out a form of notice of abandonment for use in connection with this rule.*

Where an appellant abandons an appeal to the Crown Court, both the Crown Court and the magistrates’ court have power to make a costs order against that appellant in favour of the respondent: see section 52 of the Senior Courts Act 1981 and section 109 of the Magistrates’ Courts Act 1980. Part 45 contains rules about costs on abandoning an appeal.

²⁰²⁷ Commencement: 6 July 1981, SI 1981/457 art. 2

²⁰²⁸ The note is contained within the Crim PR.

6.1.3. Applications, time limits and appeal notices

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.2(1) - An appellant must serve an appeal notice on—

- (a) the magistrates' court officer; and
- (b) every other party.

rule.34.2(2) - The appellant must serve the appeal notice—

- (a) as soon after the decision appealed against as the appellant wants; but
- (b) not more than 21 days after—
 - (i) sentence or the date sentence is deferred, whichever is earlier, if the appeal is against conviction or against a finding of guilt,
 - (ii) sentence, if the appeal is against sentence, or
 - (iii) the order or failure to make an order about which the appellant wants to appeal, in any other case.

rule.34.2(3) - The appellant must serve with the appeal notice any application for the following, with reasons—

- (a) an extension of the time limit under this rule, if the appeal notice is late;
- (b) bail pending appeal, if the appellant is in custody;
- (c) the suspension of any disqualification imposed in the case, where the magistrates' court or the Crown Court can order such a suspension pending appeal.

rule.34.2(4) - Where both the magistrates' court and the Crown Court can suspend a disqualification pending appeal, an application for its suspension must indicate by which court the appellant wants the application determined.

*Note.*²⁰²⁹ Under section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000(a), a magistrates' court may defer passing sentence for up to 6 months.

Under section 39 of the Road Traffic Offenders Act 1988(b), a court which has made an order disqualifying a person from driving may suspend the disqualification pending appeal. Under section 40 of the 1988 Act(c), the appeal court may do so. See also rule 29.2.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.3 - The appeal notice must be in writing and must—

- (a) specify—
 - (i) the conviction or finding of guilt,
 - (ii) the sentence, or
 - (iii) the order, or the failure to make an order about which the appellant wants to appeal;
- (b) summarise the issues;
- (c) in an appeal against conviction—

²⁰²⁹ The note is contained within the Crim PR.

- (i) identify the prosecution witnesses whom the appellant will want to question if they are called to give oral evidence, and
 - (ii) say how long the trial lasted in the magistrates' court and how long the appeal is likely to last in the Crown Court;
- (d) in an appeal against a finding that the appellant insulted someone or interrupted proceedings in the magistrates' court, attach—
 - (i) the magistrates' court's written findings of fact, and
 - (ii) the appellant's response to those findings;
- (e) say whether the appellant has asked the magistrates' court to reconsider the case; and
- (f) include a list of those on whom the appellant has served the appeal notice.

*Note.*²⁰³⁰ *The Practice Direction sets out a form of appeal notice for use in connection with this rule. In some cases, a magistrates' court can reconsider a conviction, sentence or other order and make a fresh decision. See section 142 of the Magistrates' Courts Act 1980. See also rule 3.11 (Conduct of a trial or an appeal).*

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.4 - The magistrates' court officer must—

- (a) as soon as practicable serve on the Crown Court officer—
 - (i) the appeal notice and any accompanying application served by the appellant,
 - (ii) details of the parties including their addresses,
 - (iii) a copy of each magistrates' court register entry relating to the decision under appeal and to any application for bail pending appeal, and
 - (iv) any report received for the purposes of sentencing;
- (b) keep any document or object exhibited in the proceedings in the magistrates' court, or arrange for it to be kept by some other appropriate person, until—
 - (i) 6 weeks after the conclusion of those proceedings, or
 - (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks;
- (c) provide the Crown Court with any document, object or information for which the Crown Court officer asks, within such period as the Crown Court officer may require; and
- (d) arrange for the magistrates' court to hear as soon as practicable any application to that court under rule 34.2(3)(c) (suspension of disqualification pending appeal).

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.5 - A person who, under arrangements made by the magistrates' court officer, keeps a document or object exhibited in the proceedings in the magistrates' court must—

- (a) keep that exhibit until—
 - (i) 6 weeks after the conclusion of those proceedings, or

²⁰³⁰ The note is contained within the Crim PR.

- (ii) the conclusion of any proceedings in the Crown Court that begin within that 6 weeks,
unless the magistrates' court or the Crown Court otherwise directs; and
- (b) provide the Crown Court with any such document or object for which the Crown Court officer asks, within such period as the Crown Court officer may require.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.6(1) - The Crown Court officer must, as soon as practicable, serve a reference by the Criminal Cases Review Commission on—

- (a) the appellant;
- (b) every other party; and
- (c) the magistrates' court officer.

rule.34.6(2) - The appellant may serve an appeal notice on—

- (a) the Crown Court officer; and
- (b) every other party,
not more than 21 days later.

rule.34.6(3) - The Crown Court must treat the reference as the appeal notice if the appellant does not serve an appeal notice.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.10 - The Crown Court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow an appellant to vary an appeal notice that that appellant has served;
- (c) direct that an appeal notice be served on any person;
- (d) allow an appeal notice or a notice of abandonment to be in a different form to one set out in the Practice Direction, or to be presented orally.

6.1.4. Bail

MCA 180 s.113²⁰³¹: Bail on appeal or case stated

s.113(1) - where a person has given notice of appeal to the Crown Court against the decision of a magistrates' court or has applied to a magistrates' court to state a case for the opinion of the High Court, then, if he is in custody, the magistrates' court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant him bail.

s.113(2) - if a person is granted bail under subsection (1) above, the time and place at which he is to appear (except in the event of the determination in respect of which the case is stated being reversed by the High Court) shall be—

- (a) if he has given notice of appeal, the Crown Court at the time appointed for the hearing of the appeal;

²⁰³¹ Commencement: 6 July 1981, SI 1981/457 art. 2

- (b) if he has applied for the statement of a case, the magistrates' court at such time within 10 days after the judgment of the High Court has been given as may be specified by the magistrates' court;

and any recognizance that may be taken from him or from any surety for him shall be conditioned accordingly.

s.113(3) - subsection (1) above shall not apply where the accused has been committed to the Crown Court for sentence under section 37 above or section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.

s.113(4) - Section 37(6) of the Criminal Justice Act 1948 (which relates to the currency of a sentence while a person is released on bail by the High Court) shall apply to a person released on bail by a magistrates' court under this section pending the hearing of a case stated as it applies to a person released on bail by the High Court under section 22 of the Criminal Justice Act 1967.

6.1.5. The hearing

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.8(1) - The Crown Court as a general rule must hear in public an appeal or reference to which this Part applies, but—

- (a) may order any hearing to be in private; and
- (b) where a hearing is about a public interest ruling, must hold that hearing in private.

(2) - The Crown Court officer must give as much notice as reasonably practicable of every hearing to—

- (a) the parties;
- (b) any party's custodian; and
- (c) any other person whom the Crown Court requires to be notified.

(3) - The Crown Court officer must serve every decision on—

- (a) the parties;
- (b) any other person whom the Crown Court requires to be served; and
- (c) the magistrates' court officer and any party's custodian, where the decision determines an appeal.

(4) - But where a hearing or decision is about a public interest ruling, the Crown Court officer must not—

- (a) give notice of that hearing to; or
- (b) serve that decision on,
anyone other than the prosecutor who applied for that ruling, unless the court otherwise directs.

*Note.*²⁰³² See also Part 15 (Disclosure).

²⁰³² The note is contained within the Crim PR.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.34.11 - On the hearing of an appeal—

- (a) the general rule is that the Crown Court must comprise—
 - (i) a judge of the High Court, a Circuit judge, a Recorder or a qualifying judge advocate, and
 - (ii) no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal; and
- (b) if the appeal is from a youth court—
 - (i) each justice of the peace must be qualified to sit as a member of a youth court, and
 - (ii) the Crown Court must include a man and a woman; but
- (c) the Crown Court may include only one justice of the peace and need not include both a man and a woman if—
 - (i) the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably, or
 - (ii) one or more of the justices of the peace who started hearing the appeal is absent.

*Note.*²⁰³³ See sections 73 and 74 of the Senior Courts Act 1981(a), section 45 of the Children and Young Persons Act 1933(b) and section 9 of the Courts Act 2003(c). Under section 8(1A) of the Senior Courts Act 1981(d), a qualifying judge advocate may not exercise the jurisdiction of the Crown Court on an appeal from a youth court.

SCA 1981 s.79: Practice and procedure in connection with indictable offences and appeals

- s.79(1) - all enactments and rules of law relating to procedure in connection with indictable offences shall continue to have effect in relation to proceedings in the Crown Court.
- s.79(2) - without prejudice to the generality of subsection (1), that subsection applies in particular to—
 - (a) the practice by which, on any one indictment, the taking of pleas, the trial by jury and the pronouncement of judgment may respectively be by or before different judges;
 - (b) the release, after respite of judgment, of a convicted person on recognizance to come up for judgment if called on, but meanwhile to be of good behaviour;
 - (c) the manner of trying any question relating to the breach of a recognizance;
 - (d) the manner of execution of any sentence on conviction, or the manner in which any other judgment or order given in connection with trial on indictment may be enforced.
- s.79(3) - the customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case, shall continue to be observed.

²⁰³³ The note is contained within the Crim PR.

6.1.6. Power of Crown Court on appeal

General jurisdiction

SCA 1981 s.45²⁰³⁴: General jurisdiction of Crown Court

- s.45(1) - the Crown Court shall be a superior court of record.
- s.45(2) - subject to the provisions of this Act, there shall be exercisable by the Crown Court—
 - (a) all such appellate and other jurisdiction as is conferred on it by or under this or any other Act; and
 - (b) all such other jurisdiction as was exercisable by it immediately before the commencement of this Act.
- s.45(3) - without prejudice to subsection (2), the jurisdiction of the Crown Court shall include all such powers and duties as were exercisable or fell to be performed by it immediately before the commencement of this Act.
- s.45(4) - subject to section 8 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (substitution in criminal cases of procedure in that Act for procedure by way of subpoena) and to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority as the High Court.
- s.45(5) - the specific mention elsewhere in this Act of any jurisdiction covered by subsections (2) and (3) shall not derogate from the generality of those subsections.

Application of powers

SCA 1981 s.48: Appeals to Crown Court

- s.48(5) - this section applies whether or not the appeal is against the whole of the decision.

Meaning of “sentence”

SCA 1981 s.48: Appeals to Crown Court

- s.48(6) - in this section “sentence” includes any order made by a court when dealing with an offender, including—
 - (a) a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order, and an *interim* hospital order under that Act; and
 - (b) a recommendation for deportation made when dealing with an offender.

²⁰³⁴ Commencement: 1 January 1982, SCA 1981 s.153(2).

Powers

SCA 1981 s.48: Appeals to Crown Court

- s.48(1) - the Crown Court may, in the course of hearing any appeal, correct any error or mistake in the order or judgment incorporating the decision which is the subject of the appeal.
- s.48(2) - on the termination of the hearing of an appeal the Crown Court—
- (a) may confirm, reverse or vary the decision appealed against any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence; or
 - (b) may remit the matter with its opinion thereon to the authority whose decision is appealed against; or
 - (c) may make such other order in the matter as the court thinks just, and by such order exercise any power which the said authority might have exercised.
- s.48(3) - subsection (2) has effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the court on the appeal.

Sentence may increase on appeal

- s.48(4) - subject to section 11(6) of the Criminal Appeal Act 1995, if the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the magistrates' court whose decision is appealed against, if that is a punishment which that magistrates' court might have awarded.

Effect of pending appeal on interim hospital order

SCA 1981 s.48: Appeals to Crown Court

- s.48(7) - the fact that an appeal is pending against an *interim* hospital order under the said Act of 1983 shall not affect the power of the magistrates' court that made it to renew or terminate the order or to deal with the appellant on its termination; and where the Crown Court quashes such an order but does not pass any sentence or make any other order in its place the Court may direct the appellant to be kept in custody or released on bail pending his being dealt with by that magistrates' court.
- s.48(8) - where the Crown Court makes an *interim* hospital order by virtue of subsection (2)—
- (a) the power of renewing or terminating the order and of dealing with the appellant on its termination shall be exercisable by the magistrates' court whose decision is appealed against and not by the Crown Court; and
 - (b) that magistrates' court shall be treated for the purposes of section 38(7) of the said Act of 1983 (absconding offenders) as the court that made the order.

Costs

Note: There is a power to make a costs order under POA 1985 s.16. See the costs section for details. See also Crim PR Part 45.

6.1.7. Effect of Crown Court determination etc.

MCA 1980 s.110: Enforcement of decision of the Crown Court

- s.110 - after the determination by the Crown Court of an appeal from a magistrates' court the decision appealed against as confirmed or varied by the Crown Court, or any decision of the Crown Court substituted for the decision appealed against, may, without prejudice to the powers of the Crown Court to enforce the decision, be enforced—
- (a) by the issue by the court by which the decision appealed against was given of any process that it could have issued if it had decided the case as the Crown Court decided it;
 - (b) so far as the nature of any process already issued to enforce the decision appealed against permits, by that process;
- and the decision of the Crown Court shall have effect as if it had been made by the magistrates' court against whose decision the appeal is brought.

6.2 From the Crown Court

6.2.1. General

Jurisdiction of the Criminal Division of the Court of Appeal

SCA 1981 s.53²⁰³⁵: Distribution of business between civil and criminal divisions

- s.53(1) - rules of court may provide for the distribution of business in the Court of Appeal between the civil and criminal divisions, but subject to any such rules business shall be distributed in accordance with the following provisions of this section.
- s.53(2) - the criminal division of the Court of Appeal shall exercise—
- (a) all jurisdiction of the Court of Appeal under Parts I and II of the Criminal Appeal Act 1968;
 - (b) the jurisdiction of the Court of Appeal under section 13 of the Administration of Justice Act 1960 (appeals in cases of contempt of court) in relation to appeals from orders and decisions of the Crown Court;
 - (c) all other jurisdiction expressly conferred on that division by this or any other Act; and
 - (d) the jurisdiction to order the issue of writs of *venire de novo*.
- s.53(3) - the civil division of the Court of Appeal shall exercise the whole of the jurisdiction of that court not exercisable by the criminal division.
- s.53(4) - where any class of proceedings in the Court of Appeal is by any statutory provision assigned to the criminal division of that court, rules of court may provide for any enactment relating to—
- (a) appeals to the Court of Appeal under Part I of the Criminal Appeal Act 1968; or
 - (b) any matter connected with or arising out of such appeals,
- to apply in relation to proceedings of that class or, as the case may be, to any corresponding matter connected with or arising out of such proceedings, as it applies in relation to such appeals or, as the case may be, to the relevant matter within paragraph (b), with or without prescribed modifications in either case.

