



Sentencing Act 2020

2020 CHAPTER 17

FIRST GROUP OF PARTS Introductory provisions and overview

PART 1

INTRODUCTORY PROVISIONS AND OVERVIEW

1 Overview

(1) Parts 2 to 13 of this Act together make up a code called the “Sentencing Code”.

(2) They deal with the following matters.

Before sentencing

Part 2 is about powers exercisable by a court before passing sentence.

Sentencing

Part 3 is about court procedure when sentencing.

Part 4 is about the discretion a court has when sentencing.

Sentences

Part 5 is about absolute and conditional discharges.

Part 6 is about orders relating to conduct.

Part 7 is about fines and other orders relating to property.

Part 8 is about disqualification.

Part 9 is about community sentences.

Part 10 is about custodial sentences.

Part 11 is about behaviour orders.

General

Part 12 contains miscellaneous and general provision about sentencing.

Part 13 deals with interpretation.

(3) Part 14 of this Act contains supplementary provision.

(4) For other provision that may be relevant in relation to sentencing, see—

(a) Criminal Procedure Rules, and

- (b) sentencing guidelines.

2 Application of Code

- (1) The Sentencing Code does not apply where a person is convicted of an offence before the commencement date.
- (2) Accordingly, any provision that corresponds to a provision of the Sentencing Code continues on and after that date to have effect as regards dealing with a person—
 - (a) for an offence of which the person was convicted before that date, and
 - (b) in relation to a sentence passed for an offence of which the person was convicted before that date.
- (3) Where on or after that date a court is dealing with a person in relation to an offence of which the person was convicted before that date and is required to treat the person as just convicted of the offence, the requirement does not mean that subsection (2) no longer applies.

SECOND GROUP OF PARTS Provisions applying to sentencing courts generally

PART 2

POWERS EXERCISABLE BEFORE PASSING SENTENCE

CHAPTER 1

DEFERMENT OF SENTENCE

3 Deferment order

- (1) In this Code “deferment order” means an order deferring passing sentence on an offender in respect of one or more offences until the date specified in the order, to enable a court, in dealing with the offender, to have regard to—
 - (a) the offender’s conduct after conviction (including, where appropriate, the offender’s making reparation for the offence), or
 - (b) any change in the offender’s circumstances.
- (2) A deferment order may impose requirements (“deferment requirements”) as to the offender’s conduct during the period of deferment.
- (3) Deferment requirements may include—
 - (a) requirements as to the residence of the offender during all or part of the period of deferment;
 - (b) restorative justice requirements.

4 Availability of deferment order

- (1) A deferment order is available to the Crown Court or a magistrates’ court in respect of an offence where—
 - (a) the offender is before the court to be dealt with for the offence, and
 - (b) no previous deferment order has been made in respect of the offence.

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See also section 11(4) (power of Crown Court to make further deferment order where magistrates' court commits offender for sentence).

- (2) But a deferment order is not available to a magistrates' court dealing with an offender in respect of an offence for which section 85(1)(a) (compulsory referral conditions) requires the court to make a referral order.

5 Making a deferment order

- (1) A court may make a deferment order in respect of an offence only if—
- (a) the offender consents,
 - (b) the offender undertakes to comply with any deferment requirements the court proposes to impose,
 - (c) if those requirements include a restorative justice requirement, section 7(2) (consent of participants in restorative justice activity) is satisfied, and
 - (d) the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to make the order.
- (2) The date specified under section 3(1) in the order may not be more than 6 months after the date on which the order is made.
- (3) A court which makes a deferment order must forthwith give a copy of the order—
- (a) to the offender,
 - (b) if it imposes deferment requirements that include a restorative justice requirement, to every person who would be a participant in the activity concerned (see section 7(1)),
 - (c) where an officer of a provider of probation services has been appointed to act as a supervisor, to that provider, and
 - (d) where a person has been appointed under section 8(1)(b) to act as a supervisor, to that person.
- (4) A court which makes a deferment order may not on the same occasion remand the offender, notwithstanding any enactment.

6 Effect of deferment order

- (1) Where a deferment order has been made in respect of an offence, the court which deals with the offender for the offence may have regard to—
- (a) the offender's conduct after conviction, or
 - (b) any change in the offender's circumstances.
- (2) The matters to which the court may have regard in dealing with the offender include, in particular—
- (a) where appropriate, the making by the offender of reparation for the offence, and
 - (b) the extent to which the offender has complied with any deferment requirements.
- (3) Subsection (4) applies where—
- (a) the court which made a deferment order proposes to deal with the offender on the date specified in the order, or

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- (b) the offender does not appear on that date.
- (4) The court may—
 - (a) issue a summons requiring the offender to appear before the court at the time and place specified in the summons, or
 - (b) issue a warrant for the offender’s arrest which requires the offender to be brought before the court at the time and place specified in the warrant.
- (5) Subsection (6) applies where a magistrates’ court makes a deferment order.
- (6) In making the order the court is to be regarded as having adjourned the trial under section 10(1) of the Magistrates’ Courts Act 1980.

Accordingly, sections 11(1) and 13(1) to (3A) and (5) of that Act (non-appearance of the accused) apply if the offender does not appear on the date specified in the deferment order (but this is without prejudice to subsection (4)).

7 Restorative justice requirements

- (1) Any reference in this Chapter to a restorative justice requirement is to a requirement to participate in an activity—
 - (a) where the participants consist of, or include, the offender and one or more of the victims,
 - (b) which aims to maximise the offender’s awareness of the impact of the offending concerned on the victims, and
 - (c) which gives an opportunity to a victim or victims to talk about, or by other means express experience of, the offending and its impact.
- (2) A restorative justice requirement may not be imposed as a deferment requirement without the consent of every person who would be a participant in the activity.
- (3) For the purposes of subsection (2), a supervisor and the offender do not count as proposed participants.
- (4) A person running an activity for the purposes of a restorative justice requirement must have regard to any guidance issued from time to time by the Secretary of State with a view to encouraging good practice in connection with such an activity.
- (5) In this section “victim” means a victim of, or other person affected by, the offending concerned.

8 Deferment order: supervisor

Appointment of supervisor

- (1) Where a court makes a deferment order that imposes deferment requirements, it may appoint—
 - (a) an officer of a provider of probation services, or
 - (b) any other person the court thinks appropriate who consents to the appointment,
 to act as a supervisor in relation to the offender.

Function of supervisor

- (2) A supervisor must—
- (a) monitor the offender’s compliance with the deferment requirements, and
 - (b) provide the court which deals with the offender for any offence in respect of which the order was made with such information as the court may require relating to the offender’s compliance with the deferment requirements.

Supervisor appointed under subsection (1)(b): power of magistrates’ court to issue summons

- (3) Where—
- (a) a deferment order imposes deferment requirements,
 - (b) it falls to a magistrates’ court to—
 - (i) deal with the offender for any offence in respect of which the order was made, or
 - (ii) determine under section 9(3)(b) whether the offender has failed to comply with a deferment requirement, and
 - (c) a justice of the peace is satisfied that a supervisor appointed under subsection (1)(b)—
 - (i) is likely to be able to give evidence that may assist the court in doing so, and
 - (ii) will not voluntarily attend as a witness,

the justice may issue a summons directed to that supervisor requiring the supervisor to attend before the court at the time and place appointed in the summons to give evidence.

9 Failure to comply with deferment requirement

- (1) This section applies where—
- (a) a court has made a deferment order that imposes deferment requirements, and
 - (b) a supervisor has reported to the court that the offender has failed to comply with one or more of the deferment requirements.
- (2) The court may issue—
- (a) a summons requiring the offender to appear before it at the time and place specified in the summons, or
 - (b) a warrant for the offender’s arrest which requires the offender to be brought before it at the time and place specified in the warrant.
- (3) The court may deal with the offender for the offence in respect of which the order was made before the end of the period of deferment if—
- (a) the offender appears or is brought before the court under subsection (2), and
 - (b) the court is satisfied that the offender has failed to comply with one or more of the deferment requirements.

For the powers of the court in dealing with the offender under this subsection, see section 11.

10 Conviction of offence during period of deferment

- (1) This section applies where a court has made a deferment order in respect of an offence.

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Power of court which made deferment order

- (2) The court which made the order (“the original court”) may deal with the offender for the offence in respect of which the deferment order was made before the end of the period of deferment if during that period the offender is convicted in Great Britain of any offence.

For the powers of the original court in dealing with the offender under this subsection, see section 11.

- (3) Where the original court proposes to deal with the offender by virtue of subsection (2) before the end of the period of deferment, it may issue—
- (a) a summons requiring the offender to appear before the court at the time and place specified in the summons, or
 - (b) a warrant for the arrest of the offender, requiring the offender to be brought before the court at the time and place specified in the warrant.

Power of court which sentences offender for later offence

- (4) Subsection (5) applies where during the period of deferment the offender is convicted in England and Wales of any offence (“the later offence”).

This is subject to subsection (6).

- (5) The court which passes sentence on the offender for the later offence may also deal with the offender for the offence or offences in respect of which the deferment order was made (if this has not already been done).

For the powers of the court in dealing with the offender under this subsection, see section 11.

- (6) Subsection (5) does not apply where—
- (a) the deferment order was made by the Crown Court, and
 - (b) the court which passes sentence on the offender for the later offence is a magistrates’ court.
- (7) Subsection (5)—
- (a) is without prejudice to subsection (2), and
 - (b) applies whether or not the offender is sentenced for the later offence during the period of deferment.

11 Powers of court dealing with offender following deferment order

- (1) Subsection (2) applies where an offender who is subject to a deferment order is being dealt with for any offence in respect of which the order was made—
- (a) by the court which made the order (“the original court”)—
 - (i) at the end of the period of deferment, in accordance with the deferment order,
 - (ii) under section 9(3) (failure to comply with deferment requirement), or
 - (iii) under section 10(2) (original court dealing with offender following conviction during period of deferment), or
 - (b) by any court under section 10(5) (conviction during period of deferment: convicting court dealing with offender).

- (2) The court may deal with the offender for the offence in any way in which the original court could have dealt with the offender for the offence if it had not made a deferment order.
- (3) Where a magistrates' court is dealing with the offender, its power under that subsection includes, in particular, the power in section 14 to commit the offender to the Crown Court for sentence.
- (4) Where a magistrates' court deals with the offender by committing the offender to the Crown Court under section 14, the power of the Crown Court to deal with the offender includes the same power to make a deferment order as if the offender had just been convicted of the offence on indictment before it.

12 Saving for power to bind over and other powers to defer sentence

Nothing in this Chapter affects—

- (a) the power of the Crown Court to bind over an offender to come up for judgment when called upon, or
- (b) any other power of a court to defer passing sentence.

13 Deferment orders: interpretation

(1) In this Chapter—

“deferment requirement” has the meaning given by section 3(2);

“period of deferment”, in relation to a deferment order, means the period from the date on which the deferment order is made until the date specified in the order under section 3(1);

“restorative justice requirement” has the meaning given by section 7;

“supervisor”, in relation to a deferment order, means a person appointed under section 8(1).

(2) In relation to a deferment order made by a magistrates' court, any reference in this Chapter to the court which made the order includes a reference to any magistrates' court acting in the same local justice area as that court.

CHAPTER 2

COMMITTAL TO THE CROWN COURT FOR SENTENCE

Committal following summary trial: adults and corporations

14 Committal for sentence on summary trial of offence triable either way: adults and corporations

(1) This section applies where—

- (a) on the summary trial of an offence triable either way a person aged 18 or over is convicted of the offence, and
- (b) the court is of the opinion that—
 - (i) the offence, or

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(ii) the combination of the offence and one or more offences associated with it,

was so serious that the Crown Court should have the power to deal with the offender in any way it could deal with the offender if the offender had been convicted on indictment.

This is subject to the provisions mentioned in subsection (4).

- (2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 21(2).
- (3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.
- (4) For offences in relation to which this section does not apply see sections 17D and 33 of the Magistrates' Courts Act 1980 (exclusion in respect of certain offences where value involved is small).
- (5) This section applies to a corporation as if—
 - (a) the corporation were an individual aged 18 or over, and
 - (b) in subsection (2) the words “in custody or on bail” were omitted.

15 Committal for sentence of dangerous adult offenders

- (1) This section applies where—
 - (a) on the summary trial of a specified offence (see section 306) triable either way a person aged 18 or over is convicted of the offence, and
 - (b) the court is of the opinion that an extended sentence of detention in a young offender institution or of imprisonment (see section 266 or 279) would be available in relation to the offence.
- (2) The court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 21(2).
- (3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.
- (4) In doing anything under or contemplated by this section, the court is not bound by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable).
- (5) Nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is inconsistent with an indication of sentence.
- (6) Nothing in this section prevents the court from committing an offender convicted of a specified offence to the Crown Court for sentence under section 14 or 18 if the provisions of that section are satisfied.

Committal following summary trial: persons under 18

16 Committal for sentence of young offenders on summary trial of certain serious offences

- (1) This section applies where—

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- (a) on the summary trial of an offence within paragraph (a) or (b) of the table in section 249(1) (offences punishable with imprisonment for 14 years or more and certain sexual offences), a person is convicted of the offence,
 - (b) the person is aged under 18 at the time of conviction, and
 - (c) the court is of the opinion that—
 - (i) the offence, or
 - (ii) the combination of the offence and one or more offences associated with it,was such that the Crown Court should have power to deal with the offender by imposing a sentence of detention under section 250.
- (2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 22(2).
- (3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.

17 Committal for sentence of dangerous young offenders

- (1) This section applies where—
- (a) on the summary trial of a specified offence (see section 306) a person aged under 18 is convicted of the offence, and
 - (b) the court is of the opinion that an extended sentence of detention under section 254 would be available in relation to the offence.
- (2) The court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 22(2).
- (3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.
- (4) Nothing in this section prevents the court from committing a person convicted of a specified offence to the Crown Court for sentence under section 16 or 19 if the provisions of that section are satisfied.

Committal for sentence following indication of guilty plea

18 Committal for sentence on indication of guilty plea to offence triable either way: adult offenders

- (1) Where a magistrates' court—
- (a) has convicted an offender aged 18 or over of an offence triable either way following an indication of a guilty plea, and
 - (b) has sent the offender to the Crown Court for trial for one or more related offences,
- it may commit the offender in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 21(2).
- (2) For offences in relation to which subsection (1) does not apply, see section 17D of the Magistrates' Courts Act 1980 (cases where value involved is small).
- (3) Where a magistrates' court—

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- (a) convicts an offender aged 18 or over of an offence triable either way following an indication of a guilty plea, and
- (b) is still to determine to send, or whether to send, the offender to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, for one or more related offences,

it must adjourn the proceedings relating to the offence until after it has made those determinations.

- (4) Where the court—
 - (a) commits the offender under subsection (1) to the Crown Court to be dealt with in respect of the offence, and
 - (b) in its opinion also has power under section 14(2) or is required under section 15(2) to commit the offender to the Crown Court to be dealt with in respect of the offence,
 the court may make a statement of that opinion.
- (5) For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 20.
- (6) For the purposes of this section, a magistrates' court convicts a person of an offence triable either way following an indication of a guilty plea if—
 - (a) the person appears or is brought before the court on an information charging the person with the offence,
 - (b) the person or (where applicable) the person's representative indicates under—
 - (i) section 17A or 17B of the Magistrates' Courts Act 1980 (indication of intention as to plea in case of offence triable either way), or
 - (ii) section 20(7) of that Act (summary trial appears more suitable),
 that the person would plead guilty if the offence were to proceed to trial, and
 - (c) proceeding as if—
 - (i) section 9(1) of that Act were complied with, and
 - (ii) the person pleaded guilty under it,
 the court convicts the person of the offence.
- (7) For the purposes of this section—
 - (a) "related offence" means an offence which, in the opinion of the court, is related to the offence, and
 - (b) one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.
- (8) In doing anything under or contemplated by this section, the court is not bound by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable).
- (9) Nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is inconsistent with an indication of sentence.

19 Committal for sentence on indication of guilty plea by child with related offences

- (1) Where—
 - (a) a magistrates' court—

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- (i) has convicted a person aged under 18 of an offence following an indication of a guilty plea, and
 - (ii) has sent the person to the Crown Court for trial for one or more related offences, and
 - (b) the offence falls within paragraph (a) or (b) of the table in section 249(1) (offences punishable with imprisonment for 14 years or more and certain sexual offences),
- the court may commit the offender in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 22(2).
- (2) Where a magistrates' court—
- (a) convicts a person aged under 18 of an offence mentioned in paragraph (a) or (b) of the table in section 249(1) following an indication of a guilty plea, and
 - (b) is still to determine to send, or whether to send, the person to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 for one or more related offences,
- it must adjourn the proceedings relating to the offence until after it has made those determinations.
- (3) Where the court—
- (a) commits the offender under subsection (1) to the Crown Court to be dealt with in respect of the offence, and
 - (b) in its opinion, also has power so to commit the offender under section 16(2) or 17(2),
- the court may make a statement of that opinion.
- (4) For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 20.
- (5) For the purposes of this section, a magistrates' court convicts a person aged under 18 of an offence following an indication of a guilty plea if—
- (a) the person appears or is brought before the court when aged under 18 on an information charging the person with the offence,
 - (b) the person or the person's representative indicates under section 24A or 24B of the Magistrates' Courts Act 1980 (child or young person to indicate intention as to plea in certain cases) that the person would plead guilty if the offence were to proceed to trial, and
 - (c) proceeding as if—
 - (i) section 9(1) of that Act were complied with, and
 - (ii) the person pleaded guilty under it,the court convicts the person of the offence.
- (6) For the purposes of this section—
- (a) "related offence" means an offence which, in the opinion of the court, is related to the offence, and
 - (b) one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.

