



Sentencing Act 2020

2020 CHAPTER 17

FIFTH GROUP OF PARTS Sentencing: miscellaneous provision and interpretation

PART 12

MISCELLANEOUS PROVISION ABOUT SENTENCING

CHAPTER 1

COSTS, FINES AND OTHER FINANCIAL ORDERS WHERE OFFENDER AGED UNDER 18

Offender aged under 18: order for payment by parent or guardian

380 Order for parent or guardian to pay fine, costs, compensation or surcharge

- (1) Where any enactment provides that this section applies to an amount which, but for that enactment, the court would order the offender to pay, the court—
 - (a) must, or
 - (b) if the offender is aged 16 or over, may,order that the amount is to be paid by the parent or guardian instead of by the offender himself or herself.
- (2) Subsection (1) does not apply if the court is satisfied that—
 - (a) the parent or guardian cannot be found, or
 - (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.
- (3) No order may be made under subsection (1) without giving the parent or guardian an opportunity of being heard.
- (4) But an order under subsection (1) may be made against a parent or guardian who, having been required to attend, has failed to do so.

Status: Point in time view as at 01/12/2020.

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- (5) A parent or guardian may appeal to the Crown Court against an order under subsection (1) made by a magistrates' court.
- (6) A parent or guardian may appeal to the Court of Appeal against an order under subsection (1) made by the Crown Court, as if the parent or guardian had been convicted on indictment and the order were a sentence passed on the parent's or guardian's conviction.

Modifications etc. (not altering text)

- C1** S. 380 applied by 2000 c. 6, Sch. 5 para. 2(3A) (as inserted (1.12.2020) by [Sentencing Act 2020](#) (c. 17), s. 416(1), [Sch. 24 para. 170\(3\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)

Commencement Information

- I1** S. 380 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

381 Costs awarded against offender under 18: payment by parent or guardian

Where—

- (a) but for this section, a court would impose costs in respect of an offence on an offender, and
- (b) the offender was aged under 18 when convicted of the offence,
- section 380 applies to the amount of the costs awarded.

Commencement Information

- I2** S. 381 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

382 Power to determine financial circumstances of offender's parent or guardian

- (1) For the purposes of any order under section 380, where—
- (a) the parent or guardian of an offender aged under 18—
- (i) has failed to comply with a financial circumstances order imposed by virtue of section 35(4), or
- (ii) has otherwise failed to co-operate with the court in its inquiry into the parent's or guardian's financial circumstances, and
- (b) the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances,
- the court may make such determination as it thinks fit.
- (2) Subsections (3) to (5) apply where a court has—
- (a) made an order under section 380 in respect of a parent or guardian of an offender to pay the amount of a fine, and
- (b) in fixing the amount of the fine, determined the financial circumstances of the parent or guardian under subsection (1).
- (3) If on subsequently inquiring into the financial circumstances of the parent or guardian the court is satisfied that, had it had the results of that inquiry when sentencing the offender, it—

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- (a) would have fixed a smaller amount, or
 - (b) would not have fined the offender,
- it may remit the whole or part of the fine.
- (4) Where under subsection (3) the court remits the whole or part of the fine after a term of—
- (a) imprisonment, or
 - (b) detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000,
- has been fixed under section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default) in respect of the amount ordered to be paid under section 380, the court must reduce the term by the corresponding proportion.
- (5) In calculating any reduction required by subsection (4), any fraction of a day is to be ignored.

Commencement Information

I3 S. 382 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

Orders other than fines: powers of Crown Court to order time for payment etc

383 Power of Crown Court to allow time for payment, or payment by instalments, of costs and compensation

Where the Crown Court makes an order mentioned in Part 1 of Schedule 9 to the Administration of Justice Act 1970 (orders against accused for the payment of costs or compensation), the court may—

- (a) allow time for the payment of the sum due under the order;
- (b) direct payment of that sum by instalments of the amounts and on the dates specified in the order.

