Crime and Disorder Act 1998

1998 CHAPTER 37

PART IV

DEALING WITH OFFENDERS

CHAPTER I

ENGLAND AND WALES

Sexual or violent offenders

58 Sentences extended for licence purposes.

(1) This section applies where a court which proposes to impose a custodial sentence for a sexual or violent offence 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 2 of the 1991 Act (length of 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 1991 Act;

"sexual offence" and "violent offence" have the same meanings as in Part I of that Act.

Commencement Information

I1 S. 58 wholly in force; S. 58 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

59 Effect of extended sentences.

For section 44 of the 1991 Act there shall be substituted the following section—

"**44 Extended sentences for sexual or violent offenders.**

(1) This section applies to a prisoner serving an extended sentence within the meaning of section 58 of the Crime and Disorder Act 1998.

(2) Subject to the provisions of this section and section 51(2D) below, this Part, except sections 40 and 40A, shall have effect as if the term of the extended sentence did not include the extension period.

(3) Where the prisoner is released on licence under this Part, the licence shall, subject to any revocation under section 39(1) or (2) above, remain in force until the end of the extension period.

(4) Where, apart from this subsection, the prisoner would be released unconditionally—
(a) he shall be released on licence; and
(b) the licence shall, subject to any revocation under section 39(1) or (2) above, remain in force until the end of the extension period.

(5) The extension period shall be taken to begin as follows—
(a) for the purposes of subsection (3) above, on the date given by section 37(1) above;
(b) for the purposes of subsection (4) above, on the date on which, apart from that subsection, the prisoner would have been released unconditionally.

(6) Sections 33(3) and 33A(1) above and section 46 below shall not apply in relation to the prisoner.

(7) For the purposes of sections 37(5) and 39(1) and (2) above the question whether the prisoner is a long-term or short-term prisoner shall be determined by reference to the term of the extended sentence.

(8) In this section "extension period" has the same meaning as in section 58 of the Crime and Disorder Act 1998."

Modifications etc. (not altering text)
C1 S. 59 restricted (19.9.1998) by S.I. 1998/2327, **art.8(1)**.

Commencement Information
I2 S. 59 wholly in force; S. 59 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

60 Re-release of prisoners serving extended sentences.

After section 44 of the 1991 Act there shall be inserted the following section—

"**44A Re-release of prisoners serving extended sentences.**

(1) This section applies to a prisoner serving an extended sentence within the meaning of section 58 of the Crime and Disorder Act 1998 who is recalled to prison under section 39(1) or (2) above.

(2) Subject to subsection (3) below, the prisoner may require the Secretary of State to refer his case to the Board at any time.

(3) Where there has been a previous reference of the prisoner's case to the Board (whether under this section or section 39(4) above), the Secretary of State shall not be required to refer the case until after the end of the period of one year beginning with the disposal of that reference.

(4) On a reference—

(a) under this section; or

(b) under section 39(4) above,

the Board shall direct the prisoner's release if satisfied that it is no longer necessary for the protection of the public that he should be confined (but not otherwise).

(5) If the Board gives a direction under subsection (4) above it shall be the duty of the Secretary of State to release the prisoner on licence."

Commencement Information
I3 S. 60 wholly in force; S. 60 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Offenders dependent etc. on drugs

61 Drug treatment and testing orders.

(1) This section applies where a person aged 16 or over is convicted of an offence other than one for which the sentence—

(a) is fixed by law; or

(b) falls to be imposed under section 2(2), 3(2) or 4(2) of the 1997 Act.

(2) Subject to the provisions of this section, the court by or before which the offender is convicted may make an order (a "drug treatment and testing order") which—

(a) has effect for a period specified in the order of not less than six months nor more than three years ("the treatment and testing period"); and

(b) includes the requirements and provisions mentioned in section 62 below.

(3) A court shall not make a drug treatment and testing order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the order and the notice has not been withdrawn.

(4) A drug treatment and testing order shall be a community order for the purposes of Part I of the 1991 Act; and the provisions of that Part, which include provisions with respect to restrictions on imposing, and procedural requirements for, community sentences (sections 6 and 7), shall apply accordingly.

(5) The court shall not make a drug treatment and testing order in respect of the offender unless it is satisfied—

(a) that he is dependent on or has a propensity to misuse drugs; and

(b) that his dependency or propensity is such as requires and may be susceptible to treatment.

(6) For the purpose of ascertaining for the purposes of subsection (5) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify; but the court shall not make such an order unless the offender expresses his willingness to comply with its requirements.

(7) The Secretary of State may by order amend subsection (2) above by substituting a different period for the minimum or maximum period for the time being specified in that subsection.

Commencement Information

I4 S. 61 wholly in force; S. 61 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

62 Requirements and provisions to be included in orders.

(1) A drug treatment and testing order shall include a requirement ("the treatment requirement") that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience ("the treatment provider") with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs.

(2) The required treatment for any particular period shall be—

(a) treatment as a resident in such institution or place as may be specified in the order; or

(b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

(3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).

(4) A drug treatment and testing order shall include a requirement ("the testing requirement") that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.

(5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

(6) A drug treatment and testing order shall include a provision specifying the petty sessions area in which it appears to the court making the order that the offender resides or will reside.

(7) A drug treatment and testing order shall—

(a) provide that, for the treatment and testing period, the offender shall be under the supervision of a responsible officer, that is to say, a probation officer appointed for or assigned to the petty sessions area specified in the order;

(b) require the offender to keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and

(c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the responsible officer.

(8) Supervision by the responsible officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—

(a) to report on the offender's progress to the court responsible for the order;

(b) to report to that court any failure by the offender to comply with the requirements of the order; and

(c) to determine whether the circumstances are such that he should apply to that court for the revocation or amendment of the order.

(9) In this section and sections 63 and 64 below, references to the court responsible for a drug treatment and testing order are references to—

(a) the court by which the order is made; or

(b) where another court is specified in the order in accordance with subsection (10) below, that court.

(10) Where the area specified in a drug treatment and testing order made by a magistrates' court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purposes of subsection (9) above a magistrates' court which acts for that area.

Commencement Information

I5 S. 62 wholly in force; S. 62 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

63 Periodic reviews.

(1) A drug treatment and testing order shall—

(a) provide for the order to be reviewed periodically at intervals of not less than one month;

(b) provide for each review of the order to be made, subject to subsection (7) below, at a hearing held for the purpose by the court responsible for the order (a "review hearing");

(c) require the offender to attend each review hearing;

(d) provide for the responsible officer to make to the court, before each review, a report in writing on the offender's progress under the order; and

(e) provide for each such report to include the test results communicated to the responsible officer under section 62(7)(c) above and the views of the treatment provider as to the treatment and testing of the offender.

(2) At a review hearing the court, after considering the responsible officer's report, may amend any requirement or provision of the order.

(3) The court—

(a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;

(b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in section 61(2) above, or to increase it above the maximum so specified; and

(c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.

(4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may—

(a) revoke the order; and

(b) deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.

(5) In dealing with the offender under subsection (4)(b) above, the court—

(a) shall take into account the extent to which the offender has complied with the requirements of the order; and

(b) may impose a custodial sentence notwithstanding anything in section 1(2) of the 1991 Act.

(6) Where the order was made by a magistrates' court in the case of an offender under the age of 18 years in respect of an offence triable only on indictment in the case of an adult, the court's power under subsection (4)(b) above shall be a power to do either or both of the following, namely—

(a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;

(b) to deal with the offender for that offence in any way in which it could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months;

and the reference in paragraph (b) above to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

(7) If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.

(8) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(9) At that hearing the court, after considering that report, may—

(a) exercise the powers conferred by this section as if the hearing were a review hearing; and

(b) so amend the order as to provide for each subsequent review to be made at a review hearing.

(10) In this section any reference to the court, in relation to a review without a hearing, shall be construed—

(a) in the case of the Crown Court, as a reference to a judge of the court;

(b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

Commencement Information

I6 S. 63 wholly in force; S. 63 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

64 Supplementary provisions as to orders.

(1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow (under Schedule 2 to the 1991 Act) if he fails to comply with any of those requirements;

(c) that the order may be reviewed (under that Schedule) on the application either of the offender or of the responsible officer; and

(d) that the order will be periodically reviewed at intervals as provided for in the order (by virtue of section 63 above);

and the court shall not make the order unless the offender expresses his willingness to comply with its requirements.

(2) Where, in the case of a drug treatment and testing order made by a magistrates' court, another magistrates' court is responsible for the order, the court making the order shall forthwith send copies of the order to the other court.

(3) Where a drug treatment and testing order is made or amended under section 63(2) above, the court responsible for the order shall forthwith or, in a case falling within subsection (2) above, as soon as reasonably practicable give copies of the order, or the order as amended, to a probation officer assigned to the court, and he shall give a copy—

(a) to the offender;

(b) to the treatment provider; and

(c) to the responsible officer.