Meaning of “sentence”

CAA 1968 s.50²⁰³⁶: Meaning of “sentence”

- s.50(1) - in this Act “sentence”, in relation to an offence, includes any order made by a court when dealing with an offender including, in particular—
- (a) a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order;
 - (b) an interim hospital order under that Part;
 - (bb) a hospital direction and a limitation direction under that Part;
 - (c) a recommendation for deportation;

²⁰³⁵ Commencement: 1 January 1982, SCA 1981 s.153(2).

²⁰³⁶ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (ca) a confiscation order under Part 2 of the Proceeds of Crime Act 2002 (but not a determination under section 10A of that Act);
- (cb) an order which varies a confiscation order made under Part 2 of the Proceeds of Crime Act 2002 if the varying order is made under section 21, 22 or 29 of that Act (but not otherwise);
- (d) a confiscation order under the Drug Trafficking Act 1994 other than one made by the High Court;
- (e) a confiscation order under Part VI of the Criminal Justice Act 1988;
- (f) an order varying a confiscation order of a kind which is included by virtue of paragraph (d) or (e) above;
- (g) an order made by the Crown Court varying a confiscation order which was made by the High Court by virtue of section 19 of the Act of 1994; and
- (h) a declaration of relevance, within the meaning of section 23 of the Football Spectators Act 1989; and
- (i) an order under section 129(2) of the Licensing Act 2003 (forfeiture or suspension of personal licence).

s.50(1A) - Section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (under which a conviction of an offence for which an order for a conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Act, whether against conviction or otherwise.

s.50(2) - any power of the criminal division of the Court of Appeal to pass a sentence includes a power to make a recommendation for deportation in cases where the court from which the appeal lies had power to make such a recommendation.

s.50(3) - an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not a sentence for the purposes of this Act.

6.2.2. Specific sentencing orders

Sentencing orders that may be appealed

General: For a discussion of the meaning of “sentence” in the 1968 Act, see *R. v Hayden* (1974) 60 Cr. App. R. 304. Sentence includes a compensation order and an order for prosecution costs. It does not include an order that the defendant make a contribution towards legal aid costs incurred.

“The essential key to the meaning of “sentence” in this context in our opinion is that it is an order, and it is an order made by a court when dealing with an offender, and we think that means when dealing with someone who has offended in respect of this offence. Those then are the features to which one must look in deciding whether a particular direction, to use a neutral word, made by a court is a sentence for the purposes of the Act of 1968.” (Lord Widgery CJ at [853])

Absolute discharge: CAA 1968 s.50(1A)

Bind over to come up for judgment: *R. v Williams* (1982) 75 Cr. App. R. 378

Bind over to keep the peace: *R. v Atkinson* (1988) 10 Cr. App. R. (S.) 470

Compensation order: *R. v Thebith* (1970) 54 Cr. App. R. 35; *R. v Hayden* (1974) 60 Cr. App. R. 304

Conditional discharge: CAA 1968 s.50(1A)

Confiscation (under 2002, 1994 and 1988 Acts): CAA 1968 s.50(1)(ca), (cb), (d), (e), (f) and (g)

Costs (except under LASPOA 2012 ss.23 or 24): *R. v Hayden* (1974) 60 Cr. App. R. 304 and CA 1968 s.50(3)

Deferred sentence²⁰³⁷: *R. v L* (Deferred sentence) [1999] 2 Cr. App. R. (S.) 7

Deportation, Recommendation for: CAA 1968 s.50(1)(c)

FBO (declaration of relevance under FSA 1989): FSA 1989 s.23(3) and CAA 1968 s.50(1)(h)

FBO (failure to make): FSA 1989 s.14A(5A)²⁰³⁸

Financial Reporting Order: *R. v Adams* [2008] EWCA Crim 914

Forfeiture order: *R. v Menocal* (1979) 69 Cr. App. R. 148²⁰³⁹

Hospital order, interim hospital order, hospital order with restriction order, hospital direction with limitation direction: CAA 1968 s.50(a), (b) and (bb).

Life sentence (discretionary): CAA 1968 s.9(1)

Minimum sentence following quashing of previous conviction under PCC(S)A 2000 ss.110 or 111: PCC(S)A 2000 s.112

Minimum term of mandatory life sentence: CAA 1968 s.9(1) and (1A)

Minimum term of mandatory life sentence set or reviewed by High Court judge: CJA 2003 Sch.22 para.14

Minimum term of mandatory life sentence for transferred life prisoner: CJA 2003 s.274(3)

Parent/Guardian to enter into recognizance or pay a fine: PCC(S)A 2000 s.150(9)

Parental order (financial): PCC(S)A 2000 s.137(7)

Parenting order (appeal by parent or guardian): CDA 1998 s.10(4)

Restitution order: *R. v Hayden* (1974) 60 Cr. App. R. 304 and PCC(S)A 2000 s.149(3)(b)²⁰⁴⁰

Restraining order on acquittal: PHA 1997 s.5A(5)

Review of sentence under SOCPA 2005 s.74: SOCPA 2005 s.74(8)

Sentence of IPP/DPP/extended sentence following quashing of previous CJA 2003 Sch.15A conviction: CJA 2003 s.231

SCPO: SCA 2007 s.24(1)

SOPOs/SHPOs and interim SOPOs/SHPOs: SOA 2003 ss.110 or 103H

SOPOs/SHPOs variations, renewals or discharges: SOA 2003 ss.110 or 103H

Terrorist connection, determination that offence has: CTA 2008 s.42

Victim surcharge: *R v Stone* [2013] EWCA Crim 723 (see [14])

Sentencing orders that may not be appealed

Mandatory life sentence: CAA 1968 s.9(1)

Notification requirement: *R. v Longworth* [2006] UKHL 1

²⁰³⁷ A deferred sentence may also be referred to the Court by the Attorney General under the unduly lenient sentence scheme, see *Attorney General's Reference (No. 22 of 1992)* (*R. v Thomas*) (1993) 14 Cr. App. R. (S.) 435

²⁰³⁸ Note that the appeal is to the Civil Division of the Court of Appeal, see *R. v Boggild* [2011] EWCA Crim 1928.

²⁰³⁹ This concerned an order expressed to be under the MDA 1971 s.27 "or alternatively" under the PCCA 1973 s.43 (the predecessor to the current forfeiture order).

²⁰⁴⁰ However *R. v Thebith* (1970) 54 Cr. App. R. 35 suggests that the order could not be appealed.

Note: The issue is determined by whether the specific order is considered to be “a sentence” imposed for the offence in question (see CAA 1968 s.9(1)). Accordingly, many of the sentencing orders available have been omitted from this list as the issue is uncontroversial (e.g. a Restraining Order or a fine, community order, sentence of imprisonment etc).

6.2.3. Right to ask for leave to appeal

General

CAA 1968 s.9²⁰⁴¹: Appeal against sentence following conviction on indictment

- s.9(1) - a person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.

Murder

CAA 1968 s.9²⁰⁴²: Appeal against sentence following conviction on indictment

- s.9(1) - a person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.
- s.9(1A) - in subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.

Summary offences convicted on indictment

CAA 1968 s.9²⁰⁴³: Appeal against sentence following conviction on indictment

- s.9(2) - a person who on conviction on indictment has also been convicted of a summary offence under paragraph 6 of Schedule 3 to the Crime and Disorder Act 1998 (power of Crown Court to deal with summary offence where person sent for trial for indictable-only offence) may appeal to the Court of Appeal against any sentence passed on him for the summary offence (whether on his conviction or in subsequent proceedings) under subsection (7) of that section or sub-paragraph (4) of that paragraph.

Committals for sentence etc.

CAA 1968 s.10²⁰⁴⁴: Appeal against sentence in other cases dealt with at assizes or quarter sessions

- s.10(1) - this section has effect for providing rights of appeal against sentence when a person is dealt with by the Crown Court (otherwise than on appeal from a magistrates' court) for an offence of which he was not convicted on indictment.

²⁰⁴¹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁴² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁴³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁴⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1. Note: I have been unable to find a copy of the 1968 SI to verify the commencement.

- s.10(2) - the proceedings from which an appeal against sentence lies under this section are those where an offender convicted of an offence by a magistrates' court—
- (a) is committed by the court to be dealt with for his offence before the Crown Court, or
 - (b) having been given a suspended sentence or made the subject of—
 - (i) an order for conditional discharge,
 - (ii) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, or
 - (iii) a community order within the meaning of Part 12 of the Criminal Justice Act 2003,appears or is brought before the Crown Court to be further dealt with for the offence.
- s.10(3) - an offender dealt with for an offence before the Crown Court in a proceeding to which subsection (2) of this section applies may appeal to the Court of Appeal against any sentence passed on him for the offence by the Crown Court.
- s.10(4) - for purposes of subsection (3)(a) of this section and section 11 of this Act, any two or more sentences are to be treated as passed in the same proceeding if—
- (a) they are passed on the same day; or
 - (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence;
- and consecutive terms of imprisonment or detention and terms which are wholly or partly concurrent are to be treated as a single term.

Insanity and unfitness to plead

CAA 1968 s.16A²⁰⁴⁵: Right of appeal against hospital order etc.

- s.16A(1) - a person in whose case the Crown Court—
- (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
 - (b) makes a supervision order under section 5 of that Act,
- may appeal to the Court of Appeal against the order.
- s.16A(2) - an appeal under this section lies only—
- (a) with the leave of the Court of Appeal; or
 - (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

Contempt of court

BA 1976 s.6²⁰⁴⁶: Offence of absconding by person released on bail

- s.6(1) - if a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

²⁰⁴⁵ Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

²⁰⁴⁶ Commencement: 17 April 1978, SI 1978/132 art.2.

- s.6(2) - if a person who—
- (a) has been released on bail in criminal proceedings, and
 - (b) having reasonable cause therefor, has failed to surrender to custody,
- fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.
- s.6(3) - it shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.
- s.6(4) - a failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.
- s.6(5) - an offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

AJA 1960 s.13²⁰⁴⁷: Appeal in cases of contempt of court

- s.13(1) - subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.
- s.13(2) - an appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
- (a) from an order or decision of any inferior court not referred to in the next following paragraph, to the High Court;
 - (b) from an order or decision of the county court or any other inferior court from which appeals generally lie to the Court of Appeal, and from an order or decision (other than a decision on an appeal under this section) of a single judge of the High Court, or of any court having the powers of the High Court or of a judge of that court, to the Court of Appeal;
 - (bb) from an order or decision of the Crown Court to the Court of Appeal
 - (c) from a decision of a single judge of the High Court on an appeal under this section, from an order or decision of a Divisional Court or the Court of Appeal (including a decision of either of those courts on an appeal under this section), and from an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial Appeal Court, to the Supreme Court.
- s.13(2A) - paragraphs (a) to (c) of subsection (2) of this section do not apply in relation to appeals under this section from an order or decision of the family court, but (subject to any provision made under section 56 of the Access of Justice Act 1999 or by or under any other enactment) such an appeal shall lie to the Court of Appeal.
- s.13(3) - the court to which an appeal is brought under this section may reverse or vary the order or decision of the court below, and make such other order as may be just; and without prejudice to the inherent powers of any court referred to in subsection (2) of this section, provision may be made by rules of court rules made under section seven

²⁰⁴⁷ Commencement: 27 October 1960.

of the Northern Ireland Act 1962 for authorising the release on bail of an appellant under this section.

- s.13(4) - Subsections (2) to (4) of section one and section two of this Act shall apply to an appeal to the Supreme Court under this section as they apply to an appeal to the Supreme Court under the said section one, except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section.
- s.13(5) - in this section “court” includes any tribunal or person having power to punish for contempt; and references in this section to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references—
- (a) to an order or decision of the High Court, the family court, the Crown Court or the county court under any enactment enabling that court to deal with an offence as if it were contempt of court;
 - (b) to an order or decision of [the county court, or of any court having the powers of [the county court, under section 14, 92 or 118 of the County Courts Act 1984;
 - (c) to an order or decision of a magistrates’ court under subsection (3) of section 63 of the Magistrates’ Courts Act 1980;
 - (d) to an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial, the Summary Appeal Court or the Service Civilian Court under section 309 of the Armed Forces Act 2006,
- but do not include references to order under section five of the Debtors Act 1869, or under any provision of the Magistrates’ Courts Act 1980, or the County Courts Act 1984, except those referred to in paragraphs (b) and (c) of this subsection and except sections 38 and 142 of the last mentioned Act so far as those sections confer jurisdiction in respect of contempt of court.
- s.13(6) - this section does not apply to a conviction or sentence in respect of which an appeal lies under Part I of the Criminal Appeal Act 1968, or to a decision of the criminal division of the Court of Appeal under that Part of that Act.

Note: The effect of this is that there is no need to apply for leave; an appeal is as of right. This is distinct from those sentenced for failure to surrender at the magistrates’ court and who appeal against sentence to the Crown Court. In such cases, leave is required (see CAA 1968 s.10(2)).

6.2.4. CCRC referrals

Power to refer sentences

CAA 1995 s.9²⁰⁴⁸: Cases dealt with on indictment in England and Wales

- s.9(1) - where a person has been convicted of an offence on indictment in England and Wales, the Commission—
- (a) may at any time refer the conviction to the Court of Appeal, and
 - (b) (whether or not they refer the conviction) may at any time refer to the Court of Appeal any sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction.

²⁰⁴⁸ Commencement: 31 March 1997, SI 1997/402 art.3(c) and 4

- s.9(2) - a reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1968 Act against the conviction.
- s.9(3) - a reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction on an indictment shall be treated for all purposes as an appeal by the person under section 9 of the 1968 Act against—
- (a) the sentence, and
 - (b) any other sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction or any other conviction on the indictment.

