



Powers of Criminal Courts (Sentencing) Act 2000

2000 CHAPTER 6

PART V

CUSTODIAL SENTENCES ETC.

CHAPTER I

GENERAL PROVISIONS

Meaning of "custodial sentence"

76 Meaning of "custodial sentence"

- (1) In this Act "custodial sentence" means—
- (a) a sentence of imprisonment (as to which, see section 89(1)(a) below);
 - (b) a sentence of detention under section 90 or 91 below;
 - (c) a sentence of custody for life under section 93 or 94 below;
 - (d) a sentence of detention in a young offender institution (under section 96 below or otherwise); or
 - (e) a detention and training order (under section 100 below).
- (2) In subsection (1) above "sentence of imprisonment" does not include a committal for contempt of court or any kindred offence.

Status: This is the original version (as it was originally enacted).

Liability to imprisonment on conviction on indictment

77 Liability to imprisonment on conviction on indictment

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

General limit on magistrates' courts' powers

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

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

General restrictions on discretionary custodial sentences

79 General restrictions on imposing discretionary custodial sentences

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one—
 - (a) fixed by law; or
 - (b) falling to be imposed under section 109(2), 110(2) or 111(2) below.
- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it 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 only such a sentence can be justified for the offence; or
 - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.
- (3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he fails to express his willingness to comply with—
- (a) a requirement which is proposed by the court to be included in a probation order or supervision order and which requires an expression of such willingness; or
 - (b) a requirement which is proposed by the court to be included in a drug treatment and testing order or an order under section 52(4) above (order to provide samples).
- (4) Where a court passes a custodial sentence, it shall—
- (a) in a case not falling within subsection (3) above, state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
 - (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

80 Length of discretionary custodial sentences: general provision

- (1) This section applies where a court passes a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subject to sections 110(2) and 111(2) below, the custodial sentence shall be—
- (a) for such term (not exceeding the permitted maximum) as 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; or
 - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it, the court shall—
- (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and
 - (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.
- (5) Subsection (3) above shall not apply in any case where the court passes a custodial sentence falling to be imposed under subsection (2) of section 110 or 111 below which is for the minimum term specified in that subsection.

Procedural requirements for imposing discretionary custodial sentences

81 Pre-sentence reports and other requirements

- (1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 79 or 80 above.
- (2) Subsection (1) above 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) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (2) above 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.
- (4) In forming any such opinion as is mentioned in subsection (2) of section 79 or 80 above, a court—
 - (a) shall 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; and
 - (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.
- (5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (1) above, but any court on an appeal against such a sentence—
 - (a) shall, subject to subsection (6) below, obtain a pre-sentence report if none was obtained by the court below; and
 - (b) shall consider any such report obtained by it or by that court.
- (6) Subsection (5)(a) above 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.
- (7) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (6) above 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.

- (8) Section 156 below (disclosure of pre-sentence report to offender etc.) applies to any pre-sentence report obtained in pursuance of this section.

82 Additional requirements in case of mentally disordered offender

- (1) Subject to subsection (2) below, in any case where the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence, other than one fixed by law or falling to be imposed under section 109(2) below, on an offender who is or appears to be mentally disordered, a court shall consider—
- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
 - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
- (a) shall obtain a medical report if none was obtained by the court below; and
 - (b) shall consider any such report obtained by it or by that court.
- (5) In this section, “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health 83.
- (6) In this section, “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.
- (7) Nothing in this section shall be taken as prejudicing the generality of section 81 above.

Other restrictions

83 Restriction on imposing custodial sentences on persons not legally represented

- (1) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who—
- (a) is not legally represented in that court, and
 - (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom,
- unless he is a person to whom subsection (3) below applies.
- (2) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not—
- (a) pass a sentence of detention under section 90 or 91 below,

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

84 Restriction on consecutive sentences for released prisoners

- (1) A court sentencing a person to a term of imprisonment shall not order or direct that the term shall commence on the expiry of any other sentence of imprisonment from which he has been released under Part II of the Criminal Justice Act 1991 (early release of prisoners).
- (2) Expressions used in this section shall be construed as if they were contained in that Part.
- (3) Without prejudice to the generality of subsection (2) above, any reference in this section to imprisonment shall be construed in accordance with section 43 (young offenders) and section 45 (fine defaulters and contemnors) of that Act.

Sexual and violent offences: licences etc.

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

- (1) This section applies where a court—
 - (a) proposes to impose a custodial sentence for a sexual or violent offence committed on or after 30th September 1998; and
 - (b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of preventing the commission by him of further offences and securing his rehabilitation.