(4) Where a drug treatment and testing order has been made on an appeal brought from the Crown Court, or from the criminal division of the Court of Appeal, for the purposes of sections 62 and 63 above it shall be deemed to have been made by the Crown Court.

(5) Schedule 2 to the 1991 Act (enforcement etc. of community orders) shall have effect subject to the amendments specified in Schedule 4 to this Act, being amendments for applying that Schedule to drug treatment and testing orders.

Commencement Information

I7 S. 64 wholly in force; S. 64 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Young offenders: reprimands and warnings

65 Reprimands and warnings.

(1) Subsections (2) to (5) below apply where—

(a) a constable has evidence that a child or young person ("the offender") has committed an offence;

(b) the constable considers that the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of his being convicted;

(c) the offender admits to the constable that he committed the offence;

(d) the offender has not previously been convicted of an offence; and

(e) the constable is satisfied that it would not be in the public interest for the offender to be prosecuted.

(2) Subject to subsection (4) below, the constable may reprimand the offender if the offender has not previously been reprimanded or warned.

(3) The constable may warn the offender if—

(a) the offender has not previously been warned; or

(b) where the offender has previously been warned, the offence was committed more than two years after the date of the previous warning and the constable considers the offence to be not so serious as to require a charge to be brought;

but no person may be warned under paragraph (b) above more than once.

(4) Where the offender has not been previously reprimanded, the constable shall warn rather than reprimand the offender if he considers the offence to be so serious as to require a warning.

(5) The constable shall—

(a) give any reprimand or warning at a police station and, where the offender is under the age of 17, in the presence of an appropriate adult; and

(b) explain to the offender and, where he is under that age, the appropriate adult in ordinary language—

(i) in the case of a reprimand, the effect of subsection (5)(a) of section 66 below;

(ii) in the case of a warning, the effect of subsections (1), (2), (4) and (5)(b) and (c) of that section, and any guidance issued under subsection (3) of that section.

(6) The Secretary of State shall publish, in such manner as he considers appropriate, guidance as to—

(a) the circumstances in which it is appropriate to give reprimands or warnings, including criteria for determining—

(i) for the purposes of subsection (3)(b) above, whether an offence is not so serious as to require a charge to be brought; and

(ii) for the purposes of subsection (4) above, whether an offence is so serious as to require a warning;

(b) the category of constable by whom reprimands and warnings may be given; and

(c) the form which reprimands and warnings are to take and the manner in which they are to be given and recorded.

(7) In this section "appropriate adult", in relation to a child or young person, means—

(a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation;

(b) a social worker of a local authority social services department;

(c) if no person falling within paragraph (a) or (b) above is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police.

(8) No caution shall be given to a child or young person after the commencement of this section.

(9) Any reference (however expressed) in any enactment passed before or in the same Session as this Act to a person being cautioned shall be construed, in relation to any time after that commencement, as including a reference to a child or young person being reprimanded or warned.

Commencement Information

I8 S. 65 wholly in force at 1.6.2000; S. 65 not in force at Royal Assent, see s. 121; S. 65 in force at 30.9.1998 for the purpose of warning a person under s. 65 in any area specified in Sch. 3 of the said S.I. by S.I. 1998/2327, **art. 3(3)** (as amended by 1998/2412); s. 65 in force for specified purposes at 1.4.2000 and 1.6.2000 insofar as not already in force by S.I. 2000/924, arts. 3, 4, **Sch.**

66 Effect of reprimands and warnings.

(1) Where a constable warns a person under section 65 above, he shall as soon as practicable refer the person to a youth offending team.

(2) A youth offending team—

(a) shall assess any person referred to them under subsection (1) above; and

(b) unless they consider it inappropriate to do so, shall arrange for him to participate in a rehabilitation programme.

(3) The Secretary of State shall publish, in such manner as he considers appropriate, guidance as to—

(a) what should be included in a rehabilitation programme arranged for a person under subsection (2) above;

(b) the manner in which any failure by a person to participate in such a programme is to be recorded; and

(c) the persons to whom any such failure is to be notified.

(4) Where a person who has been warned under section 65 above is convicted of an offence committed within two years of the warning, the court by or before which he is so convicted—

(a) shall not make an order under subsection (1)(b) (conditional discharge) of section 1A of the 1973 Act in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its doing so; and

(b) where it does so, shall state in open court that it is of that opinion and why it is.

(5) The following, namely—

(a) any reprimand of a person under section 65 above;

(b) any warning of a person under that section; and

(c) any report on a failure by a person to participate in a rehabilitation programme arranged for him under subsection (2) above,

may be cited in criminal proceedings in the same circumstances as a conviction of the person may be cited.

(6) In this section "rehabilitation programme" means a programme the purpose of which is to rehabilitate participants and to prevent them from re-offending.

Modifications etc. (not altering text)

C2 S. 66(4) modified (30.9.1998) by 1991 c. 53, **Sch. 2 para. 8A(10)** (as inserted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(11)**; S.I. 1998/2327, **art. 2(1)(w)** (with savings in arts. 5-8))

Commencement Information

I9 S. 66 wholly in force at 1.6.2000; S. 66 not in force at Royal Assent, see s. 121; S. 66 in force at 30.9.1998 for the purpose of warning a person under s. 65 in any area specified in Sch. 3 of the said S.I. by S.I. 1998/2327, **art. 3(3)** (as amended by 1998/2412); s. 66 in force at 1.4.2000 for specified purposes and 1.6.2000 insofar as not already in force by S.I. 2000/924, arts. 3, 4, **Sch.**

VALID FROM 01/02/2009

[F1 Young offenders: youth conditional cautions

Textual Amendments

F1 Ss. 66A-66H (and cross-headings before ss. 66A, 66H) inserted (1.2.2009 for the insertion of ss. 66G, 66H, 1.4.2009 for the insertion of s. 66C, 16.11.2009 for the insertion of ss. 66A, 66B, 66D-66F for specified purposes, 8.4.2013 in so far as not already in force) by Criminal Justice and Immigration Act 2008 (c. 4), s. 153(7), **Sch. 9 para. 3** (with Sch. 27 para. 18); S.I. 2009/140, art. 2(e)(ii); S.I. 2009/860, art. 2(1)(h); S.I. 2009/2780, art. 2(1)(c)(2); S.I. 2013/616, art. 2(b)

VALID FROM 16/11/2009

66A Youth conditional cautions

(1) An authorised person may give a youth conditional caution to a child or young person ("the offender") if—

(a) the offender has not previously been convicted of an offence, and

(b) each of the five requirements in section 66B is satisfied.

(2) In this Chapter, "youth conditional caution" means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.

(3) The conditions which may be attached to such a caution are those which have one or more of the following objects—

(a) facilitating the rehabilitation of the offender;

(b) ensuring that the offender makes reparation for the offence;

(c) punishing the offender.

(4) The conditions that may be attached to a youth conditional caution include—

(a) (subject to section 66C) a condition that the offender pay a financial penalty;

(b) a condition that the offender attend at a specified place at specified times.

"Specified" means specified by a relevant prosecutor.

(5) Conditions attached by virtue of subsection (4)(b) may not require the offender to attend for more than 20 hours in total, not including any attendance required by conditions attached for the purpose of facilitating the offender's rehabilitation.

(6) The Secretary of State may by order amend subsection (5) by substituting a different figure.

(7) In this section, "authorised person" means—

(a) a constable,

(b) an investigating officer, or

(c) a person authorised by a relevant prosecutor for the purposes of this section.

VALID FROM 16/11/2009

66B The five requirements

(1) The first requirement is that the authorised person has evidence that the offender has committed an offence.

(2) The second requirement is that a relevant prosecutor decides—

(a) that there is sufficient evidence to charge the offender with the offence, and

(b) that a youth conditional caution should be given to the offender in respect of the offence.

(3) The third requirement is that the offender admits to the authorised person that he committed the offence.

(4) The fourth requirement is that the authorised person explains the effect of the youth conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.

(5) If the offender is aged 16 or under, the explanation and warning mentioned in subsection (4) must be given in the presence of an appropriate adult.

(6) The fifth requirement is that the offender signs a document which contains—

(a) details of the offence,

(b) an admission by him that he committed the offence,

(c) his consent to being given the youth conditional caution, and

(d) the conditions attached to the caution.

VALID FROM 01/04/2009

66C Financial penalties

(1) A condition that the offender pay a financial penalty (a "financial penalty condition") may not be attached to a youth conditional caution given in respect of an offence unless the offence is one that is prescribed, or of a description prescribed, in an order made by the Secretary of State.

