



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART I

#### POWERS OF COURTS TO DEAL WITH OFFENDERS

##### *Custodial sentences*

#### **1 Restrictions on imposing custodial sentences.**

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law [<sup>F1</sup>or falling to be imposed under section 2(2), 3(2) or 4(2) of the Crime (Sentences) Act 1997].
- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—
  - [<sup>F2</sup>(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.
- [<sup>F3</sup>(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 61(6) of the Crime and Disorder Act 1998.]
- (4) Where a court passes a custodial sentence, it shall be its duty—
  - (a) in a case not falling within subsection (3) above, to 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

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- (b) in any case, to 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.

#### Textual Amendments

- F1** Words in s. 1(1) inserted (in part 1.10.1997 and otherwise 1.12.1999) by 1997 c. 43, s. 55, **Sch. 4 para. 15(1)**; S.I. 1997/2200, **art. 2** (with art. 5); S.I. 1999/3096, **art. 2(d)**
- F2** S. 1(2)(a) substituted (16.8.1993) by 1993 c. 36, s. **66(1)(9)**; S.I. 1993/1968, art. 2(1), **Sch. 1**
- F3** S. 1(3) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para.72**; S.I. 1998/2327, **art.2(1)(y)(2)(u)**.

#### Modifications etc. (not altering text)

- C1** S. 1 excluded (*prosp.*) by 1997 c. 43, ss. 17(5), 57(2) (with s. 41, **Sch. 1 para. 10(4)**)(by 1998 c. 37, s. 120(2), **Sch.10**, the said s. 17(5) is repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**  
Ss. 1-4 extended (1.3.1998) by 1994 c. 33, s. **1(6)**; S.I. 1998/277, **art. 3(1)** (with art. 4)(the said s. 1 of the 1994 Act is repealed (1.4.2000) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1999/3426, **art. 3** (subject to art. 4)).  
Ss. 1-4 applied (1.4.2000) by 1998 c. 37, ss. **73(4)**; S.I. 1999/3426, **art. 3(a)**
- C2** S. 1(1)(3) amended (1.10.1997 for specified purposes, otherwise 1.12.1999) by 1997 c. 43, s. **55(2)**; S.I. 1997/2200, **art. 2** (with art. 5); S.I. 1999/3096, **art. 2(d)**
- C3** S. 1(2) excluded (30.9.1998) by 1998 c. 37, s. **63(5)(b)**; S.I. 1998/2327, **art.2(1)(n)**.  
S. 1(2) excluded (30.9.1998) by 1982 c. 48, s. **19(5A)(b)** (as substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 53(3)**; S.I. 1998/2327, **art.2(1)(y)(2)(r)**).

#### Commencement Information

- I1** S. 1 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

## 2 Length of custodial sentences.

- (1) This section applies where a court passes a custodial sentence other than one fixed by law [<sup>F4</sup>or falling to be imposed under section 2(2) of the Crime (Sentences) Act 1997].
- (2) [<sup>F5</sup>Subject to sections 3(2) and 4(2) of that Act,]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 [<sup>F6</sup>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 [<sup>F6</sup>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.

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(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.

[<sup>F7</sup>(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 3 or 4 of the Crime (Sentences) Act 1997 which is for the minimum term specified in that subsection.]

#### Textual Amendments

- F4** Words in s. 2(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 15(3)**; S.I. 1997/2200, **art.2** (with savings in art. 5)
- F5** Words in s. 2(2) inserted (in part 1.10.1997 and otherwise 1.12.1999) by 1997 c. 43, s. 55, **Sch. 4 para. 15(4)**; S.I. 1997/2200, **art.2** (with savings in art. 5); S.I. 1999/3096, **art. 2(d)**
- F6** Words in s. 2(2)(a)(3) substituted (16.8.1993) by 1993 c. 36, s. 66(2)(9); S.I. 1993/1968, art. 2(1), **Sch. 1**
- F7** S. 2(5) inserted (in part 1.10.1997 and otherwise 1.12.1999) by 1997 c. 43, s. 55, **Sch. 4 para. 15(5)**; S.I. 1997/2200, **art.2** (with savings in art. 5); S.I. 1999/3096, **art. 2(d)**

#### Modifications etc. (not altering text)

- C4** S. 2 excluded (*prosp.*) by 1997 c. 43, s. 17(5), 57(2) (with s. 41, **Sch. 1 para. 10(4)**)(by 1998 c. 37, s. 120(2), **Sch.10**, the said s.17(5) is repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**). S. 2 amended (in part 1.10.1997 and otherwise 1.12.1999) by 1997 c. 43, s. 55(2); S.I. 1997/2200, **art.2** (subject to savings in art. 5); S.I. 1999/3096, **art. 2(d)**  
Ss. 1-4 extended (1.3.1998) by 1994 c. 33, s. 1(6); S.I. 1998/277, **art.3(1)** (with art. 4) (by 1998 c. 37, ss. 120(2), 121(2), **Sch.10** and S.I. 1999/3426, **arts. 3, 4** the said s. 1 of 1994 c. 33 is repealed (1.4.2000) ).  
Ss. 1-4 applied (1.4.2000) by 1998 c. 37, s. 73(4); S.I. 1999/3426, **art. 3(a)**
- C5** S. 2(2) modified (30.9.1998) by 1998 c. 37, s. 58(6) (with Sch. 9 para. 3); S.I. 1998/2327, **art.2(1)(n)**.

#### Commencement Information

- I2** S. 2 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

### 3 Procedural requirements for custodial sentences.

(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 1 or 2 above.

(2) <sup>F8</sup> . . . 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.

