

*These notes refer to the Criminal Justice Act 2003 (c.44)  
which received Royal Assent on 20th November 2003*

# **CRIMINAL JUSTICE ACT 2003**

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## **EXPLANATORY NOTES**

### **SUMMARY AND BACKGROUND**

3. In July 2002 the Government published a White Paper outlining its plans for the criminal justice system, from crime prevention through to the punishment and rehabilitation of offenders. *Justice for All* (Cm 5563) focused particularly on reforms to court procedure and sentencing, to make trials faster and to deliver clear, consistent and appropriate sentencing. On these issues the White Paper built on the proposals in two consultation documents: *Review of the Criminal Courts of England and Wales* by Sir Robin Auld (2001) and *Making Punishment Work: report of a review of the sentencing framework of England and Wales* (2001) by John Halliday.
4. This Act is intended to introduce reforms in these two areas. With regard to court procedure, the Act aims to improve the management of cases through the courts by involving the Crown Prosecution Service in charging decisions, by reforming the system for allocating cases to court, and by increasing magistrates' sentencing powers so that fewer cases have to go to the Crown Court. It will enable action to be taken to reduce breaches of bail by introducing a new presumption against bail in certain circumstances.
5. The Act is designed to ensure that criminal trials are run more efficiently and to reduce the scope for abuse of the system. It will reform the rules on advance disclosure of evidence and will allow for judge-alone trial in cases involving threats and intimidation of juries, and paves the way for judge-alone trial in exceptionally long, complex serious fraud cases. It will ensure the wider involvement of the community as a whole by reforming rules on jury service. Rules on evidence will be changed to allow the use of previous convictions where relevant, and to allow the use of reported (hearsay) evidence where there is good reason why the original source cannot be present, or where the judge otherwise considers it would be appropriate. It will enable any witness to give evidence using live links. A right of appeal for the prosecution against judicial decisions to direct or order an acquittal before the jury has been asked to consider the evidence will be introduced to balance the defendant's right of appeal against both conviction and sentence. The Act will also make it possible in certain very serious cases for a retrial to take place despite an earlier acquittal if there is new and compelling evidence of an accused's guilt.
6. The Act aims to provide a sentencing framework which is clearer and more flexible than the current one. The purposes of sentencing of adults are identified in statute for the first time, as punishment, crime reduction, reform and rehabilitation, public protection and reparation. The principles of sentencing are set out, including that any previous convictions, where they are recent and relevant, should be regarded as an aggravating factor which will increase the severity of the sentence. A new Sentencing Guidelines Council will be established. Sentences will be reformed, so that the various kinds of community order for adults will be replaced by a single community order with a range of possible requirements; custodial sentences of less than 12 months will be replaced by a new sentence, (described in the Halliday report as "custody plus"), which will always involve a period of at least 26 weeks post-release supervision in the

community; and sentences over 12 months will be served in full, half in custody, half in the community, with supervision extended to the end of the sentence rather than the  $\frac{3}{4}$  point as now. Serious violent and sexual offenders will be given new sentences which will ensure that they are kept in prison or under supervision for longer periods than currently. At the other end of the custodial scale, several "intermediate" sanctions will be introduced. These include intermittent custody and a reformed suspended sentence in which offenders have to complete a range of requirements imposed by the court. The intention is for the court to be able to provide each offender with a sentence that best meets the need of the particular case, at any level of seriousness, and for sentences to be more effectively managed by the correctional services who will need to work together closely in delivering the new sentences.

7. The Act also addresses a number of other areas. It contains a number of provisions on drug related offending, including extending to those aged 14 and above the provisions to test persons in police detention and at other points in the criminal justice system for specified Class A drugs. It establishes a new scheme under which the court, rather than the Home Secretary, will determine the minimum term to be served in prison by a person convicted of murder. It will establish a 5 year mandatory minimum custodial sentence for unauthorised possession of a prohibited firearm. It will increase the maximum penalty for causing death by dangerous driving from 10 to 14 years and retain the power of arrest for the possession of cannabis or cannabis resin following their proposed reclassification from Class B to Class C drugs. Finally, in relation to juveniles, the Act extends the use of parenting orders by making them available at an earlier stage and introduces individual support orders, requiring young people with anti-social behaviour orders to undertake education-related activities.
8. In general the Act extends only to England and Wales.
9. The Act is in fourteen parts. Part 1 contains provisions on the Police and Criminal Evidence Act. Part 2 contains provisions on bail. Part 3 contains provisions on conditional cautions. Part 4 contains provisions on charging. Part 5 contains provisions on disclosure. Part 6 contains provisions on allocation and sending of offences. Part 7 contains provisions on trials on indictment without a jury. Part 8 contains provisions on live links. Part 9 contains provisions on prosecution appeals. Part 10 contains provisions enabling retrial for serious offences following acquittal (double jeopardy). Part 11 contains provisions on evidence of bad character (Chapter 1) and provisions on hearsay evidence (Chapter 2). Part 12 contains provisions on sentencing and is split into a number of Chapters. Chapter 1 contains general provisions about sentencing. Chapter 2 contains provisions on community orders for offenders aged 16 or over. Chapter 3 contains provisions on prison sentences of less than 12 months. Chapter 4 contains further provisions on orders under Chapters 2 and 3. Chapter 5 contains provisions on dangerous offenders. Chapter 6 contains provisions on release of prisoners on licence. Chapter 7 deals with the effect of life sentences. Chapter 8 contains other provisions about sentencing. Chapter 9 contains supplementary provisions. Part 13 contains miscellaneous provisions and Part 14 contains general provisions.

### **Part 1 – Amendments of Police and Criminal Evidence Act 1984**

10. **Part 1** amends the Police and Criminal Evidence Act 1984 (PACE). The Act extends the definition of prohibited articles under section 1 of PACE so that it includes an article made, adapted or intended for use in causing criminal damage. The effect is to give police officers the power to stop and search where they have reasonable suspicion that a person is carrying any such item. It also makes new provision for warrants to enter and search. At present, persons who accompany constables executing search warrants are able to do so merely in an advisory or clerical capacity. The Act allows those accompanying the police under a warrant to actively assist in searching premises.
11. The Act enables the immediate grant of bail from the scene of arrest ("street bail") where there is no immediate need to deal with the arrested person at a police station. It

gives police the discretion to decide when and where an arrested person should attend a police station for interview. It also enables reviews of the continuing need for detention without charge to be conducted over the telephone rather than in person at the police station as is currently the case. Where video conferencing facilities are available they should be used in preference to the telephone.

