



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 1

SENTENCING

Youth sentences

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

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- (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—
- (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—

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- (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.