



Sentencing Act 2020

2020 CHAPTER 17

THIRD GROUP OF PARTS Disposals

PART 10

CUSTODIAL SENTENCES

CHAPTER 1

CUSTODY: GENERAL PROVISIONS

Introductory

221 Overview of Part

- (1) This Chapter applies generally for the purposes of determining whether a custodial sentence should be passed and, if so, what its term should be.

In particular—

- (a) section 222 defines “custodial sentence”;
 - (b) sections 227 and 228 make provision about when a custodial sentence is not available or subject to restrictions;
 - (c) section 229 permits a magistrates' court to impose imprisonment for less than the term specified;
 - (d) sections 230 to 232 make provision about how a court should decide whether to impose a custodial sentence and the term of such a sentence.
- (2) Chapter 2 is about the kinds of custodial sentence that are available for an offender aged under 18—
- (a) detention and training orders (sections 233 to 248);
 - (b) sentences of detention under section 250, including life sentences (and see section 258);

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- [^{F1}(ba) special sentences of detention for terrorist offenders of particular concern (section 252A);]
 - (c) extended sentences of detention (sections 254 to 257);
 - (d) detention during Her Majesty's pleasure for murder etc where the offender is under 18 at the time of the offence (section 259).
- (3) Chapter 3 is about the kinds of custodial sentence that are available for an offender aged 18, 19 or 20—
- (a) sentences of detention in a young offender institution (sections 262 to 271), including—
 - (i) suspended sentences,
 - (ii) special sentences for offenders of particular concern, ^{F2}...
 - (iii) extended sentences; [^{F3}and
 - (iv) serious terrorism sentences,]
 - (b) sentences of custody for life (sections 272 to 276).
- (4) Chapter 4 is about imprisonment in the case of an adult aged at least 21 at the time of conviction, including—
- (a) suspended sentences,
 - (b) special sentences for offenders of particular concern,
 - (c) extended sentences,
 - [^{F4}(ca) serious terrorism sentences,] and
 - (d) imprisonment for life.
- (5) Chapter 5 is about suspended sentences.
- (6) Chapter 6 is about dangerous offenders.
- (7) Chapter 7 is about mandatory minimum sentences.
- (8) Chapter 8 is about life sentences and in particular about when minimum term orders and whole life orders must be passed.
- (9) Chapter 9 contains certain provisions about administration of custodial sentences and includes certain powers and duties of a sentencing court that are relevant to an offender's release from custody.

Textual Amendments

- F1** S. 221(2)(ba) inserted (30.4.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(1)(i), **Sch. 13 para. 26(7)**
- F2** Word in s. 221(3)(a)(ii) omitted (29.6.2021) by virtue of Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 11(7)(a)(i)**
- F3** S. 221(3)(a)(iv) and word inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 11(7)(a)(ii)**
- F4** S. 221(4)(ca) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 11(7)(b)**

Commencement Information

- I1** S. 221 in force at 1.12.2020 by S.I. 2020/1236, reg. 2

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222 Meaning of “custodial sentence”

(1) In this Code “custodial sentence” means—

- (a) a detention and training order under section 233,
- (b) a sentence of detention under Chapter 2 of this Part,
- (c) a sentence of detention in a young offender institution,
- (d) a sentence of custody for life under section 272 or 275, or
- (e) a sentence of imprisonment.

This is subject to subsection (3).

(2) In subsection (1) “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.

(3) Subsection (1)—

- (a) does not apply to “custodial sentence” in the following expressions—
 - “appropriate custodial sentence”;
 - “current custodial sentence”;
 - “pre-Code custodial sentence”;
 - “relevant custodial sentence”, and
- (b) is subject to express provision to the contrary.

(4) In this Code, “pre-Code custodial sentence” means—

- (a) a detention and training order imposed under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000,
- (b) a sentence of detention imposed under any of the following (sentences of detention for children)—
 - (i) section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (ii) section 53(1) or (3) of the Children and Young Persons Act 1933, or
 - (iii) section 226B or 228 of the Criminal Justice Act 2003,
- (c) a sentence of detention for public protection imposed under section 226 of the Criminal Justice Act 2003, or
- (d) a sentence of custody for life under—
 - (i) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (ii) section 8 of the Criminal Justice Act 1982.

Commencement Information

I2 S. 222 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

General limits on powers to impose custodial sentences

223 Two year limit on imprisonment for statutory offence if no maximum specified

Where—

- (a) a person is convicted on indictment of an offence under any enactment which is punishable with imprisonment, and

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- (b) no enactment—
 - (i) limits the sentence to a specified term, or
 - (ii) expresses it to extend to imprisonment for life,
 the person is liable to imprisonment for not more than 2 years.