Commencement Information

I4 S. 383 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

CHAPTER 2

COMMENCEMENT AND ALTERATION OF SENTENCE

384 Commencement of sentence

- (1) A sentence imposed by a court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs.
- (2) The power to give a direction under subsection (1) is subject to section 225 (restriction on consecutive sentences for released prisoners).
- (3) This section is subject to—

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- (a) section 198 (when a youth rehabilitation order is in force);
 - (b) sections 237, 253, 257 and 270 (interaction of detention and training order with other sentences);
 - (c) section 334 (duration of criminal behaviour order);
 - (d) section 385(5) (alteration of Crown Court sentence);
 - (e) section 142(5) of the Magistrates' Courts Act 1980 (power of magistrates' court to re-open cases to rectify mistakes etc).
- (4) In this section—
- “sentence” has the meaning given by section 401, but—
 - (a) also includes a recommendation for deportation made when dealing with an offender, and
 - (b) does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid: payment for services and enforcement);
 - “imposed” includes made.

Commencement Information

I5 S. 384 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

385 Alteration of Crown Court sentence

- (1) Subsection (2) applies where the Crown Court has imposed a sentence when dealing with an offender.
- (2) The Crown Court may vary or rescind the sentence at any time within the period of 56 days beginning with the day on which the sentence was imposed.
 This subsection is subject to subsections (3) and (4).
- (3) Subsection (2) does not apply where an appeal, or an application for leave to appeal, against that sentence has been determined.
- (4) The power in subsection (2) may be exercised only by—
 - (a) the court constituted as it was when the sentence was imposed, or
 - (b) where that court comprised one or more justices of the peace, a court so constituted except for the omission of any one or more of those justices.
- (5) Where a sentence is varied under this section, the sentence, as so varied, is to take effect from the beginning of the day on which it was originally imposed, unless the court directs otherwise.
 This is subject to subsection (6).
- (6) For the purposes of—
 - (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or of application for leave to appeal), and
 - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act),

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the sentence is to be regarded as imposed on the day on which it is varied under this section.

(7) Criminal Procedure Rules may—

- (a) provide for extending the period fixed by subsection (2) for cases where two or more persons are tried separately on the same or related facts alleged in one or more indictments;
- (b) subject to the other provisions of this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Crown Court may be varied or rescinded by that court.

(8) In this section—

“sentence” has the meaning given by section 401, but—

- (a) also includes a recommendation for deportation made when dealing with an offender, and
- (b) does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid: payment for services and enforcement);

“imposed” includes made.

Commencement Information

I6 S. 385 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

CHAPTER 3

DEPORTATION

386 Deportation recommendations

See section 6 of the Immigration Act 1971 for provision about recommendations for deportation by a court dealing with an offender for an offence punishable with imprisonment where—

- (a) the offender is not a British citizen, and
- (b) is aged 17 or over when convicted.

Commencement Information

I7 S. 386 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

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CHAPTER 4

ASSISTANCE FOR PROSECUTION ETC: REVIEW OF SENTENCE

Reference back to court for review of sentence

387 Failure by offender to provide agreed assistance: review of sentence

- (1) This section applies if—
 - (a) the Crown Court has passed a sentence on an offender in respect of an offence,
 - (b) the sentence (“the original sentence”) is a discounted sentence in consequence of the offender's having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence, and
 - (c) the offender knowingly fails to any extent to give assistance in accordance with the agreement.
- (2) A specified prosecutor may at any time refer the case back to the Crown Court if—
 - (a) the offender is still serving the original sentence, and
 - (b) the specified prosecutor thinks it is in the interests of justice to do so.
- (3) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (4) If the court is satisfied that the offender knowingly failed to give the assistance it may substitute for the original sentence a sentence that is—
 - (a) greater than the original sentence, but
 - (b) not greater than the sentence which it would have passed but for the agreement mentioned in subsection (1)(b) (“the original maximum”).
- (5) Subsections (6) to (9) apply where a sentence is substituted under subsection (4).
- (6) Where the substitute sentence is less than the original maximum, the court must state in open court—
 - (a) that fact, and
 - (b) the original maximum.