12. The Act extends to persons who are aged 14 and above the provisions in the Police and Criminal Evidence Act 1984 enabling officers to detain a person after charge to test for specified class A drugs, subject to conditions in section 63B of PACE (as introduced by Section 57 of the Criminal Justice and Court Services Act 2000). An appropriate adult is required to be present during the testing procedure for those under the age of 17. The Secretary of State may alter the minimum age by order subject to the affirmative resolution procedure.
13. The Act extends the time for which someone may be detained without charge, under the authority of a superintendent, from 24 to 36 hours for any arrestable offence, rather than for any serious arrestable offence as the law currently stands. At present a custody officer is required to record everything a detained person has with him on entering custody. *Section 8* of the Act changes the law so that whilst the custody officer still has a responsibility to ascertain what the person has with him, any recording and where it is made will be at his discretion.
14. The Act makes fundamental changes to the process for establishing and amending codes of practice under PACE. At present codes cover stop and search, searching of premises, detention, identification, and the recording of interviews. Issuing a new code or revising an existing one requires extensive public consultation and an active process of parliamentary consideration. The amendments provide for a targeted consultation process and for a level of parliamentary scrutiny proportionate to the amendments proposed. The introduction of any new code will remain subject to the affirmative procedure.
15. The Act extends the powers of the police to enable them to take fingerprints and a DNA sample from a person whilst he is in police detention following his arrest for a recordable offence. Fingerprints can now be taken electronically and the police will be able to confirm in a few minutes the identity of a suspect where that person's fingerprints are already held on the National Fingerprint Database. It will prevent persons who may be wanted for other matters avoiding detection by giving the police a false name and address. Fingerprints taken under this provision will be subject to a speculative search across the crime scene database to see if they are linked to any unsolved crime. The DNA profile of an arrested person will be loaded onto the National DNA Database and will be subject to a speculative search to see whether it matches a crime scene stain already held on the Database. This will assist the police in the detection and prevention of crime.
16. *Section 12* introduces Schedule 1 which deals with amendments related to this Part of the Act.

## **Part 2 – Bail**

17. This Part gives effect to the Law Commission's recommendation that minor amendments should be made to the Bail Act 1976 to ensure that its compliance with the ECHR is beyond dispute. The provision which purports to make it an exception to the right to bail that an offence appears to have been committed while the defendant was on bail for another offence is repealed, and replaced with a presumption that bail will not be granted in these circumstances to a defendant aged 18 or over unless the court is satisfied that there is no significant risk of his re-offending on bail. There is also a presumption that a defendant aged 18 or over who without reasonable cause has failed to surrender to custody will not be granted bail, unless the court is satisfied that there is no significant risk that he would so fail if released.

18. This Part also gives effect to recommendations of Lord Justice Auld in his *Review of the Criminal Courts of England and Wales* for simplifying the bail appeals system, including removing the High Court's bail jurisdiction where it is concurrent with that of the Crown Court. The right of the prosecution to appeal to the Crown Court against a decision by magistrates to grant bail is extended to cover all imprisonable offences, and not just those carrying a maximum penalty of 5 years or more as at present.
19. This Part creates a presumption that bail will not be granted for a person aged 18 or over who is charged with an imprisonable offence, and tests positive for a specified Class A drug, if he refuses to undergo an assessment as to his dependency or propensity to misuse such drugs, or following an assessment, refuses any relevant follow-up action recommended unless the court is satisfied that there is no significant risk of his re-offending on bail.

### **Part 3 – Conditional Cautions**

20. This Part allows for a caution with specific conditions attached to it to be given where there is sufficient evidence to charge a suspect with an offence which he or she admits, and the suspect agrees to the caution. It would be for the prosecutor to decide whether a conditional caution was appropriate, and in most cases for the police to administer it. If the suspect failed to comply with the conditions, he or she would be liable to be prosecuted for the offence. The Act provides for the publication of a Code of Practice for conditional cautions.

### **Part 4 – Charging etc**

21. This Part amends the Police and Criminal Evidence Act 1984 to provide that, where a custody officer decides that there is sufficient evidence to charge a suspect who is in police detention, he is to have regard to guidance issued by the DPP in determining whether the suspect should be released without charge but on bail, released without charge and without bail, or charged. Where, pursuant to that guidance, a case is referred to the Crown Prosecution Service to determine whether proceedings should be instituted (and if so on which charge), the defendant will be released on police bail with or without conditions.
22. This Part also makes provision for a new method of initiating public prosecutions, to replace laying an information and issue of a summons. The police, the CPS and other named public prosecutors will instead issue a written charge, which will be accompanied by a 'requisition' informing the defendant when he is to appear in court to answer to it.

### **Part 5 – Disclosure**

23. This Part amends some of the provisions in the Criminal Procedure and Investigations Act 1996 that govern the disclosure of unused prosecution material to the defence and the provision of a defence case statement. It replaces the present two stage test with a new objective single test for the disclosure of unused prosecution material to the defence, requiring the prosecutor to disclose prosecution material that has not previously been disclosed and which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused. It replaces the present secondary disclosure stage with a revised continuing duty on the prosecutor to disclose material that meets the new test. The prosecutor is specifically required to review the prosecution material on receipt of the defence statement and to make further disclosure if required under the continuing duty.
24. It also amends the defence disclosure requirements, requiring the accused to provide a more detailed defence statement than currently required. The main changes are that the defence will be required to set out the nature of his defence including any particular defences on which he intends to rely and indicate any points of law he wishes to take, including any points as to the admissibility of evidence or abuse of process. Other

new provisions are a requirement for the judge to warn the accused about any failure to comply with the defence statement requirements, placing cross service of defence statements on a statutory footing, a requirement for service of an updated defence statement to assist the management of the trial, requiring the accused to serve, before the trial, details of any witnesses he intends to call to give evidence (other than himself) and also details of all experts instructed including those not called to give evidence. The new obligation on the defence to provide details of the witnesses it intends to call will be accompanied by a code of practice governing the conduct of any interviews by the police or non-police investigators with defence witnesses disclosed in accordance with the requirement.