Commencement Information

I3 S. 223 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

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

- (1) A magistrates' court does not have power to impose—
 - (a) imprisonment, or
 - (b) detention in a young offender institution,
 for more than [^{F5}6 months in the case of any one summary offence or 12 months in respect of any one offence triable either way].
- (2) Unless expressly excluded, subsection (1) applies 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 [^{F6}6 months or (as the case may be) 12 months].
- (3) Nothing in subsection (1) affects section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment).
- (4) Subsection (1) does not limit any power of a magistrates' court to impose a term of imprisonment for—
 - (a) non-payment of a fine, or
 - (b) want of sufficient goods to satisfy a fine.
- (5) In subsection (4)—
 - (a) “fine”—
 - (i) includes a pecuniary penalty, but
 - (ii) does not include a pecuniary forfeiture or pecuniary compensation;
 - (b) the reference to want of sufficient goods to satisfy a fine is a reference to circumstances where—
 - (i) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the fine from a person, but
 - (ii) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule).
- (6) In this section “impose imprisonment” means—
 - (a) pass a sentence of imprisonment, or
 - (b) fix a term of imprisonment for—
 - (i) failure to pay any sum of money,
 - (ii) want of sufficient distress to satisfy any sum of money (see section 397(3)), or

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(iii) failure to do or abstain from doing anything required to be done or left undone.

(7) Section 132 of the Magistrates' Courts Act 1980 (5 day minimum term) provides for the minimum term of imprisonment that a magistrates' court may impose.

Textual Amendments

F5 Words in s. 224(1) substituted (2.5.2022 at 12.01 a.m.) by [The Criminal Justice Act 2003 \(Commencement No. 33\)](#) and [Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(3), **6(1)(a)**

F6 Words in s. 224(2) substituted (2.5.2022 at 12.01 a.m.) by [The Criminal Justice Act 2003 \(Commencement No. 33\)](#) and [Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(3), **6(1)(b)**

Commencement Information

I4 S. 224 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

225 Restriction on consecutive sentences for released prisoners

- (1) A court sentencing a person to a relevant custodial term may not order or direct that the term is to commence on the expiry of any current custodial sentence from which the offender has been released under—
- Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall), or
 - Part 2 of the Criminal Justice Act 1991 (early release of prisoners).
- (2) In this section “relevant custodial term” means a term of—
- detention under Chapter 2 of this Part,
 - detention in a young offender institution (under this Code), or
 - imprisonment.
- (3) In this section, “current custodial sentence” means a sentence that has not yet expired which is—
- a sentence of imprisonment,
 - a sentence of detention in a young offender institution, or
 - a sentence of detention imposed under any of the following—
 - section 250,
 - ^[F7](ia) section 252A,
 - section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006),
 - section 226B or 228 of the Criminal Justice Act 2003 (including one passed as a result of section 221A or 222 of the Armed Forces Act 2006),
 - section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - section 53(3) of the Children and Young Persons Act 1933,
 - section 209 of the Armed Forces Act 2006, or
 - section 71A(4) of the Army Act 1955 or the Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957.

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Textual Amendments

- F7** S. 225(3)(c)(ia) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 26\(8\)](#)

Commencement Information

- I5** S. 225 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

226 Custodial sentence: restrictions in certain cases where offender not legally represented

- (1) This section applies where—
- (a) a magistrates' court is dealing with an offender on summary conviction, or
 - (b) the Crown Court is dealing with an offender—
 - (i) on committal for sentence, or
 - (ii) on conviction on indictment.

Offenders aged under 21

- (2) The court may not—
- (a) make a detention and training order,
 - (b) pass a sentence of detention under section 250 (or 254) [^{F8}, under section 252A] or under section 259 (offenders under 18),
 - (c) pass a sentence of detention in a young offender institution, or
 - (d) pass a sentence of custody for life (see sections 272 and 275),
- unless the offender is legally represented in that court, or has failed, or is ineligible on financial grounds, to benefit from relevant representation (see subsections (7) and (8)).