(2) An order under subsection (1) must prescribe, in respect of each offence or description of offence in the order, the maximum amount of the penalty that may be specified under subsection (5)(a).

(3) The amount that may be prescribed in respect of any offence must not exceed £100.

(4) The Secretary of State may by order amend subsection (3) by substituting a different figure.

(5) Where a financial penalty condition is attached to a youth conditional caution, a relevant prosecutor must also specify—

(a) the amount of the penalty, and

(b) the person to whom the financial penalty is to be paid and how it may be paid.

(6) To comply with the condition, the offender must pay the penalty in accordance with the provision specified under subsection (5)(b).

(7) Where a financial penalty is (in accordance with the provision specified under subsection (5)(b)) paid to a person other than a designated officer for a local justice area, the person to whom it is paid must give the payment to such an officer.

VALID FROM 16/11/2009

66D Variation of conditions

A relevant prosecutor may, with the consent of the offender, vary the conditions attached to a youth conditional caution by—

(a) modifying or omitting any of the conditions;

(b) adding a condition.

VALID FROM 16/11/2009

66E Failure to comply with conditions

(1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the youth conditional caution, criminal proceedings may be instituted against the person for the offence in question.

(2) The document mentioned in section 66B(6) is to be admissible in such proceedings.

(3) Where such proceedings are instituted, the youth conditional caution is to cease to have effect.

(4) Section 24A(1) of the Criminal Justice Act 2003 ("the 2003 Act") applies in relation to the conditions attached to a youth conditional caution as it applies in relation to the conditions attached to a conditional caution (within the meaning of Part 3 of that Act).

(5) Sections 24A(2) to (9) and 24B of the 2003 Act apply in relation to a person who is arrested under section 24A(1) of that Act by virtue of subsection (4) above as they apply in relation to a person who is arrested under that section for failing to comply with any of the conditions attached to a conditional caution (within the meaning of Part 3 of that Act).

VALID FROM 16/11/2009

66F Restriction on sentencing powers where youth conditional caution given

Where a person who has been given a youth conditional caution is convicted of an offence committed within two years of the giving of the caution, the court by or before which the person is so convicted—

(a) may not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its doing so; and

(b) where it does make such an order, must state in open court that it is of that opinion and why it is.

66G Code of practice on youth conditional cautions

(1) The Secretary of State must prepare a code of practice in relation to youth conditional cautions.

(2) The code may, in particular, make provision as to—

(a) the circumstances in which youth conditional cautions may be given,

(b) the procedure to be followed in connection with the giving of such cautions,

(c) the conditions which may be attached to such cautions and the time for which they may have effect,

(d) the category of constable or investigating officer by whom such cautions may be given,

(e) the persons who may be authorised by a relevant prosecutor for the purposes of section 66A,

(f) the form which such cautions are to take and the manner in which they are to be given and recorded,

(g) the places where such cautions may be given,

(h) the provision which may be made by a relevant prosecutor under section 66C(5)(b),

(i) the monitoring of compliance with conditions attached to such cautions,

(j) the exercise of the power of arrest conferred by section 24A(1) of the Criminal Justice Act 2003 (c. 44) as it applies by virtue of section 66E(4),

(k) who is to decide how a person should be dealt with under section 24A(2) of that Act as it applies by virtue of section 66E(5).

(3) After preparing a draft of the code the Secretary of State—

(a) must publish the draft,

(b) must consider any representations made to him about the draft, and

(c) may amend the draft accordingly,

but he may not publish or amend the draft without the consent of the Attorney General.

(4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament.

(5) When he has done so he may bring the code into force by order.

(6) The Secretary of State may from time to time revise a code of practice brought into force under this section.

(7) Subsections (3) to (6) are to apply (with appropriate modifications) to a revised code as they apply to an original code.

VALID FROM 01/02/2009

Interpretation of Chapter 1

66H Interpretation

In this Chapter—

(a) "appropriate adult" has the meaning given by section 65(7);

(b) "authorised person" has the meaning given by section 66A(7);

(c) "investigating officer" means an officer of Revenue and Customs, appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005, or a person designated as an investigating officer under section 38 of the Police Reform Act 2002 (c. 30);

(d) "the offender" has the meaning given by section 66A(1);

(e) "relevant prosecutor" means—

(i) the Attorney General,

(ii) the Director of the Serious Fraud Office,

(iii) the Director of Revenue and Customs Prosecutions,

(iv) the Director of Public Prosecutions,

(v) the Secretary of State, or

(vi) a person who is specified in an order made by the Secretary State as being a relevant prosecutor for the purposes of this Chapter;

(f) "youth conditional caution" has the meaning given by section 66A(2).**]**

Young offenders: non-custodial orders

67 Reparation orders.

(1) This section applies where a child or young person is convicted of an offence other than one for which the sentence is fixed by law.

(2) Subject to the provisions of this section and section 68 below, the court by or before which the offender is convicted may make an order (a "reparation order") which requires the offender to make reparation specified in the order—

(a) to a person or persons so specified; or

(b) to the community at large;

and any person so specified must be a person identified by the court as a victim of the offence or a person otherwise affected by it.

(3) The court shall not make a reparation order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be named in the order and the notice has not been withdrawn.

(4) The court shall not make a reparation order in respect of the offender if it proposes—

(a) to pass on him a custodial sentence or a sentence under section 53(1) of the 1933 Act; or

(b) to make in respect of him a community service order, a combination order, a supervision order which includes requirements imposed in pursuance of sections 12 to 12C of the 1969 Act or an action plan order.

(5) A reparation order shall not require the offender—

(a) to work for more than 24 hours in aggregate; or

(b) to make reparation to any person without the consent of that person.

(6) Subject to subsection (5) above, requirements specified in a reparation order shall be such as in the opinion of the court are commensurate with seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(7) Requirements so specified shall, as far as practicable, be such as to avoid—

(a) any conflict with the offender's religious beliefs or with the requirements of any community order to which he may be subject; and

(b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment.

(8) Any reparation required by a reparation order—

(a) shall be made under the supervision of the responsible officer; and

(b) shall be made within a period of three months from the date of the making of the order.

(9) A reparation order shall name the petty sessions area in which it appears to the court making the order, or to the court varying any provision included in the order in pursuance of this subsection, that the offender resides or will reside.

(10) In this section "responsible officer", in relation to a reparation order, means one of the following who is specified in the order, namely—

(a) a probation officer;

(b) a social worker of a local authority social services department; and

(c) a member of a youth offending team.

(11) The court shall give reasons if it does not make a reparation order in a case where it has power to do so.

Modifications etc. (not altering text)

C3 S. 67 restricted (*prosp.*) by 1999 c. 23, ss. 4(4)(c), 68(4) (with Sch. 7 paras. 3(3), **5(2)**); which s. 4 of the 1999 Act is repealed (*prosp.*) by 2000 c. 6, ss. 165, 168, **Sch. 12 Pt. I**

Commencement Information

I10 S. 67 partly in force; S. 67 not in force at Royal Assent see s. 121. In force at 30.9.1998 for certain purposes by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

68 Reparation orders: supplemental.

(1) Before making a reparation order, a court shall obtain and consider a written report by a probation officer, a social worker of a local authority social services department or a member of a youth offending team, indicating—

(a) the type of work that is suitable for the offender; and

(b) the attitude of the victim or victims to the requirements proposed to be included in the order.

(2) Before making a reparation order, a court shall explain to the offender in ordinary language—

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow (under Schedule 5 to this Act) if he fails to comply with any of those requirements; and

(c) that the court has power (under that Schedule) to review the order on the application either of the offender or of the responsible officer.

(3) Schedule 5 to this Act shall have effect for dealing with failure to comply with the requirements of reparation orders, for varying such orders and for discharging them with or without the substitution of other sentences.

Commencement Information

I11 S. 68 wholly in force; S. 68 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

69 Action plan orders.

(1) This section applies where a child or young person is convicted of an offence other than one for which the sentence is fixed by law.

(2) Subject to the provisions of this section and section 70 below, the court by or before which the offender is convicted may, if it is of the opinion that it is desirable to do so in the interests of securing his rehabilitation, or of preventing the commission by him of further offences, make an order (an "action plan order") which—

(a) requires the offender, for a period of three months beginning with the date of the order, to comply with an action plan, that is to say, a series of requirements with respect to his actions and whereabouts during that period;

(b) places the offender under the supervision for that period of the responsible officer; and

(c) requires the offender to comply with any directions given by that officer with a view to the implementation of that plan.

(3) The court shall not make an action plan order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be named in the order and the notice has not been withdrawn.

