



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 1

SENTENCING

Youth sentences

79 Referral orders for young offenders

- (1) In section 16(1)(c) of the Powers of Criminal Courts (Sentencing) Act 2000 (duty or power to refer a young offender to a youth offender panel not to apply if court proposes to discharge the offender absolutely) for “absolutely” substitute “, whether absolutely or conditionally,”.
- (2) In section 17 of that Act (the referral conditions)—
 - (a) in subsection (2) at the end of paragraph (a) insert “and”,
 - (b) in that subsection omit paragraph (c) and the word “and” immediately before it, and
 - (c) omit subsections (2A) to (2D).
- (3) In consequence of the amendment made by subsection (2)(c) omit paragraph 12(3), (4) and (5) of Schedule 17 to the Coroners and Justice Act 2009.
- (4) The amendments made by this section do not apply in relation to any sentence passed in relation to an offence committed before the coming into force of this section.

80 Breach of detention and training order

- (1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- (2) In section 104 (breach of detention and training order), in subsection (3) (penalties for breach), for paragraph (a) and the “or” at the end of that paragraph substitute—
- “(a) order the offender to be detained, in such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding the maximum period found under subsection (3A) below, as the court may specify;
 - (aa) order the offender to be subject to such period of supervision, not exceeding the maximum period found under subsection (3A) below, as the court may specify; or”.
- (3) After subsection (3) of that section insert—
- “(3A) The maximum period referred to in subsection (3)(a) and (aa) above is the shorter of—
 - (a) three months, and
 - (b) the period beginning with the date of the offender’s failure and ending with the last day of the term of the detention and training order.
 - (3B) For the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the first of those days.
 - (3C) A court may order a period of detention or supervision, or impose a fine, under subsection (3) above before or after the end of the term of the detention and training order.
 - (3D) A period of detention or supervision ordered under subsection (3) above—
 - (a) begins on the date the order is made, and
 - (b) may overlap to any extent with the period of supervision under the detention and training order.”
- (4) After subsection (4) of that section insert—
- “(4A) Where an order under subsection (3)(a) above is made in the case of a person who has attained the age of 18, the order has effect to require the person to be detained in prison for the period specified by the court.”
- (5) After subsection (5) of that section insert—
- “(5A) Sections 104A and 104B below make further provision about the operation of orders under subsection (3) above.”
- (6) In subsection (6) of that section, after “(a)” insert “, (aa)”.
- (7) After that section insert—

“104A Application of sections 103 to 105 in relation to orders under section 104(3)(aa)

- (1) Subsections (3) to (7) of section 103 above apply in relation to a period of supervision to which an offender is subject by virtue of an order under

section 104(3)(aa) above as they apply to the period of supervision under a detention and training order.

- (2) In the application of section 103 above by virtue of subsection (1) above, subsection (7)(a) of that section is to be read as requiring a notice to be given to the offender as soon as is reasonably practicable after the order under section 104(3)(aa) above is made.
- (3) Section 104 above and section 105 below apply where an offender is subject to a period of supervision under section 104(3)(aa) above as they apply where a detention and training order is in force in respect of an offender.
- (4) In the application of section 104 above by virtue of subsection (3) above—
 - (a) the references in that section to section 103(6)(b) above are to be read as references to that provision as applied by subsection (1) above,
 - (b) the references in subsections (3A)(b) and (3C) of that section to the term of the detention and training order are to be read as references to the term of the period of supervision under section 104(3)(aa) above, and
 - (c) the reference in subsection (3D)(b) of that section to the period of supervision under the detention and training order is to be read as including a reference to the period of supervision under section 104(3)(aa) above.
- (5) In the application of section 105 below by virtue of subsection (3) above—
 - (a) paragraph (a) of subsection (1) of that section is to be read as if the words “after his release and” were omitted, and
 - (b) the reference in that paragraph to the date on which the term of the detention and training order ends is to be read as a reference to the date on which the period of supervision under section 104(3)(aa) ends.