This is subject to subsection (8).
- (7) Section 52(2) or, as the case may be, 322(4) (requirement to explain reasons for sentence or other order) applies where a substitute sentence is imposed under subsection (4) unless—
 - (a) the court considers that it is not in the public interest to disclose that the original sentence was a discounted sentence, or
 - (b) subsection (8) provides otherwise.
- (8) Where the substitute sentence is less than the original maximum and the court considers that it would not be in the public interest to disclose that fact—
 - (a) subsection (6) does not apply;
 - (b) the court must give a written statement of the matters specified in subsection (6)(a) and (b) to—
 - (i) the prosecutor, and
 - (ii) the offender;

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- (c) section 52(2) or, as the case may be, 322(4) does not apply to the extent that the explanation would disclose that the substitute sentence is less than the original maximum.
- (9) Any part of the original sentence which the offender has already served must be taken into account in determining when the substitute sentence has been served.

Commencement Information

18 S. 387 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

388 Review of sentence following subsequent agreement for assistance by offender

- (1) A case is eligible for review under this section if—
 - (a) the Crown Court has passed a sentence on an offender in respect of an offence,
 - (b) the offender is still serving the sentence, and
 - (c) pursuant to a written agreement subsequently made with a specified prosecutor, the offender has assisted or offered to assist the investigator or prosecutor of any offence,but this is subject to subsection (2).
- (2) A case is not eligible for review under this section if—
 - (a) the sentence was discounted and the offender has not given the assistance offered in accordance with the written agreement by virtue of which it was discounted, or
 - (b) the offence was one for which the sentence was fixed by law and the offender did not plead guilty to it.
- (3) A specified prosecutor may at any time refer a case back to the Crown Court if—
 - (a) the case is eligible for review under this section, and
 - (b) the prosecutor considers that it is in the interests of justice to do so.
- (4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (5) The court may—
 - (a) take into account the extent and nature of the assistance given or offered;
 - (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.
- (6) Nothing in—
 - (a) any of the provisions listed in section 399(b) or (c) (minimum sentences in certain circumstances), or
 - (b) section 321 (and Schedule 21) (determination of minimum term in relation to mandatory life sentence),affects the court's power under subsection (5).
- (7) Subsections (8) to (11) apply where a sentence is substituted under subsection (5).
- (8) The court must state in open court—
 - (a) the fact that the substitute sentence is a discounted sentence, and
 - (b) the original maximum.

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This is subject to subsection (10).

- (9) Section 52(2) or, as the case may be, 322(4) (requirement to explain reasons for sentence or other order) applies where a sentence is imposed under subsection (5).

But this is subject to subsection (10).

- (10) Where the court considers that it would not be in the public interest to disclose that the substitute sentence is a discounted sentence —
- (a) subsection (7) does not apply;
 - (b) the court must give a written statement of the matters specified in subsection (8)(a) and (b) to—
 - (i) the prosecutor, and
 - (ii) the offender;
 - (c) section 52(2) or, as the case may be, 322(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.
- (11) Any part of the sentence to which the referral relates which the offender has already served must be taken into account in determining when the substitute sentence has been served.

Commencement Information

I9 S. 388 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

References under this Chapter: further provision

389 References under sections 387 and 388: appeals

- (1) Where a reference is made under section 387 or 388—
- (a) the person in respect of whom the reference is made, or
 - (b) the specified prosecutor,
- may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision of the Crown Court.
- (2) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- (3) In relation to any proceedings under this section, the Secretary of State may by regulations make provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).
- (4) Regulations under this section are subject to the negative resolution procedure.

Commencement Information

I10 S. 389 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

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390 Proceedings under section 387 or 388: exclusion of public

- (1) This section applies to—
 - (a) any proceedings relating to a reference made under section 387 or 388, and
 - (b) any other proceedings arising in consequence of such proceedings.
- (2) The court in which the proceedings will be or are being heard may make such order as it considers appropriate—
 - (a) to exclude from the proceedings any person who does not fall within subsection (4);
 - (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) The court may make an order under subsection (2) only if the court considers that the order is—
 - (a) necessary to protect the safety of any person, and
 - (b) in the interests of justice.
- (4) The following persons fall within this subsection—
 - (a) a member or officer of the court;
 - (b) a party to the proceedings;
 - (c) counsel or a solicitor for a party to the proceedings;
 - (d) a person otherwise directly concerned with the proceedings.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
 - (a) to exclude any person from proceedings, or
 - (b) to restrict the publication of any matter relating to proceedings.