(4) The court shall not make an action plan order in respect of the offender if—

(a) he is already the subject of such an order; or

(b) the court proposes to pass on him a custodial sentence or a sentence under section 53(1) of the 1933 Act, or to make in respect of him a probation order,

a community service order, a combination order, a supervision order or an attendance centre order.

(5) Requirements included in an action plan order, or directions given by a responsible officer, may require the offender to do all or any of the following things, namely—

(a) to participate in activities specified in the requirements or directions at a time or times so specified;

(b) to present himself to a person or persons specified in the requirements or directions at a place or places and at a time or times so specified;

(c) to attend at an attendance centre specified in the requirements or directions for a number of hours so specified;

(d) to stay away from a place or places specified in the requirements or directions;

(e) to comply with any arrangements for his education specified in the requirements or directions;

(f) to make reparation specified in the requirements or directions to a person or persons so specified or to the community at large; and

(g) to attend any hearing fixed by the court under section 70(3) below.

(6) Such requirements and directions shall, as far as practicable, be such as to avoid—

(a) any conflict with the offender's religious beliefs or with the requirements of any other community order to which he may be subject; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(7) Subsection (5)(c) above does not apply unless the offence committed by the offender is punishable with imprisonment in the case of a person aged 21 or over.

(8) A person shall not be specified in requirements or directions under subsection (5)(f) above unless—

(a) he is identified by the court or, as the case may be, the responsible officer as a victim of the offence or a person otherwise affected by it; and

(b) he consents to the reparation being made.

(9) An action plan order shall name the petty sessions area in which it appears to the court making the order, or to the court varying any provision included in the order in pursuance of this subsection, that the offender resides or will reside.

(10) In this section "responsible officer", in relation to an action plan order, means one of the following who is specified in the order, namely—

(a) a probation officer;

(b) a social worker of a local authority social services department; and

(c) a member of a youth offending team.

(11) An action plan order shall be a community order for the purposes of Part I of the 1991 Act; and the provisions of that Part, which include provisions with respect to restrictions on imposing, and procedural requirements for, community sentences (sections 6 and 7), shall apply accordingly.

Commencement Information

I12 S. 69 partly in force; S. 69 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

70 Action plan orders: supplemental.

(1) Before making an action plan order, a court shall obtain and consider—

(a) a written report by a probation officer, a social worker of a local authority social services department or a member of a youth offending team, indicating—

(i) the requirements proposed by that person to be included in the order;

(ii) the benefits to the offender that the proposed requirements are designed to achieve; and

(iii) the attitude of a parent or guardian of the offender to the proposed requirements; and

(b) where the offender is under the age of 16, information about the offender's family circumstances and the likely effect of the order on those circumstances.

(2) Before making an action plan order, a court shall explain to the offender in ordinary language—

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow (under Schedule 5 to this Act) if he fails to comply with any of those requirements; and

(c) that the court has power (under that Schedule) to review the order on the application either of the offender or of the responsible officer.

(3) Immediately after making an action plan order, a court may—

(a) fix a further hearing for a date not more than 21 days after the making of the order; and

(b) direct the responsible officer to make, at that hearing, a report as to the effectiveness of the order and the extent to which it has been implemented.

(4) At a hearing fixed under subsection (3) above, the court—

(a) shall consider the responsible officer's report; and

(b) may, on the application of the responsible officer or the offender, vary the order—

(i) by cancelling any provision included in it; or

(ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that the court could originally have included in it.

(5) Schedule 5 to this Act shall have effect for dealing with failure to comply with the requirements of action plan orders, for varying such orders and for discharging them with or without the substitution of other sentences.

Commencement Information

I13 S. 70 partly in force; S. 70 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

71 Supervision orders.

(1) In subsection (3) of section 12A of the 1969 Act (young offenders), after paragraph (a) there shall be inserted the following paragraph—

"(aa) to make reparation specified in the order to a person or persons so specified or to the community at large;".

(2) In subsection (5) of that section, for the words "subsection (3)(a) or (b)" there shall be substituted the words " subsection (3)(a), (aa) or (b) ".

(3) In subsection (7) of that section, after paragraph (a) there shall be inserted the following paragraph—

"(aa) any requirement to make reparation to any person unless that person—

(i) is identified by the court as a victim of the offence or a person otherwise affected by it; and

(ii) consents to the inclusion of the requirement; or".

(4) In subsection (6) of section 12AA of the 1969 Act (requirement for young offender to live in local authority accommodation), for paragraphs (b) to (d) there shall be substituted the following paragraphs—

"(b) that order imposed—

(i) a requirement under section 12, 12A or 12C of this Act; or

(ii) a residence requirement;

(c) he fails to comply with that requirement, or is found guilty of an offence committed while that order was in force; and

(d) the court is satisfied that—

(i) the failure to comply with the requirement, or the behaviour which constituted the offence, was due to a significant extent to the circumstances in which he was living; and

(ii) the imposition of a residence requirement will assist in his rehabilitation;"; and for the words "the condition in paragraph (d)" there shall be substituted the words " sub-paragraph (i) of paragraph (d) ".

(5) In section 13 of the 1969 Act (selection of supervisor), subsection (2) shall cease to have effect.

Commencement Information

I14 S. 71 partly in force; S. 71 not in force at Royal Assent see s. 121. S. 71(5) in force at 30.9.1998 for certain purposes by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8); S. 71(4) in force at 1.4.1999 by S.I. 1998/3263, **art. 5**; s. 71 (1)-(3) in force at 1.6.2000 by S.I. 2000/924, **art. 5**

72 Breach of requirements in supervision orders.

(1) In subsection (3) of section 15 of the 1969 Act (variation and discharge of supervision orders), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

"(a) whether or not it also makes an order under subsection (1) above, may order him to pay a fine of an amount not exceeding £1,000, or make in respect of him—

(i) subject to section 16A(1) of this Act, an order under section 17 of the [M1]Criminal Justice Act 1982 (attendance centre orders); or

(ii) subject to section 16B of this Act, an order under section 12 of the [M2]Criminal Justice Act 1991 (curfew orders);

(b) if the supervision order was made by a relevant court, may discharge the order and deal with him, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or

(c) if the order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court."

(2) For subsections (4) to (6) of that section there shall be substituted the following subsections—

"(4) Where a court deals with a supervised person under subsection (3)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving—

(a) particulars of the supervised person's failure to comply with the requirement in question; and

(b) such other particulars of the case as may be desirable;

and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.

(5) Where—

(a) by virtue of subsection (3)(c) above the supervised person is brought or appears before the Crown Court; and

(b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question,

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

(6) Where the Crown Court deals with a supervised person under subsection (5) above, it shall discharge the supervision order if it is still in force."

(3) In subsections (7) and (8) of that section, for the words "or (4)" there shall be substituted the words " or (5) ".

Commencement Information

I15 S. 72 wholly in force; S. 72 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Marginal Citations

M1 1982 c.48.

M2 1991 c.53.

Young offenders: detention and training orders

VALID FROM 01/04/2000

73 Detention and training orders.

(1) Subject to section 53 of the 1933 Act, section 8 of the [M3]Criminal Justice Act 1982 ("the 1982 Act") and subsection (2) below, where—

(a) a child or young person ("the offender") is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over; and

(b) the court is of the opinion that either or both of paragraphs (a) or (b) of subsection (2) of section 1 of the 1991 Act apply or the case falls within subsection (3) of that section,

the sentence that the court is to pass is a detention and training order.

(2) A court shall not make a detention and training order—

(a) in the case of an offender under the age of 15 at the time of the conviction, unless it is of the opinion that he is a persistent offender;

(b) in the case of an offender under the age of 12 at that time, unless—

(i) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and

(ii) the offence was committed on or after such date as the Secretary of State may by order appoint.

(3) A detention and training order is an order that the offender in respect of whom it is made shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

(4) A detention and training order shall be a custodial sentence for the purposes of Part I of the 1991 Act; and the provisions of sections 1 to 4 of that Act shall apply accordingly.

(5) Subject to subsection (6) below, the term of a detention and training order shall be 4, 6, 8, 10, 12, 18 or 24 months.

(6) The term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21 or over) impose for the offence.

(7) The following provisions, namely—

(a) section 1B of the 1982 Act (detention in young offender institutions: special provision for offenders under 18); and

(b) sections 1 to 4 of the 1994 Act (secure training orders),

which are superseded by this section and sections 74 to 78 below, shall cease to have effect.

Modifications etc. (not altering text)

C4 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**

Marginal Citations
M3 1982 c.48.

74 Duties and powers of court.

(1) On making a detention and training order in a case where subsection (2) of section 73 above applies, it shall be the duty of the court (in addition to the duty imposed by section 1(4) of the 1991 Act) to state in open court that it is of the opinion mentioned in paragraph (a) or, as the case may be, paragraphs (a) and (b)(i) of that subsection.