25. Other provisions include a requirement that the judge must warn the defence about disclosure failures and judicial discretion to disclose the defence statement to the jury. The procedure for enabling the jury to draw adverse inferences from defence disclosure failures in respect of the defence statement is simplified.

### **Part 6 – Allocation and sending of offences**

26. This Part of the Act (with *Schedule 3*) amends the procedure to be followed by magistrates' courts in determining whether cases triable either way should be tried summarily or on indictment, and provides for the sending to the Crown Court of those cases which need to go there. The new procedures are designed to enable cases to be dealt with in the level of court which is appropriate to their seriousness, and to ensure that they reach that court as quickly as possible.
27. These provisions give effect to a number of recommendations from Lord Justice Auld's *Review of the Criminal Courts*, including making magistrates aware, when they determine allocation, of any previous convictions of the defendant; removing the option of committal for sentence in cases which the magistrates decide to hear; allowing defendants in cases where summary trial is considered appropriate to seek a broad indication of the sentence they would face if they were to plead guilty at that point; and replacing committal proceedings and transfers in serious fraud and child witness cases with a common system for sending cases to the Crown Court, based on the present arrangements for indictable-only cases.
28. Provision is made for defendants aged under 18 to give, for certain offences, an indication of plea, along the lines of the procedure which applies in adult cases. This should help to avoid cases involving young defendants being sent to the Crown Court unnecessarily. Provision is made for defendants under 18 who are charged with certain firearms offences to be sent to the Crown Court for trial.

### **Part 7 – Trials on indictment without a jury**

29. This Part of the Act sets out the circumstances in which criminal trials that currently take place on indictment in the Crown Court before a judge and jury will in future be conducted by a judge sitting alone.
30. This Part makes provision for the prosecution to apply for a trial of a serious or complex fraud case to proceed in the absence of a jury. The judge may order the case to be conducted without a jury if he is satisfied that the length or complexity of the case (having regard to steps which might reasonably be taken to reduce it) is likely to make the trial so burdensome upon the jury that the interests of justice require serious consideration to be given to conducting the trial without a jury.
31. This Part provides for a trial to be conducted without a jury where there is a real and present danger of jury tampering, or continued without a jury where the jury has been discharged because of jury tampering. The court must be satisfied that the risk of jury tampering would be so substantial (notwithstanding any steps, including police protection, that could reasonably be taken to prevent it) as to make it necessary in the interests of justice for the trial to be conducted without a jury. In trials already

under way where the jury has been discharged because of jury tampering, the trial will continue without a jury unless the judge considers it necessary in the interests of justice to terminate the trial. In that event, he may order a retrial, and if he does he will have the option of ordering that the retrial should take place without a jury.

32. This Part provides a right of appeal to the Court of Appeal for both prosecution and defence against a determination made by a court on an application for a trial without a jury, and against a court order to continue a trial in the absence of a jury, or to order a retrial without a jury, because of jury tampering.
33. Where a trial is conducted or continued without a jury and a defendant is convicted, the court will be required to give its reasons for the conviction.

### **Part 8 – Live links**

34. This Part provides powers for the courts to hear evidence by way of a live television link from outside the court building. The court will be able to exercise these powers where they believe it to be in the interests of the efficient or effective administration of justice. Under the law as it stands at present witnesses are generally required to attend the court in person. The law does however currently provide for the use of live links in limited cases, such as in the case of young, disabled, vulnerable or intimidated witnesses under the Youth Justice and Criminal Evidence Act 1999.
35. Sir Robin Auld during his Review of the Criminal Courts, which reported in October 2001, considered evidence given by experts and recommended provision for the use of live links in this context. The provisions of this Part extend live link provision to any witness, other than the defendant, where it is in the interests of efficiency or effectiveness, to hear that witness's evidence by way of a live link.

### **Part 9 – Prosecution appeals**

36. Under current legislation, the defendant has a right of appeal at the end of the trial against both conviction and sentence but the prosecution has no equivalent right of appeal against an acquittal, whether as a result of a jury's decision or a judge's ruling that has the effect of bringing trial to an end early. This Part introduces an interlocutory prosecution right of appeal against two categories of ruling by a Crown Court judge. The first group comprises a ruling that has the effect of terminating the trial made either at a pretrial hearing or during the trial, at any time up until the start of the judge's summing up. This includes both rulings that are terminating in themselves and those that are so fatal to the prosecution case that the prosecution proposes to treat them as terminating and, in the absence of the right of appeal, would offer no or no further evidence. The second group relates to an evidentiary ruling or series of rulings made in certain trials for qualifying offences listed in *Schedule 4*. This right of appeal is limited to those rulings that significantly weaken the prosecution case and may only be exercised up to the opening of the defence case.
37. Leave to appeal must be obtained either from the judge or the Court of Appeal. Depending upon the circumstances of the case the judge will decide whether the appeal follows either an expedited route, where the trial is adjourned pending the conclusion of the appeal, or a non-expedited route, where any jury that has been empanelled may be discharged. In both cases any judicial ruling effectively acquitting the defendant or otherwise terminating the trial will not take effect while the prosecution is considering whether to appeal and, if an appeal is pursued, until the conclusion of the appeal or its abandonment. When appealing a terminating or effectively terminating ruling the prosecution must agree to the acquittal of the defendant(s) for the offence(s) to which the ruling applies, if leave to appeal is not granted or the appeal is abandoned. This does not apply to appeals against significantly weakening evidentiary rulings where the trial will usually continue or a fresh trial will take place, whatever the outcome of the appeal.