Commencement Information

III S. 390 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

[^{F1}391 Proceedings under section 387 or 388: use of live link

Section 57E of the Crime and Disorder Act 1998 (use of live link in sentencing hearings) applies to hearings relating to a reference under section 387 or 388 as it applies to sentencing hearings.]

Textual Amendments

F1 S. 391 omitted (temp.) by virtue of 2020 c. 7, Sch 24 para. 14 (as inserted (1.12.2020) by virtue of [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 302](#) (with [Sch. 27](#)); [S.I. 2020/1236, reg. 2](#))

Commencement Information

III2 S. 391 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

392 Interpretation of Chapter

- (1) This section applies for the purposes of this Chapter.

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- (2) A discounted sentence is a sentence passed in pursuance of—
- (a) section 74, or
 - (b) section 388.
- (3) References—
- (a) to a written agreement are to an agreement made in writing with a specified prosecutor;
 - (b) to a specified prosecutor are to be read in accordance with section 71 of the Serious Organised Crime and Police Act 2005 (assistance by offender: immunity from prosecution).

Commencement Information

I13 S. 392 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

CHAPTER 5

RECOGNIZANCES

393 Power of magistrates' court to dispense with recognizance

- (1) This section applies where under an enactment, whether passed before or after the commencement of this Act, an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognizance with or without sureties to—
- (a) keep the peace, or
 - (b) observe any other condition.
- (2) The magistrates' court which convicted the offender may dispense with or modify the requirement.
- (3) In subsection (1) “enactment” includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act.

Commencement Information

I14 S. 393 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

CHAPTER 6

ORDERS IMPOSING COMMUNITY REQUIREMENTS

394 Rules relating to community orders and suspended sentence orders etc

- (1) The Secretary of State may make rules for regulating—
- (a) the supervision of persons who are subject to community orders or suspended sentence orders,

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- (b) without prejudice to the generality of paragraph (a), the functions of responsible officers within the meaning of section 213 or 299 in relation to offenders subject to community orders or suspended sentence orders,
 - (c) the arrangements to be made by providers of probation services for—
 - (i) persons subject to unpaid work requirements of such orders to perform work, and
 - (ii) the performance of such work,
 - (d) the provision and carrying on of attendance centres,
 - (e) the attendance of persons subject to—
 - (i) rehabilitation activity requirements,
 - (ii) attendance centre requirements, or
 - (iii) attendance centre requirements imposed by youth rehabilitation orders,at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records,
 - (f) electronic monitoring in pursuance of an electronic monitoring requirement of a community order or a suspended sentence order, and
 - (g) without prejudice to the generality of paragraph (f), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.
- (2) Rules under subsection (1)(c) may, in particular, make provision—
- (a) limiting the number of hours of work to be done by a person on any one day,
 - (b) as to the reckoning of hours worked and the keeping of work records, and
 - (c) for the payment of travelling and other expenses in connection with the performance of work.
- (3) Rules under this section are subject to the negative resolution procedure.

Modifications etc. (not altering text)

- C2** S. 394 applied (with modifications) by 2003 c. 44, s. 300(6), Sch. 31 (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 paras. 241\(5\), 249](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)
- C3** S. 394 extended (with modifications) by 2003 c. 44, Sch. 19A para. 5 (as substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 248\(2\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)
- C4** S. 394 applied (with modifications) by 2006 c. 52, s. 183 (as substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 8](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)
- C5** S. 394 applied (with modifications) by 2006 c. 52, s. 182(3)-(5) (as substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 7\(5\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)
- C6** S. 394 applied (with modifications) by 2006 c. 52, s. 178(2)-(4) (as substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 3\(3\)](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)

Commencement Information

- I15** S. 394 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

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395 Data from electronic monitoring: code of practice

- (1) The Secretary of State must issue a code of practice relating to processing of data gathered in the course of electronic monitoring of offenders under electronic monitoring requirements imposed by community orders and suspended sentence orders.
- (2) A failure to observe a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.