(2) Subject to subsection (3) below, where—

(a) an offender is convicted of more than one offence for which he is liable to a detention and training order; or

(b) an offender who is subject to a detention and training order is convicted of one or more further offences for which he is liable to such an order,

the court shall have the same power to pass consecutive detention and training orders as if they were sentences of imprisonment.

(3) A court shall not make in respect of an offender a detention and training order the effect of which would be that he would be subject to detention and training orders for a term which exceeds 24 months.

(4) Where the term of the detention and training orders to which an offender would otherwise be subject exceeds 24 months, the excess shall be treated as remitted.

(5) In determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded in custody in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.

(6) The reference in subsection (5) above to an offender being remanded in custody is a reference to his being—

(a) held in police detention;

(b) remanded in or committed to custody by an order of a court;

(c) remanded or committed to local authority accommodation under section 23 of the 1969 Act and placed and kept in secure accommodation; or

(d) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the [M4]Mental Health Act 1983.

(7) A person is in police detention for the purposes of subsection (6) above—

(a) at any time when he is in police detention for the purposes of the 1984 Act; and

(b) at any time when he is detained under section 14 of the [M5]Prevention of Terrorism (Temporary Provisions) Act 1989;

and in that subsection "secure accommodation" has the same meaning as in section 23 of the 1969 Act.

(8) For the purpose of any reference in this section or sections 75 to 78 below to the term of a detention and training order, consecutive terms of such orders and terms of such orders which are wholly or partly concurrent shall be treated as a single term if—

(a) the orders were made on the same occasion; or

(b) where they were made on different occasions, the offender has not been released (by virtue of subsection (2), (3), (4) or (5) of section 75 below) at

any time during the period beginning with the first and ending with the last of those occasions.

Modifications etc. (not altering text)
C5 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**

Marginal Citations
M4 1983 c.20.
M5 1989 c.4.

75 The period of detention and training.

(1) An offender shall serve the period of detention and training under a detention and training order in such secure accommodation as may be determined by the Secretary of State or by such other person as may be authorised by him for that purpose.

(2) Subject to subsections (3) to (5) below, the period of detention and training under a detention and training order shall be one-half of the term of the order.

(3) The Secretary of State may at any time release the offender if he is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds.

(4) The Secretary of State may release the offender—
- (a) in the case of an order for a term of 8 months or more but less than 18 months, one month before the half-way point of the term of the order; and
- (b) in the case of an order for a term of 18 months or more, one month or two months before that point.

(5) If the youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State shall release the offender—
- (a) in the case of an order for a term of 8 months or more but less than 18 months, one month after the half-way point of the term of the order; and
- (b) in the case of an order for a term of 18 months or more, one month or two months after that point.

(6) An offender detained in pursuance of a detention and training order shall be deemed to be in legal custody.

(7) In this section and sections 77 and 78 below "secure accommodation" means—
- (a) a secure training centre;
- (b) a young offender institution;
- (c) accommodation provided by a local authority for the purpose of restricting the liberty of children and young persons;
- (d) accommodation provided for that purpose under subsection (5) of section 82 of the 1989 Act (financial support by the Secretary of State); or
- (e) such other accommodation provided for the purpose of restricting liberty as the Secretary of State may direct.

Modifications etc. (not altering text)

C6 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**
S. 75 modified (30.6.1999) by S.I. 1999/1748, art. 8(2), **Sch. 4 para. 1(1)**

VALID FROM 01/04/2000

76 The period of supervision.

(1) The period of supervision of an offender who is subject to a detention and training order—

(a) shall begin with the offender's release, whether at the half-way point of the term of the order or otherwise; and

(b) subject to subsection (2) below, shall end when the term of the order ends.

(2) The Secretary of State may by order provide that the period of supervision shall end at such point during the term of a detention and training order as may be specified in the order under this subsection.

(3) During the period of supervision, the offender shall be under the supervision of—

(a) a probation officer;

(b) a social worker of a local authority social services department; or

(c) a member of a youth offending team;

and the category of person to supervise the offender shall be determined from time to time by the Secretary of State.

(4) Where the supervision is to be provided by a probation officer, the probation officer shall be an officer appointed for or assigned to the petty sessions area within which the offender resides for the time being.

(5) Where the supervision is to be provided by—

(a) a social worker of a local authority social services department; or

(b) a member of a youth offending team,

the social worker or member shall be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.

(6) The offender shall be given a notice from the Secretary of State specifying—

(a) the category of person for the time being responsible for his supervision; and

(b) any requirements with which he must for the time being comply.

(7) A notice under subsection (6) above shall be given to the offender—

(a) before the commencement of the period of supervision; and

(b) before any alteration in the matters specified in subsection (6)(a) or (b) above comes into effect.

Modifications etc. (not altering text)

C7 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**

S. 76 modified (30.6.1999) by S.I. 1999/1748, art. 8(2), **Sch. 4 para. 1(1)**

C8 S. 76(3)(6): certain functions made exercisable by the Youth Justice Board for England and Wales concurrently with the Secretary of State (20.4.2000) by S.I. 2000/1160, **art. 4(1)(2)(n)(ii)(iii)**

77 Breaches of supervision requirements.

(1) Where a detention and training order is in force in respect of an offender and it appears on information to a justice of the peace acting for a relevant petty sessions area that the offender has failed to comply with requirements under section 76(6)(b) above, the justice—

(a) may issue a summons requiring the offender to appear at the place and time specified in the summons before a youth court acting for the area; or

(b) if the information is in writing and on oath, may issue a warrant for the offender's arrest requiring him to be brought before such a court.

(2) For the purposes of this section a petty sessions area is a relevant petty sessions area in relation to a detention and training order if—

(a) the order was made by a youth court acting for it; or

(b) the offender resides in it for the time being.

(3) If it is proved to the satisfaction of the youth court before which an offender appears or is brought under this section that he has failed to comply with requirements under section 76(6)(b) above, that court may—

(a) order the offender to be detained, in such secure accommodation as the Secretary of State may determine, for such period, not exceeding the shorter of three months or the remainder of the term of the detention and training order, as the court may specify; or

(b) impose on the offender a fine not exceeding level 3 on the standard scale.

(4) An offender detained in pursuance of an order under subsection (3) above shall be deemed to be in legal custody; and a fine imposed under that subsection shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

Modifications etc. (not altering text)

C9 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**
S. 77 modified (30.6.1999) by S.I. 1999/1748, art. 8(2), **Sch. 4 para. 1(1)**

VALID FROM 01/04/2000

78 Offences during currency of order.

(1) This section applies to a person subject to a detention and training order if—

(a) after his release and before the date on which the term of the order ends, he commits an offence punishable with imprisonment in the case of a person aged 21 or over; and

(b) whether before or after that date, he is convicted of that offence ("the new offence").

(2) Subject to section 7(8) of the 1969 Act, the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be detained in such secure accommodation as the Secretary of State may determine for the whole or any part of the period which—

(a) begins with the date of the court's order; and

(b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.

(3) The period for which a person to whom this section applies is ordered under subsection (2) above to be detained in secure accommodation—

(a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and

(b) in either case, shall be disregarded in determining the appropriate length of that sentence.

(4) Where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

(5) A person detained in pursuance of an order under subsection (2) above shall be deemed to be in legal custody.

Modifications etc. (not altering text)

C10 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**

C11 S. 78(2): certain functions made exercisable by the Youth Justice Board for England and Wales concurrently with the Secretary of State (20.4.2000) by S.I. 2000/1160, **art. 4(1)(2)(n)(v)**

79 Interaction with sentences of detention.

(1) Where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows—

(a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 75 above, at the beginning of the day on which it is passed;

(b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of that subsection.

(2) Where a court makes a detention and training order in the case of an offender who is subject to a sentence of detention in a young offender institution, the order shall take effect as follows—

(a) if the offender has been released under Part II of the 1991 Act, at the beginning of the day on which it is made;

(b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released under that Part.

(3) Subject to subsection (4) below, where at any time an offender is subject concurrently—

(a) to a detention and training order; and

(b) to a sentence of detention in a young offender institution,

he shall be treated for the purposes of sections 75 to 78 above, section 1C of the 1982 Act and Part II of the 1991 Act as if he were subject only to the one of them that was imposed on the later occasion.

(4) Nothing in subsection (3) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

(5) Where, by virtue of any enactment giving a court power to deal with a person in a manner in which a court on a previous occasion could have dealt with him, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person shall be treated as if he had been sentenced to detention in a young offender institution for the same term.