38. The Court of Appeal will be able to confirm, reverse or vary the ruling appealed against. Where it confirms a terminating or effectively terminating ruling, the Court of Appeal must order the acquittal of the defendant(s) for the offence(s) to which the appeal applies and it has the discretion to do so where it reverses or varies the ruling. Where it reverses or varies a terminating or effectively terminating ruling, the Court of Appeal may only order that proceedings in the Crown Court should continue or that a fresh trial should take place if this is necessary in the interests of justice. In the case of prosecution appeals against evidentiary rulings, after confirming, reversing or varying the ruling(s) appealed against, the Court of Appeal may order the continuation of the proceedings in the Crown Court or a fresh trial to take place. But where the prosecution indicates that it does not intend to continue with the prosecution the Court of Appeal may order the acquittal of the defendant. Under both categories of appeal, both the prosecution and the defence will have a further right of appeal to the Houses of Lords on a point of law of general public importance.
39. This Part also provides for restrictions on reporting the proceedings associated with the appeal and the appeal itself, until after the conclusion of the trial. The aim is to ensure that, if the appeal is successful, matters prejudicial to the continuing or fresh trial are not reported. This restriction will cover reports in England and Wales, Scotland and Northern Ireland. Contravention will be a summary offence subject to a maximum penalty of a level 5 fine.

#### **Part 10 – Retrial for serious offences**

40. This Part of the Act reforms the law relating to double jeopardy, by permitting retrials in respect of a number of very serious offences, where new and compelling evidence has come to light. At present the law does not permit a person who has been acquitted or convicted of an offence to be retried for that same offence – this risk of retrial is known as “double jeopardy”. There are two principles arising from the common law which prevent this. The first is known by the legal terms *autrefois acquit* and *autrefois convict*. These principles provide a bar to the trial, in respect of the same offence, of a person who has previously been either acquitted or convicted of that offence. In addition, the courts may consider it an *abuse of process* for additional charges to be brought, following an acquittal or conviction, for different offences which arose from the same behaviour or facts. There are certain exceptions to this rule.
41. The Government considers that the law should be reformed to permit a re-trial in cases of serious offences where there has been an acquittal in court, but compelling new evidence subsequently comes to light against the acquitted person. This is in line with, but drawn more widely than, recommendations of the Law Commission and those set out in Lord Justice Auld’s review of the Criminal Courts, published in 2001. Examples of new evidence might include DNA or fingerprint tests, or new witnesses to the offence coming forward. The measures amend the law to permit the police to re-investigate a person acquitted of serious offences in these circumstances, to enable the prosecuting authorities to apply to the Court of Appeal for an acquittal to be quashed, and for a re-trial to take place where the Court of Appeal is satisfied that the new evidence is highly probative of the case against the acquitted person. The measures provide safeguards aimed at preventing the possible harassment of acquitted persons in cases where there is not a genuine question of new and compelling evidence, by requiring the personal consent of the Director of Public Prosecutions (DPP) both to the taking of significant steps in the re-opening of investigations – except in urgent cases – and to the making of an application to the Court of Appeal. The DPP will take into account both the strength of the evidence and the public interest in determining whether a re-investigation or application to the Court is appropriate.
42. The new arrangements will apply only in respect of serious offences. These are offences which carry a maximum sentence of life imprisonment, and for which the consequences for victims or for society as a whole are particularly serious. The offences are listed in Schedule 5 to the Act and include, for example, murder, manslaughter and rape. They

do not include all offences for which life imprisonment is the maximum punishment, because this would catch a number of common law offences which may not have such serious consequences, and for which a life sentence would rarely be imposed.

43. Where the Court of Appeal quashes an acquittal, a new indictment for the same offence may then be preferred by the prosecuting authorities, and a retrial will follow. The retrial will take account of all the evidence available in the case. The Court of Appeal may refuse to quash an acquittal in cases where the evidence is not new and compelling, or where it is not considered in the interests of justice to proceed with a retrial.

## **Part 11 – Evidence**

44. **Chapter 1** deals with the admissibility in criminal proceedings of evidence of a person's bad character. Under the law as it currently stands, there is an exclusionary rule which prevents the prosecution generally from producing evidence in a trial of a defendant's previous misconduct. This includes the fact that they have previously been convicted of an offence and any other evidence that might show a disposition in that person to break the law or act in particular way. This rule is an exception to the general principle that all relevant evidence is admissible and is itself subject to a number of exceptions. These include the "similar fact rule", which allows the prosecution to rely on evidence of a defendant's previous misconduct as part of its case against him in certain circumstances. There are also statutory exceptions such as section 1(3) of the Criminal Evidence Act 1898, which allows a defendant to be asked questions about his past in cross-examination where he has claimed to be of good character or has himself attacked the character of a prosecution witness or given evidence against a co-defendant. There are, however, no comparable rules governing the introduction of a witness's previous misconduct, which is therefore admissible provided that it is relevant.
45. This area of the law has been the subject of a comprehensive study by the Law Commission, who published a report of their conclusions and recommendations for reform in October 2001: "Evidence of Bad Character in Criminal Proceedings" (Report No. 273). It was also considered by Sir Robin Auld during his Review of the Criminal Courts, which also reported in October 2001. Both offered substantial criticism of the present rules.
46. The Government's approach has been closely informed by both reports and was set out in the Criminal Justice White Paper "Justice for All" (Cm 5563, July 2002). The Act's provisions are intended to provide a comprehensive set of rules for the admissibility of this sort of evidence in respect both of witnesses and defendants. Accordingly, the existing common law rules are abolished and other statute law substantially repealed.
47. **Chapter 2** makes further changes to the rules of evidence by reforming the law relating to the admissibility of hearsay evidence in criminal proceedings.
48. The common law rule against the admission of hearsay evidence is generally accepted as meaning that 'an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact or opinion asserted'. This means that only a statement given by a witness *orally* in court proceedings is admissible as evidence of the facts as they represent them. The main implication of this rule is that witnesses *must* give oral evidence in court from first-hand knowledge, and may not repeat what other people have told them. For example:
- Written records are inadmissible evidence of the matters they contain;
  - Witnesses must give oral evidence and a written statement cannot be a substitute for their personal appearance in the witness box;
  - Witnesses must give evidence from first hand knowledge and may not repeat what other people have told them; and