Powers of the court

CAA 1968 s.16C²⁰⁴⁹: Power to dismiss certain appeals following references by the CCRC

- s.16C(1) - this section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 9(1)(a), (5) or (6) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.
- s.16C(2) - notwithstanding anything in section 2, 13 or 16 of this Act, the Court of Appeal may dismiss the appeal if—
- (a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and
 - (b) the condition in subsection (3) is met.
- s.16C(3) - the condition in this subsection is that if—
- (a) the reference had not been made, but
 - (b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,
- the Court would not think it appropriate to grant the application by exercising the power conferred by section 18(3).

6.2.5. Applications and time limits

Must give notice of appeal within 28 days of sentence

CAA 1968 s.18²⁰⁵⁰: Initiating procedure

- s.18(1) - a person who wishes to appeal under this Part of this Act to the Court of Appeal, or to obtain the leave of that court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as may be directed by rules of court.
- s.18(2) - notice of appeal, or of application for leave to appeal, shall be given within twenty-eight days from the date of the conviction, verdict or finding appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the

²⁰⁴⁹ Commencement: 14 July 2008, as inserted by CJIA 2008 s.42, SI 2008/1586 art.2(1) and Sch.1 para.21. Subject to transitory, transitional and savings provisions as specified in CJIA 2008 Sch.27 para.14.

²⁰⁵⁰ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

case of an order made or treated as made on conviction, from the date of the making of the order.

PCC(S)A 2000 s.155²⁰⁵¹: Alteration of Crown Court sentence

s.155(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.

Power to extend time limits

CAA 1968 s.18²⁰⁵²: Initiating procedure

s.18(3) - the time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

Contempt of court

CAA 1968 s.18A²⁰⁵³: Appeals in cases of contempt of court

s.18A(1) - a person who wishes to appeal under section 13 of the Administration of Justice Act 1960 from any order or decision of the Crown Court in the exercise of jurisdiction to punish for contempt of court shall give notice of appeal in such manner as may be directed by rules of court.

s.18A(2) - notice of appeal shall be given within twenty-eight days from the date of the order or decision appealed against.

s.18A(3) - the time for giving notice under this section may be extended, either before or after its expiry, by the Court of Appeal.

6.2.6. Powers of the single judge

Note: This subsection lists the powers of the single judge exercisable under the CAA 1968. There are other powers pertaining to particular sentencing orders contained within the relevant legislation. Those provisions are contained within the relevant sections.

CAA 1968 s.31²⁰⁵⁴: Powers of Court which are exercisable by single judge

s.31(1) - there may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions—

- (a) the powers of the Court of Appeal under this Part of this Act specified in subsection (2) below;

(aa) the power to give leave under section 14(4B) of the Criminal Appeal Act 1995;

²⁰⁵¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

²⁰⁵² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁵³ Commencement: 31 July 1989, as inserted by CJA 1988 s.170(1) and Sch.15 para.25, SI 1989/1085 art.2(1) and Sch.1.

²⁰⁵⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (b) the power to give directions under section 4(4) of the Sexual Offences (Amendment) Act 1976; and
- (c) the powers to make orders for the payment of costs under sections 16 to 18 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act.

s.31(2) - the powers mentioned in subsection (1)(a) above are the following:—

- (a) to give leave to appeal;
- (b) to extend the time within which notice of appeal or of application for leave to appeal may be given;
- (c) to allow an appellant to be present at any proceedings;
- (ca) to give a live link direction under section 22(4);
- (d) to order a witness to attend for examination;
- (e) to exercise the powers conferred by section 19 of this Act;
- (f) to make orders under section 8(2) of this Act and discharge or vary such orders;
- (g) (repealed)
- (h) to give directions under section 29(1) of this Act;
- (i) to make orders under section 23(1)(a).

s.31(2ZA) - the power of the Court of Appeal to renew an interim hospital order made by them by virtue of any provision of this Part may be exercised by a single judge in the same manner as it may be exercised by the Court.

s.31(2A) - the power of the Court of Appeal to suspend a person's disqualification under section 40(2) of the Road Traffic Offenders Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.

s.31(2B) - the power of the Court of Appeal to grant leave of appeal under section 159 of the Criminal Justice Act 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.

s.31(2C) - the power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge in the same manner as it may be exercised by the Court.

s.31(2D) - the power of the Court of Appeal to grant leave to appeal under section 9(11) of the Criminal Justice Act 1987 may be exercised by a single judge in the same manner as it may be exercised by the Court.

s.31(2E) - the power of the Court of Appeal to grant leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996 may be exercised by a single judge in the same manner as it may be exercised by the Court.

s.31(2F) - the powers of the Court of Appeal to make, discharge or vary a witness anonymity order under Chapter 2 of Part 3 of the Coroners and Justice Act 2009 may be exercised by a single judge in the same manner as they may be exercised by the Court.

s.31(3) - if the single judge refuses an application on the part of an appellant to exercise in his favour any of the powers above specified, the appellant shall be entitled to have the application determined by the Court of Appeal.

6.2.7. Powers of the Registrar

CAA 1968 s.31A²⁰⁵⁵: Powers of Court under Part I which are exercisable by registrar

- s.31A(1) - the powers of the Court of Appeal under this Part of this Act which are specified in subsection (2) below may be exercised by the registrar.
- s.31A(2) - the powers mentioned in subsection (1) above are the following—
- (a) to extend the time within which notice of appeal or of application for leave to appeal may be given;
 - (aa) to give a live link direction under section 22(4);
 - (b) to order a witness to attend for examination;
 - (c) to vary the conditions of bail granted to an appellant by the Court of Appeal or the Crown Court; and
 - (d) to make orders under section 23(1)(a).
- s.31A(3) - no variation of the conditions of bail granted to an appellant may be made by the registrar unless he is satisfied that the respondent does not object to the variation; but, subject to that, the powers specified in that subsection are to be exercised by the registrar in the same manner as by the Court of Appeal and subject to the same provisions.
- s.31A(4) - if the registrar refuses an application on the part of an appellant to exercise in his favour any of the powers specified in subsection (2) above, the appellant shall be entitled to have the application determined by a single judge.
- s.31A(5) - in this section “*respondent*” includes a person who will be a respondent if leave to appeal is granted.

6.2.8. Procedural directions

Power to make directions

CAA 1968 s.31B²⁰⁵⁶: Procedural directions: powers of single judge and registrar

- s.31B(1) - the power of the Court of Appeal to determine an application for procedural directions may be exercised by—
- (a) a single judge, or
 - (b) the registrar.
- s.31B(2) - “*Procedural directions*” means directions for the efficient and effective preparation of—
- (a) an application for leave to appeal, or
 - (b) an appeal,
- to which this section applies.

²⁰⁵⁵ Commencement: 1 January 1996, as inserted by CAA 1995 s.6, SI 1995/3061 art.3(a). The insertion is subject to savings specified in SI 1995/3061 art.4.

²⁰⁵⁶ Commencement: 1 May 2004, as inserted CA 2003 s.87(3), SI 2004/1104 art.3(b).

- s.31B(3) - a single judge may give such procedural directions as he thinks fit–
- (a) when acting under subsection (1);
 - (b) on a reference from the registrar;
 - (c) of his own motion, when he is exercising, or considering whether to exercise, any power of his in relation to the application or appeal.
- s.31B(4) - the registrar may give such procedural directions as he thinks fit–
- (a) when acting under subsection (1);
 - (b) of his own motion.
- s.31B(5) - this section applies to an appeal, and an application to the Court of Appeal for leave to appeal, under–
- (a) this Part,
 - (b) section 9 of the Criminal Justice Act 1987, or
 - (c) section 35 of the Criminal Procedure and Investigations Act 1996.

Appeals against procedural directions

CAA 1968 s.31C²⁰⁵⁷: Appeals against procedural directions

- s.31C(3) - subsection (4) applies if the registrar gives, or refuses to give, procedural directions.
- s.31C(4) - a single judge may, on an application to him under subsection (5):
- (a) confirm, set aside or vary any procedural directions given by the registrar, and
 - (b) give such procedural directions as he thinks fit.
- s.31C(5) - an application under this subsection may be made by–
- (a) an appellant;
 - (b) a respondent, if the directions–
 - (i) relate to an application for leave to appeal and appear to need the respondent's assistance to give effect to them,
 - (ii) relate to an application for leave to appeal which is to be determined by the Court of Appeal, or
 - (iii) relate to an appeal.
- s.31C(6) - in this section–
- “*appellant*” includes a person who has given notice of application for leave to appeal under any of the provisions mentioned in section 31B(5);
- “*respondent*” includes a person who will be a respondent if leave to appeal is granted.

Note: The effect of the provision is that there is no appeal against a procedural direction made by the single judge. Such directions are final.

²⁰⁵⁷ Commencement: 1 May 2004, as inserted CA 2003 s.87(3), SI 2004/1104 art.3(b).

6.2.9. Bail pending outcome of appeal

CAA 1968 s.19²⁰⁵⁸: Bail

- s.19(1) - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if they think fit,—
- (a) grant an appellant bail pending the determination of his appeal; or
 - (b) revoke bail granted to an appellant by the Crown Court under paragraph (f) of section 81(1) of the Senior Courts Act 1981 or paragraph (a) above; or
 - (c) vary the conditions of bail granted to an appellant in the exercise of the power conferred by either of those paragraphs
- s.19(2) - the powers conferred by subsection (1) above may be exercised—
- (a) on the application of an appellant; or
 - (b) if it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as “*the registrar*”) that any of them ought to be exercised, on a reference to the court by him.

Note: The CJPOA 1994 s.25 prohibits the granting of bail to those accused or convicted of rape or murder after a previous conviction for such an offence unless there are exceptional circumstances.

CAA 1968 s.29²⁰⁵⁹: Effect of appeal on sentence

- s.29(3) - when an appellant is granted bail under section 19 of this Act, the time during which he is released on bail shall be disregarded in computing the term of any sentence to which he is for the time being subject.

6.2.10. Summary determination

CAA 1968 s.20²⁰⁶⁰: Disposal of groundless appeal or application for leave to appeal

- s.20 - if it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.

²⁰⁵⁸ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁵⁹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁶⁰ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

6.2.11. Pre-appeal matters

Leave granted by Court of Appeal

CAA 1968 s.11²⁰⁶¹: Supplementary provisions as to appeal against sentence

- s.11(1) - subject to subsection (1A) below, an appeal against sentence, whether under section 9(1) or under section 10 of this Act, lies only with the leave of the Court of Appeal.

Sentencing judge grants certificate for appeal

CAA 1968 s.11²⁰⁶²: Supplementary provisions as to appeal against sentence

- s.11(1) - subject to subsection (1A) below, an appeal against sentence, whether under section 9(1) or under section 10 of this Act, lies only with the leave of the Court of Appeal.
- s.11(1A) - if, within 28 days from the date on which the sentence was passed, the judge who passed it grants a certificate that the case is fit for appeal under section 9 or 10 of this Act, an appeal lies under this section without the leave of the Court of Appeal.

More than one sentence: Appeal is against all sentences

CAA 1968 s.11²⁰⁶³: Supplementary provisions as to appeal against sentence

- s.11(2) - where the Crown Court, in dealing with an offender either on his conviction on indictment or in a proceeding to which section 10(2) of this Act applies, has passed on him two or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 10), being sentences against which an appeal lies under section 9(1) or section 10, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.

Summary and either way offences: Appeal is against all

CAA 1968 s.11²⁰⁶⁴: Supplementary provisions as to appeal against sentence

- s.11(2A) - where following conviction on indictment a person has been convicted under section 41 of the Criminal Justice Act 1988 of a summary offence an appeal or application for leave to appeal against any sentence for the offence triable either way shall be treated also as an appeal or application in respect of any sentence for the summary offence and an appeal or application for leave to appeal against any sentence for the summary offence shall be treated also as an appeal or application in respect of the offence triable either way.
- s.11(2B) - if the appellant or applicant was convicted on indictment of two or more offences triable either way, the references to the offence triable either way in subsection (2A) above are to be construed, in relation to any summary offence of which he was convicted under section 41 of the Criminal Justice Act 1988 following the conviction on indictment, as references to the offence triable either way specified in the notice relating to that summary offence which was given under subsection (2) of that section.

²⁰⁶¹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁶² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁶³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁶⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

Preparation for the hearing

CAA 1968 s.21²⁰⁶⁵: Preparation of case for hearing

s.21(1) - the registrar shall—

- (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to him and which is not referred and dismissed summarily under the foregoing section; and
- (b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the appeal or application.

s.21(2) - rules of court may enable an appellant to obtain from the registrar any documents or things, including copies or reproductions of documents, required for his appeal and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.

Abandonment

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.36.13(1) - This rule applies where an appellant wants to—

- (a) abandon—
 - (i) an application to the court for permission to appeal, or
 - (ii) an appeal; or
- (b) reinstate such an application or appeal after abandoning it.

rule.36.13(2) - The appellant—

- (a) may abandon such an application or appeal without the court's permission by serving a notice of abandonment on—
 - (i) the Registrar, and
 - (ii) any respondentbefore any hearing of the application or appeal; but
- (b) at any such hearing, may only abandon that application or appeal with the court's permission.

rule.36.13(3) - A notice of abandonment must be in the form set out in the Practice Direction, signed by or on behalf of the appellant.

rule.36.13(4) - On receiving a notice of abandonment the Registrar must—

- (a) date it;
- (b) serve a dated copy on—
 - (i) the appellant,
 - (ii) the appellant's custodian, if any,
 - (iii) the Crown Court officer, and

²⁰⁶⁵ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (iv) any other person on whom the appellant or the Registrar served the appeal notice; and
- (c) treat the application or appeal as if it had been refused or dismissed by the Court of Appeal.

rule.36.13(5) - An appellant who wants to reinstate an application or appeal after abandoning it must—

- (a) apply in writing, with reasons; and
- (b) serve the application on the Registrar.

*Note.*²⁰⁶⁶ *The Court of Appeal has power only in exceptional circumstances to allow an appellant to reinstate an application or appeal that has been abandoned.*

6.2.12. Evidence

CAA 1968 s.23²⁰⁶⁷: Evidence

- s.23(1) - for the purposes of an appeal, or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—
- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
 - (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
 - (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.
- s.23(1A) - the power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—
- (a) the Court;
 - (b) the appellant;
 - (c) the respondent.
- s.23(2) - the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
- (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
- s.23(3) - subsection (1)(c) above applies to any evidence of a witness (including the appellant) who is competent but not compellable.

²⁰⁶⁶ The note is contained within the Crim PR.

