



# Powers of Criminal Courts (Sentencing) Act 2000

## 2000 CHAPTER 6

VALID FROM 25/08/2000

### PART II

#### ABSOLUTE AND CONDITIONAL DISCHARGE

#### **12 Absolute and conditional discharge.**

- (1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law or falls to be imposed under section 109(2), 110(2) or 111(2) below) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—
  - (a) discharging him absolutely; or
  - (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.
- (2) Subsection (1)(b) above has effect subject to section 66(4) of the <sup>M1</sup>Crime and Disorder Act 1998 (effect of reprimands and warnings).
- (3) An order discharging a person subject to such a condition as is mentioned in subsection (1)(b) above is in this Act referred to as an “order for conditional discharge”; and the period specified in any such order is in this Act referred to as “the period of conditional discharge”.
- (4) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

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- (5) If (by virtue of section 13 below) a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.
- (6) On making an order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.
- (7) Nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from making an order for costs against the offender or imposing any disqualification on him or from making in respect of the offence an order under section 130, 143 or 148 below (compensation orders, deprivation orders and restitution orders).

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

- C1 S. 12 restricted (28.8.2000) by 1989 c. 37, s. 14A(5) (as substituted (28.8.2000) by 2000 c. 25, s. 1, Sch. 1 para. 2; S.I. 2000/2125, art. 2)

**Marginal Citations**

- M1 1998 c. 37.

**13 Commission of further offence by person conditionally discharged.**

- (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with subsection (2) below, or to a justice of the peace having jurisdiction in accordance with that subsection, that a person in whose case an order for conditional discharge has been made—
  - (a) has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge, and
  - (b) has been dealt with in respect of that offence,
 that court or justice may, subject to subsection (3) below, issue a summons requiring that person to appear at the place and time specified in it or a warrant for his arrest.
- (2) Jurisdiction for the purposes of subsection (1) above may be exercised—
  - (a) if the order for conditional discharge was made by the Crown Court, by that court;
  - (b) if the order was made by a magistrates' court, by a justice acting for the petty sessions area for which that court acts.
- (3) A justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- (4) A summons or warrant issued under this section shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.
- (5) If a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—

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- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and
  - (b) if it does so, shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the justices' chief executive by whom the register is kept.
- (6) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.
- (7) If a person in whose case an order for conditional discharge has been made by a magistrates' court—
- (a) is convicted before the Crown Court of an offence committed during the period of conditional discharge, or
  - (b) is dealt with by the Crown Court for any such offence in respect of which he was committed for sentence to the Crown Court,
- the Crown Court may deal with him, for the offence for which the order was made, in any way in which the magistrates' court could deal with him if it had just convicted him of that offence.
- (8) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may, with the consent of the court which made the order, deal with him, for the offence for which the order was made, in any way in which the court could deal with him if it had just convicted him of that offence.
- (9) Where an order for conditional discharge has been made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under subsection (6), (7) or (8) above by that or any other court in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
  - (b) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.
- (10) The reference in subsection (6) above to a person's having been convicted of an offence committed during the period of conditional discharge is a reference to his having been so convicted by a court in Great Britain.

#### **14 Effect of discharge.**

- (1) Subject to subsection (2) below, a conviction of an offence for which an order is made under section 12 above discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 13 above.

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- (2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently sentenced (under section 13 above) for that offence, subsection (1) above shall cease to apply to the conviction.
- (3) Without prejudice to subsections (1) and (2) above, the conviction of an offender who is discharged absolutely or conditionally under section 12 above shall in any event be disregarded for the purposes of any enactment or instrument which—
  - (a) imposes any disqualification or disability upon convicted persons; or
  - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) Subsections (1) to (3) above shall not affect—
  - (a) any right of an offender discharged absolutely or conditionally under section 12 above to rely on his conviction in bar of any subsequent proceedings for the same offence;
  - (b) the restoration of any property in consequence of the conviction of any such offender; or
  - (c) the operation, in relation to any such offender, of any enactment or instrument in force on 1st July 1974 which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (5) In subsections (3) and (4) above—
 

“enactment” includes an enactment contained in a local Act; and

“instrument” means an instrument having effect by virtue of an Act.
- (6) Subsection (1) above has effect subject to section 50(1A) of the Criminal Appeal Act 1968 and section 108(1A) of the Magistrates’ Courts Act 1980 (rights of appeal); and this subsection shall not be taken to prejudice any other enactment that excludes the effect of subsection (1) or (3) above for particular purposes.
- (7) Without prejudice to paragraph 1(3) of Schedule 11 to this Act (references to provisions of this Act to be construed as including references to corresponding old enactments), in this section—
  - (a) any reference to an order made under section 12 above discharging an offender absolutely or conditionally includes a reference to an order which was made under any provision of Part I of the Powers of Criminal Courts Act 1973 (whether or not reproduced in this Act) discharging the offender absolutely or conditionally;
  - (b) any reference to an offender who is discharged absolutely or conditionally under section 12 includes a reference to an offender who was discharged absolutely or conditionally under any such provision.

## **15 Discharge: supplementary.**

- (1) The Secretary of State may by order direct that subsection (1) of section 12 above shall be amended by substituting, for the maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.
- (2) Where an order for conditional discharge has been made on appeal, for the purposes of section 13 above it shall be deemed—

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- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
  - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.
- (3) In proceedings before the Crown Court under section 13 above, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge shall be determined by the court and not by the verdict of a jury.

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