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- Previous out of court oral statements made by the witness themselves are inadmissible evidence of the matters they contain.
49. There are several exceptions to this rule, some of which are found in common law and some in statute. Both the common law rule and the way in which the exceptions operate, however, have been the subject of considerable criticism.
  50. This area of the law was the subject of a Law Commission Report *Evidence in Criminal Proceedings: Hearsay and Related Topics* (Report No 245) in 1997, which included 50 recommendations for reform and incorporated a draft Bill. This area of law was again considered by Sir Robin Auld as part of his Review. Sir Robin Auld concluded that we should move away from the strict rule against the admission of hearsay evidence in criminal proceedings, to a more flexible position where we admit such evidence and instead trust fact-finders to assess the weight of the evidence.
  51. The provisions in Chapter 2 of Part 11 are intended, so far as necessary, to codify the law relating to the admissibility of out of court statements in criminal proceedings. They aim to simplify the law and to provide greater certainty as to the circumstances when such evidence will be admitted. The main provisions (in *Sections 114 and 115*) remove the old common law rule against the admission of hearsay evidence and provide that such evidence *will* be admissible (on behalf of the prosecution and defence) provided certain safeguards are met.
  52. *Chapter 2* also provides the court with an additional statutory discretion to allow an out of court statement to be admitted as evidence where it would be in the interests of justice to do so. In addition, witness's previous statements will be more widely admissible at trial (as proof of the facts contained within). *Chapter 3* provides that certain witnesses in serious cases may use their video recorded statements in place of their main evidence.

## **Part 12 – Sentencing**

53. *Chapter 1* sets out general sentencing provisions. Many of these re-enact existing provisions, which are currently contained in the Powers of Criminal Courts (Sentencing) Act 2000.
54. *Sections 142 to 146* make provision for matters to be taken into account in sentencing. These include the purposes of adult sentencing, principles for determining the seriousness of an offence, reduction in sentences for early guilty pleas and aggravating factors where the offence was motivated by the offender's race, religion, disability or sexual orientation. The purposes of sentencing are set out in statute for the first time. They are: punishment, crime reduction, reform and rehabilitation, public protection and reparation.
55. *Sections 147 to 151* specify when community sentences can be used and set out general restrictions on imposing community sentences. *Sections 152 and 153* perform a similar function in relation to custodial sentences. *Sections 154 to 155* amend the existing limits on magistrates' court's powers to impose custodial sentences. *Sections 156 to 160* set out the procedural requirements for imposing community and custodial sentences. They deal, in particular, with pre-sentence reports and other requirements in the case of mentally disordered offenders. For adult offenders pre-sentence reports are written by the probation service on the basis of their analysis of the offender's behaviour, criminal history and needs. They suggest to the court the kind of punishment and rehabilitation that would be appropriate in each particular case and make recommendations as to the particular sentence that should be passed. In the case of mentally disordered offenders the court has to obtain a medical report before imposing a custodial sanction. *Section 161* provides for pre-sentence drug testing when the court is considering imposing a community sentence or a suspended sentence. The test is intended to help the court to decide whether drug treatment and testing is necessary. *Sections 162 to 165* deal with

the court's powers to impose and remit fines. *Section 166* re-enacts existing provisions about mitigation and about dealing with mentally disordered offenders.

56. *Sections 167 to 173* set up the Sentencing Guidelines Council, a new body which will produce sentencing guidelines for all criminal courts and guidelines on the allocation of cases between courts. Sentencing guidelines enable courts to approach sentence in any case from a common starting point. They are also intended to enable practitioners and the public generally to know what that starting point will be. The Act creates a new Council to promulgate those guidelines and provides for the existing Sentencing Advisory Panel to tender its advice to that Council. The Council will create guidelines across a wide range of issues that are relevant to sentencing and Courts will be obliged to take the guidelines into account when deciding a sentence. The Council will be chaired by the Lord Chief Justice and will consist of 7 further judicial members and 4 non-judicial members. In addition, the Home Secretary will appoint an observer who will bring to the Council experience of sentencing policy and the administration of sentences
57. *Section 174* replaces the existing duties on courts to provide reasons for sentence, with a new overarching duty to provide reasons and explain the sentence. The court is required to give reasons if it departs from a recommended guideline. *Section 175* expands the existing duty on the Home Secretary in section 95 of the Criminal Justice Act 1991 to publish information on the effectiveness of sentencing.
58. *Chapter 2* provides for community orders for offenders aged 16 or over. There are currently a number of different community orders: community rehabilitation orders, community punishment orders, community punishment and rehabilitation orders, curfew orders, drug treatment and testing orders, drug abstinence orders (being piloted), and exclusion orders (not yet commenced). This Act creates a single generic community sentence, which combines requirements currently available under different community sentences.
59. The range of requirements available with a generic community sentence will be:
  - Compulsory (unpaid) work;
  - Participation in any specified activities;
  - Programmes aimed at changing offending behaviour;
  - Prohibition from certain activities;
  - Curfew;
  - Exclusion from certain areas;
  - Residence requirement;
  - Mental health treatment (with consent of the offender);
  - Drug treatment and testing (with consent of the offender);
  - Alcohol treatment (with consent of the offender);
  - Supervision;
  - Attendance centre requirements (for those under 25).
60. *Schedules 8 and 9* make provision for breaches of community sentences and their transfer to Scotland or Northern Ireland.
61. *Chapter 3* contains new provisions in relation to short prison sentences of less than 12 months. Currently an offender serving a prison sentence of less than 12 months is released automatically at the half way point of the sentence, and the second half of the sentence is not subject to any licence conditions. Following the recommendations of the Halliday Report 'Making Punishments Work', new sentences of less than 12 months

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have been developed which are designed to provide a more effective framework within which to address the needs of offenders.