Modifications etc. (not altering text)
C12 Ss. 73-79 applied (15.12.1999) by S.I. 1999/3426, **art. 4(1)(a)(i)**

Sentencing: general

VALID FROM 01/07/1999

80 Sentencing guidelines.

(1) This section applies where the Court—

(a) is seised of an appeal against, or a reference under section 36 of the [M6]Criminal Justice Act 1988 with respect to, the sentence passed for an offence; or

(b) receives a proposal under section 81 below in respect of a particular category of offence;

and in this section "the relevant category" means any category within which the offence falls or, as the case may be, the category to which the proposal relates.

(2) The Court shall consider—

(a) whether to frame guidelines as to the sentencing of offenders for offences of the relevant category; or

(b) where such guidelines already exist, whether it would be appropriate to review them.

(3) Where the Court decides to frame or revise such guidelines, the Court shall have regard to—

(a) the need to promote consistency in sentencing;

(b) the sentences imposed by courts in England and Wales for offences of the relevant category;

(c) the cost of different sentences and their relative effectiveness in preventing re-offending;

(d) the need to promote public confidence in the criminal justice system; and

(e) the views communicated to the Court, in accordance with section 81(4)(b) below, by the Sentencing Advisory Panel.

(4) Guidelines framed or revised under this section shall include criteria for determining the seriousness of offences, including (where appropriate) criteria for determining the weight to be given to any previous convictions of offenders or any failures of theirs to respond to previous sentences.

(5) In a case falling within subsection (1)(a) above, guidelines framed or revised under this section shall, if practicable, be included in the Court's judgment in the appeal.

(6) Subject to subsection (5) above, guidelines framed or revised under this section shall be included in a judgment of the Court at the next appropriate opportunity (having regard to the relevant category of offence).

(7) For the purposes of this section, the Court is seised of an appeal against a sentence if—

(a) the Court or a single judge has granted leave to appeal against the sentence under section 9 or 10 of the [M7]Criminal Appeal Act 1968; or

(b) in a case where the judge who passed the sentence granted a certificate of fitness for appeal under section 9 or 10 of that Act, notice of appeal has been given,

and (in either case) the appeal has not been abandoned or disposed of.

(8) For the purposes of this section, the Court is seised of a reference under section 36 of the [M8]Criminal Justice Act 1988 if it has given leave under subsection (1) of that section and the reference has not been disposed of.

(9) In this section and section 81 below—

"the Court" means the criminal division of the Court of Appeal;

"offence" means an indictable offence.

Marginal Citations

M6 1988 c.33.
M7 1968 c.19.
M8 1988 c.33.

VALID FROM 01/07/1999

81 The Sentencing Advisory Panel.

(1) The Lord Chancellor, after consultation with the Secretary of State and the Lord Chief Justice, shall constitute a sentencing panel to be known as the Sentencing Advisory Panel ("the Panel") and appoint one of the members of the Panel to be its chairman.

(2) Where, in a case falling within subsection (1)(a) of section 80 above, the Court decides to frame or revise guidelines under that section for a particular category of offence, the Court shall notify the Panel.

(3) The Panel may at any time, and shall if directed to do so by the Secretary of State, propose to the Court that guidelines be framed or revised under section 80 above for a particular category of offence.

(4) Where the Panel receives a notification under subsection (2) above or makes a proposal under subsection (3) above, the Panel shall—

(a) obtain and consider the views on the matters in issue of such persons or bodies as may be determined, after consultation with the Secretary of State and the Lord Chief Justice, by the Lord Chancellor;

(b) formulate its own views on those matters and communicate them to the Court; and

(c) furnish information to the Court as to the matters mentioned in section 80(3)(b) and (c) above.

(5) The Lord Chancellor may pay to any member of the Panel such remuneration as he may determine.

82 Increase in sentences for racial aggravation.

(1) This section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 above.

(2) If the offence was racially aggravated, the court—

(a) shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and

(b) shall state in open court that the offence was so aggravated.

(3) Section 28 above applies for the purposes of this section as it applies for the purposes of sections 29 to 32 above.

Commencement Information

I16 S. 82 wholly in force; S. 82 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Miscellaneous and supplemental

83 Power to make confiscation orders on committal for sentence.

After subsection (9) of section 71 of the [M9]Criminal Justice Act 1988 (confiscation orders) there shall be inserted the following subsection—

"(9A) Where an offender is committed by a magistrates' court for sentence under section 38 or 38A of the [M10]Magistrates' Courts Act 1980 or section 56 of the [M11]Criminal Justice Act 1967, this section and sections 72 to 74C below shall have effect as if the offender had been convicted of the offence in the proceedings before the Crown Court and not in the proceedings before the magistrates' court."

Commencement Information

I17 S. 83 wholly in force; S. 83 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Marginal Citations

M9 1988 c.33.
M10 1980 c.43.
M11 1967 c.80.

84 Football spectators: failure to comply with reporting duty.

(1) In section 16(5) of the [M12]Football Spectators Act 1989 (penalties for failure to comply with reporting duty imposed by restriction order)—

(a) for the words "one month" there shall be substituted the words " six months "; and

(b) for the words "level 3" there shall be substituted the words " level 5 ".

(2) In section 24(2) of the 1984 Act (arrestable offences), after paragraph (p) there shall be inserted—

"(q) an offence under section 16(4) of the [M13]Football Spectators Act 1989 (failure to comply with reporting duty imposed by restriction order)."

Marginal Citations

M12 1989 c.37.
M13 1989 c.37.

85 Interpretation etc. of Chapter I.

(1) In this Chapter—

"action plan order" has the meaning given by section 69(2) above;

"detention and training order" has the meaning given by section 73(3) above;

"drug treatment and testing order" has the meaning given by section 61(2) above;

"make reparation", in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation;

"reparation order" has the meaning given by section 67(2) above;

"responsible officer"—

(a) in relation to a drug treatment and testing order, has the meaning given by section 62(7) above;

(b) in relation to a reparation order, has the meaning given by section 67(10) above;

(c) in relation to an action plan order, has the meaning given by section 69(10) above.

(2) Where the supervision under a reparation order or action plan order is be provided by a probation officer, the probation officer shall be an officer appointed for or assigned to the petty sessions area named in the order.

(3) Where the supervision under a reparation order or action plan order is to be provided by—

(a) a social worker of a local authority social services department; or

(b) a member of a youth offending team,

the social worker or member shall be a social worker of, or a member of a youth offending team established by, the local authority within whose area it appears to the court that the child or young person resides or will reside.

(4) In this Chapter, in relation to a drug treatment and testing order—

"the treatment and testing period" has the meaning given by section 61(2) above;

"the treatment provider" and "the treatment requirement" have the meanings given by subsection (1) of section 62 above;

"the testing requirement" has the meaning given by subsection (4) of that section.

(5) In this Chapter, unless the contrary intention appears, expressions which are also used in Part I of the 1991 Act have the same meanings as in that Part.

(6) For the purposes of this Chapter, a sentence falls to be imposed under section 2(2), 3(2) or 4(2) of the 1997 Act if it is required by that provision and the court is not of the opinion there mentioned.

Commencement Information

I18 S. 85 wholly in force; S. 85 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

CHAPTER II

SCOTLAND

Sexual or violent offenders

86 Extended sentences for sex and violent offenders.

(1) After section 210 of the 1995 Act there shall be inserted the following section—

"**210A Extended sentences for sex and violent offenders.**

(1) Where a person is convicted on indictment of a sexual or violent offence, the court may, if it—

(a) intends, in relation to—

(i) a sexual offence, to pass a determinate sentence of imprisonment; or

(ii) a violent offence, to pass such a sentence for a term of four years or more; 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 protecting the public from serious harm from the offender,

pass an extended sentence on the offender.

(2) An extended sentence is a sentence of imprisonment which is the aggregate of—

(a) the term of imprisonment ("the custodial term") which the court would have passed on the offender otherwise than by virtue of this section; and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.

(3) The extension period shall not exceed, in the case of—

(a) a sexual offence, ten years; and

(b) a violent offence, five years.

(4) A court shall, before passing an extended sentence, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.

(5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.

(6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding three years.

(7) The Secretary of State may by order—

(a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and

(b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.

(8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.

(10) For the purposes of this section—

"licence" and "relevant officer" have the same meaning as in Part I of the [M14]Prisoners and Criminal Proceedings (Scotland) Act 1993;

"sexual offence" means—

(i) rape;

(ii) clandestine injury to women;

(iii) abduction of a woman or girl with intent to rape or ravish;

(iv) assault with intent to rape or ravish;

(v) indecent assault;

(vi) lewd, indecent or libidinous behaviour or practices;

(vii) shameless indecency;

(viii) sodomy;

(ix) an offence under section 170 of the [M15]Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the [M16]Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;

(x) an offence under section 52 of the [M17]Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);

(xi) an offence under section 52A of that Act (possession of indecent images of children);

(xii) an offence under section 1 of the [M18]Criminal Law (Consolidation) (Scotland) Act 1995 (incest);

(xiii) an offence under section 2 of that Act (intercourse with a stepchild);

(xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);

(xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);

(xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);

(xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);

(xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16); and

(xix) an offence under subsection (5) of section 13 of that Act (homosexual offences);

"imprisonment" includes—

(i) detention under section 207 of this Act; and

(ii) detention under section 208 of this Act; and

"violent offence" means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.

