



# Powers of Criminal Courts (Sentencing) Act 2000

## 2000 CHAPTER 6

### PART V

#### CUSTODIAL SENTENCES ETC.

#### CHAPTER I

##### GENERAL PROVISIONS

##### *Meaning of “custodial sentence”*

#### **76 Meaning of “custodial sentence”.**

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

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*Liability to imprisonment on conviction on indictment*

**77 Liability to imprisonment on conviction on indictment.**

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

*General limit on magistrates' courts' powers*

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

- (1) A magistrates' court shall not have power to impose imprisonment, or detention in a young offender institution, for more than six months in respect of any one offence.
- (2) Unless expressly excluded, subsection (1) above shall apply even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than six months.
- (3) Subsection (1) above is without prejudice to section 133 of the <sup>M1</sup>Magistrates' Courts Act 1980 (consecutive terms of imprisonment).
- (4) Any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine, shall not be limited by virtue of subsection (1) above.
- (5) In subsection (4) above "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.
- (6) In this section "impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.
- (7) Section 132 of the <sup>M2</sup>Magistrates' Courts Act 1980 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court.

**Marginal Citations**

- M1** 1980 c. 43.  
**M2** 1980 c. 43.

*General restrictions on discretionary custodial sentences*

**79 General restrictions on imposing discretionary custodial sentences.**

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one—
  - (a) fixed by law; or

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- (b) falling to be imposed under section 109(2), 110(2) or 111(2) below.
- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—
- (a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or
  - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.
- (3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he fails to express his willingness to comply with—
- (a) a requirement which is proposed by the court to be included in a [F1community rehabilitation order] or supervision order and which requires an expression of such willingness; or
  - (b) a requirement which is proposed by the court to be included in a drug treatment and testing order or an order under section 52(4) above (order to provide samples).
- (4) Where a court passes a custodial sentence, it shall—
- (a) in a case not falling within subsection (3) above, state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
  - (b) in any case, explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

#### Textual Amendments

- F1** Words in s. 79(3)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. I para. 1(1)(a)(2); S.I. 2001/919, art. 2(f)(i)

## 80 Length of discretionary custodial sentences: general provision.

- (1) This section applies where a court passes a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subject to sections 110(2) and 111(2) below, the custodial sentence shall be—
- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it; or
  - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it, the court shall—
- (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and

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- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.
- (5) Subsection (3) above shall not apply in any case where the court passes a custodial sentence falling to be imposed under subsection (2) of section 110 or 111 below which is for the minimum term specified in that subsection.

*Procedural requirements for imposing discretionary custodial sentences*

**81 Pre-sentence reports and other requirements.**

- (1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 79 or 80 above.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.
- (3) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (2) above unless—
  - (a) there exists a previous pre-sentence report obtained in respect of the offender; and
  - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (4) In forming any such opinion as is mentioned in subsection (2) of section 79 or 80 above, a court—
  - (a) shall take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors; and
  - (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.
- (5) No custodial sentence shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (1) above, but any court on an appeal against such a sentence—
  - (a) shall, subject to subsection (6) below, obtain a pre-sentence report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (6) Subsection (5)(a) above does not apply if the court is of the opinion—
  - (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or

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- (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.
- (7) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (6) above unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
  - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (8) Section 156 below (disclosure of pre-sentence report to offender etc.) applies to any pre-sentence report obtained in pursuance of this section.

## **82 Additional requirements in case of mentally disordered offender.**

- (1) Subject to subsection (2) below, in any case where the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence, other than one fixed by law or falling to be imposed under section 109(2) below, on an offender who is or appears to be mentally disordered, a court shall consider—
  - (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
  - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
  - (a) shall obtain a medical report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (5) In this section, “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the <sup>M3</sup>Mental Health 83.
- (6) In this section, “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the <sup>M4</sup>Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.
- (7) Nothing in this section shall be taken as prejudicing the generality of section 81 above.

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### **Marginal Citations**

**M3** 1983 c. 20.

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**M4** 1983 c. 20.

[<sup>F2</sup> Life sentences]

**Textual Amendments**

**F2** S. 82A and cross-heading inserted (30.11.2000) by 2000 c. 43, ss. 60(1), 80(3)

[<sup>F3</sup>82A **Determination of tariffs.**

- (1) This section applies if a court passes a life sentence in circumstances where—
  - (a) the sentence is not fixed by law; or
  - (b) the offender was aged under 18 when he committed the offence.
- (2) The court shall, unless it makes an order under subsection (4) below, order that the provisions of section 28(5) to (8) of the <sup>M5</sup>Crime (Sentences) Act 1997 (referred to in this section as the “early release provisions”) shall apply to the offender as soon as he has served the part of his sentence which is specified in the order.
- (3) The part of his sentence shall be such as the court considers appropriate taking into account—
  - (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
  - (b) the effect of any direction which it would have given under section 87 below (crediting periods of remand in custody) if it had sentenced him to a term of imprisonment; and
  - (c) the early release provisions as compared with sections 33(2) and 35(1) of the <sup>M6</sup>Criminal Justice Act 1991.
- (4) If the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2) above, the court shall order that, subject to subsection (5) below, the early release provisions shall not apply to the offender.
- (5) If, in a case where an order under subsection (4) above is in force, the offender was aged under 18 when he committed the offence, the Secretary of State shall at the appropriate stage direct that the early release provisions shall apply to the offender as soon as he has served the part of his sentence which is specified in the direction.
- (6) The appropriate stage, for the purposes of subsection (5) above, is when the Secretary of State has formed the opinion, having regard to any factors determined by him to be relevant for the purpose, that it is appropriate for him to give the direction.
- (7) In this section—
 

“court” includes a court-martial;

“life sentence” has the same meaning as in Chapter II of Part II of the <sup>M7</sup>Crime (Sentences) Act 1997.
- (8) So far as this section relates to sentences passed by a court-martial, section 167(1) below does not apply.]