62. *Sections 181 and 182* make provision for the new sentence (described in the Halliday report as “custody plus”), that will replace all short prison sentences of under 12 months (with the exception of intermittent custody). It will be made up of a short period in custody of up to 3 months (to fulfil the punishment purpose of the sentence) followed by a longer period under supervision in the community (to fulfil the reparation and crime reduction purposes of the sentence) of a minimum of 6 months. At the point of sentence the court will specify the lengths of the two parts and attach specific requirements, based upon those available under the generic community sentence, to the supervision part of the sentence so as to address the rehabilitative needs of the offender.
63. If the court deems it appropriate, and the offender consents, the custodial part of the sentence can be served intermittently. *Sections 183 to 186* outline this sentence. Where an intermittent custody order is made the custodial periods will be served in short blocks of a few days at a time, while the licence period runs between the blocks (and may continue after the last custodial period). Intermittent custody will enable offenders to maintain jobs, family ties or education, all of which have been shown to play a part in reducing re-offending. This will be a new type of sentence in England and Wales, although there are similar systems in Europe. It will be piloted in two sites before a decision is made on whether to implement it more widely. If an offender fails to comply with the terms of the community part of the sentence he will be returned to custody. As with all recalls, the Parole Board will decide when he is to be re-released.
64. *Schedules 10 and 11* set out the provisions for dealing with revocation and amendment of custody plus and intermittent custody orders, and for their transfer to Scotland and Northern Ireland.
65. *Sections 189 to 194* deal with suspended sentences. At present a custodial sentence can be suspended for between one and two years provided that the offence warrants custody and the suspension is justified by the “exceptional circumstances” of the case. A suspended sentence can be combined with a fine or compensation order, but not with a community sentence (although a supervision order can be attached). The custodial sentence is activated by the committal of another imprisonable offence. This Act replaces this sentence with an amended version which is designed to be more widely available and more effective in correcting offending behaviour. The key change is that the court may suspend a short custodial sentence (as described in *Section 181*) for between six months and two years on condition that the offender undertakes activities in the community. These activities are chosen by the court from the list available under the generic community sentence. If the offender breaches the terms of the suspension the suspended sentence will be activated. The commission of a further offence during the period of suspension will also count as a breach, and the offender’s existing suspended sentence will normally be activated when the court sentences him for the new offence. The provisions dealing with breaches of suspended sentences are set out in Schedule 12 and arrangements for their transfer to Scotland or Northern Ireland in Schedule 13.
66. This Act provides the courts with a discretionary power to review an offender’s progress under a suspended sentence. Courts already have the power to review drug treatment and testing orders (see section 54(6) of the Powers of Criminal Courts (Sentencing) Act 2000). The court can amend any requirement or provision of the drug treatment and testing order based on the progress of the offender under the sentence. The court will continue to have this power in relation to a drug treatment and testing requirement of a community sentence. It will also have the power to review the progress of an offender on a suspended sentence, if it chooses, whether or not a drug rehabilitation requirement forms part of the order, and alter the requirements accordingly. This more general power of review is limited to the new suspended sentence in this Act, but may be extended further if it proves successful.

67. **Chapter 4** contains the provisions common to community sentences and short prison sentences. *Sections 197 and 198* describe the duties of the “responsible officer”. A responsible officer is an employee of the local probation board, an electronic monitoring provider (if electronic monitoring of a curfew or exclusion requirement is the only requirement on the order), and if the offender is under 18 it can be either a probation officer or a Youth Offending Team member. The responsible officer has overall control of an offender on a community sentence or the licence period of a custodial sentence. *Sections 199 to 214* describe in detail the requirements available in relation to community orders, custody plus orders, suspended sentence orders and intermittent custody orders. *Section 215* provides that electronic monitoring can be attached to any of the requirements. *Sections 216 to 220* set out general procedural requirements for community orders and short prison sentences, such as ensuring that people receive relevant information concerning each order. *Sections 221 to 223* set out the powers of the Secretary of State in relation to various requirements, including provisions as to whom copies of relevant orders should be provided to which are set out in Schedule 14.
68. **Chapter 5** provides measures for dealing with dangerous offenders. The Halliday report criticised the existing disparate set of provisions for sexual and violent offenders and identified a need for a more coherent sentencing structure to deal with this type of offender. The Act introduces a new scheme of sentences for offenders who have been assessed as dangerous and have committed a specified sexual or violent offence. Under the new scheme, dangerous offenders who have been convicted of a trigger sexual or violent offence (listed in Schedule 15) for which the maximum penalty is between two and ten years will be given an extended sentence (*Section 227*). This sentence will be a determinate sentence served in custody to the half way point. Release during the whole of the second half of the sentence will be on recommendation of the Parole Board. In addition extended supervision periods of up to five years for violent offenders and eight years for sexual offenders must be added to the sentence.
69. If an offender has been assessed as dangerous and has been convicted of a sexual or violent trigger offence (listed in Schedule 15) whose maximum sentence length is ten years or more, he will receive either a sentence of imprisonment for public protection (*Section 225*) or a discretionary life sentence. In cases where the offender has been assessed as dangerous and has been convicted of a trigger offence carrying a maximum sentence of life imprisonment the court must consider the seriousness of the offence when deciding upon which of the two possible sentences to impose. For both sentences the court will specify a minimum term which the offender is required to serve in custody. After this point the offender will remain in prison until the Parole Board is satisfied that their risk has sufficiently diminished for them to be released and supervised in the community. Following release, those serving a sentence of imprisonment for public protection would be able to apply to the Parole Board to have their licence rescinded after ten years had elapsed. Offenders serving a discretionary life sentence would be on licence for the rest of their lives. The Act makes similar provisions for juveniles enabling the sentence of detention for public protection (*Section 226*) and the extended sentence (*Section 228*) to be passed for offenders aged under 18 who have committed a specified sexual or violent offence (listed in Schedule 15) and have been assessed by the courts as dangerous.
70. **Chapter 6** deals with the arrangements for prisoners’ release on licence, recall to prison following breach of licence requirements, and further re-release. It also contains provisions for calculating remand time, calculating how sentences should be served and drug testing requirements on licence.
71. *Sections 240 to 243* enable the court to deduct any time spent on remand from the custodial part of the sentence that it passes.
72. *Sections 244 to 253* provide for the release of offenders from custody. Under the present system only half of a prison sentence of between 12 months and 4 years has to be served in prison. Following release the offender will be subject to licence conditions

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until the three-quarter point of his sentence. If the sentence is of 4 years or more then the offender may be released between the half and two thirds point of the sentence subject to a recommendation by the Parole Board. At the two-thirds point release is automatic and the prisoner is subject to licence conditions until the three-quarter point and remains on licence until the end of his sentence.