104B Interaction of orders under section 104(3)(a) with other sentences

- (1) Where a court makes a detention and training order in the case of an offender who is subject to a period of detention under section 104(3)(a) above, the detention and training order takes effect—
 - (a) at the beginning of the day on which it is made, or
 - (b) if the court so orders, at the time when the period of detention under section 104(3)(a) above ends.
- (2) Where a court orders an offender who is subject to a detention and training order to be subject to a period of detention under section 104(3)(a) above for a failure to comply with requirements under a different detention and training order, the period of detention takes effect as follows—
 - (a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which the order for the period of detention is made, and
 - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102 above.
- (3) Subject to subsection (4) below, where at any time an offender is subject concurrently—

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- (a) to a detention and training order, and
 - (b) to a period of detention under section 104(3)(a) above,

the offender is to be treated for the purposes of sections 102 to 105 of this Act as if the offender were subject only to the detention and training order.
- (4) Nothing in subsection (3) above requires the offender to be released in respect of either the order or the period of detention unless and until the offender is required to be released in respect of each of them.
- (5) The Secretary of State may by regulations make provision about the interaction between a period of detention under section 104(3)(a) above and a custodial sentence in a case where—
 - (a) an offender who is subject to such a period of detention becomes subject to a custodial sentence, or
 - (b) an offender who is subject to a custodial sentence becomes subject to such a period of detention.
- (6) The provision that may be made by regulations under subsection (5) above includes—
 - (a) provision as to the time at which the period of detention under section 104(3)(a) above or the custodial sentence is to take effect;
 - (b) provision for the offender to be treated, for the purposes of the enactments specified in the regulations, as subject only to the period of detention or the custodial sentence;
 - (c) provision about the effect of enactments relating to the person's release from detention or imprisonment in a case where that release is not to take effect immediately by virtue of provision in the regulations.
- (7) The power of the Secretary of State to make regulations under subsection (5) above—
 - (a) is exercisable by statutory instrument;
 - (b) includes power to make supplementary, incidental, transitional, transitory or saving provision.
- (8) A statutory instrument containing regulations under subsection (5) above is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (8) Before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentence of detention in a young offender institution) section 104(4A) of the Powers of Criminal Courts (Sentencing) Act 2000 has effect as if it referred to a person who has attained the age of 21.
- (9) In section 213 of the Armed Forces Act 2006 (application of provisions relating to civilian detention and training orders to orders under section 211 of that Act)—
 - (a) in subsection (2), after “(13)” insert “, 104B(1)”, and
 - (b) after subsection (3) insert—
 - “(4) Subsection (5) applies where an order under section 104(3) (further period of detention or supervision) of the Sentencing Act is made against an offender for breach of supervision requirements—

- (a) during a period of supervision under an order under section 211 of this Act,
 - (b) during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or
 - (c) during one of a series of further periods of supervision—
 - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
 - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).
- (5) In the application of sections 104A and 104B of the Sentencing Act in relation to the offender, references to section 105 of that Act include section 214 of this Act.
- (6) In subsection (4)—
- “further period of supervision” means a period of supervision imposed under section 104(3)(aa) of the Sentencing Act;
- “supervision requirements” means requirements under section 103(6)(b) of that Act.
- (7) In section 104B of the Sentencing Act, references to a custodial sentence within the meaning of that Act include a custodial sentence within the meaning of this Act.”
- (10) The amendments made by this section apply in relation to a failure to comply with requirements under section 103(6)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 that occurs after this section comes into force.
- (11) Where a failure is found to have occurred over two or more days, it is to be taken for the purposes of subsection (10) to have occurred on the first of those days.

81 Youth rehabilitation order: curfew requirement

- (1) Paragraph 14 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order: curfew requirement) is amended as follows.
- (2) In sub-paragraph (2) (order may not specify curfew period of more than 12 hours) for “12” substitute “16”.
- (3) In sub-paragraph (3) (order may not specify curfew periods outside period of 6 months from making of order) for “6” substitute “12”.