²⁰⁶⁷ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- s.23(4) - for the purposes of an appeal, or an application for leave to appeal, under this Part of this Act, the Court of Appeal may, if they think it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under subsection (1)(b) above to be conducted, in manner provided by rules of court, before any judge or officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court.
- s.23(5) - a live link direction under section 22(4) does not apply to the giving of oral evidence by the appellant at any hearing unless that direction, or any subsequent direction of the court, provides expressly for the giving of such evidence through a live link.
- s.23(6) - in this section, “*respondent*” includes a person who will be a respondent if leave to appeal is granted.

6.2.13. The hearing

Composition of the court

SCA 1981 s.55²⁰⁶⁸: Court of criminal division

- s.55(1) - this section relates to the criminal division of the Court of Appeal; and in this section “*court*” means a court of that division.
- s.55(2) - subject to subsection (6), a court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of judges not less than three.
- s.55(3) - where—
- (a) part of any proceedings before a court has been heard by an uneven number of judges greater than three; and
 - (b) one or more members of the court are unable to continue,
- the court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than three.
- s.55(4) - subject to subsection (6), a court shall, if it consists of two judges, be duly constituted for every purpose except—
- (a) determining an appeal against—
 - (i) conviction; or
 - (ii) a verdict of not guilty by reason of insanity; or
 - (iii) a finding under section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead) that a person is under a disability;
 - (aa) reviewing sentencing under Part IV of the Criminal Justice Act 1988;
 - (b) determining an application for leave to appeal to the Supreme Court; and
 - (c) refusing an application for leave to appeal to the criminal division against conviction or any such verdict or finding as is mentioned in paragraph (a)(ii) or (iii), other than an application which has been refused by a single judge.
- s.55(5) - where an appeal has been heard by a court consisting of an even number of judges and the members of the court are equally divided, the case shall be re-argued before and determined by an uneven number of judges not less than three.

²⁰⁶⁸ Commencement: 1 January 1982, SCA 1981 s.153(2).

- s.55(6) - a court shall not be duly constituted if it includes more than one Circuit judge acting as a judge of the court under section 9.

SCA 1981 s.56²⁰⁶⁹: Judges not to sit on appeal from their own judgments, etc.

- s.56(1) - no judge shall sit as a member of the civil division of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal from a judgment or order made in any case by himself or by any court of which he was a member.
- s.56(2) - no judge shall sit as a member of the criminal division of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal against—
- (a) a conviction before himself or a court of which he was a member; or
 - (b) a sentence passed by himself or such a court.

Appellant has right to be present

CAA 1968 s.22²⁰⁷⁰: Right of appellant to be present

- s.22(1) - except as provided by this section, an appellant shall be entitled to be present, if he wishes it, on the hearing of his appeal, although he may be in custody.
- s.22(2) - a person in custody shall not be entitled to be present—
- (a) where his appeal is on some ground involving a question of law alone; or
 - (b) on an application by him for leave to appeal; or
 - (c) on any proceedings preliminary or incidental to an appeal; or
 - (d) where he is in custody in consequence of a verdict of not guilty by reason of insanity or of a finding of disability,
- unless the Court of Appeal give him leave to be present.
- s.22(3) - the power of the Court of Appeal to pass sentence on a person may be exercised although he is for any reason not present.
- s.22(4) - the Court of Appeal may give a live link direction in relation to a hearing at which the appellant is expected to be in custody but is entitled to be present (by virtue of subsection (1) or leave given under subsection (2)) at any time before the beginning of that hearing.
- s.22(5) - for this purpose—
- (a) a “live link direction” is a direction that the appellant (if he is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which he is held; and
 - (b) “live link” means an arrangement by which the appellant is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded).

²⁰⁶⁹ Commencement: 1 January 1982, SCA 1981 s.153(2).

²⁰⁷⁰ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.22(6) - the Court of Appeal—

- (a) must not give a live link direction unless the parties to the appeal have had the opportunity to make representations about the giving of such a direction; and
- (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a party).

Powers: General

CAA 1968 s.11²⁰⁷¹: *Supplementary provisions as to appeal against sentence*

s.11(3) - on an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—

- (a) quash any sentence or order which is the subject of the appeal; and
- (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;

but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.

Powers: Confiscation

CAA 1968 s.11²⁰⁷²: *Supplementary provisions as to appeal against sentence*

s.11(3A) - where the Court of Appeal exercise their power under paragraph (a) of subsection (3) to quash a confiscation order, the Court may, instead of proceeding under paragraph (b) of that subsection, direct the Crown Court to proceed afresh under the relevant enactment.

s.11(3B) - when proceeding afresh pursuant to subsection (3A), the Crown Court shall comply with any directions the Court of Appeal may make.

s.11(3C) - the Court of Appeal shall exercise the power to give such directions so as to ensure that any confiscation order made in respect of the appellant by the Crown Court does not deal more severely with the appellant than the order quashed under subsection (3)(a).

s.11(3D) - for the purposes of this section—

“confiscation order” means a confiscation order made under—

- (a) section 1 of the Drug Trafficking Offences Act 1986,
- (b) section 71 of the Criminal Justice Act 1988,
- (c) section 2 of the Drug Trafficking Act 1994, or
- (d) section 6 of the Proceeds of Crime Act 2002;

“relevant enactment”, in relation to a confiscation order quashed under subsection (3)(a), means the enactment under which the order was made.

²⁰⁷¹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁷² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

Powers: Appeal pending against interim hospital order

CAA 1968 s.11²⁰⁷³: Supplementary provisions as to appeal against sentence

- s.11(5) - the fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or to deal with the appellant on its termination; and where the Court of Appeal quash such an order but do not pass any sentence or make any other order in its place the Court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below.

Powers: Interpretation

CAA 1968 s.11²⁰⁷⁴: Supplementary provisions as to appeal against sentence

- s.11(7) - for the purposes of this section, any two or more sentences are to be treated as passed in the same proceeding if—
- (a) they are passed on the same day; or
 - (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence.

Reconstitution of court

Note: Where the CACD lacks jurisdiction to quash some orders, it may reconstitute itself as an Administrative Court where the constitution of the court satisfies the requirements for a valid Administrative Court bench. An example would be where a Crown Court judge has sat as a District Judge (Magistrates' Court) under CA 2003 s.66 and the Court wishes to deal with an order made by the Crown Court judge in those circumstances. C v Winchester Crown Court [2014] EWCA Crim 339 is an example of the Div Ct sitting in place of the CoA.

6.2.14. Transcripts

CAA 1968 s.32²⁰⁷⁵: Transcripts

- s.32(1) - rules of court may provide—
- (a) for the making of a record (whether by means of shorthand notes, by mechanical means or otherwise) of any proceedings in respect of which an appeal lies (with or without leave) to the Court of Appeal; and
 - (b) for the making and verification of a transcript of any such record and for supplying the transcript (on payment of such charge, if any, as may be fixed for the time being by the Treasury) to the registrar for the use of the Court of Appeal or any judge exercising the powers of a judge of the Court, and to such other persons and in such circumstances as may be prescribed by the rules.
- s.32(2) - without prejudice to subsection (1) above, the Secretary of State may, if he thinks fit, in any case direct that a transcript shall be made of any such record made in pursuance of the rules and be supplied to him.

²⁰⁷³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁷⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁷⁵ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.32(3) - the cost—

- (a) of making any such record in pursuance of the rules; and
- (b) of making and supplying in pursuance of this section any transcript ordered to be supplied to the registrar or the Secretary of State,

shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament; and the cost of providing and installing at a court any equipment required for the purpose of making such a record or transcript shall also be defrayed out of moneys so provided.

6.2.15. Effect of appeal against sentence

Sentence runs from date of original sentence

CAA 1968 s.29²⁰⁷⁶: Effect of appeal on sentence

s.29(4) - the term of any sentence passed by the Court of Appeal under section 3, 4, 5, 11 or 13(4) of this Act shall, unless the Court otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

CAA 1968 s.30A²⁰⁷⁷: Effect of interim hospital orders

s.30A(1) - this section applies where the Court of Appeal—

- (a) make an interim hospital order by virtue of any provision of this Part, or
- (b) renew an interim hospital order so made.

s.30A(2) - the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.

6.2.16. Directions for loss of time

CAA 1968 s.29²⁰⁷⁸: Effect of appeal on sentence

s.29(1) - the time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

s.29(2) - where the Court of Appeal give a contrary direction under subsection (1) above, they shall state their reasons for doing so; and they shall not give any such direction where—

- (a) leave to appeal has been granted; or
- (b) a certificate has been given by the judge of the court of trial; or under:
 - (i) section 1 or 11(1A) of this Act; or
 - (ii) section 81(1B) of the Senior Courts Act 1981

²⁰⁷⁶ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁷⁷ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.8 para.8, SI 2008/1586 art.2 and Sch.1 para.26. The insertion is subject to transitional and saving provisions specified in SI 2008/1586 art.2(3) and Sch.2 para.5.

²⁰⁷⁸ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (c) the case has been referred to them under section 9 of the Criminal Appeal Act 1995.

6.2.17. Sentencing powers of the Court of Appeal otherwise than on appeal against sentence

Conviction

CAA 1968 s.3²⁰⁷⁹: Power to substitute conviction of alternative offence

- s.3(1) - this section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence.
- s.3(2) - the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

Substitution of conviction after guilty plea

CAA 1968 s.3A²⁰⁸⁰: Power to substitute conviction of alternative offence after guilty plea

- s.3A(1) - this section applies on an appeal against conviction where—
 - (a) an appellant has been convicted of an offence to which he pleaded guilty,
 - (b) if he had not so pleaded, he could on the indictment have pleaded, or been found, guilty of some other offence, and
 - (c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.
- s.3A(2) - the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

Re-sentencing where conviction appeal allowed but appellant remains convicted of other offences

CAA 1968 s.4²⁰⁸¹: Power to re-sentence where appellant remains convicted of related offences

- s.4(1) - this section applies where—
 - (a) two or more related sentences are passed,
 - (b) the Court of Appeal allow an appeal against conviction in respect of one or more of the offences for which the sentences were passed ("the related offences"), but
 - (c) the appellant remains convicted of one or more of those offences.

²⁰⁷⁹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁸⁰ Commencement: 1 September 2004, as inserted by CJA 2003 s.316(3), SI 2004/1629 art.3(2)(c).

²⁰⁸¹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- s.4(2) - except as provided by subsection (3) below, the Court may in respect of any related offence of which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as they think proper and is authorised by law.
- s.4(3) - the Court shall not under this section pass any sentence such that the appellant's sentence (taken as a whole) for all the related offences of which he remains convicted will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all the related offences.
- s.4(4) - for the purposes of subsection (1)(a), two or more sentences are related if—
- (a) they are passed on the same day,
 - (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence, or
 - (c) they are passed on different days but in respect of counts on the same indictment.
- s.4(5) - where—
- (a) two or more sentences are related to each other by virtue of subsection (4)(a) or (b), and
 - (b) any one or more of those sentences is related to one or more other sentences by virtue of subsection (4)(c),
- all the sentences are to be treated as related for the purposes of subsection (1)(a).

Special verdicts

CAA 1968 s.5²⁰⁸²: Disposal of appeal against conviction on special verdict

- s.5(1) - this section applies on an appeal against conviction in a case where the jury have found a special verdict.
- s.5(2) - if the Court of Appeal consider, that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict they may, instead of allowing the appeal, order such conclusion to be recorded as appears to them to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

Verdict of not guilty by reason of insanity

CAA 1968 s.13²⁰⁸³: Disposal of appeal under s.12

- s.13(1) - subject to the provisions of this section, the Court of Appeal—
- (a) shall allow an appeal under section 12 of this Act if they think that the verdict is unsafe; and
 - (b) shall dismiss such an appeal in any other case.
- s.13(3) - where apart from this subsection—
- (a) an appeal under section 12 of this Act would fall to be allowed; and

²⁰⁸² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁸³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Appeal may dismiss the appeal if they are of opinion that, but for the insanity of the accused, the proper verdict would have been that he was guilty of an offence other than the offence charged.

s.13(4) - where an appeal under section 12 of this Act is allowed, the following provisions apply:—

- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Appeal are of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court—
 - (i) shall substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and
 - (ii) shall, subject to subsection (5) below, have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if the jury had come to the substituted verdict; and
- (b) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal.

s.13(5) - the Court of Appeal shall not by virtue of subsection (4)(a) above sentence any person to death; but where under that paragraph they substitute a verdict of guilty of an offence for which apart from this subsection they would be required to sentence the appellant to death, their sentence shall (whatever the circumstances) be one of imprisonment for life.

s.13(6) - an order of the Court of Appeal allowing an appeal in accordance with this section shall operate as a direction to the court of trial to amend the record to conform with the order.

Insanity and unfitness to plead

CAA 1968 s.16²⁰⁸⁴: Disposal of appeal under s. 15

s.16(1) - the Court of Appeal—

- (a) shall allow an appeal under section 15 of this Act against a finding if they think that the finding is unsafe; and
- (b) shall dismiss such an appeal in any other case.

s.16(3) - where the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant is under a disability—

- (a) the appellant may be tried accordingly for the offence with which he was charged; and
- (b) the Court may, subject to section 25 of the Criminal Justice and Public Order Act 1994 make such orders as appear to them necessary or expedient pending any such trial for his custody, release on bail or continued detention under the Mental Health Act 1983;

and Schedule 3 to this Act has effect for applying provisions in Part III of that Act to persons in whose case an order is made by the Court under this subsection.

²⁰⁸⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- s.16(4) - where, otherwise than in a case falling within subsection (3) above, the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).

CAA 1968 Sch.3 para.2²⁰⁸⁵

- para.2 - where an order is made by the Court of Appeal under section 16(3) of this Act for a person's continued detention under the Mental Health Act 1983, Part III of that Act (patients concerned in criminal proceedings or under sentence) shall apply to him as if he had been ordered under the said section 16(3) to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a restriction direction.

CAA 1968 s.16B²⁰⁸⁶: Disposal of appeal under s.16A

- s.16B(1) - if on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
- (a) they may quash any order which is the subject of the appeal; and
 - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- s.16B(2) - the fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- s.16B(4) - the fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.
- s.16B(5) - where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.

6.2.18. Interpretation

CAA 1968 s.45²⁰⁸⁷: Construction of references in Parts I and II to Court of Appeal and a single judge

- s.45(1) - references in Parts I and II and sections 44A and 51 of this Act to the Court of Appeal shall be construed as references to the criminal division of the Court.
- s.45(2) - the references in sections 23A, 31 to 31C, 44 and 44A of this Act to a single judge are to any judge of the Court of Appeal or the High Court.