73. Under the new framework, offenders serving sentences of 12 months or more will be released automatically on licence at the half-way point of their sentence (subject to early release on home detention curfew (HDC) which will remain available). Upon release, the second half of their sentence will be subject to standard licence conditions and any combination of the additional prescribed conditions that the Secretary of State may determine by order. New custodial sentences of 12 months or more will therefore be served in full and licence conditions may be imposed right up to the end of the sentence.
74. If an offender fails to comply with a licence condition or commits an offence on licence he is liable to be recalled to prison, as described in [Sections 254 and 255](#). This Act makes recall to custody an executive decision – by the prison and probation services - rather than by the Parole Board, as at present. The offender will have the right of appeal to the Parole Board, and even if the offender chooses not to exercise this right the Parole Board will nonetheless scrutinise all recall decisions, to ensure they are fairly taken. By allowing the Parole Board to focus on assessing decisions of recall, the Act removes the anomaly by which the Parole Board currently both advise on recalls and act as an appeal body against those same recalls.
75. When determining an appeal against recall, or scrutinising the validity of a recall decision, the Parole Board will consider the issue of re-release, as laid out in [Section 256](#). It will either set a date for re-release or for a review of re-release a further date for considering re-release if setting a date is not feasible.
76. [Section 257](#) provides the Secretary of State with the power to add days to prison sentences, under prison rules, where disciplinary offences are committed whilst in custody.
77. [Sections 259 to 262](#) provide for a new early removal scheme from prison for foreign national prisoners liable to removal from the UK. Eligible prisoners may be removed up to 135 days early provided the custodial part of the sentence is at least 6 weeks and a specified proportion of the sentence has been served. The provisions will apply to all determinate sentence prisoners. The provisions introduce an order-making power to allow the Secretary of State, inter alia, to reduce or increase the reference to 135 days as well as to alter the provisions specifying the minimum custodial part of the sentence and the proportion of the sentence that must have been served. [Section 260](#) provides that, if a foreign national prisoner who has been removed from prison and from the UK in these circumstances re-enters the UK then he is liable to be detained in pursuance of his sentence for the period he would have served if he had not been removed early from prison or his sentence expiry date, whichever is earlier. [Section 262](#) gives effect to a new schedule (Schedule 20) which makes provisions for a similar scheme to apply in advance of the commencement of this Act.
78. [Sections 263 and 264](#) set out the principles for calculating the time offenders must spend in custody and on licence where several sentences are passed on the same or different occasions, and are ordered to be served concurrently (at the same time) or consecutively (one after the other).
79. [Section 266](#) amends section 64 of the Criminal Justice and Court Services Act 2000 (release on licence etc. drug testing requirements) to require a young offender aged 14 and above, to be tested for specified Class A drugs if a responsible officer believes that the offender is likely to misuse any specified class A drug and that such misuse has caused or contributed to any offence for which he was convicted, or may cause him to commit further offences. An appropriate adult is required to be present during the

testing procedure for those under the age of 17. The requirement for a trigger offence to have been committed is removed.

80. [Chapter 7](#) establishes a new scheme under which the court, rather than the Home Secretary, will determine the minimum term to be served in prison by a person convicted of murder. The length of this minimum term is to be determined by reference to a new statutory framework set out in Schedule 21. Once the minimum term has expired, the Parole Board will consider the person's suitability for release, and if appropriate, direct his release. These provisions respond to two court judgements, the judgement of the European Court of Human Rights in May 2002 in *Stafford*, and the judgement of the House of Lords in *Anderson* in November 2002.
81. [Chapter 8](#) contains additional sentencing provisions. One of these relates to deferred sentences. Currently a court can defer passing a sentence pending the good behaviour of the offender, as long as the offender consents and the court believes that deferring the sentence is in the interests of justice. If the offender commits another offence during the deferment period the court will deal with both sentences at once. This Act will require more of the offender on a deferred sentence. The power to defer passing sentence is only exercisable if the offender undertakes to comply with any requirements as to his conduct that the court considers it appropriate to impose. He may have to complete undertakings in the community as set by the court. These can be activities such as reparation to the community. The probation service or other responsible body will monitor the offender's compliance with the requirements and will prepare a report for the court at the point of sentence. Failure to comply with a requirement will result in the offender being brought back to court early for sentence. As now, if the offender commits another offence during the deferment period the court will deal with both sentences at once.
82. [Section 279](#) introduces Schedule 24 which enables a requirement as to drug treatment and testing to be included in an action plan order or a supervision order.
83. [Sections 280 to 284](#), in conjunction with Schedules 25, 26, 27 and 28 make the necessary alterations to the maximum penalties available for certain offences so as to ensure that they are compatible with the new sentencing framework. The Act creates a new sentence of less than 12 months, custody plus, that will replace all short custodial sentences currently available (see [Sections 181 and 182](#)). The maximum length of a sentence of custody plus, in relation to a single offence, will be 51 weeks. Therefore, in order to ensure that a full sentence of custody plus may be passed for a certain offence, this offence must have a maximum penalty of 51 weeks imprisonment or more. Currently there are a number of offences, triable only in the magistrates' court, that carry maximum penalties of six months imprisonment or less. These penalties will have no practical application under the new sentencing framework, therefore [Sections 280 and 281](#) make the necessary alterations to the maximum penalties for such offences by either raising them to 51 weeks or lowering them to non custodial penalties. Similarly, [Section 282](#) makes the necessary alterations to the penalties for certain triable-either-way offences on summary conviction so that they may be compatible with the new sentencing framework. [Section 283](#) also amends those powers in other legislation that provide for the creation of new summary or triable either way offences, so as to ensure that any offences created under these enabling powers will have maximum penalties that are compatible with the new sentencing framework. [Section 284](#) and Schedule 28 increase the penalties for certain drug-related offences.
84. In July 2002, the Government published its Report on the Review of Road Traffic Penalties and proposed to increase the maximum penalties for the offences of causing death by dangerous driving, causing death by careless driving under the influence of drink or drugs and aggravated vehicle taking where the aggravating feature is that, owing to the driving of the vehicle, an accident occurs and death results. Concerns had been expressed in response to the Review about the level of the maximum penalties and some sentences had been passed at, or close to, the maximum. [Section 285](#) of the Act provides that each of these three offences should have the same maximum penalty