Committal for sentence where offender committed in respect of another offence

20 Committal in certain cases where offender committed in respect of another offence

- (1) This section applies where a magistrates' court ("the committing court") commits an offender to the Crown Court under—
- (a) sections 14 to 19 (committal for sentence for indictable offences),
 - (b) paragraph 5(4) of Schedule 2 (further offence committed by offender given conditional discharge order),
 - (c) paragraph 24(2) of Schedule 10 (committal to Crown Court where offender convicted of further offence while community order is in force),
 - (d) paragraph 11(2) of Schedule 16 (committal to Crown Court where offender commits further offence during operational period of suspended sentence order),
 - (e) section 43 of the Mental Health Act 1980 (power of magistrates' courts to commit for restriction order),
 - (f) section 6(6) or 9(3) of the Bail Act 1976 (committal to Crown Court for offences of absconding by person released on bail or agreeing to indemnify sureties in criminal proceedings), or
 - (g) the Vagrancy Act 1824 (incorrigible rogues),
- to be sentenced or otherwise dealt with in respect of an offence ("the relevant offence").
- (2) Where—
- (a) the relevant offence is an indictable offence, and
 - (b) the committing court has power to deal with the offender in respect of another offence,
- the committing court may also commit the offender to the Crown Court to be dealt with in respect of the other offence in accordance with section 23.
- (3) It is immaterial for the purposes of subsection (2) whether the court which convicted the offender of the other offence was the committing court or another court.
- (4) Where the relevant offence is a summary offence, the committing court may commit the offender to the Crown Court to be dealt with, in accordance with section 23, in respect of—
- (a) any other offence of which the committing court has convicted the offender which is punishable with—
 - (i) imprisonment, or
 - (ii) driving disqualification, or
 - (b) any suspended sentence in respect of which it falls to the committing court to deal with the offender by virtue of paragraph 11(1) of Schedule 16.
- (5) For the purposes of subsection (4)(a) an offence is punishable with driving disqualification if the committing court has a power or duty to order the offender to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences) in respect of it.
- (6) A committal to the Crown Court under this section is to be in custody or on bail as the case may require.

Power of Crown Court on committal for sentence

21 Power of Crown Court on committal for sentence of offender under section 14, 15 or 18

- (1) This section applies where an offender is committed by a magistrates' court for sentence under—
- (a) section 14(2) (committal for sentence on summary trial of offence triable either way),
 - (b) section 15(2) (committal for sentence of dangerous adult offenders), or
 - (c) section 18(1) (committal for sentence on indication of guilty plea to offence triable either way).

- (2) The Crown Court—
- (a) must inquire into the circumstances of the case, and
 - (b) may deal with the offender in any way in which it could deal with the offender if the offender had been convicted of the offence on indictment before the court.

This is subject to subsections (4) and (5).

- (3) Any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court—
- (a) is not to be discharged or exercised by that court, but
 - (b) is instead to be discharged or may instead be exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).

- (4) Subsection (5) applies where a magistrates' court—
- (a) commits an offender under section 18(1) to be dealt with in respect of an offence ("the offence"), but
 - (b) does not make a statement under section 18(4) (statement of power to commit under section 14(2) or 15(2)).

- (5) Unless the offender is convicted before the Crown Court of at least one of the offences for which the magistrates' court has sent the offender for trial (see section 18(1)(b))—
- (a) subsection (2)(b) does not apply, and
 - (b) the Crown Court may deal with the offender for the offence in any way in which the magistrates' court could have dealt with the offender for it.

- (6) Section 20A(1) of the Magistrates' Courts Act 1980 (which relates to the effect of an indication of sentence under section 20 of that Act) does not apply in respect of a specified offence (see section 306)—
- (a) in respect of which the offender is committed under section 15(2) (dangerous adult offenders), or
 - (b) in respect of which—
 - (i) the offender is committed under section 18(1) (guilty plea to offence triable either way), and
 - (ii) the court makes a statement under section 18(4) that, in its opinion, it also has power to commit the offender under section 15(2).

22 Power of Crown Court on committal for sentence of person under 18 under section 16, 17 or 19

- (1) This section applies where an offender is committed by a magistrates' court for sentence under—
- (a) section 16(2) (committal for sentence of young offenders on summary trial of certain serious offences),
 - (b) section 17(2) (committal for sentence of dangerous young offenders), or
 - (c) section 19(1) (committal for sentence on indication of guilty plea by child or young person with related offences).
- (2) The Crown Court—
- (a) must inquire into the circumstances of the case, and
 - (b) may deal with the offender in any way in which it could deal with the offender if the offender had been convicted of the offence on indictment before the court.

This is subject to subsections (4) and (5).

- (3) Any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court—
- (a) is not to be discharged or exercised by that court, but
 - (b) is instead to be discharged or may instead be exercised by the Crown Court.
- This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).
- (4) Subsection (5) applies where a magistrates' court—
- (a) commits an offender under section 19(1) to be dealt with in respect of an offence ("the offence"), but
 - (b) does not make a statement under section 19(3) (statement of power to commit under section 16(2) or 17(2)).
- (5) Unless the offender is convicted before the Crown Court of at least one of the offences for which the magistrates' court has sent the offender for trial (see section 19(1)(a))—
- (a) subsection (2)(b) does not apply, and
 - (b) the Crown Court may deal with the offender for the offence in any way in which the magistrates' court could have dealt with the offender for it.

23 Power of Crown Court on committal for sentence under section 20

- (1) Subsection (2) applies where under section 20(2) or (4)(a) (committal for sentence in certain cases where offender committed in respect of another offence) a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence.
- (2) The Crown Court—
- (a) must inquire into the circumstances of the case, and
 - (b) may deal with the offender for the offence in any way in which the magistrates' court could have dealt with the offender (assuming it had convicted the offender of the offence).
- (3) Subsection (4) applies where under section 20(4)(b) a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence.

- (4) The powers under paragraphs 13 and 14 of Schedule 16 (power of court to deal with suspended sentence) are exercisable by the Crown Court.
- (5) Subsection (6) applies where under section 20 a magistrates' court commits a person to be dealt with by the Crown Court.
- (6) Without prejudice to subsections (1) to (4), any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court—
- (a) is not to be discharged or exercised by that court, but
 - (b) is instead to be discharged or may instead be exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).

Further powers to commit to Crown Court for sentence

24 Further powers to commit offender to the Crown Court to be dealt with

- (1) For other powers of a magistrates' court to commit an offender to the Crown Court to be dealt with for an offence, see—
- (a) paragraph 22(2) and (4) of Schedule 7 (offender subject to youth rehabilitation order made by Crown Court convicted of further offence by magistrates' court);
 - (b) section 70 of the Proceeds of Crime Act 2002 (request by prosecution with a view to consideration of confiscation order under section 6 of that Act);
 - (c) section 43(1) of the Mental Health Act 1983 (power of magistrates' courts to commit for restriction order);
 - (d) section 6(6) of the Bail Act 1976 (offence of absconding by person released on bail);
 - (e) section 9(3) of that Act (offence of agreeing to indemnify sureties in criminal proceedings);
 - (f) the Vagrancy Act 1824 (incorrigible rogues).
- (2) Nothing in subsection (1) is to be taken to limit any other power of a magistrates' court to commit an offender to the Crown Court.

CHAPTER 3

REMISSION TO YOUTH COURT OR OTHER MAGISTRATES' COURT FOR SENTENCE

25 Power and duty to remit offenders aged under 18 to youth courts for sentence

- (1) This section applies where a person aged under 18 is convicted by or before a court (“the convicting court”) of an offence other than homicide.
- (2) If the convicting court is the Crown Court, it must remit the offender to a youth court acting for the place where the sending court sat, unless satisfied that it would be undesirable to do so.

The “sending court” is the magistrates' court which sent the offender to the Crown Court for trial.

Status: This is the original version (as it was originally enacted).

- (3) If the convicting court is a youth court, it may remit the offender to another youth court.
- (4) If the convicting court is a magistrates' court other than a youth court—
- (a) it may remit the offender to a youth court, and
 - (b) must do so unless subsection (5) applies.
- (5) This subsection applies where the convicting court—
- (a) would be required by section 85(1)(a) to make a referral order if it did not remit the offender to a youth court, or
 - (b) is of the opinion that the case is one which can properly be dealt with by means of—
 - (i) an order for absolute discharge or an order for conditional discharge,
 - (ii) a fine, or
 - (iii) an order (under section 376) requiring the offender's parent or guardian to enter into a recognizance to take proper care of, and exercise proper control over, the offender,
 with or without any other order that the court has power to make when making an order for absolute discharge or an order for conditional discharge.
- (6) For the purposes of subsection (5)(b)(iii)—
- (a) “care” and “control” are to be read in accordance with section 376(3) (binding over of parent or guardian), and
 - (b) section 404 (certain references to parent or guardian to be read as references to local authority) does not apply.
- (7) Any remission of an offender under subsection (3) or (4) must be to a youth court acting for—
- (a) the same place as the remitting court, or
 - (b) the place where the offender habitually resides.
- (8) Where an offender is remitted to a youth court under this section, that court may deal with the offender in any way in which it could deal with the offender if it had convicted the offender of the offence.
- (9) A court which remits an offender to a youth court under this section must provide the designated officer for the youth court with a certificate which—
- (a) sets out the nature of the offence, and
 - (b) states—
 - (i) that the offender has been convicted of the offence, and
 - (ii) that the offender has been remitted for the purpose of being dealt with under subsection (8).
- (10) A document which purports—
- (a) to be a copy of an order made by a court under this section, and
 - (b) to be certified as a true copy by the designated officer for the court,
- is to be evidence of the order.

26 Remission by Crown Court to youth court: custody or bail, and appeals

- (1) This section applies where the Crown Court remits an offender to a youth court under section 25.

- (2) The Crown Court may, subject to section 25 of the Criminal Justice and Public Order Act 1994 (restrictions on granting bail), give such directions as appear to be necessary—
- (a) with respect to the custody of the offender, or
 - (b) for the offender's release on bail,
- until the offender can appear or be brought before the youth court.
- (3) The offender—
- (a) has no right of appeal against the order of remission, but
 - (b) has the same right of appeal against an order of the youth court as if convicted by that court.

27 Power of youth court to remit offender who attains age of 18 to magistrates' court other than youth court for sentence

- (1) Subsection (2) applies where a person who appears or is brought before a youth court charged with an offence subsequently reaches the age of 18.
- (2) The youth court may, at any time after conviction and before sentence, remit the offender for sentence to a magistrates' court other than a youth court ("the adult court").
- (3) Where an offender is remitted under subsection (2), the adult court may deal with the offender in any way in which it could deal with the offender if it had convicted the offender of the offence.
- (4) Where an offender is remitted under subsection (2), section 25(4) (duty of adult magistrates' court to remit young offenders to youth court for sentence) does not apply to the adult court.

28 Power of magistrates' court to remit case to another magistrates' court for sentence

- (1) Subsection (2) applies where—
- (a) a person aged 18 or over has been convicted by a magistrates' court ("the convicting court") of a relevant offence ("the present offence"),
 - (b) it appears to the convicting court that some other magistrates' court ("the other court") has convicted the offender of another relevant offence in respect of which the other court has not—
 - (i) passed sentence on the offender,
 - (ii) committed the offender to the Crown Court for sentence, nor
 - (iii) dealt with the offender in any other way, and
 - (c) the other court consents to the offender's being remitted to it under this section.
- (2) The convicting court may remit the offender to the other court to be dealt with in respect of the present offence by the other court instead of by the convicting court.
- (3) In subsection (1), "relevant offence", in relation to the convicting court or the other court, means an offence which is punishable by that court with—
- (a) imprisonment, or
 - (b) driving disqualification.

Status: This is the original version (as it was originally enacted).

For this purpose, an offence is punishable by a court with driving disqualification if the court has a power or duty to order the offender to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences) in respect of it.

- (4) Where the convicting court remits the offender to the other court under this section the other court may deal with the offender in any way in which it could deal with the offender if it had convicted the offender of the present offence.

This is subject to subsection (7).

- (5) The power conferred on the other court by subsection (4) includes, where applicable, the power to remit the offender under this section to another magistrates' court in respect of the present offence.
- (6) Where the convicting court has remitted the offender under this section, the other court may remit the offender back to the convicting court; and where it does so subsections (4) and (5) (so far as applicable) apply with the necessary modifications.
- (7) Nothing in this section prevents the convicting court from making a restitution order (see section 147) by virtue of the offender's conviction of the present offence.
- (8) In this section "conviction" includes a finding under section 11(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination) that the person in question did the act or made the omission charged, and "convicted" is to be read accordingly.

29 Remission by magistrates' court: adjournment, remand and appeal

- (1) This section applies where a magistrates' court ("the remitting court") remits an offender under section 25, 27 or 28 to another magistrates' court ("the other court") to be dealt with in respect of an offence.
- (2) The remitting court must adjourn proceedings in relation to the offence.
- (3) Any remand enactment has effect, in relation to the remitting court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the other court.
- (4) In this section, "remand enactment" means section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) or any other enactment, whenever passed or made, relating to remand or the granting of bail in criminal proceedings; and for this purpose—
- (a) "enactment" includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act, and
 - (b) "bail in criminal proceedings" has the same meaning as in the Bail Act 1976.
- (5) The offender has no right of appeal against the order of remission.

This does not affect any right of appeal against an order made in respect of the offence by the other court.

PART 3

PROCEDURE

CHAPTER 1

INFORMATION AND REPORTS

Pre-sentence reports

30 Pre-sentence report requirements

- (1) This section applies where, by virtue of any provision of this Code, the pre-sentence report requirements apply to a court in relation to forming an opinion.
- (2) If the offender is aged 18 or over, the court must obtain and consider a pre-sentence report before forming the opinion unless, in the circumstances of the case, it considers that it is unnecessary to obtain a pre-sentence report.
- (3) If the offender is aged under 18, the court must obtain and consider a pre-sentence report before forming the opinion unless—
 - (a) there exists a previous pre-sentence report obtained in respect of the offender, and
 - (b) the court considers—
 - (i) in the circumstances of the case, and
 - (ii) having had regard to the information contained in that report or, if there is more than one, the most recent report,that it is unnecessary to obtain a pre-sentence report.
- (4) Where a court does not obtain and consider a pre-sentence report before forming an opinion in relation to which the pre-sentence report requirements apply, no custodial sentence or community sentence is invalidated by the fact that it did not do so.

31 Meaning of “pre-sentence report” etc

“Pre-sentence report”

- (1) In this Code “pre-sentence report” means a report which—
 - (a) is made or submitted by an appropriate officer with a view to assisting the court in determining the most suitable method of dealing with an offender, and
 - (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.
- (2) In subsection (1), “an appropriate officer” means—
 - (a) where the offender is aged 18 or over, an officer of a provider of probation services;
 - (b) where the offender is aged under 18—
 - (i) an officer of a provider of probation services,
 - (ii) a social worker of a local authority, or
 - (iii) a member of a youth offending team.

Status: This is the original version (as it was originally enacted).

- (3) Rules under subsection (1)(b) are subject to the negative resolution procedure.

“Obtaining” a pre-sentence report

- (4) Where by any provision of this Code, the court is required to obtain a pre-sentence report, it may accept a pre-sentence report given orally in open court.

But this is subject to—

- (a) any rules made under subsection (1)(b), and
 - (b) subsection (5).
- (5) A pre-sentence report must be in writing if it—
- (a) relates to an offender aged under 18, and
 - (b) is required to be obtained and considered before the court forms an opinion mentioned in—
 - (i) section 230(2) (seriousness threshold for discretionary custodial sentence),
 - (ii) section 231(2) (determining term of custodial sentence),
 - (iii) section 255(1)(c) (determining risk of harm to public for purpose of extended sentence), or
 - (iv) section 258(1)(c) (determining risk of harm to public for purpose of required life sentence).

32 Disclosure of pre-sentence reports

- (1) This section applies where the court obtains a pre-sentence report, other than a report given orally in open court.

Copy for offender and parent or guardian

- (2) The court must give a copy of the report—
- (a) to the offender or the offender’s legal representative, and
 - (b) if the offender is aged under 18, to any parent or guardian of the offender who is present in court.

- (3) But if—
- (a) the offender is aged under 18, and
 - (b) it appears to the court that the disclosure of any information contained in the report—

- (i) to the offender, or
- (ii) to a parent or guardian of the offender,

would be likely to create a risk of significant harm to the offender,

a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

For this purpose, “harm” has the same meaning as in section 31 of the Children Act 1989.

Copy for prosecutor

Status: This is the original version (as it was originally enacted).

- (4) The court must give a copy of the report to the prosecutor, that is to say, the person having the conduct of the proceedings in respect of the offence.
- (5) But a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for the prosecutor to be given it.

But this subsection does not apply if the prosecutor is of a description specified in regulations made by the Secretary of State.

- (6) No information obtained by virtue of subsection (4) may be used or disclosed otherwise than for the purpose of—
 - (a) determining whether representations as to matters contained in the report need to be made to the court, or
 - (b) making such representations to the court.
- (7) Regulations under subsection (5) are subject to the negative resolution procedure.