(11) Any reference in subsection (10) above to a sexual offence includes—

(a) a reference to any attempt, conspiracy or incitement to commit that offence; and

(b) except in the case of an offence in paragraphs (i) to (viii) of the definition of "sexual offence" in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence."

(2) In section 209 of the 1995 Act (supervised release orders), in subsection (1)—

(a) after the word "convicted" there shall be inserted the words " on indictment ";

(b) after the words "an offence" there shall be inserted the words " , other than a sexual offence within the meaning of section 210A of this Act, "; and

(c) the words "not less than twelve months but" shall cease to have effect.

Modifications etc. (not altering text)

C13 S. 86(2)(b)(c) restricted (19.9.1998) by S.I. 1998/2327, **art.8(2)**.

Commencement Information

I19 S. 86 wholly in force; S. 86 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Marginal Citations

M14 1993 c.9.
M15 1979 c.2.
M16 1876 c.36.
M17 1982 c.45.
M18 1995 c.39.

87 Further provision as to extended sentences.

After section 26 of the [M19]Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act") there shall be inserted the following section—

" Extended sentences

26A Extended sentences.

(1) This section applies to a prisoner who, on or after the date on which section 87 of the Crime and Disorder Act 1998 comes into force, has been made subject to an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences).

(2) Subject to the provisions of this section, this Part of this Act, except section 1A, shall apply in relation to extended sentences as if any reference to a sentence or term of imprisonment was a reference to the custodial term of an extended sentence.

(3) Where a prisoner subject to an extended sentence is released on licence under this Part the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.

(4) Where, apart from this subsection, a prisoner subject to an extended sentence would be released unconditionally—

(a) he shall be released on licence; and

(b) the licence shall, subject to any revocation under section 17 of this Act, remain in force until the end of the extension period.

(5) The extension period shall be taken to begin as follows—

(a) for the purposes of subsection (3) above, on the day following the date on which, had there been no extension period, the prisoner would have ceased to be on licence in respect of the custodial term;

(b) for the purposes of subsection (4) above, on the date on which, apart from that subsection, he would have been released unconditionally.

(6) Subject to section 1A(c) of this Act and section 210A(3) of the 1995 Act and to any direction by the court which imposes an extended sentence, where a prisoner is subject to two or more extended sentences, the extension period which is taken to begin in accordance with subsection (5) above shall be the aggregate of the extension period of each of those sentences.

(7) For the purposes of sections 12(3) and 17(1) of this Act, and subject to subsection (8) below, the question whether a prisoner is a long-term or short-term prisoner shall be determined by reference to the extended sentence.

(8) Where a short-term prisoner serving an extended sentence in respect of a sexual offence is released on licence under subsection (4)(a) above, the provisions of section 17 of this Act shall apply to him as if he was a long-term prisoner.

(9) In relation to a prisoner subject to an extended sentence, the reference in section 17(5) of this Act to his sentence shall be construed as a reference to the extended sentence.

(10) For the purposes of this section "custodial term", "extension period" and "imprisonment" shall have the same meaning as in section 210A of the 1995 Act.

(11) In section 1A(c) and section 16(1)(a) of this Act, the reference to the date on which a prisoner would have served his sentence in full shall mean, in relation to a prisoner subject to an extended sentence, the date on which the extended sentence, as originally imposed by the court, would expire."

Commencement Information

I20 S. 87 wholly in force; S. 87 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Marginal Citations

M19 1993 c.9.

88 Re-release of prisoners serving extended sentences.

After section 3 of the 1993 Act there shall be inserted the following section—

"**3A Re-release of prisoners serving extended sentences.**

(1) This section applies to a prisoner serving an extended sentence within the meaning of section 210A of the 1995 Act (extended sentences) who has been recalled to prison under section 17(1) of this Act.

(2) Subject to subsection (3) below, a prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board—

(a) where his case has previously been referred to the Parole Board under this section or section 17(3) of this Act, not less than one year following the disposal of that referral;

(b) in any other case, at any time.

(3) Where a prisoner to whom this section applies is subject to another sentence which is not treated as a single sentence with the extended sentence, the Secretary of State shall not be required to refer his case to the Parole Board before he has served one half of that other sentence.

(4) Where the case of a prisoner to whom this section applies is referred to the Parole Board under this section or section 17(3) of this Act, the Board shall, if it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined (but not otherwise), direct that he should be released.

(5) If the Parole Board gives a direction under subsection (4) above, the Secretary of State shall release the prisoner on licence."

Commencement Information

I21 S. 88 wholly in force; S. 88 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Offenders dependent etc. on drugs

89 Drug treatment and testing orders.

After section 234A of the 1995 Act there shall be inserted the following section—

"234B Drug treatment and testing order.

(1) This section applies where a person of 16 years of age or more is convicted of an offence, other than one for which the sentence is fixed by law, committed on or after the date on which section 89 of the Crime and Disorder Act 1998 comes into force.

(2) Subject to the provisions of this section, the court by or before which the offender is convicted may, if it is of the opinion that it is expedient to do so instead of sentencing him, make an order (a "drug treatment and testing order") which shall—

(a) have effect for a period specified in the order of not less than six months nor more than three years ("the treatment and testing period"); and

(b) include the requirements and provisions mentioned in section 234C of this Act.

(3) A court shall not make a drug treatment and testing order unless it—

(a) has been notified by the Secretary of State that arrangements for implementing such orders are available in the area of the local authority proposed to be specified in the order under section 234C(6) of this Act and the notice has not been withdrawn;

(b) has obtained a report by, and if necessary heard evidence from, an officer of the local authority in whose area the offender is resident about the offender and his circumstances; and

(c) is satisfied that—

(i) the offender is dependent on, or has a propensity to misuse, drugs;

(ii) his dependency or propensity is such as requires and is susceptible to treatment; and

(iii) he is a suitable person to be subject to such an order.

(4) For the purpose of determining for the purposes of subsection (3)(c) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify.

(5) A drug treatment and testing order or an order under subsection (4) above shall not be made unless the offender expresses his willingness to comply with its requirements.

(6) The Secretary of State may by order—

(a) amend paragraph (a) of subsection (2) above by substituting a different period for the minimum or the maximum period for the time being specified in that paragraph; and

(b) make such transitional provisions as appear to him necessary or expedient in connection with any such amendment.

(7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

(8) A drug treatment and testing order shall be as nearly as may be in the form prescribed by Act of Adjournal."

Commencement Information

I22 S. 89 wholly in force; S. 89 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

90 Requirements and provisions to be included in drug treatment and testing orders.

After section 234B of the 1995 Act there shall be inserted the following section—

"234C Requirements and provisions of drug treatment and testing orders.

(1) A drug treatment and testing order shall include a requirement ("the treatment requirement") that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience ("the treatment provider") with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs.

(2) The required treatment for any particular period shall be—

(a) treatment as a resident in such institution or place as may be specified in the order; or

(b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

(3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is required to submit to treatment as a resident).

(4) A drug treatment and testing order shall include a requirement ("the testing requirement") that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times and in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.

(5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

(6) A drug treatment and testing order shall specify the local authority in whose area the offender will reside when the order is in force and require that authority to appoint or assign an officer (a "supervising officer") for the purposes of subsections (7) and (8) below.

(7) A drug treatment and testing order shall—

(a) provide that, for the treatment and testing period, the offender shall be under the supervision of a supervising officer;

(b) require the offender to keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and

(c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the supervising officer.

(8) Supervision by the supervising officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—

(a) to report on the offender's progress to the appropriate court;

(b) to report to that court any failure by the offender to comply with the requirements of the order; and

(c) to determine whether the circumstances are such that he should apply to that court for the variation or revocation of the order."

Commencement Information

I23 S. 90 wholly in force; S. 90 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

91 Procedural matters relating to drug treatment and testing orders.

After section 234C of the 1995 Act there shall be inserted the following section—

"**234D Procedural matters relating to drug treatment and testing orders.**

(1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences which may follow under section 234G of this Act if he fails to comply with any of those requirements;

(c) that the court has power under section 234E of this Act to vary or revoke the order on the application of either the offender or the supervising officer; and

(d) that the order will be periodically reviewed at intervals provided for in the order.

(2) Upon making a drug treatment and testing order the court shall—

(a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;

(b) send a copy of the order to the treatment provider;

(c) send a copy of the order to the chief social work officer of the local authority specified in the order in accordance with section 234C(6) of this Act; and

(d) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.