Offenders aged 21 or over

- (3) The court may not pass a sentence of imprisonment unless—
- (a) the offender—
 - (i) is legally represented in that court, or
 - (ii) has failed, or is ineligible on financial grounds, to benefit from relevant representation (see subsections (7) and (8)), or
 - (b) the offender has previously been sentenced to imprisonment by a court in any part of the United Kingdom.
- (4) For the purposes of subsection (3) a previous sentence of imprisonment which has been suspended and which has not taken effect under—
- (a) paragraph 8 of Schedule 16,
 - (b) paragraph 8 of Schedule 12 to the Criminal Justice Act 2003,
 - (c) section 119 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (d) section 19 of the Treatment of Offenders Act (Northern Ireland) 1968,
- is to be disregarded.
- (5) For those purposes, “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence (and “sentenced to imprisonment” is to be read accordingly).

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When a person is legally represented

- (6) For the purposes of this section an offender is legally represented in a court if the offender has the assistance of counsel or a solicitor to represent him or her in the proceedings in that court at some time after being found guilty and before being sentenced.

Relevant representation: failure or ineligibility to benefit

- (7) For the purposes of subsections (2) and (3), “relevant representation”, in relation to proceedings in a court, means representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid) for the purposes of the proceedings.
- (8) For those purposes, an offender has failed, or is ineligible on financial grounds, to benefit from relevant representation if—
- (a) the offender has refused or failed to apply for relevant representation, having—
 - (i) been informed of the right to apply for it, and
 - (ii) had the opportunity to do so,
 - (b) the offender's application for relevant representation was refused on financial grounds, or
 - (c) relevant representation was made available to the offender but withdrawn—
 - (i) because of the offender's conduct, or
 - (ii) on financial grounds.

Relevant representation is refused or withdrawn on financial grounds if it appears that the offender's financial resources are such that the offender is not eligible for such representation.

Textual Amendments

- F8** Words in s. 226(2)(b) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 26\(9\)](#)

Commencement Information

- I6** S. 226 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

227 Restriction on imposing imprisonment on persons under 21

Sentence of imprisonment

- (1) No court may pass a sentence of imprisonment on an offender for an offence if the offender is aged under 21 when convicted of the offence.

Committal to prison

- (2) No court may commit a person who is aged under 21 to prison for any reason, except as provided by subsection (3).
- (3) Subsection (2) does not prevent the committal to prison of a person aged under 21 who is—

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- (a) remanded in custody,
- (b) committed in custody for sentence, or
- (c) sent in custody for trial under section 51 or 51A of the Crime and Disorder Act 1998.

Commencement Information

17 S. 227 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

228 Other restrictions on custodial sentence

Custodial sentence not indicated in indication of sentence

- (1) For restrictions on a custodial sentence where the case is dealt with under section 20(7) of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable and indication of sentence is given), see section 20A(1) of that Act (restriction where indication of sentence does not indicate custodial sentence).

Hospital order or guardianship order

- (2) For restrictions on a custodial sentence where a hospital order or guardianship order is made, see section 37(8) of the Mental Health Act 1983.

Commencement Information

18 S. 228 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

Power of magistrates' court to imprison for less than specified term

229 Power of magistrates' court to imprison for less than specified term

- (1) Where a magistrates' court has power to sentence an offender to imprisonment for a period specified by an enactment (whether passed or made before or after this Act), the court may sentence the offender to imprisonment for less than that period.
- (2) This is subject to—
 - (a) section 132 of the Magistrates' Courts Act 1980 (5 day minimum term);
 - (b) express provision to the contrary in an Act passed after 31 December 1879.
- (3) In this section “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

19 S. 229 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

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Exercise of powers to impose discretionary custodial sentences

230 Threshold for imposing discretionary custodial sentence

- (1) Subsection (2) applies where a person is convicted of an offence which is punishable with a custodial sentence.

This is subject to subsection (3).

- (2) The court must not pass a custodial sentence unless it is of the opinion that—
- (a) the offence, or
 - (b) the combination of the offence and one or more offences associated with it,
- was so serious that neither a fine alone nor a community sentence can be justified for the offence.

Threshold generally not applicable where mandatory sentence requirement applies

- (3) This section does not apply if the offence is one in relation to which a mandatory sentence requirement applies (see section 399), except as provided in sections 273(4) and 283(4) (pre-condition for life sentence for second listed offence).