33 Appeals: requirements relating to pre-sentence reports

- (1) Any court, on an appeal against a custodial sentence or a community sentence, must—
 - (a) subject to subsection (2) or (3), obtain a pre-sentence report if none was obtained by the court below, and
 - (b) consider any such report obtained by it or by the court below.
- (2) If the offender is aged 18 or over, the court need not obtain a pre-sentence report if it considers—
 - (a) that the court below was justified in not obtaining a pre-sentence report, or
 - (b) that, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.
- (3) If the offender is aged under 18, the court need not obtain a pre-sentence report if—
 - (a) there exists a previous pre-sentence report obtained in respect of the offender, and
 - (b) the court considers, having had regard to the information contained in that report or, if there is more than one, the most recent report—
 - (i) that the court below was justified in not obtaining a pre-sentence report, or
 - (ii) that, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

Other reports of providers of probation services etc

34 Disclosure of other reports

- (1) This section applies where—
 - (a) a report by—
 - (i) an officer of a provider of probation services, or
 - (ii) a member of a youth offending team,
- is made to any court (other than a youth court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, and

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- (b) the report is not a pre-sentence report.
- (2) The court must give a copy of the report—
 - (a) to the offender or the offender’s legal representative, and
 - (b) if the offender is aged under 18, to any parent or guardian of the offender who is present in court.
- (3) But if—
 - (a) the offender is aged under 18, and
 - (b) it appears to the court that the disclosure of any information contained in the report—
 - (i) to the offender, or
 - (ii) to a parent or guardian of the offender,
 would be likely to create a risk of significant harm to the offender,
 a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

For this purpose, “harm” has the same meaning as in section 31 of the Children Act 1989.

Financial circumstances orders

35 Powers to order statement as to offender’s financial circumstances

- (1) In this Code, “financial circumstances order”, in relation to an individual, means an order requiring the individual to give the court, before the end of the period specified in the order, such a statement of the individual’s assets and other financial circumstances as the court may require.
- (2) Where an individual has been convicted of an offence, the court may, before sentencing the individual, make a financial circumstances order with respect to the individual.
- (3) Where a magistrates’ court has been notified in accordance with section 12(4) of the Magistrates’ Courts Act 1980 that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to the individual.
- (4) Where—
 - (a) an individual aged under 18 has been convicted of an offence, and
 - (b) the court is considering whether to make an order under section 380 in respect of the individual’s parent or guardian (power to order parent or guardian to pay fine, costs, compensation or surcharge),
 the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.

36 Financial circumstances order: offences

- (1) It is an offence for an individual to fail without reasonable excuse to comply with a financial circumstances order.
- (2) An individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Status: This is the original version (as it was originally enacted).

- (3) It is an offence for an individual, in furnishing any statement in pursuance of a financial circumstances order—
- (a) to make a statement which the individual knows to be false in a material particular,
 - (b) recklessly to furnish a statement which is false in a material particular, or
 - (c) knowingly to fail to disclose any material fact.
- (4) An individual who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Proceedings for an offence under subsection (3) may be commenced at any time which is both—
- (a) within 2 years from the date of the offence, and
 - (b) within 6 months from its first discovery by the prosecutor.

This subsection has effect despite anything in section 127(1) of the Magistrates' Courts Act 1980 (limitation of time).

Other powers to obtain reports etc

37 Reports and information: other powers of court

- (1) For other powers and duties of a court in relation to obtaining information or a report before passing sentence, see—
- (a) section 232 (medical report before passing certain custodial sentence in case of offender suffering from mental disorder);
 - (b) section 48(3) of the Children and Young Persons Act 1933 (power of youth court to remand for purpose of enabling information to be obtained with respect to offender aged under 18);
 - (c) section 10(3) of the Magistrates' Courts Act 1980 (adjournment by magistrates' court for purpose of enabling enquiries);
 - (d) section 35 of the Mental Health Act 1983 (remand to hospital for a report on the person's mental condition).
- (2) See also section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand by magistrates' court for medical examination) where a magistrates' court is considering whether to make an order under section 37(3) of the Mental Health Act 1983 (hospital admission or guardianship).

CHAPTER 2

DEROGATORY ASSERTION ORDERS

38 Derogatory assertion order and restriction on reporting of assertions

- (1) While a derogatory assertion order or interim derogatory assertion order has effect in relation to an assertion, the assertion must not—
- (a) be published in Great Britain in a written publication available to the public, or
 - (b) be included in a relevant programme for reception in Great Britain.

Status: This is the original version (as it was originally enacted).

(2) In this Chapter—

“derogatory assertion order” means an order made under subsection (3) of section 39 in relation to an assertion to which that section applies;

“interim derogatory assertion order” means an order made under subsection (4) of section 39 in relation to an assertion to which that section applies.

39 Order in respect of certain assertions

- (1) This section applies to an assertion that forms part of a speech in mitigation made by or on behalf of an offender before—
 - (a) a court determining what sentence should be passed on the offender in respect of an offence, or
 - (b) a magistrates’ court determining whether the offender should be committed to the Crown Court for sentence.
- (2) This section also applies to an assertion that forms part of a submission relating to a sentence which is made by or on behalf of the offender before—
 - (a) a court hearing an appeal against or reviewing the sentence, or
 - (b) a court determining whether to grant leave to appeal against the sentence.
- (3) The court may make a derogatory assertion order in relation to an assertion to which this section applies where there are substantial grounds for believing—
 - (a) that the assertion is derogatory to a person’s character (for instance, because it suggests that the person’s conduct is or has been criminal, immoral or improper), and
 - (b) that the assertion is false or that the facts asserted are irrelevant to the sentence.
- (4) Where it appears to the court that there is a real possibility that a derogatory assertion order will be made in relation to an assertion, the court may make an interim derogatory assertion order in relation to it (see subsection (8)).
- (5) No derogatory assertion order or interim derogatory assertion order may be made in relation to an assertion which it appears to the court was previously made—
 - (a) at the trial at which the offender was convicted of the offence, or
 - (b) during any other proceedings relating to the offence.
- (6) Section 38(1) has effect where a court makes a derogatory assertion order or an interim derogatory assertion order.
- (7) A derogatory assertion order—
 - (a) may be made after the court has made the relevant determination, but only if it is made as soon as is reasonably practicable after the determination has been made;
 - (b) subject to subsection (10), ceases to have effect at the end of the period of 12 months beginning with the day on which it is made;
 - (c) may be made whether or not an interim derogatory assertion order has been made with regard to the case concerned.
- (8) An interim derogatory assertion order—
 - (a) may be made at any time before the court makes the relevant determination, and

Status: This is the original version (as it was originally enacted).

- (b) subject to subsection (10), ceases to have effect when the court makes the relevant determination.
- (9) For the purposes of subsections (7) and (8) “relevant determination” means the determination of—
- (a) the sentence (where this section applies by virtue of subsection (1)(a));
 - (b) whether the offender should be committed to the Crown Court for sentence (where this section applies by virtue of subsection (1)(b));
 - (c) what the sentence should be (where this section applies by virtue of subsection (2)(a));
 - (d) whether to grant leave to appeal (where this section applies by virtue of subsection (2)(b)).
- (10) A derogatory assertion order or interim derogatory assertion order may be revoked at any time by the court which made it.

40 Reporting of assertions: offences

- (1) If an assertion is published or included in a relevant programme in contravention of section 38, each of the following persons is guilty of an offence—
- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
 - (b) in the case of publication in any other form, the person publishing the assertion;
 - (c) in the case of an assertion included in a relevant programme, any body corporate engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.
- (2) A person guilty of an offence under this section is liable on summary conviction to—
- (a) in England and Wales, a fine;
 - (b) in Scotland, a fine of an amount not exceeding level 5 on the standard scale.
- (3) Where a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence the person—
- (a) was not aware, and neither suspected nor had reason to suspect, that a derogatory assertion order or interim derogatory assertion order had effect at that time, or
 - (b) was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the assertion in question.
- (4) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person purporting to act in any such capacity,
- that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In relation to a body corporate whose affairs are managed by its members, “director” in subsection (4) means a member of the body corporate.

Status: This is the original version (as it was originally enacted).

41 Reporting of assertions: supplementary

- (1) In sections 38 and 40—
- “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990;
- “written publication” includes a film, a soundtrack and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.
- (2) For the purposes of sections 38 and 40 an assertion is published or included in a programme if the material published or included—
- (a) names the person about whom the assertion is made or, without naming the person, contains enough to make it likely that members of the public will identify that person as the person about whom it is made, and
 - (b) reproduces the actual wording of the matter asserted or contains its substance.
- (3) Nothing in section 38 or 39 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.

CHAPTER 3

SURCHARGE

42 Court’s duty to order payment of surcharge

- (1) A court when dealing with an offender for one or more offences committed on or after 1 April 2007 must also order the offender to pay a surcharge.

This is subject to subsections (2) to (4).

- (2) Subsection (1)—
- (a) does not apply in such cases as may be prescribed by regulations made by the Secretary of State, and
 - (b) is subject to section 15 of the Proceeds of Crime Act 2002 (effect on duty in subsection (1) when proceedings on confiscation order are postponed).
- (3) Where a court dealing with an offender considers—
- (a) that it would be appropriate to make one or more of—
 - (i) a compensation order,
 - (ii) an unlawful profit order, and
 - (iii) a slavery and trafficking reparation order, but
 - (b) that the offender has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,

the court must reduce the surcharge accordingly (if necessary to nil).

But see section 13(4) of the Proceeds of Crime Act 2002 (court not to take confiscation order into account.)

- (4) Where an offender aged under 18 is convicted of an offence and, but for this subsection, a court would order the offender to pay a surcharge—

Status: This is the original version (as it was originally enacted).

- (a) section 380 (orders for payment by parent or guardian) applies to the surcharge, and
 - (b) for the purposes of any order under that section in respect of the surcharge, subsection (3)(b) of this section is to be read as if the reference to the offender’s means were to the means of the offender’s parent or guardian.
- (5) For the purposes of this section a court does not “deal with” a person if it—
- (a) discharges the person absolutely, or
 - (b) makes an order under the Mental Health Act 1983 in respect of the person.
- (6) In this section—
- “slavery and trafficking reparation order” means an order under section 8 of the Modern Slavery Act 2015;
 - “unlawful profit order” means an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.
- (7) Regulations under subsection (2) are subject to the negative resolution procedure.

43 Amount of surcharge

- (1) The surcharge payable under section 42 is such amount as the Secretary of State may specify by regulations.
- (2) Regulations under this section may provide for the amount to depend on—
- (a) the offence or offences committed;
 - (b) how the offender is otherwise dealt with (including, where the offender is fined, the amount of the fine);
 - (c) the age of the offender.
- (3) Regulations under this section are subject to the negative resolution procedure.

CHAPTER 4

CRIMINAL COURTS CHARGE

44 Criminal courts charge duty where court dealing with offender for offence

Where the Crown Court or a magistrates’ court deals with an offender for an offence, the criminal courts charge duty applies to the court (see section 46).

45 Other occasions where criminal courts charge duty arises

For other occasions where the criminal courts charge duty applies to a court, see—

- (a) section 52A of the Senior Courts Act 1981 (dismissal of appeal by Crown Court);
- (b) section 30B of the Criminal Appeal Act 1968 (dismissal of appeal by Court of Appeal);
- (c) section 256AC of the Criminal Justice Act 2003 (breach of supervision requirements imposed on release);
- (d) paragraph 10(6) of Schedule 10 (magistrates’ court dealing with offender for breach of requirement of community order);

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- (e) paragraph 11(3) of that Schedule (Crown Court dealing with offender for breach of community order);
- (f) paragraph 13(2) of Schedule 16 (magistrates' court or Crown Court dealing with offender for breach of community requirement of suspended sentence order).

46 Criminal courts charge duty

- (1) Where the criminal courts charge duty applies to a court in relation to an offender, the court must order the offender to pay a charge in respect of relevant court costs, unless—
- (a) the offender was aged under 18 when the offence was committed,
 - (b) the offence was committed before 13 April 2015, or
 - (c) the case is, or is of a class, prescribed by the Lord Chancellor by regulations.

But this is subject to section 15(2) of the Proceeds of Crime Act 2002 (effect on duty when proceedings on confiscation order are postponed).

- (2) In this section—

“court costs” means costs of providing the judiciary and the rest of the system of courts, but does not include defence or prosecution costs;

“relevant court costs” means court costs incurred in connection with—

- (a) criminal proceedings, or
- (b) proceedings for a relevant failure,

but does not include costs of providing the Supreme Court or judges of that Court;

“relevant failure” means a failure to comply with—

- (a) a requirement of a community order,
- (b) a community requirement of a suspended sentence order, or
- (c) a supervision requirement imposed under section 256AA of the Criminal Justice Act 2003.

- (3) In this Code, “criminal courts charge order” means an order under subsection (1).

47 Court to disregard criminal courts charge duty in dealing with offender

- (1) This section applies where the criminal courts charge duty applies to a court in dealing with an offender for—
- (a) an offence, or
 - (b) a failure to comply with a requirement.
- (2) In dealing with the offender (other than under the duty) for the offence or failure, the court must not take into account—
- (a) the criminal courts charge duty, or
 - (b) any criminal courts charge order.

48 Amount of criminal courts charge

- (1) A charge ordered to be paid by a criminal courts charge order must be of an amount specified by the Lord Chancellor by regulations.

- (2) When specifying amounts under this section, the Lord Chancellor must seek to secure that an amount specified in respect of a class of case does not exceed the relevant court costs reasonably attributable to a case of that class.
- (3) In this section “relevant court costs” has the same meaning as in section 46.

49 Interest on criminal courts charge

- (1) The Lord Chancellor may by regulations provide that a person who is ordered by a criminal courts charge order to pay a charge must pay interest on the charge so far as it remains unpaid.
- (2) The regulations may, in particular—
 - (a) make provision about the rate of interest,
 - (b) make provision about periods when interest is or is not payable, and
 - (c) make provision by reference to a measure or document as amended from time to time.
- (3) The regulations may not make provision for a rate of interest that is higher than the rate that the Lord Chancellor considers would maintain the value in real terms of amounts that remain unpaid.
- (4) An amount of interest payable under the regulations is to be treated as part of the charge ordered to be paid by the criminal courts charge order.

50 Power of magistrates’ court to remit criminal courts charge

- (1) This section applies where a court has made a criminal courts charge order against a person.
- (2) A magistrates’ court may remit the whole or part of the criminal courts charge, but this is subject to subsections (3) to (5).
- (3) It may remit the charge only if—
 - (a) it is satisfied that the person has taken all reasonable steps to pay it, having regard to the person’s personal circumstances, or
 - (b) it is satisfied that collection and enforcement of the charge is impracticable.
- (4) It may not remit the charge at a time when the person is detained in prison.
- (5) It may not remit the charge unless each of the following has expired—
 - (a) a specified period beginning with the day on which a criminal courts charge order was last made in respect of the person;
 - (b) a specified period beginning with the day on which the person was last convicted of an offence;
 - (c) where relevant, a specified period beginning with the day on which the person was last released from prison.
- (6) Where a court remits a criminal courts charge after an order has been made under section 300(2) of the Criminal Justice Act 2003 (power to impose unpaid work requirement etc on fine defaulter) for default in paying the charge (or the charge and other amounts), the court must—

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- (a) reduce the total number of hours or days to which the order relates by the same proportion as the amount remitted bears to the total amount in respect of which the order was made, or
 - (b) if the total number of hours or days would be reduced to nil under paragraph (a), revoke the order.
- (7) In calculating a reduction required by subsection (6), any fraction of an hour or day is to be rounded down to the nearest hour or day.
- (8) In this section—
- “criminal courts charge” means the charge ordered to be paid by a criminal courts charge order;
 - “prison” includes any place where a person serving a sentence of detention for an offence is liable to be detained;
 - “specified period” means a period of a length specified by the Lord Chancellor by regulations.

51 Regulations under Chapter

- (1) Subsections (4) and (6) of section 407 (general powers to make provision in regulations) do not apply to the powers to make regulations conferred by this Chapter.
- (2) Regulations under this Chapter are subject to the negative resolution procedure.

CHAPTER 5

DUTIES TO EXPLAIN OR GIVE REASONS

52 Duty to give reasons for and to explain effect of sentence

- (1) A court passing sentence on an offender has the duties in subsections (2) and (3).
- (2) The court must state in open court, in ordinary language and in general terms, the court’s reasons for deciding on the sentence.
- (3) The court must explain to the offender in ordinary language—
 - (a) the effect of the sentence,
 - (b) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence,
 - (c) any power of the court to vary or review any order that forms part of the sentence, and
 - (d) the effects of failure to pay a fine, if the sentence consists of or includes a fine.
- (4) Criminal Procedure Rules may—
 - (a) prescribe cases in which either duty does not apply, and
 - (b) make provision about how an explanation under subsection (3) is to be given.
- (5) Subsections (6) to (9) are particular duties of the court in complying with the duty in subsection (2).

Sentencing guidelines

Status: This is the original version (as it was originally enacted).

- (6) The court must identify any sentencing guidelines relevant to the offender's case and—
 - (a) explain how the court discharged any duty imposed on it by section 59 or 60 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);
 - (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.
- (7) Where as a result of taking into account any matter mentioned in section 73(2) (guilty pleas), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.

Offender aged under 18

- (8) If the court imposes a youth rehabilitation order with supervision and surveillance, or a youth rehabilitation order with fostering, it must state why it is of the opinion mentioned in each of—
 - (a) section 179(2), and
 - (b) paragraph (a) and, if applicable, paragraph (b) of section 180(2).
- (9) If—
 - (a) the offender is aged under 18, and
 - (b) the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in section 230(2) (discretionary custodial sentence),the court must state why it is of that opinion.

53 Offender aged under 16: duties to give reasons where order not made in respect of parent or guardian

- (1) Where an offender aged under 16 is convicted of an offence, for the duty of the court to make a statement in certain circumstances—
 - (a) if it does not make a parenting order under section 366 in respect of a parent or guardian of the offender, see subsection (3)(b) of that section;
 - (b) if it—
 - (i) makes a criminal behaviour order in respect of the offender, and
 - (ii) does not make a parenting order under section 8(1)(b) of the Crime and Disorder Act 1998 in respect of a parent or guardian of the offender,see section 9(1B) of that Act;
 - (c) if it does not make an order under section 376 (binding over of parent or guardian), see subsection (4)(b) of that section.
- (2) Section 404 (certain references to parent or guardian to be read as references to local authority) does not apply to this section.

54 Duty to give reasons where reparation order not made

Where—

- (a) a court is dealing with an offender for an offence, and
- (b) a reparation order is available,

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the court must give reasons if it does not make a reparation order.