82 Youth rehabilitation order: mental health treatment requirement

- (1) Paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order: mental health treatment requirement) is amended as follows.
- (2) In sub-paragraph (3)(a) (requirement for court to be satisfied as to offender’s mental condition on evidence of registered medical practitioner)—
 - (a) omit the words from “, on the evidence” to “1983 (c. 20),”, and
 - (b) in sub-paragraph (ii), for “that Act” substitute “the Mental Health Act 1983”.

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- (3) Omit sub-paragraph (5) (application of section 54(2) and (3) of the Mental Health Act 1983 to proof of offender’s mental condition).

83 Youth rehabilitation order: duration

- (1) In Schedule 1 to the Criminal Justice and Immigration Act 2008 (further provisions about youth rehabilitation orders), in paragraph 32 (requirement for order to specify date by which requirements must have been complied with)—

- (a) in sub-paragraph (1), after the first “date” insert “(“the end date””,
 (b) for sub-paragraph (2) substitute—

“(2) If a youth rehabilitation order imposes two or more different requirements falling within Part 2 of this Schedule, the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.”, and

- (c) after sub-paragraph (3) insert—

“(4) Subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order ceases to be in force on the end date.”

- (2) In Schedule 2 to that Act (breach, revocation or amendment of youth rehabilitation order), in paragraph 6 (powers of magistrates’ court in case of breach of order)—

- (a) in sub-paragraph (6), at the beginning insert “Subject to sub-paragraph (6A)”,
 and
 (b) after that sub-paragraph insert—

“(6A) When imposing a requirement under sub-paragraph (2)(b), the court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.

(6B) A date substituted under sub-paragraph (6A)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
 (b) subject to that, may fall more than three years after the date on which the order took effect.

(6C) The power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 8(6A) has previously been exercised in relation to that order.

(6D) A date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.”

- (3) In that Schedule, in paragraph 8 (powers of Crown Court in case of breach of order)—

- (a) in sub-paragraph (6), at the beginning insert “Subject to sub-paragraph (6A)”,
 and
 (b) after that sub-paragraph insert—

- “(6A) When imposing a requirement under sub-paragraph (2)(b), the Crown Court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.
- (6B) A date substituted under sub-paragraph (6A)—
- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
 - (b) subject to that, may fall more than three years after the date on which the order took effect.
- (6C) The power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 6(6A) has previously been exercised in relation to that order.
- (6D) A date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.”
- (4) In that Schedule, in paragraph 16(1) (exercise of powers to amend order: further provision), at the beginning insert “Subject to paragraph 16A,”.
- (5) After that paragraph insert—

“Extension of order

- 16A (1) The appropriate court may, on the application of the offender or the responsible officer, amend a youth rehabilitation order by substituting a later date for that specified under paragraph 32(1) of Schedule 1.
- (2) A date substituted under sub-paragraph (1)—
- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
 - (b) subject to that, may fall more than three years after the date on which the order took effect.
- (3) The power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.
- (4) A date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.
- (5) In this paragraph “the appropriate court” means—
- (a) if the order was made by a youth court or other magistrates’ court, or was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, the court determined under sub-paragraph (6), and
 - (b) if the order was made by the Crown Court and does not contain a direction under paragraph 36 of Schedule 1, the Crown Court.
- (6) The court referred to in sub-paragraph (5)(a) is—
- (a) if the offender is aged under 18 when the application is made, a youth court acting in the local justice area specified in the youth rehabilitation order, and

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- (b) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area."

84 Youth rehabilitation order: fine for breach

- (1) Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach of requirement of youth rehabilitation order) is amended as follows.
- (2) In paragraph 6 (powers of magistrates' court in case of breach), in sub-paragraph (2) (a), for sub-paragraphs (i) and (ii) substitute "£2,500".
- (3) In paragraph 8 (powers of Crown Court in case of breach), in sub-paragraph (2)(a), for sub-paragraphs (i) and (ii) substitute "£2,500".
- (4) In paragraph 10 (power to amend amounts of fine)—
 - (a) in sub-paragraph (1) omit "(i) or (ii)" in both places, and
 - (b) in sub-paragraph (3)—
 - (i) in paragraph (a) omit "(i) or (ii)" in both places, and
 - (ii) in paragraph (b), for "this Act was passed" substitute "section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force".