Modifications etc. (not altering text)

- C7** S. 395 applied (with modifications) by 2006 c. 52, s. 178(2)-(4) (as substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 25 para. 3(3)** (with s. 416(7), Sch. 27); S.I. 2020/1236, reg. 2)
- C8** S. 395 applied (with modifications) by 2003 c. 44, Sch. 19A paras. 1-3 (as substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 248(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2)
- C9** S. 395 applied (with modifications) by 2003 c. 44, s. 300(6), Sch. 31 (as amended (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 24 paras. 241(5), **249** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2)

Commencement Information

- I16** S. 395 in force at 1.12.2020 by S.I. 2020/1236, reg. 2

CHAPTER 7

WARRANTS

396 Execution of process between England and Wales and Scotland

Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English and Welsh courts in Scotland) applies to any process issued by a magistrates' court under any of the following provisions as it applies to process issued under the Magistrates' Courts Act 1980 by a magistrates' court—

- section 6(4) (effect of deferment order);
- section 9(2) (failure to comply with deferment requirement);
- section 10(3) (conviction of offence during period of deferment);
- paragraph 3(2) of Schedule 2 (order for conditional discharge: commission of further offence);
- paragraph 3(2) of Schedule 4 (referral order: further court proceedings);
- paragraph 6(3) of Schedule 5 (breach, revocation and amendment of reparation order);
- paragraph 8(2) or (4), 14(4) or 24(4) of Schedule 10 (breach, revocation or amendment of community order);
- paragraph 24(2) of Schedule 11 (transfer of community orders to Scotland or Northern Ireland);
- paragraph 2(2) of Schedule 12 (detention and training order: breach of supervision requirements and further offences);

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paragraph 8(2) or (4), 20(2) or 25(6) of Schedule 16 (breach or amendment of suspended sentence order, and effect of further conviction).

Commencement Information

I17 S. 396 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

PART 13

INTERPRETATION

397 Interpretation: general

(1) In this Code, except where the contrary intention appears—

“accommodation provided by or on behalf of a local authority” has the same meaning as in the Children Act 1989 (see section 105 of that Act);

“the appropriate officer of the court” means, in relation to a magistrates' court, the designated officer for the court;

“associated”, in relation to offences, is to be read in accordance with section 400;

“attendance centre” has the meaning given by section 221 of the Criminal Justice Act 2003;

“community order” means an order under section 200;

“community order requirement” is to be read in accordance with section 200(2);

“community requirement”, in relation to a suspended sentence order, has the meaning given by section 286(7);

“community sentence” means a sentence which consists of or includes—

- (a) a community order, or
- (b) a youth rehabilitation order;

“compensation order” has the meaning given by section 133;

“court” does not include a service court;

“criminal behaviour order” has the meaning given by section 330;

“criminal courts charge order” has the meaning given by section 46(3);

“custodial sentence” has the meaning given by section 222;

“detention and training order” has the meaning given by section 233;

“electronic compliance monitoring requirement” has the meaning given by paragraph 29 of Schedule 9;

“electronic monitoring requirement”, in relation to a community order or suspended sentence order, means—

- (a) an electronic compliance monitoring requirement, or
- (b) an electronic whereabouts monitoring requirement;

“electronic whereabouts monitoring requirement” has the meaning given by paragraph 30 of Schedule 9;

“end date”, in relation to a community order, means the date for the time being specified in the order under—

- (a) section 209 (community order to specify end date),

Status: Point in time view as at 01/12/2020.