²⁰⁸⁵ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁸⁶ Commencement: 31 March 2005, as inserted by DVCVA 2004 s.25, SI 2005/579 art.3(b).

²⁰⁸⁷ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

CAA 1968 s.51²⁰⁸⁸: Interpretation

- s.51(1) - in this Act, except where the context otherwise requires—
- “*appeal*”, where used in Part I or II of this Act, means appeal under that Part, and “*appellant*” has a corresponding meaning and in Part I includes a person who has given notice of application for leave to appeal;
- “*the court of trial*”, in relation to an appeal, means the court from which the appeal lies;
- “*duly approved*”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State, or by another person by virtue of section 12ZA or 12ZB of that Act, as having special experience in the diagnosis or treatment of mental disorder;
- “*the judge of the court of trial*” means, where the Crown Court comprises justices of the peace, the judge presiding;
- “*registered medical practitioner*” means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise;
- “*under disability*” has the meaning assigned to it by section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and
- s.51(1A) - in Part 2 of this Act “*the defendant*”—
- (a) in relation to an appeal under section 33(1) of this Act against a decision of the Court of Appeal on an appeal under Part 1 of this Act, means the person who was the appellant before the Court of Appeal,
- (b) in relation to an appeal under section 33(1) of this Act against any other decision, means a defendant in the proceedings before the Crown Court who was a party to the proceedings before the Court of Appeal, and
- (c) in relation to an appeal under section 33(1B) of this Act, shall be construed in accordance with section 33(4) of this Act;
- and “*prosecutor*” shall be construed accordingly.
- s.51(2) - any expression used in this Act which is defined in section 145(1) and (1AA) of the Mental Health Act 1983 has the same meaning in this Act as in that Act.
- s.51(2A) - Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof of the appellant’s mental condition for the purposes of section 6 or 14 of this Act as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.

²⁰⁸⁸ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

6.3 From the Court of Appeal

6.3.1. Right of appeal

CAA 1968 s.33²⁰⁸⁹: Right of appeal to Supreme Court

- s.33(1) - an appeal lies to the Supreme Court, at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under Part I of this Act or Part 9 of the Criminal Justice Act 2003 or section 9 (preparatory hearings) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 or section 47 of the Criminal Justice Act 2003.
- s.33(1B) - an appeal lies to the Supreme Court, at the instance of the acquitted person or the prosecutor, from any decision of the Court of Appeal on an application under section 76(1) or (2) of the Criminal Justice Act 2003 (retrial for serious offences).
- s.33(2) - the appeal lies only with the leave of the Court of Appeal or the the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.
- s.33(3) - except as provided by this Part of this Act and section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), no appeal shall lie from any decision of the criminal division of the Court of Appeal.
- s.33(4) - in relation to an appeal under subsection (1B), references in this Part to a defendant are references to the acquitted person.

6.3.2. Applications and right to appeal

General

CAA 1968 s.34²⁰⁹⁰: Application for leave to appeal

- s.34(1) - an application to the Court of Appeal for leave to appeal to the Supreme Court shall be made within the period of 28 days beginning with the relevant date; and an application to the Supreme Court for leave shall be made within the period of 28 days beginning with the date on which the application for leave is refused by the Court of Appeal.
 - (1A) In subsection (1), “*the relevant date*” means—
 - (a) the date of the Court of Appeal's decision, or
 - (b) if later, the date on which the Court of Appeal gives reasons for its decision.
- s.34(2) - the Supreme Court or the Court of Appeal may, upon application made at any time by the defendant or, in the case of an appeal under section 33(1B), by the prosecutor, extend the time within which an application may be made by him to the Supreme Court or the Court of Appeal under subsection (1) above.
- s.34(3) - an appeal to the Supreme Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for purposes of this Part of this Act an application for leave to appeal

²⁰⁸⁹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁹⁰ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.

Contempt of court

BA 1976 s.6²⁰⁹¹: Offence of absconding by person released on bail

- s.6(1) - if a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.
- s.6(2) - if a person who—
- (a) has been released on bail in criminal proceedings, and
 - (b) having reasonable cause therefore, has failed to surrender to custody,
- fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.
- s.6(3) - it shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.
- s.6(4) - a failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.
- s.6(5) - an offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

AJA 1960 s.13²⁰⁹²: Appeal in cases of contempt of court

- s.13(1) - subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.
- s.13(2) - an appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
- [...]
 - (c) from a decision of a single judge of the High Court on an appeal under this section, from an order or decision of a Divisional Court or the Court of Appeal (including a decision of either of those courts on an appeal under this section), and from an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial Appeal Court, to the Supreme Court.
- s.13(2A) - paragraphs (a) to (c) of subsection (2) of this section do not apply in relation to appeals under this section from an order or decision of the family court, but (subject to any provision made under section 56 of the Access to Justice Act 1999 or by or under any other enactment) such an appeal shall lie to the Court of Appeal.
- s.13(3) - the court to which an appeal is brought under this section may reverse or vary the order or decision of the court below, and make such other order as may be just; and

²⁰⁹¹ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰⁹² Commencement: 27 October 1960.

without prejudice to the inherent powers of any court referred to in subsection (2) of this section, provision may be made by rules of court rules made under section seven of the Northern Ireland Act 1962 for authorising the release on bail of an appellant under this section.

- s.13(4) - Subsections (2) to (4) of section one and section two of this Act shall apply to an appeal to the Supreme Court under this section as they apply to an appeal to the Supreme Court under the said section one, except that so much of the said subsection (2) as restricts the grant of leave to appeal shall apply only where the decision of the court below is a decision on appeal to that court under this section.
- s.13(5) - in this section “court” includes any tribunal or person having power to punish for contempt; and references in this section to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references—
- (a) to an order or decision of the High Court, the family court, the Crown Court or the county court under any enactment enabling that court to deal with an offence as if it were contempt of court;
 - (b) to an order or decision of [the county court, or of any court having the powers of [the county court, under section 14, 92 or 118 of the County Courts Act 1984;
 - (c) to an order or decision of a magistrates’ court under subsection (3) of section 63 of the Magistrates’ Courts Act 1980;
 - (d) to an order or decision (except one made in Scotland or Northern Ireland) of the Court Martial, the Summary Appeal Court or the Service Civilian Court under section 309 of the Armed Forces Act 2006,
- but do not include references to order under section five of the Debtors Act 1869, or under any provision of the Magistrates’ Courts Act 1980, or the County Courts Act 1984, except those referred to in paragraphs (b) and (c) of this subsection and except sections 38 and 142 of the last mentioned Act so far as those sections confer jurisdiction in respect of contempt of court.
- s.13(6) - this section does not apply to a conviction or sentence in respect of which an appeal lies under Part I of the Criminal Appeal Act 1968, or to a decision of the criminal division of the Court of Appeal under that Part of that Act.

Minimum term review decisions

Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 (SI 2005/2798) art.12²⁰⁹³: Right of appeal to the Supreme Court

- art.12(1) - an appeal lies to the Supreme Court at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under paragraph 14(1) of Schedule 22 to the 2003 Act.
- art.12(2) - the appeal lies only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

²⁰⁹³ Commencement: 3 November 2005, SI 2005/2798 art.1

Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005 (SI 2005/2798) art.14²⁰⁹⁴: Hearing and disposal of appeal

art.14(3) - for the purpose of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court of Appeal

Sentence review under SOCPA

Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006 (SI 2006/2135) art.15²⁰⁹⁵: Right of appeal to the Supreme Court

art.15(1) - an appeal lies to the Supreme Court at the instance of the offender or a specified prosecutor, from any decision of the Court of Appeal on an appeal to that court under section 74(8) of the Act.

art.15(2) - the appeal lies only with the leave of the Court of Appeal or the Supreme Court.

art.15(3) - leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

Serious Crime Prevention Order

SCA 2007 s.24²⁰⁹⁶: Appeals from Crown Court

s.24(6) - an appeal against a decision of the Court of Appeal on an appeal to that court under subsection (1) or (2) may be made to the Supreme Court by any person who was a party to the proceedings before the Court of Appeal.

Attorney General's References

CJA 1988 s.36²⁰⁹⁷: Reviews of sentencing

s.36(5) - where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the Supreme Court for its opinion, and the Supreme Court shall consider the point and give its opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or itself deal with the case.

s.36(6) - a reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

s.36(7) - for the purpose of dealing with a case under this section the Supreme Court may exercise any powers of the Court of Appeal.

²⁰⁹⁴ Commencement: 3 November 2005, SI 2005/2798 art.1

²⁰⁹⁵ Commencement: 28 August 2006, SI 2006/2135 art.1

²⁰⁹⁶ Commencement: Subsections (9) and (10) in force 1 March 2008, SI 2008/219 art.3(a). Subsections (1) to (8) and (11) and (12) in force 6 April 2008, SI 2008/755 art.15(1)(d).

²⁰⁹⁷ Commencement: 1 February 1989, SI 1989/1 art.2(a).

6.3.3. The hearing

CAA 1968 s.35²⁰⁹⁸: Hearing and disposal of appeal

- s.35(3) - for the purpose of disposing of an appeal, the Supreme Court may exercise any powers of the Court of Appeal or may remit the case to the Court.

6.3.4. Bail

CAA 1968 s.36²⁰⁹⁹: Bail on appeal by defendant

- s.36 - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if it seems fit, on the application of a person appealing or applying for leave to appeal to the Supreme Court, other than a person appealing or applying for leave to appeal from a decision on an appeal under Part 9 of the Criminal Justice Act 2003 or section 9(11) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 (appeals against orders or rulings at preparatory hearings) or section 47 of the Criminal Justice Act 2003, grant him bail pending the determination of his appeal.

6.3.5. Appeals by the Crown

Appeals by the Crown: Detention of defendant

CAA 1968 s.37²¹⁰⁰: Detention of defendant on appeal by the Crown

- s.37(1) - the following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.
- s.37(2) - if, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal shall make—
- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 36 above), so long as the appeal is pending, or
 - (b) an order that he be released without bail.
- s.37(2A) - the Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the [Supreme Court] on the appeal.
- s.37(3) - an order under subsection (2)(a) shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the Court of Appeal.
- s.37(4) - where an order is made under subsection (2)(a) in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—
- (a) an order or direction under Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act) (admission to hospital of persons convicted by criminal courts); or

²⁰⁹⁸ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²⁰⁹⁹ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²¹⁰⁰ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

- (b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc),

the order under subsection (2)(a) shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) or (b) of this subsection; and the provisions of the Mental Health Act 1983 with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

- s.37(4A) - where an order is made under subsection (2)(a) in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under section 36 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—
 - (a) subsection (3) of this section shall not apply to the order;
 - (b) Part III of the said Act of 1983 shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the Supreme Court is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
 - (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.
- s.37(5) - the defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
 - (a) the Court of Appeal have made an order under subsection (2)(b), or
 - (b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).

Community orders: Appeals by the Crown

CAA 1968 s.37A²¹⁰¹: Continuation of community treatment order on appeal by the Crown

- s.37A(1) - the following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal.
- s.37A(2) - if, but for the decision of the Court of Appeal, the defendant would be liable to recall, the Court of Appeal may make an order under this section.
- s.37A(3) - for the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.

²¹⁰¹ Commencement: 3 November 2008, as inserted by MHA 1983 Sch.4 para.2(3), SI 2008/1900 art.2(i).

- s.37A(4) - an order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as an appeal to the Supreme Court is pending.
- s.37A(5) - where an order is made under this section the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- s.37A(6) - an order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would, but for the decision of the Court of Appeal, have been–
- (a) liable to recall; or
 - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.
- s.37A(7) - where the Court of Appeal have power to make an order under this section, and either no such order is made or the defendant is discharged, by virtue of subsection (5) or (6) of this section, before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.

6.3.6. Presence of defendant at appeal

CAA 1968 s.38²¹⁰²: Presence of defendant at hearing

- s.38 - a defendant who has been convicted of an offence, or in whose case an order under section 77 of the Criminal Justice Act 2003 or a declaration under section 77(4) of that Act has been made, and who is detained pending an appeal to the Supreme Court shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto, except where an order of the Supreme Court authorises him to be present, or where the Supreme Court or the Court of Appeal, as the case may be, give him leave to be present.

6.3.7. Effect of appeal on sentence

CAA 1968 s.43²¹⁰³: Effect of appeal on sentence

- s.43(1) - where a person subject to a sentence is granted bail under section 36 or 37 of this Act, the time during which he is released on bail shall be disregarded in computing the term of his sentence.
- s.43(2) - subject to the foregoing subsection, any sentence passed on an appeal to the Supreme Court in substitution for another sentence shall, unless the Supreme Court or the Court of Appeal otherwise direct, begin to run from the time when the other sentence would have begun to run.

²¹⁰² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²¹⁰³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

6.3.8. Powers of single judge

CAA 1968 s.44²¹⁰⁴: Powers of Court of Appeal under Part II which are exercisable by single judge

- s.44(1) - there may be exercised by a single judge—
- (a) the powers of the Court of Appeal under this Part of the Act—
 - (i) to extend the time for making an application for leave to appeal;
 - (ii) to make an order for or in relation to bail; and
 - (iii) to give leave for a person to be present at the hearing of any proceedings preliminary or incidental to an appeal; and
 - (b) their powers to make orders for the payment of costs under sections 16 and 17 of the Prosecution of Offences Act 1985 in proceedings under this Part of this Act, [but where the judge refuses an application to exercise any of the said powers the applicant shall be entitled to have the application determined by the Court of Appeal.]
- s.44(2) - the power of the Court of Appeal to suspend a person's disqualification under section 40(3) of the Road Traffic Offenders Act 1988 may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.
- s.44(3) - the power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court of Appeal.

6.3.9. Cases involving death

CAA 1968 s.44A²¹⁰⁵: Appeals in cases of death

- s.44A(1) - where a person has died—
- (a) any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal; and
 - (b) where any relevant appeal was begun by him while he was alive or is begun in relation to his case by virtue of paragraph (a) above or by a reference by the Criminal Cases Review Commission, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.
- s.44A(2) - in this section “*relevant appeal*” means —
- (a) an appeal section 1, 9, 12 or 15 of this Act; or
 - (b) an appeal under section 33 of this Act from any decision of the Court of Appeal on an appeal under any of those sections.

²¹⁰⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²¹⁰⁵ Commencement: 1 January 1996 as inserted by CAA 1995 s.7, except to the extent that it related to references by the Criminal Cases Review Commission, SI 1995/3061 art.3(b). In force 31 March 1997 otherwise, SI 1997/402 art.3(b).