[<sup>F9</sup>(2A) In the case of an offender under the age of eighteen years, save where the offence or any other offence associated with it is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (2) above or subsection (4A) below unless there exists a previous pre-sentence report obtained in respect of the offender and 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.]

(3) In forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above a court—

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- (a) shall take into account all such information about the circumstances of the offence [<sup>F10</sup>or (as the case may be) of the offence and the offence or offences associated with it,] (including any aggravating or mitigating factors) as is available to it; 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.
- (4) No custodial sentence <sup>F11</sup> . . . shall be invalidated by the failure of a court to [<sup>F12</sup>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 [<sup>F13</sup>, subject to subsection (4A) 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.
- [<sup>F14</sup>(4A) Subsection (4)(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.]
- (5) In this Part “pre-sentence report” means a report in writing 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 a
    - [<sup>F15</sup>(i) a probation officer;
    - (ii) a social worker of a local authority social services department; or
    - (iii) where the offender is under the age of 18 years, a member of a youth offending team;]
  - ; and
  - (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

#### Textual Amendments

- F8** Words in s. 3(2) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 40(2)(a), Sch. 11; S.I. 1995/127, art. 2(1), Sch. 1 Appendices A,C
- F9** S. 3(2A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(b); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A
- F10** Words in s. 3(3)(a) inserted (16.8.1993) by 1993 c. 36, s. 66(3)(9); S.I. 1993/1968, art. 2(1), Sch. 1
- F11** Words in s. 3(4) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 40(2)(c)(i), Sch. 11; S.I. 1995/127, art. 2(1), Sch. 1 Appendices A,C
- F12** Words in s. 3(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(c)(ii); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A
- F13** Words in s. 3(4)(a) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(c)(iii); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A
- F14** S 3(4A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(d); S.I. 1995/127, art. (1), Sch. 1 Appendix A
- F15** S. 3(5)(a)(i)(ii)(iii) substituted for words in s. 3(5)(a) (30.9.1998 for areas specified in S.I. 1998/2327, Sch. 1 and subject to art. 9 of that S.I., and otherwise (1.4.2000)) by 1998 c. 37, s. 119, Sch. 8 para.73; S.I. 1998/2327, arts. 3(1)(b), 9, Sch. 1.; S.I. 2000/924, art. 2(c)

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#### Modifications etc. (not altering text)

- C6** Ss. 1-4 extended (1.3.1998) by 1994 c. 33, **ss. 1(6)**; S.I. 1998/277, **art. 3(1)** (with art. 4) (by 1998 c. 37, s. 120(2), **Sch. 10** and S.I. 1999/3426, **arts. 3, 4** the said s. 1 is repealed (1.4.2000))  
Ss. 1-4 applied (1.4.2000) by 1998 c. 37, **ss. 73(4)**; S.I. 1999/3426, **art. 3(a)**

#### Commencement Information

- I3** S. 3 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

## 4 Additional requirements in the case of mentally disordered offenders.

- (1) Subject to subsection (2) below, in any case where <sup>F16</sup> . . . 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 [<sup>F17</sup> or falling to be imposed under section 2(2) of the Crime (Sentences) Act 1997].
- (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 [<sup>F18</sup> or falling to be imposed under section 2(2) of the Crime (Sentences) Act 1997] 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—

“duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the <sup>M1</sup>Mental Health Act 1983 (“the 1983 Act”) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;

“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 duly approved.
- (6) Nothing in this section shall be taken as prejudicing the generality of section 3 above.

#### Textual Amendments

- F16** Words in s. 4(1) repealed (1.10.1997) by 1997 c. 43, ss. 55, 56(2), Sch. 4 para. 15(6)(a), **Sch. 6**; S.I. 1997/2200, **art.2** (with savings in art. 5)
- F17** Words in s. 4(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 15(6)(b)**; S.I. 1997/2200, **art. 2** (with savings in art. 5)
- F18** Words in s. 4(3) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 15(7)**; S.I. 1997/2200, **art. 2** (with savings in art. 5)

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**Modifications etc. (not altering text)**

- C7** S. 4 amended (in part 1.10.1997 and otherwise 1.12.1999) by 1997 c. 43, s. 55(2); S.I. 1997/2200, art. 2 (with savings in art. 5); S.I. 1999/3096, art. 2(d)  
Ss. 1-4 extended (1.3.1998) by 1994 c. 33, s. 1(6); S.I. 1998/277, art.3(1) (with art. 4) (by 1998 c. 37, ss. 120(2), 121(2), Sch.10, the said s. 1 of 1994 c. 33 is repealed (1.4.2000))  
Ss. 1-4 applied (1.4.2000) by 1998 c. 37, s. 73(4); S.I. 1999/3426, art. 3(a)

**Commencement Information**

- I4** S. 4 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**Marginal Citations**

- M1** 1983 c. 20.

**5 Suspended and extended sentences of imprisonment.**

- (1) For subsection (2) of section 22 (suspended sentences of imprisonment) of the <sup>M2</sup>Powers of Criminal Courts Act 1973 (“the 1973 Act”) there shall be substituted the following subsections—

“(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—

- (a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
- (b) that the exercise of that power can be justified by the exceptional circumstances of the case.

(2A) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”

- (2) The following shall cease to have effect, namely—

- (a) sections 28 and 29 of the 1973 Act (extended sentences of imprisonment for persistent offenders); and
- (b) section 47 of the <sup>M3</sup>Criminal Law Act 1977 (sentence of imprisonment partly served and partly suspended).

**Commencement Information**

- I5** S. 5 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**Marginal Citations**

- M2** 1973 c. 62.  
**M3** 1977 c. 45.

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