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(b) paragraph 13(1)(b) of Schedule 10 (power to substitute later end date on breach), or

(c) paragraph 20(1) of that Schedule (power to amend order to substitute later end date);

“extended sentence” means a sentence under—

(a) section 254 (extended custodial sentence for persons aged under 18),

(b) section 266 (extended sentence of detention in a young offender institution for adults aged under 21), or

(c) section 279 (extended sentence of imprisonment);

“guardian” has the same meaning as in the Children and Young Persons Act 1933 (see section 107(1) of that Act);

“home local justice area” means—

(a) in relation to a community order, the local justice area specified in the order under section 210 or paragraph 16 or 17 of Schedule 10;

(b) in relation to a suspended sentence order which imposes one or more community requirements, the local justice area specified in the order under section 296 or paragraph 23 or 24 of Schedule 16;

“imprisonable offence” means an offence that is punishable with imprisonment in a court (even if the offence in question is not so punishable by the court dealing with the offender for it);

“local authority foster parent” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);

“order for absolute discharge” has the meaning given by section 79;

“order for conditional discharge” has the meaning given by section 80;

“place of safety” has the same meaning as in the Children and Young Persons Act 1933 (see section 107(1) of that Act);

“pre-sentence report” has the meaning given by section 31;

“probation trust” means a trust established under section 5 of the Offender Management Act 2007;

“referral order” has the meaning given by section 83;

“relevant order” means—

(a) a community order, or

(b) a suspended sentence order which imposes one or more community requirements;

“reparation order” has the meaning given by section 109(1);

“the responsible officer”—

(a) in relation to a community order, has the meaning given by section 213;

(b) in relation to a suspended sentence order which imposes one or more community requirements, has the meaning given by section 299;

“restraining order” has the meaning given by section 359;

“sentence of imprisonment” does not include a committal—

(a) in default of payment of any sum of money,

(b) for want of sufficient distress to satisfy any sum of money, or

(c) for failure to do or abstain from doing anything required to be done or left undone,

and references to sentencing an offender to imprisonment are to be read accordingly;

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“sentencing guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued;

“service court” means—

- (a) the Court Martial,
- (b) the Summary Appeal Court,
- (c) the Service Civilian Court,
- (d) the Court Martial Appeal Court, or
- (e) the Supreme Court on an appeal from the Court Martial Appeal Court;

“sexual harm prevention order” has the meaning given by section 343(1);

“specified offence” has the meaning given by section 306;

“suspended sentence” and “suspended sentence order” have the meanings given by section 286(6);

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998;

“youth rehabilitation order” has the meaning given by section 173;

“youth rehabilitation order with fostering” has the meaning given by section 176;

“youth rehabilitation order with intensive supervision and surveillance” has the meaning given by section 175.

- (2) Any reference in this Code to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders.
- (3) A reference in this Code to want of sufficient distress to satisfy a sum includes a reference to circumstances where—
 - (a) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the sum from a person, but
 - (b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (within the meaning given by 50(3) of Schedule 12 to that Act).
- (4) A reference in this Code to an offender who is subject to a detention and training order being released for supervision is to be read in accordance with section 248(5).

Modifications etc. (not altering text)

C10 S. 397(1) applied (with modifications) by 2008 c. 4, s. 39(6)(a), **Sch 7** (as amended (1.12.2020) by **Sentencing Act 2020 (c. 17)**, s. 416(1), **Sch. 24 paras. 266(5), 270** (with **Sch. 24 para. 447**, **Sch. 27**); **S.I. 2020/1236**, **reg. 2**

Commencement Information

I18 S. 397 in force at 1.12.2020 by **S.I. 2020/1236**, **reg. 2**

398 Ancillary and inchoate offences

- (1) Nothing in this Code is to be taken to affect the operation of the following (liability as an accessory)—

Status: Point in time view as at 01/12/2020.

