

EXPLANATORY MEMORANDUM TO
THE FIREARMS (SENTENCING) (TRANSITORY PROVISIONS) ORDER 2007

2007 No. 1324

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Criminal Justice Act 2003 ('the CJA 2003') amended the Firearms Act 1968 to create a mandatory minimum sentence of five years' imprisonment for those aged 18 or over convicted of possessing a prohibited firearm. In anticipation of the repeal of the sentence for 18-20 year olds of detention in a young offender institution, the legislation did not make separate provision for minimum sentences of five years' detention for people in this age group. However, the sentence of detention in a young offender institution has not yet been repealed, and the Court of Appeal has subsequently determined that the mandatory minimum sentence of five years' imprisonment cannot lawfully be applied to 18-20 year olds, for whom imprisonment is not available and detention in a young offender institution remains the appropriate custodial sentence.

2.2 This order modifies the Firearms Act 1968 pending the repeal of detention in a young offender institution to give effect to the original intention of the CJA 2003: that all those aged 18 or over and convicted of possessing a prohibited firearm should be subject to a mandatory minimum custodial sentence of five years.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 51A of the Firearms Act 1968 was inserted by section 287 of the CJA 2003, and was commenced on 22 January 2004 by the Criminal Justice Act 2003 (Commencement No.2 and Savings Provisions) Order 2004 (SI 2004/81).

4.2 Section 51A provides for minimum sentences for the firearms offences specified in subsection (1). The combined effect of subsections (4) and (5) is that the minimum sentence for the relevant offences applicable to offenders in England and Wales aged 18 or over at the date of conviction is a sentence of imprisonment of at least five years.

4.3 In line with the rest of the CJA 2003, section 287 was drafted on the assumption that all offenders aged 18 or over at the time of conviction would be sentenced to imprisonment. Such drafting takes into account section 61 of the Criminal Justice and Court Services Act 2000, which repeals the current sentence of detention in a young offender institution for 18-20 year olds. However, section 61 has not yet been commenced, nor has the repeal of section 89 of the Powers of Criminal Courts

(Sentencing) Act 2000, which prohibits the imposition of a sentence of imprisonment for 18-20 year olds.

4.4 Other sentencing provisions in the CJA 2003 referring to a sentence of imprisonment were modified by the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 (SI 2005/643) before being brought into force, relying on the power in the CJA 2003 to make transitory modifications pending the abolition of the sentence of detention in a young offender institution for 18-20 year olds (see section 333(1)-(2) and paragraph 1 of Schedule 38). However, that power was not exercised prior to the commencement of section 287 of the CJA 2003.

4.5 The Court of Appeal considered the applicability of the five-year minimum sentence in section 51A to a sentence of detention in a young offender institution imposed on an 18-20 year old offender in the case of R v Campbell [2006] EWCA Crim 726. The Court of Appeal found that, given the statutory prohibition on imposing a sentence of imprisonment on 18-20 year olds in section 89 of the Powers of Criminal Courts (Sentencing) Act 2000, the failure by the Secretary of State to exercise the power in section 333 of the CJA 2003 to make transitory provisions and the case of R v C [2005] EWCA Crim 3533 in which the Court of Appeal held that it was not possible to interpret the CJA 2003 “*to provide a transitional regime which Parliament envisaged should be provided by the Secretary of State*”, the words “*or detention in a young offender institution*” could not be read into the five-year mandatory sentence of imprisonment in section 51A for the purpose of applying that sentence to 18-20 year olds in England and Wales. No application for permission to appeal against the Campbell judgment was made.

4.6 This order therefore uses the power in section 333(1) of the CJA 2003 to modify section 51A of the Firearms Act 1968, pending the repeal of the sentence of detention in a young offender institution for offenders aged 18-20 at the time of conviction. The modification applies the five-year minimum term for a qualifying offence to offenders aged 21 or over sentenced to imprisonment, and to 18-20 year olds sentenced to detention in a young offender institution.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The CJA 2003 was intended to create mandatory minimum custodial sentences of five years for anyone convicted of possessing a prohibited firearm aged 18 or over at the time of conviction.

7.2 The CJA 2003 was drafted on the assumption that the sentence of detention in a young offender institution would be repealed, as would the statutory prohibition on imposing a sentence of imprisonment on 18-20 year olds, and that consequently offenders

aged 18 or over on conviction could be sentenced to a term of imprisonment. However, these statutes have not been repealed, and therefore detention in a young offender institution remains the appropriate custodial sentence for those aged 18-20.

7.3 The Court of Appeal has ruled that the mandatory minimum sentence of imprisonment provided for by the CJA 2003 does not translate to a sentence of detention for those aged 18-20. Therefore, the five-year minimum sentence cannot be applied to offenders in this age group, and the original policy intention of the CJA 2003 has not been fulfilled.

7.4 This Order makes the necessary modification to the Firearms Act 1958 to allow a mandatory minimum sentence of five years' detention in a young offender institution to be imposed on those aged 18-20 convicted of possessing a prohibited firearm. This is necessary to give effect to the original policy intention of the CJA 2003: that the five-year mandatory minimum sentence should be applicable to all offenders aged 18 or over.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Simon Holmes at the Home Office Tel: 020 7035 3001 or e-mail: simon.holmes@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.