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of 14 years imprisonment, an increase from 5 years for the aggravated vehicle taking offence and from 10 years for the other two offences. This will provide consistency in approach for driving offences where death results.

85. *Sections 287 to 293* make provision for establishing a mandatory minimum sentence for anyone who is convicted, on indictment, of illegal possession or distribution of prohibited firearms.
86. *Section 299* and Schedule 30 insert two new sections into Part 2 of the Criminal Justice and Court Services Act 2000 which deal with disqualifying unsuitable people from working with children. New *section 29A* extends the court's powers by adding a discretion to make an order if it is satisfied that it is likely a further offence against a child will be committed, even though the sentence threshold specified in the Act is not met. New *section 29B* provides that where a court was under a duty to consider the issue of a disqualification order, by virtue of convicting the offender of a relevant offence and passing a sentence which met the threshold specified, but appeared not to have done so, the prosecution may subsequently apply to a senior court for a disqualification order to be made.
87. *Sections 300 and 301* provide a power to impose an unpaid work or curfew requirement on a fine defaulter or to disqualify them from driving, rather than sending them to prison. Schedule 31 sets out the equivalent number of hours of unpaid work or days of curfew in relation to amounts of fine defaulted.
88. *Chapter 9* sets out the principal repeals and deals with the interpretation of Part 12.

### **Part 13- Miscellaneous**

89. *Section 306* amends Schedule 8 to the Terrorism Act 2000.
90. *Section 307* provides for the maximum prison sentences for offences arising from EC Regulations on the protection of wild fauna and flora to be increased from two years to five years.
91. *Section 308* extends the cases in which a defendant in the magistrates' court can plead guilty and be dealt with in his absence.
92. *Sections 309 to 312* extend the scope of statutory preparatory hearings and *sections 313 to 319* make changes to criminal appeal procedures.
93. *Section 320* adds the common law offence of "outraging public decency" to the list of offences at Schedule 1 of the Magistrates' Courts Act 1980. This will have the effect of making it triable summarily, as well as on indictment. At the present time, this offence is triable on indictment only.
94. The Act amends the principal statute governing jury service, the Juries Act 1974, to abolish (except in the case of mentally disordered persons) the categories of ineligibility for, and excusal "as of right" from jury service, currently set out in that Act. This means that certain groups who currently must not, or need not, do jury service, will, when these provisions are brought into force, be required to do so unless they can show good reason not to. The Act also makes amendments to the category of those disqualified from jury service to reflect developments in sentencing legislation, including those made by the Act itself.
95. *Sections 322 and 323* provide for an Individual Support Order, aimed at preventing further anti-social behaviour, to be available for use where an anti-social behaviour order has already been granted against a person under 18. The Individual Support Order may require the young person to undertake activities to tackle the underlying causes of their anti-social behaviour.
96. *Section 324* and Schedule 34 amend the Parenting Order provisions in the Crime and Disorder Act 1998 and the Referral Order provisions in the Powers of Criminal Courts

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(Sentencing) Act 2000 to enable courts to make a Parenting Order when a Referral Order is being made. In such cases the court must first obtain a report indicating requirements proposed for the Order, the reasons for these, and, where the offender is aged under 16 years, information about the family circumstances. If a Parenting Order is not made at the same time as a Referral Order, the provision will also allow Youth Offending Panels to refer parents to the court where a parent has failed to attend panel meetings. The measure will allow Parenting Orders to be issued to parents of first time offenders who plead guilty.

97. *Sections 325 to 327* build upon the provisions in the Criminal Justice and Court Services Act 2000 that place a requirement upon the responsible authority to establish arrangements for the management of certain high-risk offenders in the community. The responsible authority was defined as the local probation board and the chief officer of police and the Act extends this definition to include the Minister of State exercising functions in relation to prisons. The Act also places a new duty upon certain named bodies (e.g. local housing authorities and health authorities) to co-operate with the responsible authority as necessary to enable it to undertake its statutory duties effectively. The Act requires the responsible authority to regularly review its effectiveness in undertaking its duties and to recruit two lay advisers to oversee this task.
98. *Section 328* and Schedule 35 amend Part 5 of the Police Act 1997 which sets out the statutory framework under which the Criminal Records Bureau (CRB) provides criminal record disclosures for employment vetting purposes. The changes give effect to a number of the recommendations of the Independent Review Team appointed in September 2002 to take a fundamental look at the operations of the CRB. The amendments to the 1997 Act are designed to improve the efficiency and effectiveness of the CRB so that it can provide greater protection for children and vulnerable adults whilst ensuring that the disclosure process does not act as a bar to speedy recruitment.
99. *Section 329* makes new provision about cases where a person who has been convicted of an imprisonable criminal offence takes civil action for damages for trespass to the person against the victim of the offence or against a third party who has intervened, for example to protect the victim or to protect or recover property. It requires that, where a claimant convicted of an imprisonable offence wishes to sue someone for damages for a trespass to the person which is committed on the same occasion as the offence, he must first obtain the permission of the court. Permission may only be given if there is evidence that certain conditions relating to the defendant's perceptions and reasons for doing the act which amounted to trespass to the claimant's person are not met, or that in all the circumstances the defendant's act was grossly disproportionate. The defendant will not be liable at the trial if he can prove that the relevant conditions are met and that in all the circumstances the action was not grossly disproportionate.