- s.44A(3) - approval for the purposes of this section may only be given to:
- (a) the widow or widower or surviving civil partner of the dead person;
 - (b) a person who is the personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925) of the dead person; or
 - (c) any other person appearing to the Court of Appeal to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him.
- s.44A(4) - except in the case of an appeal begun by a reference by the Criminal Cases Review Commission, an application for such approval may not be made after the end of the period of one year beginning with the date of death.
- s.44A(5) - where this section applies, any reference in this Act to the appellant shall, where appropriate, be construed as being or including a reference to the person approved under this section.
- s.44A(6) - the power of the Court of Appeal to approve a person under this section may be exercised by a single judge in the same manner as by the Court of Appeal and subject to the same provisions; but if the single judge refuses the application, the applicant shall be entitled to have the application determined by the Court of Appeal.

6.3.10. Interpretation

CAA 1968 s.45²¹⁰⁶: Construction of references in Parts I and II to Court of Appeal and a single judge

- s.45(1) - references in Parts I and II and sections 44A and 51 of this Act to the Court of Appeal shall be construed as references to the criminal division of the Court.
- s.45(2) - the references in sections 23A, 31 to 31C, 44 and 44A of this Act to a single judge are to any judge of the Court of Appeal or the High Court.

CAA 1968 s.51²¹⁰⁷: Interpretation

- s.51(1) - in this Act, except where the context otherwise requires—
- “*appeal*”, where used in Part I or II of this Act, means appeal under that Part, and “*appellant*” has a corresponding meaning and in Part I includes a person who has given notice of application for leave to appeal;
- “*the court of trial*”, in relation to an appeal, means the court from which the appeal lies;
- “*duly approved*”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State, or by another person by virtue of section 12ZA or 12ZB of that Act, as having special experience in the diagnosis or treatment of mental disorder;
- “*the judge of the court of trial*” means, where the Crown Court comprises justices of the peace, the judge presiding;
- “*registered medical practitioner*” means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise;
- “*under disability*” has the meaning assigned to it by section 4 of the Criminal Procedure (Insanity) Act 1964 (unfitness to plead); and

²¹⁰⁶ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

²¹⁰⁷ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

s.51(1A) - in Part 2 of this Act “*the defendant*”—

- (a) in relation to an appeal under section 33(1) of this Act against a decision of the Court of Appeal on an appeal under Part 1 of this Act, means the person who was the appellant before the Court of Appeal,
- (b) in relation to an appeal under section 33(1) of this Act against any other decision, means a defendant in the proceedings before the Crown Court who was a party to the proceedings before the Court of Appeal, and
- (c) in relation to an appeal under section 33(1B) of this Act, shall be construed in accordance with section 33(4) of this Act;

and “*prosecutor*” shall be construed accordingly.

s.51(2) - any expression used in this Act which is defined in section 145(1) and (1AA) of the Mental Health Act 1983 has the same meaning in this Act as in that Act.

s.51(2A) - Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof of the appellant’s mental condition for the purposes of section 6 or 14 of this Act as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.

6.4 Attorney General's references

6.4.1. At the Crown Court

Goodyear indications: Advocate must warn defendant

R. v Goodyear [2005] EWCA Crim 888; [2006] 1 Cr. App. R. (S.) 6 (p.23)

...the advocate is personally responsible for ensuring that his client fully appreciates that...any sentence indication given by the judge remains subject to the entitlement of the Attorney General (where it arises) to refer an unduly lenient sentence to the Court of Appeal... (Lord Woolf CJ, at [65])

Attorney General's Reference (No.40 of 1996) [1997] 1 Cr. App. R. (S.) 357

An indication of sentence at the Crown Court is a matter to be taken into account but it does not preclude the court from increasing the sentence.

6.4.2. Power to refer sentences

Power to refer

CJA 1988 s.36²¹⁰⁸: Reviews of sentencing

s.36(1) - if it appears to the Attorney General—

(a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and

(b) that the case is one to which this Part of this Act applies,

he may, with the leave of the Court of Appeal, refer the case to them for them to review the sentencing of that person; and on such a reference the Court of Appeal may—

(i) quash any sentence passed on him in the proceeding; and

(ii) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him.

What does 'unduly lenient' mean?

CJA 1988 s.36²¹⁰⁹: Reviews of sentencing

s.36(2) - without prejudice to the generality of subsection (1) above, the condition specified in paragraph (a) of that subsection may be satisfied if it appears to the Attorney General that the judge;

(a) erred in law as to his powers of sentencing; or

(b) failed to impose a sentence required by—

(zi) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;

(i) section 51A(2) of the Firearms Act 1968;

(ia) section 139(6B), 139A(5B) or 139AA(7) of this Act;

²¹⁰⁸ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹⁰⁹ Commencement: 1 February 1989, SI 1989/1 art.2(a).

- (ii) section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000;
- (iii) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003; or
- (iv) under section 29(4) or (6) of the Violent Crime Reduction Act 2006.

Cases which may be referred

CJA 1988 s.35²¹¹⁰: Scope of Part IV

- s.35(1) - a case to which this Part of this Act applies may be referred to the Court of Appeal under section 36 below.
- s.35(2) - subject to Rules of Court, the jurisdiction of the Court of Appeal under section 36 below shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this Part of this Act shall be construed as references to that division.
- s.35(3) - this Part of this Act applies to any case —
 - (a) of a description specified in an order under this section; or
 - (b) in which sentence is passed on a person—
 - (i) for an offence triable only on indictment; or
 - (ii) for an offence of a description specified in an order under this section.
- s.35(4) - the Secretary of State may by order made by statutory instrument provide that this Part of this Act shall apply to any case of a description specified in the order or to any case in which sentence is passed on a person for an offence triable either way of a description specified in the order.
- s.35(5) - a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.35(6) - in this Part of this Act “sentence” has the same meaning as in the Criminal Appeal Act 1968, except that it does not include an interim hospital order under Part III of the Mental Health Act 1983, and “sentencing” shall be construed accordingly.

Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (SI 2006/1116)²¹¹¹

- art.2 - Part IV of the Criminal Justice Act 1988 (reviews of sentencing) shall apply to any case of a description specified in Schedule 1.

Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (SI 2006/1116)²¹¹² Sch.1

- para.1 - any case tried on indictment—
 - (a) following a notice of transfer given under section 4 of the Criminal Justice Act 1987 (notices of transfer and designated authorities) by an authority designated for that purpose under subsection (2) of that section; or

²¹¹⁰ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹¹¹ Commencement: 16 May 2006, SI 2006/1116 art.1(1). Note that this SI replaced earlier SIs setting out cases to which Part 4 of the 1988 Act applied.

²¹¹² Commencement: 16 May 2006, SI 2006/1116 art.1(1). Note that this SI replaced earlier SIs setting out cases to which Part 4 of the 1988 Act applied. Para.1A in force 6 August 2012 as inserted by SI 2012/1833 art.2(2)(a).

- (b) in which one or more of the counts in respect of which sentence is passed relates to a charge which was dismissed under section 6(1) of the Criminal Justice Act 1987 (applications for dismissal) and on which further proceedings were brought by means of preferment of a voluntary bill of indictment.

para.1A - any case tried on indictment—

- (a) following a notice given under section 51B of the Crime and Disorder Act 1998 (notices in serious or complex fraud cases); or
- (b) following such a notice, in which one or more of the counts in respect of which sentence is passed relates to a charge—
 - (i) which was dismissed under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal); and
 - (ii) on which further proceedings were brought by means of the preferment of a voluntary bill of indictment.

para.2 - any case in which sentence is passed on a person for one of the following offences:

- (a) an offence under section 16 of the Offences against the Person Act 1861 (threats to kill);
- (b) an offence under section 5(1) of the Criminal Law Amendment Act 1885 (defilement of a girl between 14 and 17);
- (c) an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16) or section 20 of the Children and Young Persons Act (Northern Ireland) 1968 (cruelty to persons under 16);
- (d) an offence under section 6 of the Sexual Offences Act 1956 (unlawful sexual intercourse with a girl under 16), section 14 or 15 of that Act (indecent assault on a woman or on a man), section 52 of the Offences against the Person Act 1861 (indecent assault upon a female), or Article 21 of the Criminal Justice (Northern Ireland) Order 2003 (indecent assault on a male);
- (e) an offence under section 1 of the Indecency with Children Act 1960 or section 22 of the Children and Young Persons Act (Northern Ireland) 1968 (indecent conduct with a child);
- (f) an offence under section 4(2) or (3) (production or supply of a controlled drug), section 5(3) (possession of a controlled drug with intent to supply) or section 6(2) (cultivation of cannabis plant) of the Misuse of Drugs Act 1971;
- (g) an offence under section 54 of the Criminal Law Act 1977 or Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting a girl under 16 to have incestuous sexual intercourse);
- (h) an offence under section 50(2) or (3), section 68(2) or section 170(1) or (2) of the Customs and Excise Management Act 1979, insofar as those offences are in connection with a prohibition or restriction on importation or exportation of either:
 - (i) a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971, such prohibition or restriction having effect by virtue of section 3 of that Act; or
 - (ii) an article prohibited by virtue of section 42 of the Customs Consolidation Act 1876 but only insofar as it relates to or depicts a person under the age of 16;
- (i) offences under sections 29 to 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated assaults; racially or religiously aggravated criminal damage; racially or religiously aggravated public order offences; racially or religiously aggravated harassment etc);

- (j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation);
- (k) an offence under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour);
- (l) an offence under section 1 (slavery, servitude and forced or compulsory labour), 2 (human trafficking) or 4 (committing an offence with intent to commit a human trafficking offence) of the Modern Slavery Act 2015.

para.3 - to the extent that Part IV of the Criminal Justice Act 1988 does not apply by virtue of section 35(3)(b)(i), any case in which sentence is passed on a person for an offence under one of the following sections of the Sexual Offences Act 2003:

- (a) section 3 (sexual assault);
- (b) section 4 (causing a person to engage in sexual activity without consent);
- (c) section 7 (sexual assault of a child under 13);
- (d) section 8 (causing or inciting a child under 13 to engage in sexual activity);
- (e) section 9 (sexual activity with a child);
- (f) section 10 (causing or inciting a child to engage in sexual activity);
- (g) section 11 (engaging in sexual activity in the presence of a child);
- (h) section 12 (causing a child to watch a sexual act);
- (i) section 14 (arranging or facilitating commission of a child sex offence);
- (j) section 15 (meeting a child following sexual grooming etc);
- (k) section 25 (sexual activity with a child family member);
- (l) section 47 (paying for sexual services of a child);
- (m) section 48 (causing or inciting child prostitution or pornography);
- (n) section 49 (controlling a child prostitute or a child involved in pornography);
- (o) section 50 (arranging or facilitating child prostitution or pornography);
- (p) section 52 (causing or inciting prostitution for gain);
- (q) section 57 (trafficking into the UK for sexual exploitation);
- (r) section 58 (trafficking within the UK for sexual exploitation);
- (s) section 59 (trafficking out of the UK for sexual exploitation);
- (sa) section 59A (trafficking people for sexual exploitation);²¹¹³
- (t) section 61 (administering a substance with intent).

para.4(1) - any case in which sentence is passed on a person for—

- (a) attempting to commit a relevant offence;
- (b) inciting the commission of a relevant offence; or
- (c) an offence under section 44 or 45 of the Serious Crime Act 2007 (encouraging or assisting an offence) in relation to a relevant offence.

²¹¹³ SI 2015/1472 made amendments to the 2006 order (see regs.2 and 3). The references to SOA 2003 ss.59 and 59A were not removed. SI 2015/1472 reg.3 contains a saving provision for the repeal of SOA 2003 s.59A for offences committed wholly or partly prior to 31 July 2015. For that reason it remains in the 2006 Order enabling a) offences of trafficking committed pre-31 July 2015 to be charged under the 2003 Act and b) the AG to refer any sentences imposed for that offence to the CACD.

para.4(2) - In this paragraph, “a *relevant offence*” means an offence set out in paragraph 2(a) to (h), (j) or (k) or paragraph 3.

Deferred sentences

Attorney General’s reference (No.22 of 1992) (1993) 14 Cr. App. R. (S.) 435

A deferred sentence is within the meaning of the statute. It can therefore be referred under s.36.

6.4.3. Pre-hearing matters

Notices of application for leave to refer

CJA 1988 s.36²¹¹⁴: Reviews of sentencing

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

- para.1 - notice of an application for leave to refer a case to the Court of Appeal under section 36 above shall be given within 28 days from the day on which the sentence, or the last of the sentences, in the case was passed.
- para.2 - if the registrar of criminal appeals is given notice of a reference or application to the Court of Appeal under section 36 above, he shall—
- (a) take all necessary steps for obtaining a hearing of the reference or application; and
 - (b) obtain and lay before the Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the reference or application.

Defendant obtaining documents

CJA 1988 s.36²¹¹⁵: Reviews of sentencing

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

- para.3 - rules of court may enable a person to whose sentencing such a reference or application relates to obtain from the registrar any documents or things, including copies or reproductions of documents, required for the reference or application and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.

Rules of court

Criminal Appeal (Reviews of Sentencing) Rules 1989 (SI 1989/19)²¹¹⁶

- r.1 - these Rules may be cited as the Criminal Appeal (Reviews of Sentencing) Rules 1989 and shall come into force on 1st February 1989.