55 Duty to give reasons where compensation order not made

Where—

- (a) a court is dealing with an offender for an offence, and
- (b) a compensation order is available,

the court must give reasons if it does not make a compensation order.

56 Other duties of court to give reasons where certain orders not made

- (1) For other duties of the court dealing with an offender for an offence to give reasons, in certain circumstances, for a decision not to make an order, see—

<i>Duty to give reasons</i>	<i>Type of order</i>	<i>Type of offence</i>
Criminal Justice and Police Act 2001		
section 33(2)(c)	travel restriction order under section 33	sentence of imprisonment for certain drug-trafficking offences
Animal Welfare Act 2006		
section 33(6)	order under section 33 (deprivation)	certain offences under that Act
section 34(8)	order under section 34 (disqualification)	certain offences under that Act
Football Spectators Act 1989		
section 14A(3)	banning order under Part 2	relevant offence within the meaning of that Part
Prevention of Social Housing Fraud Act 2013		
section 4(4)	unlawful profit order under section 4	offence under section 1 or 2
Modern Slavery Act 2015		
section 8(7)(b)	slavery and trafficking reparation order	offence under section 1, 2 or 4

- (2) Nothing in this section is to be taken to affect—

- (a) any power to make an order mentioned in the table in subsection (1), or
- (b) any requirement to give reasons for a decision not to exercise any power to make an order not mentioned in the table.

PART 4

EXERCISE OF COURT'S DISCRETION

CHAPTER 1

PURPOSES OF SENTENCING

57 Purposes of sentencing: adults

- (1) This section applies where—
 - (a) a court is dealing with an offender for an offence, and
 - (b) the offender is aged 18 or over when convicted.
- (2) The court must have regard to the following purposes of sentencing—
 - (a) the punishment of offenders,
 - (b) the reduction of crime (including its reduction by deterrence),
 - (c) the reform and rehabilitation of offenders,
 - (d) the protection of the public, and
 - (e) the making of reparation by offenders to persons affected by their offences.
- (3) Subsection (1) does not apply—
 - (a) to an offence in relation to which a mandatory sentence requirement applies (see section 399), or
 - (b) in relation to making any of the following under Part 3 of the Mental Health Act 1983—
 - (i) a hospital order (with or without a restriction order),
 - (ii) an interim hospital order,
 - (iii) a hospital direction, or
 - (iv) a limitation direction.

58 Offenders aged under 18: considerations of court not affected by Code

Nothing in this Code affects the duties of the court—

- (a) to have regard to the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37 of the Crime and Disorder Act 1998);
- (b) under section 44 of the Children and Young Persons Act 1933 (to have regard to welfare and in certain cases to take steps in relation to surroundings and provision of education etc).

CHAPTER 2

SENTENCING GUIDELINES

59 Sentencing guidelines: general duty of court

- (1) Every court—

Status: This is the original version (as it was originally enacted).

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.

- (2) The duty imposed by subsection (1) is subject to—
 - (a) section 125(1) (fine must reflect seriousness of offence);
 - (b) section 179(2) (restriction on youth rehabilitation order);
 - (c) section 186(3) and (6) (restrictions on choice of requirements of youth rehabilitation order);
 - (d) section 204(2) (restriction on community order);
 - (e) section 208(3) and (6) (restrictions on choice of requirements of community order);
 - (f) section 230 (threshold for imposing discretionary custodial sentence);
 - (g) section 231 (custodial sentence must be for shortest term commensurate with seriousness of offence);
 - (h) sections 273 and 283 (life sentence for second listed offence for certain dangerous offenders);
 - (i) section 321 and Schedule 21 (determination of minimum term in relation to mandatory life sentence);
 - (j) the provisions mentioned in section 399(c) (mandatory minimum sentences).
- (3) Nothing in this section or section 60 or 61 is to be taken as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with an offender suffering from a mental disorder in the manner it considers to be most appropriate in all the circumstances.

60 Sentencing guidelines: determination of sentence

- (1) This section applies where—
 - (a) a court is deciding what sentence to impose on an offender for an offence, and
 - (b) offence-specific guidelines have been issued in relation to the offence.
- (2) The principal guidelines duty includes a duty to impose on the offender, in accordance with the offence-specific guidelines, a sentence which is within the offence range.
- (3) Subsection (2) is subject to—
 - (a) section 73 (reduction in sentences for guilty pleas),
 - (b) sections 74, 387 and 388 (assistance by offenders: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence, and
 - (c) any rule of law as to the totality of sentences.
- (4) If the offence-specific guidelines describe different seriousness categories—
 - (a) the principal guidelines duty also includes a duty to decide which of the categories most resembles the offender's case in order to identify the sentencing starting point in the offence range, but

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- (b) nothing in this section imposes on the court a separate duty to impose a sentence which is within the category range.
- (5) Subsection (4) does not apply if the court is of the opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles the offender's case.
- (6) Subsections (2) and (4) (except as applied by section 61) are subject to any power a court has to impose an extended sentence.

61 Sentencing guidelines: extended sentences and life sentences

Extended sentence: determination of appropriate custodial term

- (1) Subsection (2) applies where a court is considering whether to impose an extended sentence for an offence.
- (2) In determining the appropriate custodial term for the purposes of section 256(2), 268(2) or 281(2) (extended sentence for certain violent, sexual or terrorism offences), section 60 applies to the court as it applies to a court in determining the sentence for an offence.

Life sentence for second listed offence: determination of sentence condition

- (3) Subsection (4) applies where a court is considering whether to impose a sentence under section 273 or 283 (life sentence for second listed offence) for an offence.
- (4) In determining, for the purpose of deciding whether the sentence condition in section 273(4) or 283(4) is met, the sentence that it would have passed as mentioned in that condition, section 60 applies to the court as it applies to a court in determining the sentence for an offence.

Notional determinate term for non-fixed life sentence

- (5) Subsection (6) applies where a court imposes a non-fixed life sentence for an offence.
- (6) Section 60 applies to the court in determining the notional determinate term in respect of the offence for the purpose of determining the order to be made under section 323 (minimum term order for non-fixed life sentence).
- (7) For the purposes of subsection (6), the notional determinate term is the determinate sentence that would have been passed in respect of the offence if the court had not been required by the need to protect the public and the potential danger of the offender to impose a non-fixed life sentence.
- (8) In this section “non-fixed life sentence” means—
 - (a) a sentence of imprisonment for life (other than a sentence fixed by law),
 - (b) a sentence of detention for life under section 250, or
 - (c) a sentence of custody for life under section 272.

62 Sentencing guidelines duties: interpretation

- (1) In this Chapter—
 - “mental disorder”, in relation to a person, has the same meaning as in the Mental Health Act 1983;

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“the principal guidelines duty” means the duty, imposed by section 59(1)(a), of a court, in sentencing an offender, to follow any sentencing guidelines which are relevant to the offender’s case;

“offence-specific guidelines” means any sentencing guidelines issued in relation to a particular offence which are structured in the way described in section 121(2) to (5) of the Coroners and Justice Act 2009 (and “the offence-specific guidelines”, in relation to an offence, means, if any such guidelines have been issued in relation to the offence, those guidelines);

“the sentencing starting point”, in relation to the offence range, has the meaning given by section 121(10) of the Coroners and Justice Act 2009.

- (2) For the purposes of this Chapter—
- (a) references to the following are to be read in accordance with section 121 of the Coroners and Justice Act 2009 (sentencing ranges)—
 - the offence range;
 - the category range;
 - the starting point;
 - the appropriate starting point;
 - (b) offence-specific guidelines describe different seriousness categories if they describe different categories of case in accordance with subsection (2) of that section.

CHAPTER 3

SERIOUSNESS AND DETERMINING SENTENCE

Generally

63 Assessing seriousness

Where a court is considering the seriousness of any offence, it must consider—

- (a) the offender’s culpability in committing the offence, and
- (b) any harm which the offence—
 - (i) caused,
 - (ii) was intended to cause, or
 - (iii) might foreseeably have caused.

Aggravating factors

64 Offence committed on bail

In considering the seriousness of an offence committed while the offender was on bail, the court must—

- (a) treat the fact that it was committed in those circumstances as an aggravating factor, and
- (b) state in open court that the offence is so aggravated.

65 Previous convictions

- (1) This section applies where a court is considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more relevant previous convictions.
- (2) The court must treat as an aggravating factor each relevant previous conviction that it considers can reasonably be so treated, having regard in particular to—
 - (a) the nature of the offence to which the relevant previous conviction relates and its relevance to the current offence, and
 - (b) the time that has elapsed since the relevant previous conviction.
- (3) Where the court treats a relevant previous conviction as an aggravating factor under subsection (2) it must state in open court that the offence is so aggravated.
- (4) In subsections (1) to (3) “relevant previous conviction” means—
 - (a) a previous conviction by a court in the United Kingdom,
 - (b) a previous conviction of a relevant offence under the law of another member State by a court in that State,
 - (c) a previous conviction of a service offence (see subsection (5)), or
 - (d) a finding of guilt in respect of a member State service offence (see subsection (6)).
- (5) In subsection (4)(c) (previous convictions of service offences)—
 - (a) “conviction” includes anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction (which relates to summary hearings and the Summary Appeal Court);
 - (b) “service offence” means—
 - (i) a service offence within the meaning of the Armed Forces Act 2006, or
 - (ii) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);
 - (c) the previous convictions referred to are to be taken to include a previous finding of guilt in—
 - (i) proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence), or
 - (ii) proceedings before a Standing Civilian Court established under section 6 of the Armed Forces Act 1976.
- (6) In subsection (4)(d) “member State service offence” means an offence which—
 - (a) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
 - (b) would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006), if it were done in any part of the United Kingdom, by a member of Her Majesty’s forces, at the time of the conviction of the offender for the current offence,and, for this purpose—

“Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006;

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“service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.

- (7) For the purposes of this section, an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the offender for the current offence.

66 Hostility

- (1) This section applies where a court is considering the seriousness of an offence which is aggravated by—
- (a) racial hostility,
 - (b) religious hostility,
 - (c) hostility related to disability,
 - (d) hostility related to sexual orientation, or
 - (e) hostility related to transgender identity.

This is subject to subsection (3).

- (2) The court—
- (a) must treat the fact that the offence is aggravated by hostility of any of those types as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (3) So far as it relates to racial and religious hostility, this section does not apply in relation to an offence under sections 29 to 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated offences).
- (4) For the purposes of this section, an offence is aggravated by hostility of one of the kinds mentioned in subsection (1) if—
- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
 - (i) the victim’s membership (or presumed membership) of a racial group,
 - (ii) the victim’s membership (or presumed membership) of a religious group,
 - (iii) a disability (or presumed disability) of the victim,
 - (iv) the sexual orientation (or presumed sexual orientation) of the victim, or (as the case may be)
 - (v) the victim being (or being presumed to be) transgender, or
 - (b) the offence was motivated (wholly or partly) by—
 - (i) hostility towards members of a racial group based on their membership of that group,
 - (ii) hostility towards members of a religious group based on their membership of that group,
 - (iii) hostility towards persons who have a disability or a particular disability,
 - (iv) hostility towards persons who are of a particular sexual orientation, or (as the case may be)
 - (v) hostility towards persons who are transgender.

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- (5) For the purposes of paragraphs (a) and (b) of subsection (4), it is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
- (6) In this section—
- (a) references to a racial group are to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;
 - (b) references to a religious group are to a group of persons defined by reference to religious belief or lack of religious belief;
 - (c) “membership” in relation to a racial or religious group, includes association with members of that group;
 - (d) “disability” means any physical or mental impairment;
 - (e) references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment;
 - (f) “presumed” means presumed by the offender.

67 Assaults on emergency workers

- (1) This section applies where a court is considering the seriousness of an offence listed in subsection (3).
- (2) If the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court—
- (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (3) The offences referred to in subsection (1) are—
- (a) an offence under any of the following provisions of the Offences against the Person Act 1861—
 - (i) section 16 (threats to kill);
 - (ii) section 18 (wounding with intent to cause grievous bodily harm);
 - (iii) section 20 (malicious wounding);
 - (iv) section 23 (administering poison etc);
 - (v) section 28 (causing bodily injury by explosives);
 - (vi) section 29 (using explosives etc with intent to do grievous bodily harm);
 - (vii) section 47 (assault occasioning actual bodily harm);
 - (b) an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);
 - (c) manslaughter;
 - (d) kidnapping;
 - (e) an inchoate offence in relation to any of the preceding offences.
- (4) For the purposes of subsection (2) the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.
- (5) In this section, “emergency worker” has the meaning given by section 68.

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- (6) Nothing in this section prevents a court from treating the fact that an offence was committed against an emergency worker acting in the exercise of functions as such as an aggravating factor in relation to offences not listed in subsection (3).

68 Emergency workers for the purposes of section 67

- (1) In section 67, “emergency worker” means—
- (a) a constable;
 - (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
 - (c) a National Crime Agency officer;
 - (d) a prison officer;
 - (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
 - (f) a prisoner custody officer, so far as relating to the exercise of escort functions;
 - (g) a custody officer, so far as relating to the exercise of escort functions;
 - (h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;
 - (i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);
 - (j) a person employed for the purposes of providing, or engaged to provide—
 - (i) NHS health services, or
 - (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.
- (2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.
- (3) In this section—
- “custodial institution” means any of the following—
- (a) a prison;
 - (b) a young offender institution, secure training centre or secure college;
 - (c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by section 147 of the Immigration and Asylum Act 1999;
 - (d) services custody premises, as defined by section 300(7) of the Armed Forces Act 2006;
- “custody officer” has the meaning given by section 12(3) of the Criminal Justice and Public Order Act 1994;
- “escort functions”—
- (a) in the case of a prisoner custody officer, means the functions specified in section 80(1) of the Criminal Justice Act 1991;
 - (b) in the case of a custody officer, means the functions specified in paragraph 1 of Schedule 1 to the Criminal Justice and Public Order Act 1994;

“NHS health services” means any kind of health services provided as part of the health service continued under section 1(1) of the National Health Service Act 2006 and under section 1(1) of the National Health Service (Wales) Act 2006;

“prisoner custody officer” has the meaning given by section 89(1) of the Criminal Justice Act 1991.

69 Terrorist connection

- (1) This section applies where a court is considering the seriousness of an offence specified in Schedule 1 (offences where terrorist connection to be considered).
- (2) If the offence has a terrorist connection, the court—
 - (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (3) For the purposes of this section, an offence has a terrorist connection if the offence—
 - (a) is, or takes place in the course of, an act of terrorism, or
 - (b) is committed for the purposes of terrorism.

For this purpose, “terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1 of that Act).

70 Using minor to mind weapon

- (1) This section applies where—
 - (a) a court is considering the seriousness of an offence under section 28 of the Violent Crime Reduction Act 2006 (using someone to mind a weapon), and
 - (b) when the offence was committed—
 - (i) the offender was aged 18 or over, and
 - (ii) the person used to look after, hide or transport the weapon in question (“the person used”) was not.
- (2) The court—
 - (a) must treat the fact that the person used was under the age of 18 when the offence was committed as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (3) Subsection (4) applies where the offence is found to have involved the person used’s having possession of a weapon, or being able to make it available—
 - (a) over a period of two or more days, or
 - (b) at some time during a period of two or more days.
- (4) If, on a day during that period, sub-paragraphs (i) and (ii) of subsection (1)(b) were both satisfied, they are to be treated as both being satisfied when the offence was committed.

71 Supply of controlled drug near school premises or involving child

- (1) This section applies where—
 - (a) a court is considering the seriousness of an offence under section 4(3) of the Misuse of Drugs Act 1971 (supplying controlled drug etc), and

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- (b) the offender was aged 18 or over when the offence was committed.
- (2) If condition A or B is met, the court—
 - (a) must treat the fact that the condition is met as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.
- (4) For the purposes of subsection (3)—
 - “relevant time”, in relation to school premises, is—
 - (a) any time when the school premises are in use by persons under the age of 18;
 - (b) one hour before the start and one hour after the end of any such time;
 - “school” has the same meaning as it has in section 4A of the Misuse of Drugs Act 1971;
 - “school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school.
- (5) Condition B is that in connection with the commission of the offence the offender used a courier who, when the offence was committed, was aged under 18.
- (6) For the purposes of subsection (5), a person uses a courier in connection with an offence under section 4(3) of the Misuse of Drugs Act 1971 if the person causes or permits another person (“the courier”)—
 - (a) to deliver a controlled drug to a third person, or
 - (b) to deliver a drug-related consideration to the person or a third person.
- (7) For the purposes of subsection (6), a drug-related consideration is a consideration of any description which—
 - (a) is obtained in connection with the supply of a controlled drug, or
 - (b) is intended to be used in connection with obtaining a controlled drug.
- (8) In this section, “controlled drug” and “supply” have the same meanings as in the Misuse of Drugs Act 1971.