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- (a) section 8 of the Accessories and Abettors Act 1861, or
 - (b) section 44 of the Magistrates' Courts Act 1980.
- (2) Accordingly, any reference in this Act to an offence includes a reference to that offence committed by aiding, abetting, counselling or procuring the commission of that offence.
- (3) In this Code, “inchoate offence” in relation to an offence, means—
- (a) an attempt to commit the offence,
 - (b) conspiracy to commit the offence,
 - (c) an offence under Part 2 of the Serious Crime Act 2007 related to the offence, or
 - (d) incitement to commit the offence,
- but this is subject to subsection (4).
- (4) Paragraph (d) of subsection (3) does not apply for the purposes of—
- (a) section 67 (assaults on emergency workers);
 - (b) Schedule 13 (special sentence for offenders of particular concern: offences).
- But paragraph (b) is not to be taken to affect the operation of paragraph 9 of Schedule 13 (abolished offences).
- (5) For the purposes of this Code, an offence committed by a person under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) is related to another offence if that other offence is the offence (or one of the offences) which the person intended or believed would be committed.

Commencement Information

119 S. 398 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

399 Mandatory sentences

For the purposes of this Code, where a court is dealing with an offender for an offence, a mandatory sentence requirement applies in relation to the offence if—

- (a) the offence is one for which the sentence is fixed by law,
- (b) the court is obliged by one of the following provisions to pass a sentence of detention for life, custody for life or imprisonment for life—
 - (i) section 258, 274 or 285 (life sentence for certain dangerous offenders);
 - (ii) section 273 or 283 (life sentence for second listed offence), or
- (c) a sentence is required by one of the following provisions and the court is not of the opinion mentioned in that provision—
 - (i) section 311(2) (minimum sentence for certain offences involving firearms that are prohibited weapons);
 - (ii) section 312(2) (minimum sentence for offence of threatening with weapon or bladed article);
 - (iii) section 313(2) (minimum sentence of 7 years for third class A drug trafficking offence);
 - (iv) section 314(2) (minimum sentence of 3 years for third domestic burglary);

Status: Point in time view as at 01/12/2020.

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- (v) section 315(2) (minimum sentence for repeat offence involving weapon or bladed article).

Commencement Information

I20 S. 399 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

400 Meaning of “associated offence”

For the purposes of this Code, an offence is associated with another if—

- (a) the offender—
- (i) is convicted of it in the proceedings in which the offender is convicted of the other offence, or
 - (ii) (although convicted of it in earlier proceedings) is sentenced for it at the same time as being sentenced for that offence, or
- (b) in the proceedings in which the offender is sentenced for the other offence, the offender—
- (i) admits having committed it, and
 - (ii) asks the court to take it into consideration in sentencing for that other offence.

Modifications etc. (not altering text)

C11 S. 400 applied (with modifications) by 2008 c. 4, s. 39(6)(a), Sch 7 (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), Sch. 24 paras. 266(5), **270** (with Sch. 24 para. 447, Sch. 27); [S.I. 2020/1236, reg. 2](#))

Commencement Information

I21 S. 400 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

401 Meaning of “sentence”

In this Code, except where otherwise provided, “sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offence, and “sentencing” is to be construed accordingly.

Commencement Information

I22 S. 401 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

402 Powers to re-sentence

- (1) Where under this Code a court has power to re-sentence an offender for an offence, the court may deal with the offender in any way in which it could deal with the offender—
- (a) if the offender had just been convicted by or before it of the offence, and
 - (b) in a case where the offender was aged under 18 when in fact convicted of the offence, as if the offender were the same age as when in fact convicted.

Status: Point in time view as at 01/12/2020.

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- (2) But where under this Code the Crown Court has power to re-sentence an offender for an offence and subsection (3) applies, the power of the Crown Court is power to deal with the offender in any way in which a magistrates' court could deal with the offender for the offence if—
- (a) the offender had just been convicted by the magistrates' court of the offence, and
 - (b) in a case where the offender was aged under 18 when in fact convicted of the offence, the offender were the same age as when in fact convicted.
- (3) This subsection applies where—
- (a) the Crown Court's power to re-sentence the offender for the offence is exercisable—
 - (i) where the Crown Court revokes another order previously made in respect of the offence, or
 - (ii) where an order for conditional discharge has previously been made in respect of the offence, by virtue of a further offence committed during the period of conditional discharge, and
 - (b) the previous order was made—
 - (i) by a magistrates' court, or
 - (ii) by the Crown Court in circumstances where its powers to deal with the offender for the offence were those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence.