²¹¹⁴ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹¹⁵ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹¹⁶ Commencement: 1 February 1989, SI 1989/19

- r.2 - in these Rules–
- “the Act” means the Criminal Justice Act 1988;
- “application” means an application by the Attorney General to the Court for leave to make a reference;
- “the Court” means the Criminal Division of the Court of Appeal;
- “reference” means a reference under section 36 of the Act by the Attorney General of a case to the Court for them to review the sentencing of a person (in these Rules called “the offender”) in a proceeding in the Crown Court;
- “the registrar” means the registrar of criminal appeals.
- r.3(1) - every application shall be in writing and shall–
- (a) specify–
- (i) the name of the offender;
 - (ii) the date on which, and the offence of which, he was convicted;
 - (iii) the sentence passed on him in respect of that offence;
 - (iv) the date on which the sentence was passed (if later than the date under sub-paragraph (ii) above); and
 - (v) the judge by whom, and the location of the Crown Court at which, the sentence was passed; and
- (b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient.
- r.3(2) - an application shall be entitled “Reference under section 36 of the Criminal Justice Act 1988” together with the year and number of the application and the name of the offender.
- r.4 - the sending of the application to the registrar shall constitute the giving of notice of the application for the purpose of paragraph 1 of Schedule 3 to the Act (notice to be given within 28 days of passing of sentence).
- r.5(1) - the registrar shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of it together with a notice which–
- (a) informs him that the result of any reference could be that the Court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as they thought appropriate for the case and as the court below had power to pass when dealing with him (including a greater punishment);
- (b) informs him of the effect of paragraphs 6 (entitlement of offender to be present at hearing of reference, although he may be in custody), 7 (offender in custody requires leave of Court to be present at hearing of application), 8 (power of Court to pass sentence on offender who is not present) and 11 (entitlement of offender to reasonable costs out of central funds) of Schedule 3 to the Act;
- (c) invites him, within such period as the registrar may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the registrar if he wishes–
- (i) to apply to the Court for leave to be present under paragraph 7 of Schedule 3 to the Act;
 - (ii) to present any argument to the Court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;

- (d) draws to his attention the effect of rule 9 below (supply of documentary and other exhibits); and
 - (e) advises him to consult a solicitor as to his position as soon as possible.
- r.5(2) - the Court shall not hear argument by or on behalf of the Attorney General until the period specified by the registrar has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.
- r.6(1) - every reference shall be in writing and shall–
 - (a) contain the information required by paragraph (a) of rule 3(1) above to be specified in an application;
 - (b) summarise the arguments intended to be put to the Court; and
 - (c) specify the authorities intended to be cited.
- r.6(2) - the reference shall bear the same title as the application.
- r.6(3) - subject to paragraph (4) below, the reference shall be sent on behalf, of the Attorney General to the registrar, who shall, as soon as practicable after receiving it, cause to be served a copy of it on the offender.
- r.6(4) - where the Court give leave for a case to be referred to them and are satisfied that the document comprising the application also contains the material required by paragraph (1) above to be contained in a reference, the Court may order that the document be treated for the purpose of these Rules as the reference; and in that case paragraph (3) above shall not apply.
- r.7 - the Attorney General may withdraw or amend an application or reference at any time before the Court have begun the hearing of the application or reference as the case may be, or, after that, and until the Court have given their decision, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the registrar and on the offender on behalf of the Attorney General.
- r.8 - the registrar may require the court of trial to furnish the Court with any assistance or information which they may require for the purpose of exercising their jurisdiction.
- r.9(1) - the registrar shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by the Treasury.
- r.9(2) - the registrar shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.
- r.9(3) - this rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.
- r.10(1) - for the purpose of these Rules service of a document on the offender may be effected–
 - (a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and
 - (b) in the case of a document to be served on any other person–
 - (i) by delivering it to the person to whom it is directed;

- (ii) by leaving it for him with some person at his last known or usual place of abode; or
- (iii) by sending it by post addressed to him at his last known or usual place of abode.

- r.10(2) - for the purpose of these Rules service of a document on the registrar may be effected—
- (a) in the case of an offender who is in custody, by delivering it to the person having custody of him;
 - (b) by delivering it to the registrar;
 - (c) by addressing it to him and leaving it at his office in the Royal Courts of Justice, London WC2; or
 - (d) by sending it by post addressed to him at the said office.
- r.10(3) - a person having custody of an offender and to whom a document is delivered in pursuance of paragraph (2)(a) above shall endorse on it the date of delivery and cause it to be forwarded to the registrar.

6.4.4. The hearing

Sentencing judge may not hear reference

CJA 1988 s.36²¹¹⁷: Reviews of sentencing

- s.36(4) - no judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, a reference under this section of a sentence passed by himself.

Presence of defendant at reference

CJA 1988 s.36²¹¹⁸: Reviews of sentencing

- s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

- para.6 - except as provided by paragraphs 7 and 8 below, a person whose sentencing is the subject of a reference to the Court of Appeal under section 36 above shall be entitled to be present, if he wishes it, on the hearing of the reference, although he may be in custody.
- para.7 - a person in custody shall not be entitled to be present—
- (a) on an application by the Attorney General for leave to refer a case; or
 - (b) on any proceedings preliminary or incidental to a reference, unless the Court of Appeal give him leave to be present.
- para.8 - the power of the Court of Appeal to pass sentence on a person may be exercised although he is not present.

²¹¹⁷ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹¹⁸ Commencement: 1 February 1989, SI 1989/1 art.2(a).

Two or more sentences

CJA 1988 s.36²¹¹⁹: Reviews of sentencing

s.36(3) - for the purposes of this Part of this Act any two or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of section 11 of the Criminal Appeal Act 1968.

Power of the court

R. v Hughes [2010] EWCA Crim 1026

At the hearing of the Attorney General's Reference this court had, at least in theory, the power not only to uphold or increase the original sentence, but also to reduce it or to impose a different form of sentence. (David Clarke J, at [6])

Test to apply

Attorney General's Reference (No.4 of 1989) (1989) 11 Cr. App. R. (S.) 517

The first thing to be observed is that it is implicit in the section that this Court may only increase sentences which it concludes were *unduly* lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased—with all the anxiety that that naturally gives rise to—merely because in the opinion of this Court the sentence was less than this Court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must of course be had to reported cases, and in particular to the guidance given by this Court from time to time in the so-called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature.

The second thing to be observed about the section is that, even where it considers that the sentence was unduly lenient, this Court has a discretion as to whether to exercise its powers. Without attempting an exhaustive definition of the circumstances in which this Court might refuse to increase an unduly lenient sentence, we mention one obvious instance: where in the light of events since the trial it appears either that the sentence can be justified or that to increase it would be unfair to the offender or detrimental to others for whose well-being the Court ought to be concerned. (Lord Lane CJ, at p.521)

Court will consider only material available at the Crown Court

Attorney General's Reference (No. 19 of 2005) (R. v WB) [2006] EWCA Crim 785

The Court stated that it was not the function of the Court of Appeal to substitute, in light of new material, its own view of what the sentence ought now to be. Rather, its task was to decide whether the judge's sentence, in light of the material before him (or her) could properly be characterised as having been unduly lenient.

²¹¹⁹ Commencement: 1 February 1989, SI 1989/1 art.2(a).

Murder minimum terms: Don't take account of double jeopardy

s.36(3A) - where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.

Costs

CJA 1988 s.36²¹²⁰: Reviews of sentencing

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

para.11(1) - where on a reference to the Court of Appeal under section 36 above or a reference to the Supreme Court under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court of Appeal or the Supreme Court, he shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, under Supreme Court Rules.

para.11(2) - sub-paragraph (1) has effect subject to—

- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).

para.11(3) - a person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.

para.11(4) - subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

²¹²⁰ Commencement: 1 February 1989, SI 1989/1 art.2(a).

6.4.5. Appeals from the Court of Appeal

Power to refer case to Supreme Court

CJA 1988 s.36²¹²¹: Reviews of sentencing

- s.36(5) - where the Court of Appeal have concluded their review of a case referred to them under this section the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the Supreme Court for its opinion, and the Supreme Court shall consider the point and give its opinion on it accordingly, and either remit the case to the Court of Appeal to be dealt with or itself deal with the case.

Time limits

CJA 1988 s.36²¹²²: Reviews of sentencing

- s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

- para.4 - an application to the Court of Appeal for leave to refer a case to the Supreme Court under section 36(5) above shall be made within the period of 14 days beginning with the date on which the Court of Appeal conclude their review of the case; and an application to the Supreme Court for leave shall be made within the period of 14 days beginning with the date on which the Court of Appeal conclude their review or refuse leave to refer the case to the Supreme Court.

Requirement to have leave to appeal

CJA 1988 s.36²¹²³: Reviews of sentencing

- s.36(6) - a reference under subsection (5) above shall be made only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.

Time in custody

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

- para.5 - the time during which a person whose case has been referred for review under section 36 above is in custody pending its review and pending any reference to the Supreme Court under subsection (5) of that section shall be reckoned as part of the term of any sentence to which he is for the time being subject.

²¹²¹ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹²² Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹²³ Commencement: 1 February 1989, SI 1989/1 art.2(a).

Defendant not entitled to be present

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

para.9 - a person whose sentencing is the subject of a reference to the Supreme Court under section 36(5) above and who is detained pending the hearing of that reference shall not be entitled to be present on the hearing of the reference or of any proceeding preliminary or incidental thereto except where an order of the Supreme Court authorises him to be present, or where the Supreme Court or the Court of Appeal, as the case may be, give him leave to be present.

Supreme Court powers

CJA 1988 s.36²¹²⁴: Reviews of sentencing

s.36(7) - for the purpose of dealing with a case under this section the Supreme Court may exercise any powers of the Court of Appeal.

Costs

CJA 1988 s.36²¹²⁵: Reviews of sentencing

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

para.11(1) - where on a reference to the Court of Appeal under section 36 above or a reference to the Supreme Court under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court of Appeal or the Supreme Court, he shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, under Supreme Court Rules.

para.11(2) - sub-paragraph (1) has effect subject to—

- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).

para.11(3) - a person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.

para.11(4) - Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

²¹²⁴ Commencement: 1 February 1989, SI 1989/1 art.2(a).

²¹²⁵ Commencement: 1 February 1989, SI 1989/1 art.2(a).

6.4.6. Effect of the sentence imposed by Court of Appeal/Supreme Court

When does the sentence run from?

CJA 1988 s.36²¹²⁶: Reviews of sentencing

s.36(8) - the supplementary provisions contained in Schedule 3 to this Act shall have effect.

CJA 1988 Sch.3: Reviews of sentencing - Supplementary

para.10 - the term of any sentence passed by the Court of Appeal or Supreme Court under section 36 above shall, unless they otherwise direct, begin to run from the time when it would have begun to run if passed in the proceeding in relation to which the reference was made.

²¹²⁶ Commencement: 1 February 1989, SI 1989/1 art.2(a).

6.5 Royal prerogative of mercy

CAA 1968 s.49²¹²⁷: *Saving for prerogative of mercy*

s.49 - nothing in this Act is to be taken as affecting Her Majesty's prerogative of mercy.

²¹²⁷ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

6.6 Sentencing on conviction after a re-trial

CAA 1968 Sch.2 para.2²¹²⁸

- para.2(1) - where a person ordered to be retried is again convicted on retrial, the court before which he is convicted may pass in respect of the offence any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction.
- para.2(2) - without prejudice to its power to impose any other sentence, the court before which an offender is convicted on retrial may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.
- para.2(3) - where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded—
- (a) any time before his conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed; and
 - (b) any time during which he was released on bail under section 8(2) of this Act.
- para.2(4) - Sections 240ZA and 240A of the Criminal Justice Act 2003 (crediting of periods of remand in custody or on bail subject to certain types of condition: terms of imprisonment and detention) shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

²¹²⁸ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

6.7 Case stated

6.7.1. From the Magistrates' Court

MCA 1980 s.111²¹²⁹: Statement of case by magistrates' court

- s.111(1) - any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved; but a person shall not make an application under this section in respect of a decision against which he has a right of appeal to the High Court or which by virtue of any enactment passed after 31st December 1879 is final.
- s.111(2) - an application under subsection (1) above shall be made within 21 days after the day on which the decision of the magistrates' court was given.
- s.111(3) - for the purpose of subsection (2) above, the day on which the decision of the magistrates' court is given shall, where the court has adjourned the trial of an information after conviction, be the day on which the court sentences or otherwise deals with the offender.
- s.111(4) - on the making of an application under this section in respect of a decision any right of the applicant to appeal against the decision to the Crown Court shall cease.
- s.111(5) - if the justices are of opinion that an application under this section is frivolous, they may refuse to state a case, and, if the applicant so requires, shall give him a certificate stating that the application has been refused; but the justices shall not refuse to state a case if the application is made by or under the direction of the Attorney General.
- s.111(6) - where justices refuse to state a case, the High Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case.

MCA 1980 s.112²¹³⁰: Effect of decisions made on case stated or on appeal

- s.112(1) - any conviction, order, determination or other proceeding of a magistrates' court varied by the High Court on an appeal by case stated, and any judgment or order of the High Court on such an appeal, may be enforced as if it were a decision of the magistrates' court from which the appeal was brought.
- s.112(2) - any order, determination or other proceeding of a magistrates' court varied by the family court on an appeal under section 111A, and any judgment or order of the family court on such an appeal, may be enforced as if it were a decision of the magistrates' court from which the appeal was brought.

²¹²⁹ Commencement: 6 July 1981, SI 1981/457 art.2.

²¹³⁰ Commencement: 6 July 1981, SI 1981/457 art.2.

MCA 1980 s.113²¹³¹: Bail on appeal or case stated

- s.113(1) - where a person has given notice of appeal to the Crown Court against the decision of a magistrates' court or has applied to a magistrates' court to state a case for the opinion of the High Court, then, if he is in custody, the magistrates' court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant him bail.
- s.113(2) - if a person is granted bail under subsection (1) above, the time and place at which he is to appear (except in the event of the determination in respect of which the case is stated being reversed by the High Court) shall be—
- (a) if he has given notice of appeal, the Crown Court at the time appointed for the hearing of the appeal;
 - (b) if he has applied for the statement of a case, the magistrates' court at such time within 10 days after the judgment of the High Court has been given as may be specified by the magistrates' court;
- and any recognizance that may be taken from him or from any surety for him shall be conditioned accordingly.
- s.113(3) - subsection (1) above shall not apply where the accused has been committed to the Crown Court for sentence under section 37 above or section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
- s.113(4) - Section 37(6) of the Criminal Justice Act 1948 (which relates to the currency of a sentence while a person is released on bail by the High Court) shall apply to a person released on bail by a magistrates' court under this section pending the hearing of a case stated as it applies to a person released on bail by the High Court under section 22 of the Criminal Justice Act 1967.

MCA 1980 s.114: Recognizances and fees on case stated

- s.114 - justices to whom application has been made to state a case for the opinion of the High Court on any proceeding of a magistrates' court shall not be required to state the case until the applicant has entered into a recognizance, with or without sureties, before the magistrates' court, conditioned to prosecute the appeal without delay and to submit to the judgment of the High Court and pay such costs as that Court may award; and (except in any criminal matter) a justices' clerk shall not be required to deliver the case to the applicant until the applicant has paid the fees payable for the case and for the recognizances to the designated officer for the court.

²¹³¹ Commencement: 6 July 1981, SI 1981/457 art.2.