72 Supply of psychoactive substance in certain circumstances

- (1) This section applies where—
 - (a) a court is considering the seriousness of an offence under section 5 of the Psychoactive Substances Act 2016 (supplying psychoactive substance etc), and
 - (b) the offender was aged 18 or over when the offence was committed.
- (2) If condition A, B or C is met the court—
 - (a) must treat the fact that the condition is met as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.
- (4) For the purposes of subsection (3)—
 - “relevant time”, in relation to school premises, means—

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- (a) any time when the school premises are in use by persons under the age of 18;
 - (b) one hour before the start and one hour after the end of any such time; “school” has the same meaning as in section 6 of the Psychoactive Substances Act 2016; “school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school.
- (5) Condition B is that, in connection with the offence, the offender used a courier who, when the offence was committed, was aged under 18.
- (6) For the purposes of subsection (5), a person uses a courier in connection with an offence under section 5 of the Psychoactive Substances Act 2016 if the person causes or permits another person (“the courier”)—
- (a) to deliver a substance to a third person, or
 - (b) to deliver a drug-related consideration to the person or a third person.
- (7) For the purposes of subsection (6), a drug-related consideration is a consideration of any description which—
- (a) is obtained in connection with the supply of a psychoactive substance, or
 - (b) is intended to be used in connection with obtaining a psychoactive substance.
- (8) Condition C is that the offence was committed in a custodial institution.
- (9) For the purposes of subsection (8), “custodial institution” means any of the following—
- (a) a prison;
 - (b) a young offender institution, secure training centre or secure college;
 - (c) a removal centre, short-term holding facility or pre-departure accommodation (each, as defined in section 147 of the Immigration and Asylum Act 1999);
 - (d) service custody premises (as defined in section 300(7) of the Armed Forces Act 2006).
- (10) In this section “psychoactive substance” has the same meaning as in the Psychoactive Substances Act 2016 (see section 2 of that Act).

Mitigating factors

73 Reduction in sentence for guilty plea

- (1) This section applies where a court is determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court.
- (2) The court must take into account the following matters—
- (a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and
 - (b) the circumstances in which the indication was given.
- (3) If—
- (a) a mandatory sentence requirement applies in relation to the offence (see section 399) by virtue of a provision mentioned in subsection (4), and
 - (b) the offender is aged 18 or over when convicted,

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the mandatory sentence requirement does not prevent the court, after taking into account any matter referred to in subsection (2), from imposing any sentence which is not less than 80 per cent of the sentence which would otherwise be required by that requirement.

- (4) The provisions referred to in subsection (3)(a) are—
- (a) section 312 (minimum sentence for threatening with weapon or bladed article);
 - (b) section 313 (minimum of 7 years for third class A drug trafficking offence);
 - (c) section 314 (minimum of 3 years for third domestic burglary);
 - (d) section 315 (minimum sentence for repeat offence involving weapon or bladed article).
- (5) If—
- (a) a mandatory sentence requirement applies in relation to the offence by virtue of—
 - (i) section 312, or
 - (ii) section 315, and
 - (b) the offender is aged 16 or 17 when convicted,
- the mandatory sentence requirement does not prevent the court from imposing any sentence that it considers appropriate after taking into account any matter referred to in subsection (2).

74 Reduction in sentence for assistance to prosecution

- (1) This section applies where the Crown Court is determining what sentence to pass in respect of an offence on an offender who—
- (a) pleaded guilty to the offence,
 - (b) was convicted in the Crown Court or committed to the Crown Court for sentence, and
 - (c) pursuant to a written agreement made with a specified prosecutor, has assisted or offered to assist—
 - (i) the investigator,
 - (ii) or the specified prosecutor or any other prosecutor,
 in relation to that or any other offence.
- (2) The court may take into account the extent and nature of the assistance given or offered.
- (3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
- (a) that it has passed a lesser sentence than it would otherwise have passed, and
 - (b) what the greater sentence would have been.

This is subject to subsection (4).

- (4) If the court considers that it would not be in the public interest to disclose that the sentence has been discounted by virtue of this section—
- (a) subsection (3) does not apply,
 - (b) the court must give a written statement of the matters specified in subsection (3)(a) and (b) to—

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- (i) the prosecutor, and
 - (ii) the offender, and
 - (c) sections 52(2) and 322(4) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted by virtue of this section.
- (5) 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 (2).

75 Specified prosecutors

- (1) In section 74 “specified prosecutor” is to be read in accordance with section 71 of the Serious Organised Crime and Police Act 2005 (assistance by offender: immunity from prosecution).
- (2) The Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under—
 - (a) section 74, and
 - (b) sections 387 to 389 (assistance for prosecution etc: review of sentence).
- (3) The Attorney General may revise any guidance issued under subsection (2).

Effect of Code on other powers of court in assessing seriousness

76 Effect of Chapter on other powers of court to consider seriousness

Nothing in this Chapter that requires or permits a court to take any matter into account for the purpose of sentencing an offender for an offence is to be taken to prevent a court taking any other matter into account for that purpose.

77 Basis of opinion provisions not to affect power to mitigate sentences

- (1) Nothing in any of the basis of opinion provisions prevents a court from mitigating an offender's sentence by taking into account any matters that, in the opinion of the court, are relevant in mitigation of sentence.
- (2) Section 230(2) (threshold for imposing discretionary custodial sentence) does not prevent a court, after taking into account such matters, from passing a community sentence even though 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 a community sentence could not normally be justified for the offence.
- (3) Nothing in any of the basis of opinion provisions prevents a court—
 - (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence, and

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- (b) in the case of an offender who is convicted of one or more other offences, from mitigating the offender’s sentence by applying any rule of law as to the totality of sentences.
- (4) Subsections (2) and (3) are not to be taken to limit subsection (1).
- (5) In this section “basis of opinion provision” means any of the following—
 - (a) section 30 or 33 (pre-sentence reports and other requirements);
 - (b) section 124, 125 or 126 (fixing of fine);
 - (c) section 179, 180 or 186(3) to (9) (exercise of power to impose youth rehabilitation order, with or without intensive supervision and surveillance or fostering, and other requirements);
 - (d) section 204 or 208(3) to (9) (exercise of power to impose community order, and community requirements);
 - (e) section 230, 231 or 232 (imposing custodial sentences).

78 Basis of opinion provisions: offenders suffering from a mental disorder

- (1) Nothing in any of the basis of opinion provisions is to be taken—
 - (a) as requiring a court to pass—
 - (i) a custodial sentence, or
 - (ii) any particular custodial sentence,
 on an offender suffering from a mental disorder, or
 - (b) as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.
- (2) In this section—
 - “mental disorder” has the same meaning as in the Mental Health Act 1983 (see section 1 of that Act);
 - “basis of opinion provision” has the same meaning as in section 77.

THIRD GROUP OF PARTSDisposals

PART 5

ABSOLUTE AND CONDITIONAL DISCHARGE

79 Order for absolute discharge

- (1) In this Code “order for absolute discharge” means an order discharging an offender absolutely in respect of an offence.

Availability

- (2) An order for absolute discharge is available to a court dealing with an offender for an offence where—
 - (a) the offender is convicted by or before the court, and
 - (b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 399).

Exercise of power to make order for absolute discharge

- (3) Where it is available, the court may make an order for absolute discharge if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—
- (a) the nature of the offence, and
 - (b) the character of the offender.

Effect on other orders

- (4) Nothing in this section is to be taken to prevent a court, on discharging an offender absolutely in respect of an offence, from—
- (a) imposing any disqualification on the offender,
 - (b) making any of the following orders in respect of the offence—
 - (i) a compensation order (see section 133);
 - (ii) an order under section 152 (deprivation orders);
 - (iii) a restitution order (see section 147);
 - (iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,
 - (c) making an order under section 46 (criminal courts charge), or
 - (d) making an order for costs against the offender.

80 Order for conditional discharge

- (1) In this Code “order for conditional discharge” means an order discharging an offender for an offence subject to the condition that the offender commits no offence during the period specified in the order (referred to in this Code as “the period of conditional discharge”).

Availability

- (2) An order for conditional discharge is available to a court dealing with an offender for an offence where—
- (a) the offender is convicted by or before the court, and
 - (b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 399).
- (3) But see the following for circumstances where an order for conditional discharge is not available—
- (a) section 66ZB(6) of the Crime and Disorder Act 1998 (effect of youth cautions);
 - (b) section 66F of that Act (youth conditional cautions);
 - (c) section 103I(4) of the Sexual Offences Act 2003 (breach of sexual harm prevention order and interim sexual harm prevention order etc);
 - (d) section 339(3) (breach of criminal behaviour order);
 - (e) section 354(5) (breach of sexual harm prevention order).

Exercise of power to make order for conditional discharge

Status: This is the original version (as it was originally enacted).

- (4) Where it is available, the court may make an order for conditional discharge if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—
 - (a) the nature of the offence, and
 - (b) the character of the offender.
- (5) The period of conditional discharge specified in an order for conditional discharge must be a period of not more than 3 years beginning with the day on which the order is made.
- (6) On making an order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.

Effect on other orders

- (7) Nothing in this section prevents a court, on making an order for conditional discharge in respect of an offence, from—
 - (a) imposing any disqualification on the offender,
 - (b) making any of the following orders in respect of the offence—
 - (i) a compensation order (see section 133),
 - (ii) an order under section 152 (deprivation orders), or
 - (iii) a restitution order (see section 147), or
 - (iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,
 - (c) making an order under section 46 (criminal courts charge), or
 - (d) making an order for costs against the offender.

81 Commission of further offence by person conditionally discharged

Schedule 2 makes provision that applies where a person in respect of whom an order for conditional discharge has been made commits a further offence during the period of conditional discharge.

82 Effect of discharge

- (1) This section applies where—
 - (a) an order for absolute discharge, or
 - (b) an order for conditional discharge,
 is made in respect of an offence.
- (2) The conviction of that offence is to be deemed not to be a conviction for any purpose other than the purposes of—
 - (a) the proceedings in which the order is made, and
 - (b) in the case of an order for conditional discharge, any subsequent proceedings which may be taken against the offender under Schedule 2.

This is subject to subsection (3).

- (3) In the case of an order for conditional discharge, if the offender is sentenced (under Schedule 2) for the offence—

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- (a) the order ceases to have effect, and
 - (b) if the offender was aged 18 or over when convicted of the offence, subsection (2) ceases to apply to the conviction.
- (4) Without prejudice to subsections (2) and (3), the offender’s conviction is in any event to be disregarded for the purposes of any enactment or instrument which—
- (a) imposes any disqualification or disability upon convicted persons, or
 - (b) authorises or requires the imposition of any such disqualification or disability.
- (5) Subsections (2) to (4) do not affect—
- (a) any right of the offender to rely on the conviction in bar of any subsequent proceedings for the same offence, or
 - (b) the restoration of any property in consequence of the conviction.
- (6) In subsection (4)—
- “enactment” includes an enactment contained in a local Act;
 - “instrument” means an instrument having effect by virtue of an Act.
- (7) Subsection (2) has effect subject to the following (which concern rights of appeal)—
- (a) section 50(1A) of the Criminal Appeal Act 1968, and
 - (b) section 108(1A) of the Magistrates’ Courts Act 1980.

Nothing in this subsection affects any other enactment that excludes the effect of subsection (2) or (4) for particular purposes.

PART 6

ORDERS RELATING TO CONDUCT

CHAPTER 1

REFERRAL ORDERS FOR OFFENDERS AGED UNDER 18

Making referral orders

83 Referral order

- (1) In this Code “referral order” means an order—
- (a) which requires an offender to attend each of the meetings of a youth offender panel established for the offender by a youth offending team, and
 - (b) by virtue of which the offender is required to comply, for a particular period, with a programme of behaviour to be agreed between the offender and the panel in accordance with this Part (which takes effect as a youth offender contract).
- (2) For the court’s power to order other persons to attend meetings of the panel, see section 90.
- (3) For provision about—
- (a) the youth offender panel, see section 91;

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(b) the youth offender contract, see section 96.

(4) For the purposes of this Code, references to an offender being referred to a youth offender panel are to a referral order being made in respect of the offender.

84 Referral order: availability

- (1) A referral order is available to a court dealing with an offender for an offence where—
- (a) the court is a youth court or other magistrates' court,
 - (b) the offender is aged under 18 when convicted,
 - (c) neither the offence nor any connected offence is an offence the sentence for which is fixed by law,
 - (d) the court is not proposing to—
 - (i) impose a custodial sentence, or
 - (ii) make a hospital order (within the meaning of the Mental Health Act 1983),in respect of the offence or any connected offence,
 - (e) the court is not proposing to make—
 - (i) an order for absolute discharge, or
 - (ii) an order for conditional discharge,in respect of the offence, and
 - (f) the offender pleaded guilty to the offence or to any connected offence.
- (2) But a referral order is not available unless the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside (and the notice has not been withdrawn).

85 Duty and power to make referral order

- (1) Where a referral order is available—
- (a) the court must make a referral order if the compulsory referral conditions are met;
 - (b) otherwise, the court may make a referral order.
- (2) The compulsory referral conditions are met where—
- (a) the offence is an imprisonable offence,
 - (b) the offender pleaded guilty to the offence and to any connected offence, and
 - (c) the offender has never been—
 - (i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or
 - (ii) convicted by or before a court in another member State of any offence.
- (3) For the effect of making a referral order on the court's other sentencing powers, see section 89.

86 Making of referral order: general

- (1) A referral order must specify—

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- (a) the youth offending team which is to establish a youth offender panel for the offender, and
 - (b) the period for which any youth offender contract which takes effect by virtue of the order is to have effect.
- (2) That period must be—
- (a) not less than 3 months, and
 - (b) not more than 12 months.
- (3) The youth offending team specified in the order must be the team which has the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.
- (4) On making a referral order the court must explain to the offender in ordinary language—
- (a) the effect of the order, and
 - (b) the consequences which may follow—
 - (i) if no youth offender contract takes effect between the offender and the panel, or
 - (ii) if the offender breaches a youth offender contract.

Nothing in this subsection affects the court’s duty under section 52 (duty to give reasons for and explain effect of sentence).

87 Referral order consecutive to earlier referral order

- (1) Where—
- (a) a court makes a referral order (“the later order”), and
 - (b) the offender is subject to an earlier referral order,
- the court may direct that any youth offender contract under the later order is not to take effect until the earlier order is revoked or discharged.
- (2) For this purpose, the reference to an earlier referral order includes an order made under section 16 of the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders).

88 Making of referral order: connected offences

- (1) This section applies where a court makes referral orders in respect of two or more connected offences.
- (2) The referral orders have the effect of referring the offender to a single youth offender panel.
- (3) Accordingly, provision made by the orders under section 83(1)(a) and section 86(1)(a) (which relates to the youth offending team and a youth offender panel) must be the same for each referral order.
- (4) The court may direct that the period specified under section 86(1)(b) in any of the referral orders is to run—
- (a) concurrently with, or
 - (b) in addition to,
- the period specified in another of the referral orders.

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- (5) But a direction under subsection (4) must not result in a total period of more than 12 months.
- (6) For the purposes of this Chapter, each of the orders mentioned in subsection (1) is associated with each other of those orders.

89 Making of referral order: effect on court's other sentencing powers

- (1) This section applies where a court makes a referral order in respect of an offence.
- (2) In dealing with the offender for any connected offence, the court must—
 - (a) sentence the offender by making a referral order, or
 - (b) make an order for absolute discharge.
- (3) In dealing with the offender in respect of the offence or any connected offence, the court may not—
 - (a) order the offender to pay a fine,
 - (b) make any of the following orders—
 - (i) a youth rehabilitation order;
 - (ii) an order under section 1(2A) of the Street Offences Act 1959;
 - (iii) a reparation order;
 - (iv) an order for conditional discharge.
- (4) The court may not make—
 - (a) an order binding the offender over to keep the peace or to be of good behaviour, or
 - (b) an order under section 376 (binding over of parent or guardian), in connection with the offence or any connected offence.
- (5) Nothing in section 85 or subsection (2) affects any power or duty of a magistrates' court under—
 - (a) section 25 (power and duty to remit young offenders to youth courts for sentence),
 - (b) section 10(3) of the Magistrates' Courts Act 1980 (adjournment for inquiries), or
 - (c) section 35, 38, 43 or 44 of the Mental Health Act 1983 (remand for reports, interim hospital orders and committal to Crown Court for restriction order).
- (6) Nothing in this section affects any power of a court, where it revokes a referral order, to re-sentence an offender for the offence in respect of which the order was made.

90 Order requiring parents etc to attend meetings

- (1) This section applies where a court makes a referral order.
- (2) The court—
 - (a) may make an order requiring—
 - (i) the appropriate person, or
 - (ii) if there are two or more appropriate persons, one or more of them, to attend the meetings of the youth offender panel, and
 - (b) must do so if the offender is aged under 16 when the referral order is made.

- (3) If the offender is—
- (a) a looked-after child, and
 - (b) aged under 16 when the referral order is made,
- the person or persons required under subsection (2) to attend those meetings must include at least one representative of the responsible authority.
- (4) But an order under subsection (2) must not require a person to attend those meetings—
- (a) if the court is satisfied that it would be unreasonable to do so, or
 - (b) to an extent which the court is satisfied would be unreasonable.
- (5) For the purposes of this section, each of the following is an appropriate person in relation to an offender—
- (a) if the offender is a looked-after child—
 - (i) a representative of the responsible authority, and
 - (ii) each person who is a parent or guardian of the offender with whom the offender is allowed to live;
 - (b) otherwise, each person who is a parent or guardian of the offender.
- (6) In this section—
- “looked-after child” means a child who is (within the meaning of the Children Act 1989 or the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#)) looked after by a local authority, and
- “responsible authority”, in relation to a looked-after child, means the authority by which the child is looked after.
- (7) The court must forthwith send a copy of an order under subsection (2)—
- (a) to each person required by the order to attend meetings of the panel, and
 - (b) to any responsible authority whose representative is required by the order to attend meetings of the panel,
- unless the person was present, or the authority was represented, in court when the order was made.

Youth offender panels

91 Establishment of youth offender panels

- (1) This section applies where a court has made a referral order (or two or more associated referral orders).
- (2) The specified youth offending team must establish a youth offender panel for the offender.
- (3) The youth offender panel must—
- (a) be constituted,
 - (b) conduct its proceedings, and
 - (c) discharge its functions under this Chapter,
- in accordance with guidance issued from time to time by the Secretary of State.
- (4) But at each of its meetings the panel must consist of at least—

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- (a) one member appointed by the specified youth offending team from among its members, and
 - (b) two members appointed by that team who are not members of the team.
- (5) The Secretary of State may by regulations make provision requiring persons appointed as members of a youth offender panel to—
- (a) have qualifications specified in the regulations;
 - (b) satisfy other criteria so specified.
- (6) Regulations under subsection (5) are subject to the negative resolution procedure.
- (7) The Secretary of State may revise any guidance issued under subsection (3).