Commencement Information

I23 S. 402 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

403 References to “local authority”

- (1) In this Code, any reference to a local authority in relation to—
- (a) accommodation provided by or on behalf of a local authority (including any reference to a local authority which is to receive a person aged under 18),
 - (b) placing a person aged under 18 with a local authority foster parent, or
 - (c) an order made under section 380 (power to order parent or guardian to pay fine, costs, compensation or surcharge) against a local authority,
- has the same meaning as in the Children Act 1989 (see section 105 of that Act).
- (2) In this Code, in relation to a youth offending team—
- (a) any reference to a local authority has the same meaning as in Part 3 of the Crime and Disorder Act 1998 (see section 42 of that Act), and
 - (b) any reference to the area of that local authority is to be read in accordance with section 42(2) of that Act.

Modifications etc. (not altering text)

C12 Ss. 403-405 applied (with modifications) by 2008 c. 4, s. 39(6)(a), Sch 7 (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), Sch. 24 paras. 266(5), **270** (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236, reg. 2](#))

Status: Point in time view as at 01/12/2020.

Changes to legislation: Sentencing Act 2020, FIFTH GROUP OF PARTS is up to date with all changes known to be in force on or before 28 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. (See end of Document for details)

Commencement Information

I24 S. 403 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

404 References to parent or guardian of offender where local authority has parental responsibility

- (1) This section applies where an offender for whom a local authority has parental responsibility is—
 - (a) in the care of the local authority, or
 - (b) provided with accommodation by the local authority in the exercise of any social services functions of the authority.
- (2) Any reference in this Code to the offender's parent or guardian is to be read as a reference to that authority.
- (3) This does not apply in paragraphs 27 and 39 of Schedule 6 (fostering and education requirements of youth rehabilitation orders) and is subject to express provision to the contrary.
- (4) In this section—
 - “local authority” has the same meaning as it has in the Children Act 1989;
 - “parental responsibility” has the same meaning as it has in that Act (see section 3 of that Act);
 - “social services functions”—
 - (a) in relation to a local authority in England, has the same meaning as in the Local Authority Social Services Act 1970 (see section 1A of that Act);
 - (b) in relation to a local authority in Wales, has the same meaning as in the Social Services and Well-being (Wales) Act 2014 (anaw 4) (see section 143 of that Act).

Modifications etc. (not altering text)

C12 Ss. 403-405 applied (with modifications) by 2008 c. 4, s. 39(6)(a), Sch 7 (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\), s. 416\(1\), Sch. 24 paras. 266\(5\), 270](#) (with [Sch. 24 para. 447, Sch. 27](#)); [S.I. 2020/1236, reg. 2](#))

Commencement Information

I25 S. 404 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

405 Age of the offender

- (1) This section applies for the purposes of any provision of this Code which requires a person's age to be determined by the court or the Secretary of State.
- (2) The person is to be deemed to be whatever age the person appears to the court, or, as the case may be, the Secretary of State, to be.
- (3) For this purpose, the court or Secretary of State must consider any available evidence.

Status: Point in time view as at 01/12/2020.

Changes to legislation: Sentencing Act 2020, FIFTH GROUP OF PARTS is up to date with all changes known to be in force on or before 28 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. (See end of Document for details)

Modifications etc. (not altering text)

- C12** Ss. 403-405 applied (with modifications) by 2008 c. 4, s. 39(6)(a), Sch 7 (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), Sch. 24 paras. 266(5), **270** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2)
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Commencement Information

- I26** S. 405 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

406 Offender reaching 18 during proceedings

Nothing in this Code affects section 29 of the Children and Young Persons Act 1963 (power of a court, where an offender reaches 18 during proceedings for an offence, to deal with the offender as if still under 18).

Commencement Information

- I27** S. 406 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

Status:

Point in time view as at 01/12/2020.

Changes to legislation:

Sentencing Act 2020, FIFTH GROUP OF PARTS is up to date with all changes known to be in force on or before 28 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.