Exceptions to subsection (2) relating to community sentences

- (4) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if the offender fails to express willingness to comply with a requirement—
- (a) which the court proposes to include in a community order, but
 - (b) which may be included only if the offender expresses willingness to comply with it.
- (5) Subsection (2) is also subject to—
- (a) paragraph 11(3) of Schedule 7 (power to impose custodial sentence in case involving wilful and persistent breach of youth rehabilitation order with intensive supervision and surveillance);
 - (b) paragraph 22(5)(b) of Schedule 9 (power to deal with offender who does not express willingness to comply with amended drug rehabilitation requirement);
 - (c) paragraph 10(9) of Schedule 10 (power of magistrates' court to impose custodial sentence following wilful and persistent breach of community order);
 - (d) paragraph 11(6) of that Schedule (corresponding power of Crown Court);
 - (e) paragraph 18(9)(b) of that Schedule (power to deal with offender who does not express willingness to comply with amended treatment requirement).

Procedure for forming opinion

- (6) In forming its opinion for the purposes of subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated or offence or offences, including any aggravating or mitigating factors.
- (7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (8) See also—

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- (a) section 77(2) (effect of mitigation: community sentence not precluded even if threshold for custodial sentence met);
- (b) section 232 (additional requirements for offender suffering from mental disorder).

Modifications etc. (not altering text)

- C1** S. 230(2) excluded by 2000 c. 6, Sch. 5 para. 2(5)(b) (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 170\(4\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, reg. 2)
- C2** S. 230(2) excluded by 2000 c. 6, Sch. 5 para. 3(3)(b) (as amended (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 170\(4\)](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, reg. 2)

Commencement Information

- I10** S. 230 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

231 Length of discretionary custodial sentences: general provision

- (1) Subsection (2) applies where a court passes a custodial sentence in respect of an offence.

This is subject to subsections (3) to (6).

- (2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of—
- (a) the offence, or
 - (b) the combination of the offence and one or more offences associated with it.

Application of subsection (2) to ^{F9}certain sentences]

- (3) Subsection (2) does not apply where the sentence is—
- (a) fixed by law, or
 - (b) a required life sentence,
- except as provided in sections 273(4) and 283(4) (pre-condition for life sentence for second listed offence).
- (4) In subsection (3), “required life sentence” means a sentence of—
- (a) detention for life under section 250,
 - (b) custody for life under section 272, or
 - (c) imprisonment for life,
- required under a provision mentioned in section 399(b) (mandatory sentences).
- (5) Subsection (2) is subject to the provisions mentioned in section 399(c) (minimum sentences).
- (6) Subsection (2) does not apply where the custodial sentence is an extended sentence, except as provided in sections 256(2), 268(2) and 281(2) (determination of appropriate custodial term).

^{F10}(6A) Subsection (2) does not apply where the custodial sentence is a serious terrorism sentence, except as provided in sections 268C(2)(b) and 282C(2)(b) (determination of appropriate custodial period where longer than the 14-year minimum).]

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Procedure for forming opinion

- (7) In forming its opinion for the purposes of subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.
- (8) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion, except where the sentence is an extended sentence.
- (9) See section 232 for additional requirements in the case of an offender suffering from a mental disorder.

Textual Amendments

- F9** Words in s. 231(3) heading substituted (29.6.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\), s. 50\(2\)\(v\), Sch. 13 para. 11\(8\)\(a\)](#)
- F10** S. 231(6A) inserted (29.6.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\), s. 50\(2\)\(v\), Sch. 13 para. 11\(8\)\(b\)](#)

Commencement Information

- I11** S. 231 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

232 Additional requirements in case of offender suffering from mental disorder

- (1) This section applies where—
 - (a) the offender is or appears to be suffering from a mental disorder, and
 - (b) the court passes a custodial sentence other than one fixed by law (“the sentence”).
- (2) Before passing the sentence, the court must obtain and consider a medical report unless, in the circumstances of the case, it considers that it is unnecessary to obtain a medical report.
- (3) Before passing the sentence, the court must consider—
 - (a) any information before it which relates to the offender's 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) If the court did not obtain a medical report where required to do so by this section, the sentence is not invalidated by the fact that it did not do so.
- (5) Any court, on an appeal against the sentence, must—
 - (a) obtain a medical report if none was obtained by the court below, and
 - (b) consider any such report obtained by it or by that court.
- (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 Mental Health Act 1983—

 - (a) by the Secretary of State, or

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(b) by another person by virtue of section 12ZA or 12ZB of that Act,
as having special experience in the diagnosis or treatment of mental disorder;

“mental disorder” has the same meaning as in the Mental Health Act 1983.

(7) Nothing in this section is to be taken to limit—

- (a) the pre-sentence report requirements (see section 30), or
- (b) any requirement for a court to take into account all information that is available to it about the circumstances of any offence, including any aggravating or mitigating factors.

Commencement Information

I12 S. 232 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

Status:

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Changes to legislation:

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