92 Attendance at panel meetings: offender and parent or guardian

- (1) This section applies to each meeting of the youth offender panel established for the offender.
- (2) The specified youth offending team must notify—
- (a) the offender, and
 - (b) any person to whom an order under section 90 (requirement to attend meetings of the panel) applies,
- of the time and place at which the person is required to attend the meeting.
- (3) If the offender fails to attend any part of the meeting the panel may—
- (a) adjourn the meeting to such time and place as the panel may specify (in which case subsection (2) applies to the adjourned meeting), or
 - (b) end the meeting and refer the offender back to court.

93 Failure of parent or guardian to comply with order under section 90

- (1) If—
- (a) a parent or guardian of an offender fails to comply with an order under section 90 (orders requiring parents etc to attend meetings), and
 - (b) the offender is aged under 18 at the time of the failure,
- the youth offender panel may refer the parent or guardian to a youth court acting in the local justice area in which it appears to the panel that the offender resides or will reside.
- (2) To make the referral, the panel must send a report to the youth court explaining why the parent or guardian is being referred to it.
- (3) A youth court which receives a report under subsection (2) must cause the parent or guardian to appear before it.
- (4) For that purpose, a justice acting in the local justice area in which the court acts may—
- (a) issue a summons requiring the parent to appear before that youth court at the place and time specified in it, or
 - (b) if the report is substantiated on oath, issue a warrant for the parent's arrest which requires the parent to be brought before that court.
- (5) For the youth court's power to make a parenting order where the panel refers the parent or guardian under this section, see section 368 (parenting order where parent or guardian fails to attend meeting of panel).

- (6) Making a parenting order under that section does not affect the order under section 90.
- (7) Accordingly, section 63(1) to (4) of the Magistrates' Courts Act 1980 (power to deal with person for breach of order etc) applies in relation to an order under section 90 (in addition to this section and section 368).

94 Attendance at panel meetings: other persons

- (1) At a meeting of a youth offender panel, the offender may be accompanied by one person aged 18 or over chosen by the offender with the agreement of the panel.
- (2) It need not be the same person who accompanies the offender to every meeting.
- (3) The panel may allow any of the following to attend a meeting—
 - (a) a victim;
 - (b) any person who appears to the panel to be someone capable of having a good influence on the offender.
- (4) If the panel allows a victim to attend a meeting of the panel, it may allow the victim to be accompanied to the meeting by one person chosen by the victim with the agreement of the panel.
- (5) For the purposes of subsections (3) and (4) “victim” means any person who appears to the panel to be a victim of, or otherwise affected by, the offence or any of the offences in respect of which the offender was referred to the panel.

Youth offender contracts

95 Duty of youth offending team to arrange initial meetings of panel

- (1) Where a court has made a referral order (or two or more associated referral orders), the specified youth offending team must arrange the first meeting of the youth offender panel established for the offender.
- (2) The specified youth offending team must also arrange any further meeting of the panel that may be held under section 98(2)(b) (resuming consideration).

96 Agreement of youth offender contract with offender

- (1) This section applies to—
 - (a) the first meeting of a youth offender panel established for an offender, and
 - (b) any further meeting of the panel held under section 98(2)(b) (resuming consideration).
- (2) At the meeting the panel must seek to reach agreement with the offender on a programme of behaviour whose aim (or principal aim) is to prevent re-offending by the offender.
- (3) Schedule 3 makes provision about the programme.
- (4) Where a programme is agreed between the offender and the panel, the panel must produce a written record of the programme forthwith—

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- (a) in language capable of being readily understood by, or explained to, the offender,
 - (b) for signature by the offender, and
 - (c) for signature by a member of the panel on behalf of the panel.
- (5) Once the record has been signed by the offender and on behalf of the panel—
- (a) the terms of the programme, as set out in the record, take effect as the terms of a “youth offender contract” between the offender and the panel, and
 - (b) the panel must provide a copy of the record to the offender.

97 Duration of compliance period

- (1) This section applies where a youth offender contract has taken effect between an offender and a youth offender panel.
- (2) The compliance period begins with the day on which the youth offender contract takes effect.
- (3) The length of the compliance period is—
- (a) if the contract relates to a single referral order, the period specified in the order under section 86(1)(b);
 - (b) if the contract relates to two or more referral orders, the total period resulting from any direction of the court under section 88(4).
- (4) Subsection (3) is subject to—
- (a) any order under paragraph 9, 12 or 15 of Schedule 4 extending the length of the compliance period, and
 - (b) subsection (5).
- (5) The compliance period expires on revocation of the referral order, or each of the referral orders, to which the youth offender contract relates.

98 Failure to agree youth offender contract

- (1) This section applies to—
- (a) the first meeting of a youth offender panel established for an offender, and
 - (b) any further meeting of the panel held under subsection (2)(b).
- (2) The panel may—
- (a) end the meeting without having reached agreement with the offender on an appropriate programme of behaviour, and
 - (b) resume consideration of the offender’s case at a further meeting of the panel.
- (3) But if, at the meeting, it appears to the panel that there is no prospect of reaching an agreement with the offender on an appropriate programme of behaviour within a reasonable period after the making of the referral order (or orders), the panel—
- (a) may not consider the case at a further meeting under subsection (2)(b), and
 - (b) must instead refer the offender back to court.
- (4) If, at the meeting, the panel and the offender reach agreement on an appropriate programme of behaviour, but—
- (a) the offender does not sign the record produced under section 96(4)(b), and

(b) the offender’s failure to do so appears to the panel to be unreasonable, the panel must end the meeting and refer the offender back to court.

(5) In this section, “appropriate programme of behaviour” means a programme of behaviour of the kind mentioned in section 96(2).

99 Arranging progress meetings

(1) This section applies where a youth offender contract has taken effect.

(2) The specified youth offending team must arrange a meeting of the youth offender panel at any time during the compliance period (“a progress meeting”) if the panel requests it to do so under this section.

(3) The panel may request the specified youth offending team to arrange a progress meeting if it appears to the panel to be expedient to review—

(a) the offender’s progress in implementing the programme of behaviour contained in the youth offender contract, or

(b) any other matter arising in connection with the contract.

(4) The panel must request the specified youth offending team to arrange a progress meeting if subsection (5) or (6) applies.

(5) This subsection applies where the offender has notified the panel that the offender wishes—

(a) the youth offender contract to be varied, or

(b) to be referred back to court with a view to the referral order (or orders) being revoked on account of a significant change in the offender’s circumstances (such as being taken to live abroad) which makes compliance with the contract impractical.

(6) This subsection applies where it appears to the panel that the offender is in breach of the contract.

100 Progress meetings: conduct

(1) This section applies to any meeting of a youth offender panel arranged under section 99.

(2) At the meeting, the youth offender panel must do such of the following as it considers appropriate in the circumstances—

(a) review the offender’s progress or any other matter referred to in section 99(3);

(b) discuss with the offender any breach of the youth offender contract which it appears to the panel that the offender has committed;

(c) consider any variation in the youth offender contract—

(i) sought by the offender, or

(ii) which appears to the panel expedient in the light of any such review or discussion;

(d) consider any request by the offender under section 99(5)(b) to be referred back to court.

(3) Where the youth offender panel has discussed with the offender any breach of the contract which it appears to the panel that the offender has committed, the panel may—

Status: This is the original version (as it was originally enacted).

- (a) agree with the offender that the offender is to continue to be required to comply with the contract (either in its original form or with any agreed variation of it) without being referred back to court, or
 - (b) end the meeting and refer the offender back to court.
- (4) Where the panel and the offender agree a variation in the contract, the panel must produce a written record of the variation forthwith—
- (a) in language capable of being readily understood by, or explained to, the offender,
 - (b) for signature by the offender, and
 - (c) for signature by a member of the panel on behalf of the panel.
- (5) Once the record has been signed by the offender and on behalf of the panel—
- (a) the variation in the contract takes effect, and
 - (b) the panel must provide a copy of the record to the offender.
- (6) If at the meeting—
- (a) the panel and the offender agree a variation in the contract,
 - (b) the offender does not sign the record produced under subsection (4), and
 - (c) the offender’s failure to do so appears to the panel to be unreasonable,
- the panel may end the meeting and refer the offender back to court.
- (7) Schedule 3 (programme of behaviour) applies to what the contract, as varied under this section, may provide as it applies to a programme of behaviour agreed under section 96.
- (8) Where the offender has requested under section 99(5)(b) to be referred back to court and the panel—
- (a) has discussed the request with the offender, and
 - (b) is satisfied that there is (or is soon to be) a change in circumstances of the kind mentioned in that provision,
- it may end the meeting and refer the offender back to court.

101 Final meeting

- (1) This section applies where—
- (a) a youth offender contract has taken effect between a youth offender panel and an offender, and
 - (b) the compliance period is due to expire.
- (2) The specified youth offending team must arrange a meeting of the panel (“the final meeting”) to be held before the end of the compliance period.
- (3) At the final meeting the panel must—
- (a) review the extent of the offender’s compliance to date with the youth offender contract,
 - (b) decide whether or not the offender’s compliance with the contract justifies the conclusion that the offender will have satisfactorily completed the contract by the end of the compliance period, and
 - (c) give the offender written confirmation of its decision.
- (4) A decision that the conclusion mentioned in subsection (3)(b) is justified—

Status: This is the original version (as it was originally enacted).

- (a) has the effect of discharging the referral order (or orders) as from the end of the compliance period, and
 - (b) can be made in the offender's absence.
- (5) If the panel decides that that conclusion is not justified, it must refer the offender back to court.
- (6) Nothing in section 92(3) permits the final meeting to be adjourned (or re-adjourned) to a time after the end of the compliance period.

Other powers to refer offender back to court

102 Revocation of referral order where offender making good progress etc

- (1) This section applies where—
- (a) a youth offender contract has taken effect between a youth offender panel and an offender, and
 - (b) it appears to the panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.
- (2) The panel may refer the offender back to court, requesting the appropriate court—
- (a) to revoke the order (or each of the orders) under sub-paragraph (2) of paragraph 7 of Schedule 4, or
 - (b) to—
 - (i) revoke the order (or each of the orders) under that sub-paragraph, and
 - (ii) re-sentence the offender under sub-paragraph (4) of that paragraph for the offence in respect of which the revoked order was made.
- (3) In deciding whether to refer the offender back to court under this section, the panel must have regard to circumstances which have arisen since the youth offender contract took effect, which may include the offender's making good progress under the contract.
- (4) Where—
- (a) the panel refers the offender back to court under this section, and
 - (b) the appropriate court decides not to revoke the order (or orders) under paragraph 7(2) of Schedule 4 in consequence of that referral,
- the panel may not refer the offender back to court again under this section during the 3 month period beginning with the date of the court's decision, except with the consent of the appropriate court.

103 Extension of compliance period

- (1) This section applies where—
- (a) a youth offender contract has taken effect,
 - (b) the compliance period is less than 12 months,
 - (c) the compliance period has not ended, and
 - (d) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of the compliance period to be extended.

Status: This is the original version (as it was originally enacted).

- (2) The panel may refer the offender back to court requesting the appropriate court to extend the length of the compliance period.
- (3) The requested period of extension must not be more than 3 months.

Further court proceedings

104 Offender referred back to court or convicted while subject to referral order

In Schedule 4—

- (a) Part 1 makes provision for what is to happen when a youth offender panel refers an offender back to court;
- (b) Part 2 makes provision for what is to happen when an offender is convicted of further offences while subject to a referral order.

Supplementary

105 Youth offender panel: change of residence

- (1) This section applies where the court which made a referral order is satisfied that—
 - (a) the offender has changed, or proposes to change, residence (to the “new residence”), and
 - (b) the youth offending team for the time being specified in the order (“the current team”) does not have the function of implementing referral orders in the area of the offender’s new residence (“the new area”).
- (2) The court may amend the order so that it specifies instead the youth offending team which has the function of implementing referral orders in the new area (“the new team”).
- (3) Where the court does so, this Chapter (and, in particular, section 91(2) (duty to establish youth offender panel)) applies to the new team accordingly.
 This is subject to subsection (4).
- (4) If a youth offender contract has already taken effect under the referral order between the offender and the youth offender panel established by the current team—
 - (a) section 95 does not apply to the new team, and
 - (b) the contract has effect after the amendment as a youth offender contract between—
 - (i) the offender, and
 - (ii) the youth offender panel established by the new team.

106 Functions of the specified youth offending team

- (1) This section applies where a referral order is made in respect of an offender.
- (2) The specified youth offending team must arrange for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel.
- (3) During the compliance period—

Status: This is the original version (as it was originally enacted).

- (a) the specified youth offending team must make arrangements for supervising the offender's compliance with the youth offender contract, and
 - (b) the person who is the member of the panel referred to in section 91(4)(a) must ensure that records are kept of the offender's compliance, or failure to comply, with that contract.
- (4) In implementing a referral order, the specified youth offending team must have regard to any guidance issued by the Secretary of State.
- (5) The Secretary of State may revise any guidance issued under subsection (4).

107 Rules of court

- (1) Criminal Procedure Rules may make such provision as appears to the Criminal Procedure Rule Committee to be necessary or expedient for the purposes of this Chapter.
- (2) Nothing in this section affects the generality of any other enactment conferring power to make Criminal Procedure Rules.

108 Referral orders: interpretation

- (1) In this Chapter—
- “the appropriate court”, in relation to any referral of an offender back to court, means—
 - (a) if the offender is aged under 18 when first appearing before the court in pursuance of the referral back, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside;
 - (b) otherwise, a magistrates' court (other than a youth court) acting in that area;
 - “associated”, in relation to referral orders, is to be read in accordance with section 88(6);
 - “compliance period” means the period for which a youth offender contract which takes effect between the offender and the youth offender panel is to have effect;
 - “meeting”, in relation to a youth offender panel, means—
 - (a) the first meeting arranged under section 95(1),
 - (b) any further meeting held under section 98(2)(b),
 - (c) any progress meeting arranged under section 99, or
 - (d) the final meeting held under section 101;
 - “the specified youth offending team”, in relation to an offender to whom a referral order applies (or two or more associated referral orders apply), means the youth offending team for the time being specified in the order (or orders);
 - “youth offender panel”, in relation to an offender, means the panel established for the offender in accordance with section 91.
- (2) For the purposes of this Chapter, an offence is connected with another offence if the offender is to be dealt with for both offences at the same time (whether or not convicted of them at the same time or by or before the same court).

Status: This is the original version (as it was originally enacted).

- (3) Any reference in this Chapter to a youth offender contract taking effect is to it taking effect between an offender and a youth offender panel under section 96.
- (4) Section 404 (certain references to parent or guardian to be read as references to local authority) does not apply for the purposes of this Part (except that it does apply for the purposes of paragraph 13 of Schedule 4 (further proceedings)).

CHAPTER 2

REPARATION ORDERS FOR OFFENDERS AGED UNDER 18

109 Reparation order

- (1) In this Code “reparation order” means an order made under this Chapter in respect of an offence which imposes requirements on the offender to make reparation for the offence to—
 - (a) a particular person or particular persons, or
 - (b) the community at large.
- (2) In this Chapter, references to making reparation for an offence are to making reparation for the offence otherwise than by the payment of compensation.

110 Reparation order: availability

- (1) A reparation order is available to a court dealing with an offender for an offence where—
 - (a) the offender is aged under 18 when convicted,
 - (b) the offence is not an offence the sentence for which is fixed by law, and
 - (c) the court is not proposing to—
 - (i) impose a custodial sentence,
 - (ii) make a youth rehabilitation order, or
 - (iii) make a referral order.
- (2) But a reparation order is not available unless the court has been notified by the Secretary of State that arrangements for implementing reparation orders are available in the area in which it appears to the court that the offender resides or will reside (and the notice has not been withdrawn).
- (3) A reparation order is not available if the offender is subject to a youth rehabilitation order, unless when it makes the reparation order the court revokes the youth rehabilitation order.
- (4) For the power of the court to revoke the youth rehabilitation order, see Part 5 of Schedule 7 (powers of court in relation to youth rehabilitation order following subsequent conviction).

111 Requirement to consider report before making a reparation order

- (1) This section applies where a court proposes to make a reparation order in respect of an offence.

- (2) Before making the order, the court must obtain and consider a written report by—
 - (a) an officer of a provider of probation services,
 - (b) a social worker of a local authority, or
 - (c) a member of a youth offending team.
- (3) The report must indicate—
 - (a) the type of work that is suitable for the offender, and
 - (b) the attitude of the victim or victims to requirements proposed to be included in the reparation order.

112 Requirements to make reparation to be specified in order

- (1) This section applies where a court makes a reparation order in respect of an offence.
- (2) The reparation order must—
 - (a) specify the requirements with which the offender must comply, and
 - (b) if those requirements require reparation to be made to a particular person or particular persons, specify that person or those persons.
- (3) The requirements must be such as in the opinion of the court are commensurate with the seriousness of—
 - (a) the offence, or
 - (b) the combination of the offence and one or more associated offences.

This is subject to subsections (5) and (6).
- (4) Any person specified under subsection (2)(b) must be a person identified by the court as—
 - (a) a victim of the offence, or
 - (b) a person otherwise affected by it.
- (5) The reparation order may not impose a requirement to make reparation to a particular person without the consent of that person.
- (6) The requirements must be requirements to make reparation which—
 - (a) may require the offender to perform work, but
 - (b) if they do, must not require the offender to work for more than 24 hours in aggregate.
- (7) The requirements must, so far as practicable, be such as to avoid—
 - (a) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment,
 - (b) any conflict with the offender’s religious beliefs, and
 - (c) any conflict with the requirements of any other court order to which the offender may be subject.