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### Textual Amendments

**F3** S. 82A and cross-heading inserted (30.11.2000) by 2000 c. 43, ss. 60(1), 80(3)

### Modifications etc. (not altering text)

**C1** S. 82A modified (30.11.2000) by 2000 c. 43, ss. 60(4), 80(3)

### Marginal Citations

**M5** 1997 c. 43.

**M6** 1991 c. 53.

**M7** 1997 c. 43.

### Other restrictions

## 83 Restriction on imposing custodial sentences on persons not legally represented.

- (1) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who—
  - (a) is not legally represented in that court, and
  - (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom,
 unless he is a person to whom subsection (3) below applies.
- (2) A magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not—
  - (a) pass a sentence of detention under section 90 or 91 below,
  - (b) pass a sentence of custody for life under section 93 or 94 below,
  - (c) pass a sentence of detention in a young offender institution, or
  - (d) make a detention and training order,
 on or in respect of a person who is not legally represented in that court unless he is a person to whom subsection (3) below applies.
- (3) This subsection applies to a person if either—
  - (a) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service but the right was withdrawn because of his conduct; or
  - (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply.
- (4) For the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- (5) For the purposes of subsection (1)(b) above a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 below or under section 19 of the <sup>M8</sup>Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded.

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- (6) In this section “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

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**Marginal Citations**

**M8** 1968 c. 29 (N.I.)

**84 Restriction on consecutive sentences for released prisoners.**

- (1) A court sentencing a person to a term of imprisonment shall not order or direct that the term shall commence on the expiry of any other sentence of imprisonment from which he has been released under Part II of the <sup>M9</sup>Criminal Justice Act 1991 (early release of prisoners).
- (2) Expressions used in this section shall be construed as if they were contained in that Part.
- (3) Without prejudice to the generality of subsection (2) above, any reference in this section to imprisonment shall be construed in accordance with section 43 (young offenders) and section 45 (fine defaulters and contemnors) of that Act.

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**Marginal Citations**

**M9** 1991 c. 53.

*Sexual and violent offences: licences etc.*

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

- (1) This section applies where a court—
- (a) proposes to impose a custodial sentence for a sexual or violent offence committed on or after 30th September 1998; and
  - (b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of preventing the commission by him of further offences and securing his rehabilitation.
- (2) Subject to subsections (3) to (5) below, the court may pass on the offender an extended sentence, that is to say, a custodial sentence the term of which is equal to the aggregate of—
- (a) the term of the custodial sentence that the court would have imposed if it had passed a custodial sentence otherwise than under this section (“the custodial term”); and
  - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose mentioned in subsection (1) above.
- (3) Where the offence is a violent offence, the court shall not pass an extended sentence the custodial term of which is less than four years.



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- (4) The extension period shall not exceed—
  - (a) ten years in the case of a sexual offence; and
  - (b) five years in the case of a violent offence.
- (5) The term of an extended sentence passed in respect of an offence shall not exceed the maximum term permitted for that offence.
- (6) Subsection (2) of section 80 above (length of discretionary custodial sentences) shall apply as if the term of an extended sentence did not include the extension period.
- (7) The Secretary of State may by order amend paragraph (b) of subsection (4) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph.
- (8) In this section “licence” means a licence under Part II of the <sup>M10</sup>Criminal Justice Act 1991 (early release of prisoners).

#### Marginal Citations

M10 1991 c. 53.

## 86 Sexual offences committed before 30th September 1998.

- (1) Where, in the case of a long-term or short-term prisoner—
  - (a) the whole or any part of his sentence was imposed for a sexual offence committed before 30th September 1998, and
  - (b) the court by which he was sentenced for that offence, having had regard to the matters mentioned in section 32(6)(a) and (b) of the <sup>M11</sup>Criminal Justice Act 1991, ordered that this section should apply,
 sections 33(3) and 37(1) of that Act shall each have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.
- (2) Expressions used in this section shall be construed as if they were contained in Part II of the <sup>M12</sup>Criminal Justice Act 1991.
- (3) The reference in subsection (1) above to section 33(3) of the <sup>M13</sup>Criminal Justice Act 1991 is to section 33(3) as it has effect without the amendment made by section 104(1) of the <sup>M14</sup>Crime and Disorder Act 1998 (which substituted the words “ on licence ” for the word “unconditionally” and does not apply in relation to a prisoner whose sentence or any part of whose sentence was imposed for an offence committed before 30th September 1998).

#### Marginal Citations

M11 1991 c. 53.

M12 1991 c. 53.

M13 1991 c. 53.

M14 1998 c. 37.

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PROSPECTIVE

*Crediting of periods of remand in custody*

**F<sup>4</sup>87 Crediting of periods of remand in custody: terms of imprisonment and detention.**

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**Textual Amendments**

- F4** S. 87 repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 303(d)(iii), 336(3)(4), [Sch. 37 Pt. 7](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 22](#) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))

**F<sup>5</sup>88 Meaning of “remand in custody”.**

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**Textual Amendments**

- F5** S. 88 repealed (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\)](#), ss. 303(d)(iii), 336(3)(4), [Sch. 37 Pt. 7](#); [S.I. 2005/950](#), art. 2(1), [Sch. 1 para. 22](#) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4](#), Sch. 26 para. 78, Sch. 28 Pt. 2; [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10](#), Sch. 14 para. 17; [S.I. 2012/2906](#), art. 2(l))

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