6.7.2. From the Crown Court

SCA 1981 s.28²¹³²: Appeals from Crown Court and inferior courts

- s.28(1) - subject to subsection (2), any order, judgment or other decision of the Crown Court may be questioned by any party to the proceedings, on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Crown Court to have a case stated by that court for the opinion of the High Court.
- s.28(2) - subsection (1) shall not apply to—
- (a) a judgment or other decision of the Crown Court relating to trial on indictment; or
 - (b) any decision of that court under the Local Government (Miscellaneous Provisions) Act 1982 which, by any provision of any of those Acts, is to be final.
- s.28(3) - subject to the provisions of this Act and to rules of court, the High Court shall, in accordance with section 19(2), have jurisdiction to hear and determine—
- (a) any application, or any appeal (whether by way of case stated or otherwise), which it has power to hear and determine under or by virtue of this or any other Act; and
 - (b) all such other appeals as it had jurisdiction to hear and determine immediately before the commencement of this Act.
- s.28(4) - in subsection (2)(a) the reference to a decision of the Crown Court relating to trial on indictment does not include a decision relating to [a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

SCA 1981 s.28A²¹³³: Proceedings on case stated by magistrates' court or Crown Court

- s.28A(1) - this section applies where a case is stated for the opinion of the High Court—
- (a) by a magistrates' court under section 111 of the Magistrates' Courts Act 1980; or
 - (b) by the Crown Court under section 28(1) of this Act.
- s.28A(2) - the High Court may, if it thinks fit, cause the case to be sent back for amendment and, where it does so, the case shall be amended accordingly.
- s.28A(3) - the High Court shall hear and determine the question arising on the case (or the case as amended) and shall—
- (a) reverse, affirm or amend the determination in respect of which the case has been stated; or
 - (b) remit the matter to the magistrates' court, or the Crown Court, with the opinion of the High Court,
- and may make such other order in relation to the matter (including as to costs) as it thinks fit.
- s.28A(4) - except as provided by the Administration of Justice Act 1960 (right of appeal to Supreme Court in criminal cases), a decision of the High Court under this section is final.

²¹³² Commencement: 1 January 1982, SCA 1981 s.153(2).

²¹³³ Commencement: 5 November 1993, as inserted by Statute Law (Repeals) Act 1993 Sch.2 para.9.

6.7.3. From the High Court

Note: This section applies to any decision of the High Court in a criminal cause or matter, and is not restricted to case stated appeals.

Right of appeal

AJA 1960 s.1²¹³⁴: Right of appeal

- s.1(1) - subject to the provisions of this section, an appeal shall lie to the Supreme Court, at the instance of the defendant or the prosecutor,—
 - (a) from any decision of the High Court in a criminal cause or matter;
- s.1(2) - no appeal shall lie under this section except with the leave of the court below or of the Supreme Court; and such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the Supreme Court, as the case may be, that the point is one which ought to be considered by the Supreme Court.
- s.1(4) - for the purpose of disposing of an appeal under this section the Supreme Court may exercise any powers of the court below or may remit the case to that court.
- s.1(5) - in this Act, unless the context otherwise requires, “*leave to appeal*” means leave to appeal to the Supreme Court under this section.

Applications to be made within 28 days

AJA 1960 s.2²¹³⁵: Application for leave to appeal

- s.2(1) - subject to the provisions of this section, an application to the court below for leave to appeal shall be made within the period of 28 days beginning with the relevant date; and an application to the Supreme Court for such leave shall be made within the period of 28 days beginning with the date on which the application is refused by the court below.
 - (1A) - In subsection (1), “*the relevant date*” means—
 - (a) the date of the decision of the court below, or
 - (b) if later, the date on which that court gives reasons for its decision.
- s.2(3) - the Supreme Court or the court below may, upon application made at any time by the defendant, extend the time within which an application may be made by him to the Supreme Court or the court below under subsection (1) of this section.

Bail pending appeal

AJA 1960 s.4²¹³⁶: Admission of appellant to bail.

- s.4(2) - the power of the High Court under any enactment or rule of law to grant bail in connection with proceedings pending before [the High Court shall, subject to section 25 of the Criminal Justice and Public Order Act 1994, include power to grant bail to [an appellant under section 1 of this Act, or a person applying for leave to appeal thereunder, pending the appeal, and in relation to [the time and place of appearance

²¹³⁴ Commencement: 27 October 1960.

²¹³⁵ Commencement: 27 October 1960.

²¹³⁶ Commencement: 27 October 1960.

appointed and any recognizance to be entered into by any surety under section thirty-seven of the Criminal Justice Act 1948 as applied by this subsection, any reference in that section to the judgment of the High Court shall be construed as a reference to the judgment of the Supreme Court or, if the case is remitted by the Supreme Court to the court below, to the judgment of that court on the case as so remitted.

- s.4(3) - where application is made to the High Court for leave to appeal, that court may give such directions as it thinks fit for discharging or enlarging any recognizances entered into by any surety, under any enactment or otherwise, with reference to the proceedings of that court.

AJA 1960 s.5²¹³⁷: Power to order detention or admission to bail of defendant

- s.5(1) - where the defendant in any proceedings from which an appeal lies under section one of this Act would, but for the decision of the court below, be liable to be detained, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court shall make—
- (a) an order providing for the detention of the defendant, or directing that he shall not be released except on bail (which may be granted by the court as under section 4 above), so long as the appeal is pending, or
 - (b) an order that the defendant be released without bail.
- s.5(1A) - the court may make an order under subsection (1)(b) only if it thinks that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the House of Lords on the appeal.
- s.5(3) - an order under subsection (1)(a) of this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the court below.
- s.5(4) - any order made under the said subsection (1)(a) for the detention of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an order or direction under Part III of the Mental Health Act 1983 (other than under section 35, 36 or 38), shall be an order authorising his continued detention in pursuance of the order or direction under the said Part III, and the provisions of the said Act with respect to persons so liable (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.
- s.5(4A) - where an order is made under the said subsection (1)(a) in the case of a defendant who, but for the decision of the court below, would be liable to be detained in pursuance of an interim hospital order under section 38 of the Mental Health Act 1983, the order may, if the court thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—
- (a) subsection (3) of this section shall not apply to the order;
 - (b) Part III of the said Act of 1983 shall apply as if he had been ordered under this section to be detained in custody so long as any appeal under section 1 of this Act is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
 - (c) if the defendant is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 38 (power of court to

²¹³⁷ Commencement: 27 October 1960.

make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.

- s.5(5) - the defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
- (a) the court has made an order under subsection (1)(b), or
 - (b) the court has made an order under subsection (1)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).

AJA 1960 s.6²¹³⁸: Computation of sentence where bail granted

- s.6(1) - where a person subject to a sentence is granted admitted to bail pending an appeal under section one of this Act, the time during which he is at large after being so admitted released on bail shall be disregarded in computing the term of his sentence.
- s.6(3) - subject to the foregoing provisions of this section, any sentence passed on an appeal under section one of this Act in substitution for another sentence shall, unless the Supreme Court or the court below otherwise directs, begin to run from the time when that other sentence would have begun to run.

AJA 1960 s.5A²¹³⁹: Power to order continuation of community treatment order

- s.5A(1) - where the defendant in any proceedings from which an appeal lies under section 1 of this Act would, but for the decision of the court below, be liable to recall, and immediately after that decision the prosecutor is granted, or gives notice that he intends to apply for, leave to appeal, the court may make an order under this section.
- s.5A(2) - for the purposes of this section, a person is liable to recall if he is subject to a community treatment order (within the meaning of the Mental Health Act 1983) and, when that order was made, he was liable to be detained in pursuance of an order or direction under Part 3 of that Act.
- s.5A(3) - an order under this section is an order providing for the continuation of the community treatment order and the order or direction under Part 3 of that Act so long as any appeal under section 1 of this Act is pending.
- s.5A(4) - where the court makes an order under this section, the provisions of the Mental Health Act 1983 with respect to persons liable to recall (including provisions as to the extension of the community treatment period, the removal or discharge of community patients, the revocation of community treatment orders and the re-detention of patients following revocation) shall apply accordingly.
- s.5A(5) - an order under this section shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would, but for the decision of the court below, have been—
- (a) liable to recall; or
 - (b) where the community treatment order is revoked, liable to be detained in pursuance of the order or direction under Part 3 of the Mental Health Act 1983.

²¹³⁸ Commencement: 27 October 1960.

²¹³⁹ Commencement: 3 November 2008, as inserted by Mental Health Act 2007 Sch.4 para.1, SI 2008/1900 art.2(i).

- s.5A(6) - where the court below has power to make an order under this section, and either no such order is made or the defendant is discharged by virtue of subsection (4) or (5) of this section before the appeal is disposed of, the defendant shall not be liable to be again detained as the result of the decision of the Supreme Court on the appeal.

Procedure etc.

AJA 1960 s.9²¹⁴⁰: Procedure

- s.9(2) - Subsection (4) of section thirty-seven of the Criminal Justice Act 1948 (which enables rules of court to be made with respect to the security given for the purposes of that section and the recommitment of persons admitted to bail thereunder) shall have effect as if references to that section included references to sections four and five of this Act so far as they relate to the High Court.
- s.9(3) - a defendant who is detained pending an appeal under section one of this Act shall not be entitled to be present on the hearing of the appeal or of any proceedings preliminary or incidental thereto except where an order of the Supreme Court authorises or rules of court, as the case may be, authorise him to be present or where the Supreme Court or the court below, as the case may be, gives him leave to be present.

Reporting restrictions

AJA 1960 s.12²¹⁴¹: Publication of information relating to proceedings in private

- s.12(1) - the publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—
- (a) where the proceedings—
 - (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;
 - (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or
 - (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
 - (b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;
 - (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
 - (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
 - (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.
- s.12(2) - without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be

²¹⁴⁰ Commencement: 27 October 1960.

²¹⁴¹ Commencement: 27 October 1960.

contempt of court except where the court (having power to do so) expressly prohibits the publication.

- s.12(3) - in this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
- s.12(4) - nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

AJA 1960 s.17: Interpretation.

- s.17(1) - in this Act any reference to the defendant shall be construed—
- (a) in relation to proceedings for an offence, and in relation to an application for an order of mandamus, prohibition or certiorari in connection with such proceedings, as a reference to the person who was or would have been the defendant in those proceedings;
 - (b) in relation to any proceedings or order for or in respect of contempt of court, as a reference to the person against whom the proceedings were brought or the order was made;
 - (c) in relation to a criminal application for *habeas corpus*, as a reference to the person by or in respect of whom that application was made,
- and any reference to the prosecutor shall be construed accordingly.
- s.17(2) - in this Act “*application for habeas corpus*” means an application for a writ of *habeas corpus ad subjiciendum* and references to a criminal application or civil application shall be construed according as the application does or does not constitute a criminal cause or matter.
- s.17(3) - in this Act any reference to the court below shall, in relation to any function of a Divisional Court, be construed as a reference to the Divisional Court or to a judge according as the function is by virtue of rules of court rules made under section seven of the Northern Ireland Act 1962 exercisable by the Divisional Court or a judge.
- s.17(4) - an appeal under section one of this Act shall be treated for the purposes of this Act as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this Act an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.
- s.17(6) - any reference in this Act to any other enactment is a reference thereto as amended by or under any other enactment, including this Act.

6.8 Costs

*Note: The powers are set out in the costs section, contained within **Part 3**, however the excerpt from the Criminal Procedure Rules below gives a brief overview of the powers of the courts to make costs orders on appeal.*

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.45.6(1) This rule—

- (a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980(a), or
 - (ii) section 45 of the Mental Health Act 1983(b).

(2) In this rule, costs include—

- (a) costs incurred in the court that made the decision under appeal; and
- (b) costs met by legal aid.

(3) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(4) A person who wants the court to make an order must—

- (a) apply as soon as practicable;
- (b) notify each other party;
- (c) specify—
 - (i) the amount claimed, and
 - (ii) against whom; and
- (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—
 - (i) apply in writing not more than 14 days later, and
 - (ii) serve the application on the appellant and on the Crown Court officer.

(5) A party who wants to oppose an order must—

- (a) make representations as soon as practicable; and
- (b) where the application was under paragraph (4)(d), serve written representations on the applicant, and on the Crown Court officer, not more than 7 days after it was served.

(6) Where the application was under paragraph (4)(d), the Crown Court officer may—

- (a) submit it to the Crown Court; or
- (b) serve it on the magistrates' court officer, for submission to the magistrates' court.

- (7) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself where—
- (a) the appellant abandons an appeal to the Crown Court;
 - (b) the Crown Court decides an appeal, except an appeal under—
 - (i) section 108 of the Magistrates' Courts Act 1980, or
 - (ii) section 45 of the Mental Health Act 1983; or
 - (c) the Court of Appeal decides an appeal to which Part 40 applies (Appeal to the Court of Appeal about reporting or public access restriction).
- (8) If the court makes an order in any other case, it must assess the amount itself.

*Note.*²¹⁴² See also rule 45.2.

A magistrates' court can order an appellant to pay a respondent's costs on abandoning an appeal to the Crown Court.

The Crown Court can order—

- (a) *the defendant to pay the prosecutor's costs on dismissing a defendant's appeal—*
 - (i) *against conviction or sentence, under section 108 of the Magistrates' Courts Act 1980, or*
 - (ii) *where the magistrates' court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and*
- (b) *one party to pay another party's costs on deciding any other appeal to which Part 34 (Appeal to the Crown Court) applies.*

The Court of Appeal can order—

- (a) *the defendant to pay another person's costs on dismissing a defendant's appeal or application to which Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 39 (Appeal to the Court of Appeal about conviction or sentence) or Part 43 (Appeal or reference to the Supreme Court) applies;*
- (b) *the defendant to pay another person's costs on allowing a prosecutor's appeal to which Part 38 (Appeal to the Court of Appeal against ruling adverse to the prosecution) applies;*
- (c) *the appellant to pay another person's costs on dismissing an appeal or application by a person affected by a serious crime prevention order;*
- (d) *one party to pay another party's costs on deciding an appeal to which Part 40 (Appeal to the Court of Appeal about reporting or public access restriction) applies.*

See section 109 of the Magistrates' Courts Act 1980; section 52 of the Senior Courts Act 1981 (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988; and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.

²¹⁴² The note is contained within the Crim PR.

6.9 Other sources

See also A Guide to Commencing Proceedings in the Court of Appeal (Criminal Division), HMCTS (2008)²¹⁴³

²¹⁴³ See <https://www.justice.gov.uk/downloads/courts/court-of-appeal/criminal-division/proc_guide.pdf>