113 Other provision to be specified in a reparation order

- (1) This section applies where a court makes a reparation order.
- (2) The reparation order must specify the local justice area in which it appears to the court making the order that the offender resides or will reside.

Status: This is the original version (as it was originally enacted).

- (3) The reparation order must specify the responsible officer.
- (4) The person specified as the responsible officer must be—
 - (a) an officer of a provider of probation services acting in the offender’s home local justice area,
 - (b) a social worker of the local authority in whose area it appears to the court that the offender resides or will reside, or
 - (c) a member of a youth offending team established by that local authority.

114 Making reparation

- (1) The offender must perform the requirements of the reparation order under the supervision of the responsible officer.
- (2) Any requirements to make reparation imposed by a reparation order must be completed within the period of 3 months beginning with the day on which the order is made.

115 Breach, revocation or amendment of reparation order

Schedule 5 makes provision about breach, revocation and amendment of reparation orders.

116 Reparation orders: interpretation

In this Chapter—

- (a) references to making reparation are to be read in accordance with section 109(2);
- (b) “offender’s home local justice area” means the local justice area for the time being specified in the reparation order under section 113 or by virtue of an order under paragraph 5(4)(b)(ii) of Schedule 5;
- (c) the “responsible officer” means the responsible officer for the time being specified in the reparation order under that section or by virtue of an order under that paragraph;
- (d) references to breach of a requirement of a reparation order include references to a failure to comply with the requirement.

CHAPTER 3

OTHER ORDERS

117 Orders under Street Offences Act 1959

See section 1(2A) of the Street Offences Act 1959 for orders available in the case of offences under section 1 of that Act (loitering or soliciting for purposes of prostitution) where no other sentence is imposed.

PART 7

FINANCIAL ORDERS AND ORDERS RELATING TO PROPERTY

CHAPTER 1

FINES

Availability

118 Availability of fine: magistrates' court

- (1) A fine is available to a magistrates' court dealing with an offender for an offence if under the relevant offence provision a person who is convicted of that offence is liable to a fine.
- (2) If under the relevant offence provision the offender is liable to—
 - (a) a fine of a specified amount,
 - (b) a fine of not more than a specified amount,the amount of the fine—
 - (i) must not be more than that amount, but
 - (ii) may be less than that amount (unless an Act passed after 31 December 1879 expressly provides to the contrary).
- (3) This is subject to—
 - (a) section 121 (availability: fines not to be combined with certain other orders);
 - (b) section 123 (limit on fines imposed by magistrates' courts in respect of young offenders).
- (4) In this section “relevant offence provision”, in relation to an offence, means—
 - (a) the enactment creating the offence or specifying the penalty to which a person convicted of the offence is liable, or
 - (b) that provision read in accordance with—
 - (i) section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates' court) and regulations under that section;
 - (ii) section 86 of that Act (power to increase certain other fines on conviction by magistrates' court) and regulations under that section;
 - (iii) section 32 of the Magistrates' Courts Act 1980 (penalties on summary conviction for offences triable either way);
 - (iv) section 119 (power of magistrates' court to fine where only imprisonment etc specified);
 - (v) section 122 (standard scale of fines),

and, for this purpose, “enactment” includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act.

Status: This is the original version (as it was originally enacted).

119 Power of magistrates' court to fine where only imprisonment etc specified

- (1) This section applies where under an enactment a magistrates' court has power to sentence an offender to imprisonment or other detention but not to a fine.

It is immaterial whether the enactment was passed or made before or after the commencement of this Act.

- (2) The magistrates' court may impose a fine instead of sentencing the offender to imprisonment or other detention (unless an Act passed after 31 December 1879 expressly provides to the contrary).

- (3) In the case of an offence which—

- (a) is triable either way, and
- (b) was committed before 12 March 2015,

a fine imposed under subsection (2) may not exceed the prescribed sum (within the meaning of section 32 of the Magistrates' Courts Act 1980).

- (4) In the case of a fine imposed under subsection (2) for a summary offence—

- (a) the amount of the fine may not exceed level 3 on the standard scale, and
- (b) the default term must not be longer than the term of imprisonment or detention to which the offender is liable on conviction of the offence.

For this purpose, “default term” means the term of imprisonment or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 to which the offender would be subject in default of payment of the fine.

- (5) 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.

120 General power of Crown Court to fine offender convicted on indictment

- (1) A fine is available to the Crown Court where it is dealing with an offender who is convicted on indictment for an offence—

- (a) instead of, or
- (b) in addition to,

dealing with the offender in any other way which is available to the court.

- (2) Subsection (1)—

- (a) does not apply where the offence is one in relation to which a mandatory sentence requirement applies by virtue of any of the following provisions of section 399—

- (i) paragraph (a) (life sentence for murder etc),
- (ii) paragraph (b) (other mandatory life sentences), or
- (iii) paragraph (c)(iv) (minimum sentence for third domestic burglary offence),

- (b) is subject to any other enactment requiring the offender to be dealt with in a particular way, and

- (c) does not apply if the court is precluded from sentencing the offender by its exercise of some other power.

- (3) Nothing in subsection (1) affects the maximum amount of a fine to which a person is liable for an offence committed before the commencement date.

121 Availability of fine: effect of other orders

For circumstances in which a fine is not available, see—

- (a) section 37(8) of the Mental Health Act 1983 (hospital order or guardianship order in case where person convicted of offence punishable with imprisonment);
- (b) section 89 (making of referral order: effect on court’s other sentencing powers).

Magistrates' court

122 The standard scale of fines for summary offences

- (1) The standard scale of fines for summary offences, which is known as “the standard scale”, as it has effect for Code offences, is as follows—

<i>Level on the scale</i>	<i>Amount of fine</i>	
	<i>Offence committed on or after 11 April 1983 and before 1 October 1992</i>	<i>Offence committed on or after 1 October 1992</i>
1	£25	£200
2	£50	£500
3	£200	£1,000
4	£500	£2,500
5	£1,000	£5,000.

- (2) In relation to a Code offence, a relevant reference to a particular level on the standard scale is to be read as referring to that level on the scale set out in the column of the table in subsection (1) that applies to offences committed on the date on which the offence was committed.

- (3) In relation to—

- (a) a relevant reference in an enactment or instrument passed or made before 12 March 2015 to level 5 on the standard scale, and
- (b) an offence committed on or after that date,

subsection (2) is subject to section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates’ court).

- (4) A reference to a level on the standard scale in an enactment or instrument made under an enactment (whenever passed or made) is a “relevant reference” to that level if—

- (a) the enactment or instrument provides that a person convicted of a summary offence is liable on conviction to a fine or maximum fine by reference to that level, or
- (b) it is a reference in an enactment which confers power by subordinate instrument to make a person liable on conviction of a summary offence (whether or not created by the instrument) to a fine or maximum fine by reference to that level.

Status: This is the original version (as it was originally enacted).

In this section, “Code offence” is an offence of which the offender is convicted after the Code comes into force.

123 Limit on fines imposed by magistrates’ courts in respect of young offenders

- (1) This section applies where an offender—
 - (a) was convicted by a magistrates’ court,
 - (b) was under 18 when convicted, and
 - (c) is before that court to be sentenced.
- (2) The court may not impose a fine of more than—
 - (a) £250, if the offender was under 14 when convicted, or
 - (b) £1,000, if the offender was 14 or over when convicted.

Exercise of powers

124 Fixing of fine: duty of court to inquire into individual offender’s circumstances

- (1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into the offender’s financial circumstances.
- (2) For the power to make a financial circumstances order, see section 35.
- (3) For modifications of this section where the court also makes an order under section 380 (power to order parent or guardian to pay fine, costs, compensation or surcharge), see section 128.

125 Exercise of court’s powers to impose fine and fix amount

- (1) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.
- (2) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, in particular, the financial circumstances of the offender so far as they are known, or appear, to the court.
- (3) Subsection (2) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.
- (4) In applying subsection (2), a court must not reduce the amount of a fine on account of any surcharge it orders the offender to pay under section 42, except to the extent that the offender has insufficient means to pay both.
- (5) For modifications of this section where the court also makes an order under section 380 (power to order parent or guardian to pay fine, costs, compensation or surcharge), see section 128.
- (6) For the effect of proceedings in relation to confiscation orders on the court’s powers to impose or fix the amount of a fine, see the following provisions of the Proceeds of Crime Act 2002—
 - (a) section 13(4) (where confiscation order has been made);
 - (b) section 15 (where proceedings on a confiscation order have been postponed).

126 Power to determine financial circumstances where offender is absent or fails to provide information

- (1) This section applies where an offender—
 - (a) has been convicted in the offender’s absence—
 - (i) in pursuance of section 11 or 12 of the Magistrates’ Courts Act 1980 (non-appearance of accused), or
 - (ii) in proceedings conducted in accordance with section 16A of that Act (trial by single justice on the papers), or
 - (b) has failed—
 - (i) to provide a statement of the offender’s financial circumstances in response to a request which is an official request for the purposes of section 20A of the Criminal Justice Act 1991 (offence of making false statement as to financial circumstances),
 - (ii) to comply with an order under section 35(2) (statement as to offender’s financial circumstances), or
 - (iii) otherwise to co-operate with the court in its inquiry into the offender’s financial circumstances.
- (2) If the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender for the purposes of section 125, it may make such determination as it considers appropriate.

127 Remission of fines following determination under section 126

- (1) This section applies where a court has, in fixing the amount of a fine, determined the offender’s financial circumstances under section 126 (offender absent or failing to provide information).
- (2) If on subsequently inquiring into the offender’s financial circumstances the court is satisfied that, had it had the results of that inquiry when sentencing the offender, it—
 - (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.
- (3) Where under this section the court remits the whole or part of a fine after a term of imprisonment, or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000, has been fixed under—
 - (a) section 129, or
 - (b) section 82(5) of the Magistrates’ Courts Act 1980 (magistrates’ powers in relation to default),it must reduce the term by the corresponding proportion.
- (4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.
- (5) Subsection (6) applies where—
 - (a) under this section the court remits the whole or part of a fine,
 - (b) the offender was ordered under section 42 to pay a surcharge, and
 - (c) the amount of the surcharge was set by reference to the amount of the fine.
- (6) The court must—

Status: This is the original version (as it was originally enacted).

- (a) determine how much the surcharge would have been if the fine had not included the amount remitted, and
- (b) remit the balance of the surcharge.

Fines: payment

128 Fine imposed on offender aged under 18: payment by parent or guardian

- (1) This section applies where a court—
 - (a) is dealing with an offender for an offence,
 - (b) the offender is aged under 18 when convicted, and
 - (c) but for this subsection, the court would impose a fine on the offender in respect of the offence.
- (2) Section 380 (order for payment by parent or guardian) applies to the fine.
- (3) Subsections (4) to (6) apply for the purposes of any order made under section 380 against the offender’s parent or guardian.
- (4) The following provisions are to be read as if any reference to the financial circumstances of the offender were a reference to the financial circumstances of the offender’s parent or guardian—
 - (a) section 124 (duty of court to inquire into individual offender’s financial circumstances);
 - (b) subsections (2) and (3) of section 125 (fixing of fine: exercise of court’s powers).

This is subject to subsection (7).
- (5) Section 126 (power to determine financial circumstances where offender is absent or fails to provide information) does not apply (but see section 382).
- (6) The reference to the offender’s means in section 125(4) (insufficient means to pay fine and surcharge) is to be read as a reference to the means of the offender’s parent or guardian.
- (7) For the purposes of any order under section 380 made against a local authority, section 124 does not apply.

129 Fine imposed on offender by Crown Court: duty to make term in default order

- (1) This section applies when the Crown Court imposes a fine on an offender who is aged 18 or over when convicted of the offence.

But it does not apply in relation to a fine imposed by the Crown Court on appeal against a decision of a magistrates’ court.
- (2) Subsections (3) to (5) also apply in relation to a fine imposed on such an offender—
 - (a) by the criminal division of the Court of Appeal, or
 - (b) by the Supreme Court on appeal from that division.
- (3) The court must make an order (a “term in default order”) fixing a term—
 - (a) of imprisonment, or

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- (b) of detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000,

which the offender is to undergo if any sum which the offender is liable to pay is not duly paid or recovered.

- (4) Column 3 of the following table sets out the maximum term of imprisonment or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 which may be fixed by a term in default order in relation to a sum that is—

- (a) more than the corresponding entry (if any) in column 1, but
 (b) not more than the corresponding entry (if any) in column 2.

<i>Amount of sum</i>		<i>Maximum term</i>
<i>More than</i>	<i>Not more than</i>	
	£200	7 days
£200	£500	14 days
£500	£1,000	28 days
£1,000	£2,500	45 days
£2,500	£5,000	3 months
£5,000	£10,000	6 months
£10,000	£20,000	12 months
£20,000	£50,000	18 months
£50,000	£100,000	2 years
£100,000	£250,000	3 years
£250,000	£1,000,000	5 years
£1,000,000		10 years.

- (5) The offender may not be committed to prison, or detained, by virtue of a term in default order on the same occasion as the fine is imposed unless—

- (a) the offence to which the fine relates is punishable with imprisonment and the offender appears to the court to have sufficient means to pay the sum forthwith,
 (b) it appears to the court that the offender is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods,
 (c) on that occasion the court sentences the offender to immediate imprisonment, custody for life or detention in a young offender institution for that or another offence, or
 (d) the offender is already serving a sentence of custody for life or a term—
 (i) of imprisonment,
 (ii) of detention in a young offender institution, or
 (iii) of detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention in default).

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- (6) Where any person liable for the payment of a fine to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term (“the current term”)—
- (a) of imprisonment,
 - (b) of detention in a young offender institution, or
 - (c) of detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention in default),

the court may order that any term of imprisonment or detention fixed by a term in default order is not to begin to run until after the end of the current term.

- (7) Nothing in any enactment which authorises the Crown Court to deal with an offender in any way in which a magistrates’ court might have dealt, or could deal, with the offender restricts the powers conferred by this section.

This is subject to subsection (8).

- (8) Where—
- (a) the Crown Court imposes a fine in exercise of powers to deal with an offender in any way in which a magistrates’ court might have dealt, or could deal, with the offender, and
 - (b) section 149(1) of the Customs and Excise Management Act 1979 (maximum periods of imprisonment in default of payment of certain fines) specifies a period that would have applied to the fine had it been imposed by a magistrates’ court,

the term imposed by the Crown Court under subsection (3) in relation to the fine must not exceed that period.

- (9) For the purposes of any reference in this section, however expressed, to the term of imprisonment or other detention—
- (a) to which a person has been sentenced, or
 - (b) which, or part of which, the person has served,
- consecutive terms and terms which are wholly or partly concurrent are treated as a single term, unless the context otherwise requires.

- (10) Any reference in this section, however expressed, to a previous sentence is to be read as a reference to a previous sentence passed by a court in Great Britain.

130 Fine imposed by Crown Court: power to allow time for payment or payment by instalments

When the Crown Court imposes a fine on an offender, it may make an order—

- (a) allowing time for the payment of the fine, or
- (b) directing payment of the fine by instalments of the amounts and on the dates specified in the order.

131 Fine imposed by Crown Court: power to search offender

See section 142 of the Powers of Criminal Courts (Sentencing) Act 2000 for the power of the Crown Court to search an offender on whom it imposes a fine.

132 Enforcement of fines imposed on offenders by Crown Court

- (1) A fine imposed on an offender by the Crown Court is to be treated for the purposes of collection, enforcement and remission as having been imposed—
- (a) by a magistrates' court specified in an order made by the Crown Court, or
 - (b) if no such order is made, by the magistrates' court by which the offender was sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998,

and as having been so imposed on conviction by the magistrates' court in question.

This is subject to subsection (5).

- (2) Subsection (3) applies where a magistrates' court issues a warrant of commitment on a default in the payment of a fine imposed by the Crown Court on an offender.
- (3) The term of imprisonment, or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000, specified in the warrant of commitment as the term which the offender is liable to serve is to be—
- (a) the term fixed by the Crown Court under section 129(3), or
 - (b) if that term has been reduced under section 79(2) of the Magistrates' Courts Act 1980 (part payment) or section 85(2) of that Act (remission), that term as so reduced,

even if that term exceeds the period applicable to the case under section 149(1) of the Customs and Excise Management Act 1979 (maximum periods of imprisonment in default of payment of certain fines).

- (4) Subsections (1) to (3) apply in relation to a fine imposed on an offender—
- (a) by the criminal division of the Court of Appeal, or
 - (b) by the Supreme Court on appeal from that division,
- as they apply in relation to a fine imposed by the Crown Court.

References in those subsections to the Crown Court (except the reference in subsection (1)(b)) are to be read accordingly.

- (5) A magistrates' court must not, under section 85(1) of the Magistrates' Courts Act 1980 as applied by subsection (1), remit the whole or any part of a fine imposed by—
- (a) the Crown Court,
 - (b) the criminal division of the Court of Appeal, or
 - (c) the Supreme Court on appeal from that division,
- without the consent of the Crown Court.
- (6) Where payment of a fine is enforceable by a magistrates' court by virtue of this section, the fine is to be treated for the purposes of section 38 of the Courts Act 2003 (application of receipts of designated officers) as having been imposed by a magistrates' court.

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CHAPTER 2

COMPENSATION ORDERS

Compensation orders

133 Compensation order

In this Code “compensation order” means an order under this Chapter made in respect of an offender for an offence that requires the offender—

- (a) to pay compensation for any personal injury, loss or damage resulting from—
 - (i) the offence, or
 - (ii) any other offence which is taken into consideration by the court in determining the sentence for the offence, or
- (b) to make payments for—
 - (i) funeral expenses, or
 - (ii) bereavement,in respect of a death resulting from any such offence.