(3) Where a copy of a drug treatment and testing order has under subsection (2)(a) been sent by registered post or by the recorded delivery service, an acknowledgment or certificate of delivery of a letter containing a copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate."

Commencement Information

I24 S. 91 wholly in force; S. 91 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

[F2]92 Amendment and periodic review of drug treatment and testing orders.

After section 234D of the 1995 Act there shall be inserted the following sections—

"**234E Amendment of drug treatment and testing order.**

(1) Where a drug treatment and testing order is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order.

(2) Where an application is made under subsection (1) above by the supervising officer, the court shall issue a citation requiring the offender to appear before the court.

(3) On an application made under subsection (1) above and after hearing both the offender and the supervising officer, the court may by order, if it appears to it in the interests of justice to do so—

(a) vary the order by—

(i) amending or deleting any of its requirements or provisions;

(ii) inserting further requirements or provisions; or

(iii) subject to subsection (4) below, increasing or decreasing the treatment and testing period; or

(b) revoke the order.

(4) The power conferred by subsection (3)(a)(iii) above shall not be exercised so as to increase the treatment and testing period above the maximum for the time being specified in section 234B(2)(a) of this Act, or to decrease it below the minimum so specified.

(5) Where the court, on the application of the supervising officer, proposes to vary (otherwise than by deleting a requirement or provision) a drug treatment and testing order, sections 234B(5) and 234D(1) of this Act shall apply to the variation of such an order as they apply to the making of such an order.

(6) If an offender fails to appear before the court after having been cited in accordance with subsection (2) above, the court may issue a warrant for his arrest.

234F Periodic review of drug treatment and testing order.

(1) A drug treatment and testing order shall—

(a) provide for the order to be reviewed periodically at intervals of not less than one month;

(b) provide for each review of the order to be made, subject to subsection (5) below, at a hearing held for the purpose by the appropriate court (a "review hearing");

(c) require the offender to attend each review hearing;

(d) provide for the supervising officer to make to the court, before each review, a report in writing on the offender's progress under the order; and

(e) provide for each such report to include the test results communicated to the supervising officer under section 234C(7)(c) of this Act and the views of the treatment provider as to the treatment and testing of the offender.

(2) At a review hearing the court, after considering the supervising officer's report, may amend any requirement or provision of the order.

(3) The court—

(a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;

(b) shall not amend any provision of the order so as reduce the treatment and testing period below the minimum specified in section 234B(2)(a) of this Act or to increase it above the maximum so specified; and

(c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.

(4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may revoke the order.

(5) If at a review hearing the court, after considering the supervising officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made without a hearing.

(6) A review without a hearing shall take place in chambers without the parties being present.

(7) If at a review without a hearing the court, after considering the supervising officer's report, is of the opinion that the offender's progress is no longer satisfactory, the court may issue a warrant for the arrest of the offender or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a citation requiring the offender to appear before that court as such time as may be specified in the citation.

(8) Where an offender fails to attend—

(a) a review hearing in accordance with a requirement contained in a drug treatment and testing order; or

(b) a court at the time specified in a citation under subsection (7) above,

the court may issue a warrant for his arrest.

(9) Where an offender attends the court at a time specified by a citation issued under subsection (7) above—

(a) the court may exercise the powers conferred by this section as if the court were conducting a review hearing; and

(b) so amend the order as to provide for each subsequent review to be made at a review hearing."

Textual Amendments

F2 S. 92 wholly in force; S. 92 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

93 Consequences of breach of drug treatment and testing order.

After section 234F of the 1995 Act there shall be inserted the following sections—

"**234G Breach of drug treatment testing order.**

(1) If at any time when a drug treatment and testing order is in force it appears to the appropriate court that the offender has failed to comply with any requirement of the order, the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.

(2) If it is proved to the satisfaction of the appropriate court that the offender has failed without reasonable excuse to comply with any requirement of the order, the court may by order—

(a) without prejudice to the continuation in force of the order, impose a fine not exceeding level 3 on the standard scale;

(b) vary the order; or

(c) revoke the order.

(3) For the purposes of subsection (2) above, the evidence of one witness shall be sufficient evidence.

(4) A fine imposed under this section in respect of a failure to comply with the requirements of a drug treatment and testing order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

234H Disposal on revocation of drugs treatment and testing order.

(1) Where the court revokes a drugs treatment and testing order under section 234E(3)(b), 234F(4) or 234G(2)(c) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made.

(2) In disposing of an offender under subsection (1) above, the court shall have regard to the time for which the order has been in operation.

(3) Where the court revokes a drug treatment and testing order as mentioned in subsection (1) above and the offender is subject to—

(a) a probation order, by virtue of section 234J of this Act; or

(b) a restriction of liberty order, by virtue of section 245D of this Act; or

(c) a restriction of liberty order and a probation order, by virtue of the said section 245D,

the court shall, before disposing of the offender under subsection (1) above—

(i) where he is subject to a probation order, discharge that order;

(ii) where he is subject to a restriction of liberty order, revoke that order; and

(iii) where he is subject to both such orders, discharge the probation order and revoke the restriction of liberty order.”

Commencement Information

I25 S. 93 wholly in force; S. 93 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

94 Combination of orders.

(1) After section 234H of the 1995 Act there shall be inserted the following section—

"**234J Concurrent drug treatment and testing and probation orders.**

(1) Notwithstanding sections 228(1) and 234B(2) of this Act, where the court considers it expedient that the offender should be subject to a drug treatment and testing order and to a probation order, it may make both such orders in respect of the offender.

(2) In deciding whether it is expedient for it to exercise the power conferred by subsection (1) above, the court shall have regard to the circumstances, including the nature of the offence and the character of the offender and to the report submitted to it under section 234B(3)(b) of this Act.

(3) Where the court makes both a drug treatment and testing order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each of the orders to the following—

(a) the treatment provider within the meaning of section 234C(1);

(b) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act; and

(c) if he would not otherwise receive a copy of the order, the officer of the local authority who is to supervise the probationer.

(4) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—

(a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 234G(2)(b) of this Act in relation to the drug treatment and testing order; and

(b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) of this Act in relation to the probation order.

(5) Where an offender by an act or omission fails to comply with both a requirement contained in a drug treatment and testing order and in a probation order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (4) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 234G(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission."

(2) Schedule 6 to this Act (Part I of which makes further provision in relation to the combination of drug treatment and testing orders with other orders and Part II of which makes provision in relation to appeals) shall have effect.

Commencement Information

I26 S. 94 wholly in force; S. 94 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

95 Interpretation provision in relation to drug treatment and testing orders.

(1) After section 234J of the 1995 Act there shall be inserted the following section—

"**234K Drug treatment and testing orders: interpretation.**

In sections 234B to 234J of this Act—

"the appropriate court" means—

(a) where the drug treatment and testing order has been made by the High Court, that court;

(b) in any other case, the court having jurisdiction in the area of the local authority for the time being specified in the order under section 234C(6) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or district court, but in a case where an order has been made by a district court and there is no district court in that area, the sheriff court; and

"local authority" means a council constituted under section 2 of the [M20]Local Government etc. (Scotland) Act 1994 and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act for which it is so constituted."

(2) In section 307(1) of the 1995 Act (interpretation), after the definition of "diet" there shall be inserted the following definition—

""drug treatment and testing order" has the meaning assigned to it in section 234B(2) of this Act;".

Commencement Information

I27 S. 95 wholly in force; S. 95 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Marginal Citations

M20 1994 c.39.

Racial aggravation

96 Offences racially aggravated.

(1) The provisions of this section shall apply where it is—

(a) libelled in an indictment; or

(b) specified in a complaint,

and, in either case, proved that an offence has been racially aggravated.

(2) An offence is racially aggravated for the purposes of this section if—

(a) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group,

and evidence from a single source shall be sufficient evidence to establish, for the purposes of this subsection, that an offence is racially aggravated.

(3) In subsection (2)(a) above—

"membership", in relation to a racial group, includes association with members of that group;

"presumed" means presumed by the offender.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) above whether or not the offender's malice and ill-will is also based, to any extent, on—

(a) the fact or presumption that any person or group of persons belongs to any religious group; or

(b) any other factor not mentioned in that paragraph.

(5) Where this section applies, the court shall, on convicting a person, take the aggravation into account in determining the appropriate sentence.

(6) In this section "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

Commencement Information

I28 S. 96 wholly in force; S. 96 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, **art. 2(1)** (subject to savings in arts. 5-8)

Status:
Point in time view as at 01/06/1999. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
Crime and Disorder Act 1998, Part IV is up to date with all changes known to be in force on or before 06 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.