- (2) Subject to subsections (3) to (5) below, the court may pass on the offender an extended sentence, that is to say, a custodial sentence the term of which is equal to the aggregate of—
- (a) the term of the custodial sentence that the court would have imposed if it had passed a custodial sentence otherwise than under this section (“the custodial term”); and
 - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose mentioned in subsection (1) above.
- (3) Where the offence is a violent offence, the court shall not pass an extended sentence the custodial term of which is less than four years.
- (4) The extension period shall not exceed—
- (a) ten years in the case of a sexual offence; and
 - (b) five years in the case of a violent offence.
- (5) The term of an extended sentence passed in respect of an offence shall not exceed the maximum term permitted for that offence.
- (6) Subsection (2) of section 80 above (length of discretionary custodial sentences) shall apply as if the term of an extended sentence did not include the extension period.
- (7) The Secretary of State may by order amend paragraph (b) of subsection (4) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph.
- (8) In this section “licence” means a licence under Part II of the Criminal Justice Act 1991 (early release of prisoners).

86 Sexual offences committed before 30th September 1998

- (1) Where, in the case of a long-term or short-term prisoner—
- (a) the whole or any part of his sentence was imposed for a sexual offence committed before 30th September 1998, and
 - (b) the court by which he was sentenced for that offence, having had regard to the matters mentioned in section 32(6)(a) and (b) of the Criminal Justice Act 1991, ordered that this section should apply,
- sections 33(3) and 37(1) of that Act shall each have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.
- (2) Expressions used in this section shall be construed as if they were contained in Part II of the Criminal Justice Act 1991.
- (3) The reference in subsection (1) above to section 33(3) of the Criminal Justice Act 1991 is to section 33(3) as it has effect without the amendment made by section 104(1) of the Crime and Disorder Act 1998 (which substituted the words “on licence” for the word “unconditionally” and does not apply in relation to a prisoner whose sentence or any part of whose sentence was imposed for an offence committed before 30th September 1998).

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

- (1) This section applies where—
 - (a) a court sentences an offender to imprisonment for a term in respect of an offence committed after the commencement of this section; and
 - (b) the offender has been remanded in custody (within the meaning given by section 88 below) in connection with the offence or a related offence, that is to say, any other offence the charge for which was founded on the same facts or evidence.
- (2) It is immaterial for that purpose whether the offender—
 - (a) has also been remanded in custody in connection with other offences; or
 - (b) has also been detained in connection with other matters.
- (3) Subject to subsection (4) below, the court shall direct that the number of days for which the offender was remanded in custody in connection with the offence or a related offence shall count as time served by him as part of the sentence.
- (4) Subsection (3) above shall not apply if and to the extent that—
 - (a) rules made by the Secretary of State so provide in the case of—
 - (i) a remand in custody which is wholly or partly concurrent with a sentence of imprisonment; or
 - (ii) sentences of imprisonment for consecutive terms or for terms which are wholly or partly concurrent; or
 - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (5) Where the court gives a direction under subsection (3) above, it shall state in open court—
 - (a) the number of days for which the offender was remanded in custody; and
 - (b) the number of days in relation to which the direction is given.
- (6) Where the court does not give a direction under subsection (3) above, or gives such a direction in relation to a number of days less than that for which the offender was remanded in custody, it shall state in open court—
 - (a) that its decision is in accordance with rules made under paragraph (a) of subsection (4) above; or
 - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.
- (7) Rules under subsection (4)(a) above may make such incidental, supplemental and consequential provisions as may appear to the Secretary of State to be necessary or expedient.
- (8) For the purposes of this section a suspended sentence—
 - (a) shall be treated as a sentence of imprisonment when it takes effect under section 119 below; and
 - (b) shall be treated as being imposed by the order under which it takes effect.

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(9) For the purposes of this section, the definition of “sentence of imprisonment” in section 163 below shall apply 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 by a conviction;”;

and references in this section to sentencing an offender to imprisonment, and to an offender’s sentence, shall be construed accordingly.

(10) For the purposes of the reference in subsection (3) above to the term of imprisonment to which a person has been sentenced (that is to say, the reference to his “sentence”), consecutive terms and terms which are wholly or partly concurrent shall 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 under Part II of the Criminal Justice Act 1991 (early release of prisoners) at any time during the period beginning with the first and ending with the last of those occasions.

(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 shall be taken for the purposes of subsection (1) above to have been committed on the last of those days.

(12) This section applies to—

- (a) a determinate sentence of detention under section 91 below, and
 - (b) a sentence of detention in a young offender institution,
- as it applies to an equivalent sentence of imprisonment.

88 Meaning of “remand in custody”

(1) References in section 87 above to an offender’s being remanded in custody are references to his being—

- (a) held in police detention;
- (b) remanded in or committed to custody by an order of a court;
- (c) remanded or committed to local authority accommodation under section 23 of the Children and Young Persons Act 1969 and placed and kept in secure accommodation; or
- (d) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

(2) A person is in police detention for the purposes of subsection (1) above—

- (a) at any time when he is in police detention for the purposes of the Police and Criminal Evidence Act 1984; and
- (b) at any time when he is detained under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989.

(3) In subsection (1) above, “secure accommodation” has the same meaning as in section 23 of the Children and Young Persons Act 1969.