Making a compensation order

134 Compensation order: availability

- (1) A compensation order is available to a court by or before which an offender is convicted of an offence.

This is subject to section 136 (road accidents).

- (2) Where a compensation order is available, the court may make such an order whether or not it also deals with the offender for the offence in any other way.

135 Making a compensation order

- (1) A compensation order must specify the amount to be paid under it.
- (2) That amount must be the amount that the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender or the prosecution.

But see also sections 136 to 139.

- (3) In determining—
 - (a) whether to make a compensation order against an offender, or
 - (b) the amount to be paid under such an order,the court must have regard to the offender’s means, so far as they appear or are known to the court.
- (4) Where the court considers—
 - (a) that it would be appropriate both to impose a fine and to make a compensation order, but

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- (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,
the court must give preference to compensation (though it may impose a fine as well).
- (5) For modifications of this section where the court also makes an order under section 380 (power to order parent or guardian to pay fine, costs, compensation or surcharge), see section 140.
- (6) For the effect of proceedings in relation to confiscation orders on the court’s powers in relation to compensation orders, see the following provisions of the Proceeds of Crime Act 2002—
 - (a) section 13(4) (where confiscation order has been made);
 - (b) section 15 (where proceedings on a confiscation order have been postponed).

Particular cases

136 Road accidents

- (1) A compensation order may not be made in respect of funeral expenses or bereavement in respect of a death due to a road accident.
- (2) A compensation order may be made in respect of injury, loss or damage due to a road accident only if it is in respect of—
 - (a) loss suffered by a person’s dependants in consequence of the person’s death,
 - (b) damage which is treated by section 137 as resulting from an offence under the Theft Act 1968 or Fraud Act 2006, or
 - (c) uninsured harm.
- (3) In subsection (2), “uninsured harm” means injury, loss or damage as respects which—
 - (a) the offender was uninsured in relation to the use of the vehicle in question, and
 - (b) compensation is not payable under any arrangements to which the Secretary of State is a party.

An offender is not uninsured in relation to the use of a vehicle for this purpose if that use of it is exempted from insurance by section 144 of the Road Traffic Act 1988.

- (4) Where a compensation order is made in respect of injury, loss or damage due to a road accident, the amount to be paid may include an amount representing all or part of any loss of, or reduction in, preferential rates of insurance attributable to the accident.
- (5) In this Chapter, “road accident” means an accident arising out of the presence of a motor vehicle on a road.

137 Damage to property and clean-up costs resulting from certain offences

- (1) Subsection (2) applies in the case of an offence under the Theft Act 1968 or Fraud Act 2006, where the property in question is recovered.
- (2) Any damage to the property occurring while it was out of the owner’s possession is to be treated for the purposes of section 133 as having resulted from the offence.

This applies regardless of how the damage was caused and who caused it.

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- (3) Section 29 of the Ancient Monuments and Archaeological Areas Act 1979 makes provision about the person in whose favour a compensation order relating to certain offences involving damage to monuments is to be made.
- (4) Section 33B of the Environmental Protection Act 1990 (clean-up costs) provides for certain costs connected with certain offences relating to waste to be loss or damage resulting from those offences for the purposes of section 133.

138 Funeral expenses and bereavement: cases other than road accidents

- (1) A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.
- (2) A compensation order in respect of bereavement may be made only for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976.
- (3) The amount to be paid in respect of bereavement under a compensation order must not exceed the amount for the time being specified in section 1A(3) of that Act.
- (4) This section is subject to section 136(1) (compensation order not available in respect of bereavement or funeral expenses in respect of a death due to a road accident).

Compensation orders made in respect of young offenders

139 Limit on compensation payable under compensation order of magistrates' court in case of young offender

- (1) This section applies where—
 - (a) a magistrates' court is dealing with an offender for one or more offences (each, a "main offence") of which the offender was convicted when aged under 18, and
 - (b) the court makes a compensation order in respect of—
 - (i) a main offence, or
 - (ii) any offence taken into consideration by the court in determining sentence for a main offence (a "TIC offence").
- (2) The compensation in respect of a main offence must not exceed £5,000.
- (3) The total compensation in respect of main offences and TIC offences must not exceed £5,000 multiplied by the number of main offences.
- (4) This section is subject to section 33B(5) of the Environmental Protection Act 1990 (clean-up costs relating to certain offences relating to waste).

140 Compensation order: order for payment by parent or guardian

- (1) This section applies where—
 - (a) a court makes or is proposing to make a compensation order in respect of an offence, and
 - (b) the offender is aged under 18 when convicted.

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- (2) Section 380 (order for payment by parent or guardian) applies to the amount to be paid under any such compensation order.
- (3) Subsection (4) applies for the purposes of any order made under section 380 against the offender’s parent or guardian.
- (4) The references in subsections (3) and (4) of section 135 (taking account of offender’s means in determining amount of compensation) to the offender’s means are to be read as references to the means of the offender’s parent or guardian.

This is subject to subsection (5).
- (5) For the purposes of any order made under section 380 against a local authority, section 135(3) does not apply.

Compensation orders: supplementary

141 Compensation orders: suspension of entitlement and appeals etc

- (1) A person in whose favour a compensation order is made is not entitled to receive the amount due to the person until there is no further possibility of the order being varied or set aside on appeal (disregarding any power to grant leave to appeal out of time).
- (2) Criminal Procedure Rules may make provision about the way in which the appropriate court is to deal with money paid in satisfaction of a compensation order where the entitlement of the person in whose favour it was made is suspended under subsection (1).
- (3) The Court of Appeal may by order annul or vary any compensation order made by the Crown Court, even if the conviction is not quashed.
- (4) Where a compensation order is annulled or varied under subsection (3)—
 - (a) the compensation order—
 - (i) if annulled, is not to take effect;
 - (ii) if varied, is to take effect as varied;
 - (b) the Court of Appeal must also vary any order previously made under section 42 (court’s duty to order payment of surcharge) so as to secure that the offender’s liability under that order is the same as it would have been if the offender were being dealt with by the Crown Court.
- (5) Where the Supreme Court restores a conviction, it may make any compensation order which the court of trial could have made.
- (6) Where the Supreme Court makes an order under subsection (5), it must also—
 - (a) make an order under section 42, or
 - (b) vary any order previously made under that section,so as to secure that the offender’s liability under the order under that section is the same as it would have been if the offender were being dealt with by the Crown Court.
- (7) Where, in any proceedings in which an offender is convicted of one or more offences (each, a “main offence”), a compensation order is made against the offender in respect of an offence taken into consideration in determining sentence—

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- (a) the order ceases to have effect if the offender successfully appeals against conviction of the main offence or, if more than one, all the main offences;
- (b) the offender may appeal against the order as if it were part of the sentence imposed in respect of the main offence or, if more than one, any of the main offences.

142 Limit on compensation payable under compensation order of magistrates’ court: offences committed before 11 December 2013

- (1) This section applies where—
- (a) a magistrates’ court is dealing with an offender for—
 - (i) an offence which was committed before 11 December 2013 (a “relevant offence”), or
 - (ii) one or more relevant offences, and
 - (b) the court makes a compensation order in respect of—
 - (i) any relevant offence,
 - (ii) any offence taken into consideration by the court in determining sentence for a relevant offence.
- (2) The compensation in respect of a relevant offence must not exceed the maximum amount.
- (3) The total compensation in respect of the offences taken into account in determining sentence for the relevant offence or relevant offences must not exceed the difference between—
- (a) the relevant limit, and
 - (b) the total compensation in respect of the relevant offences.
- (4) In this section—
- (a) the relevant limit is the aggregate of the maximum amounts for each relevant offence;
 - (b) “the maximum amount” in relation to a relevant offence means the amount specified in column 2 of the following table for an offence committed on the date of the relevant offence—

<i>Date of commission of main offence</i>	<i>Maximum amount</i>
Before 1 December 1977	£400
On or after 1 December 1977 but before 1 May 1984	£1,000
On or after 1 May 1984 but before 1 October 1992	£2,000
On or after 1 October 1992 but before 11 December 2013	£5,000.

- (5) This section is subject to section 33B(5) of the Environmental Protection Act 1990 (clean-up costs relating to certain offences relating to waste).

143 Review of compensation orders

- (1) This section applies where—
- (a) a compensation order has been made,

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- (b) there is no further possibility of the compensation order being varied or set aside on appeal (disregarding any power to grant leave to appeal out of time), and
 - (c) the person against whom it was made has not paid into court the whole of the amount required to be paid under the order.
 - (2) The appropriate court may, on the application of the person against whom the order was made—
 - (a) discharge the order, or
 - (b) reduce the amount which remains to be paid.
- This is subject to subsection (3).
- (3) The appropriate court may exercise that power only—
 - (a) if it appears to the court that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order,
 - (b) if, in the case of a compensation order in respect of the loss of any property, it appears to the court that the property has been recovered by the person in whose favour the order was made, or
 - (c) if—
 - (i) it appears to the court that the means of the person against whom the order was made are insufficient or have been reduced (see subsections (5) and (6)), and
 - (ii) where the compensation order was made by the Crown Court, the appropriate court has obtained the consent of the Crown Court.
 - (4) Subsections (5) to (7) apply for the purposes of subsection (3)(c).
 - (5) The person’s means are “insufficient” if they are not sufficient to satisfy in full—
 - (a) the compensation order, and
 - (b) every order of any of the following kinds made against the person in the same proceedings—
 - (i) a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002;
 - (ii) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013;
 - (iii) a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015.
 - (6) The person’s means “have been reduced” if they—
 - (a) have unexpectedly been substantially reduced since the compensation order was made, and
 - (b) seem unlikely to increase for a considerable period.
 - (7) If the compensation order was made on appeal it is to be treated—
 - (a) if made on an appeal from a magistrates’ court, as if made by that magistrates’ court;
 - (b) if made on an appeal—
 - (i) from the Crown Court, or
 - (ii) from the Court of Appeal,as if made by the Crown Court.

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144 Effect of compensation order on subsequent award of damages in civil proceedings

- (1) This section has effect where—
 - (a) a compensation order has been made in favour of any person in respect of any injury, loss or damage, and
 - (b) a claim by the person in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.
- (2) The damages in the civil proceedings must be assessed without regard to the order.
- (3) But the claimant may recover only an amount equal to the aggregate of—
 - (a) any amount by which the damages assessed exceed the compensation, and
 - (b) a sum equal to any portion of the compensation which the person fails to recover (“unrecovered compensation”).
- (4) The claimant may not enforce the judgment, so far as it relates to unrecovered compensation, without the leave of the court.

145 Compensation orders: interpretation

- (1) In this Chapter—

“appropriate court”, in relation to a compensation order, means the magistrates’ court which, by virtue of section 41(1) of the Administration of Justice Act 1970, for the time being has functions in relation to collection and enforcement of the order;

“road accident” has the meaning given by section 136.
 - (2) For the purposes of this Chapter a compensation order is made in respect of an offence if it relates to personal injury, loss, damage or death resulting from that offence.
- For this purpose, “offence” includes an offence taken into consideration by a court when sentencing an offender for an offence of which the offender has been convicted.

Compensation etc under other Acts

146 Compensation etc under other Acts

For provision about other orders requiring payment of compensation etc that are available to courts dealing with offenders for particular offences, see—

<i>Power to make order</i>	<i>Description of order</i>
section 8 of the Modern Slavery Act 2015	slavery and trafficking reparation order where person convicted of offence under section 1, 2 or 4 of that Act
section 4 of the Prevention of Social Housing Fraud Act 2013	unlawful profit order on conviction of offence under section 1 or 2 of that Act or certain associated offences.

CHAPTER 3

RESTITUTION AND RESTORATION

147 Restitution order where goods stolen or obtained by blackmail or fraud

- (1) In this Code, “restitution order” means an order made in an offender’s case with respect to particular goods (referred to in this section as “the stolen goods”) that—
- (a) requires anyone who has possession or control of the stolen goods (“the holder”) to restore them to any other person entitled to recover them from the holder,
 - (b) requires any other goods representing the stolen goods to be transferred or delivered to any person entitled to recover those other goods from the offender,
 - (c) requires payment of a sum out of any removed money to any person who would be entitled to recover the stolen goods from the offender if they were in the offender’s possession, or
 - (d) requires payment of a sum out of any removed money to—
 - (i) any person to whom the offender has sold the stolen goods, or
 - (ii) any person from whom the offender has borrowed money on the security of the stolen goods.
- (2) For the purposes of subsection (1)—
- (a) goods represent the stolen goods if they are the proceeds of disposal or realisation of all or part of the stolen goods, or of other goods which represent the stolen goods;
 - (b) “removed money” means money of the offender which was taken out of the offender’s possession when the offender was apprehended.

148 Restitution order: availability

- (1) A restitution order with respect to particular goods is available to a court in an offender’s case where—
- (a) the goods have been stolen, and
 - (b) either—
 - (i) the offender is convicted by or before the court of an offence with reference to the theft of the goods, whether or not the stealing was the gist of it (an “offence related to the theft”), or
 - (ii) the court takes an offence related to the theft into consideration in determining sentence for any other offence of which the offender is convicted by or before the court.
- (2) A restitution order under section 147(1)(b) is available only on the application of the person in whose favour it is to be made.
- (3) A restitution order with respect to any goods under section 147(1)(d) is available only if the court has made a restitution order under section 147(1)(a) with respect to the goods.
- (4) Making a deferment order, or otherwise deferring sentence, does not preclude a court from making a restitution order.

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149 Making a restitution order

- (1) This section applies where a restitution order is available to a court in an offender's case.
- (2) The court may make a restitution order only if in the opinion of the court the relevant facts sufficiently appear from any of the following—
 - (a) evidence given at the trial;
 - (b) any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial;
 - (c) any documents served on the offender in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998 (procedure where persons sent for trial);
 - (d) admissions made by or on behalf of any person in connection with any proposed exercise of the powers to make a restitution order.
- (3) If the court makes restitution orders under paragraphs (b) and (c) of section 147(1) in respect of the theft of the same goods, they must not result in the person in whose favour they are made recovering more than the value of those goods.
- (4) A restitution order under section 147(1)(c) may not require payment of more than the value of the stolen goods.
- (5) Subsections (6) and (7) apply in relation to making to a restitution order under section 147(1)(d) in relation to any goods.
- (6) The court may make the restitution order only if satisfied that—
 - (a) the purchaser was acting in good faith when purchasing the goods, or
 - (b) the lender was acting in good faith when lending money on the security of the goods.
- (7) The restitution order may not require payment of more than—
 - (a) the amount which the purchaser paid for the purchase, or
 - (b) the amount owed to the lender in respect of the loan.

150 Restitution orders: supplementary provision about appeals

- (1) Subsections (2) and (3) apply where a restitution order has been made in an offender's case against any person.

Order in respect of offence taken into consideration

- (2) Subsection (3) applies where the restitution order was made in respect of an offence taken into consideration by the court in determining sentence for one or more other offences of which the offender was convicted (each, a "main offence").
- (3) The restitution order ceases to have effect if the offender successfully appeals against conviction of the main offence or, if more than one, all the main offences.

Initial period of suspension

- (4) Subsection (5) applies to a restitution order made by a magistrates' court, unless the court directs under subsection (6) that it is not to apply.

- (5) The restitution order does not take effect until there is no further possibility of the order being varied or set aside on appeal (disregarding any power to grant leave to appeal out of time).
- (6) A magistrates' court may direct that subsection (5) is not to apply to a restitution order if—
 - (a) the restitution order is made under section 147(1)(a) or (b), and
 - (b) the court is of the opinion that the title to the goods to be restored or, as the case may be, delivered or transferred under the order is not in dispute.
- (7) A restitution order is to be treated as an order for the restitution of property for the purposes of section 30 of the Criminal Appeal Act 1968 (effect of appeals on such orders).
- (8) See, in particular, subsection (1) of that section for provision about—
 - (a) the initial period of suspension of a restitution order made by the Crown Court, and
 - (b) the Crown Court's power to direct that the initial period of suspension is not to apply.

151 Restitution orders: interpretation and application

- (1) In this Chapter, references to stealing are to be read in accordance with—
 - (a) section 1(1) of the Theft Act 1968 (read with the provisions of that Act relating to the construction of section 1(1)), and
 - (b) subsections (2) and (3).

(See also section 119(2) of the Consumer Credit Act 1974, which treats unreasonable refusal to deliver pawn as stealing for the purposes of this Chapter.)
- (2) In this Chapter, references to goods which have been stolen include references to goods which have been obtained—
 - (a) by blackmail, or
 - (b) by fraud (within the meaning of the Fraud Act 2006);and references to “stealing” and “theft” are to be read accordingly.
- (3) In determining for the purposes of this Chapter whether goods have been stolen, it is immaterial whether the stealing occurred—
 - (a) before or after the Theft Act 1968, or the Fraud Act 2006, came into force, or
 - (b) in England and Wales or elsewhere,provided that the stealing (if not an offence under either of those Acts) amounted to an offence where and when the goods were stolen.
- (4) In this Chapter, “goods”, except so far as the context otherwise requires, includes money and every other description of property (within the meaning of the Theft Act 1968) except land, and includes things severed from the land by stealing.
- (5) A restitution order may be made in respect of money owed by the Crown.

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CHAPTER 4

FORFEITURE, DEPRIVATION OF PROPERTY ETC

152 Deprivation order

In this Code “deprivation order” means an order under this Chapter which—

- (a) is made in respect of an offender for an offence, and
- (b) deprives the offender of any rights in the property to which it relates.

153 Deprivation order: availability

- (1) A deprivation order relating to any property to which subsection (2) applies is available to the court by or before which an offender is convicted of an offence.
- (2) This subsection applies to property which—
 - (a) has been lawfully seized from the offender, or
 - (b) was in the offender’s possession or under the offender’s control when—
 - (i) the offender was apprehended for the offence, or
 - (ii) a summons in respect of it was issued,
 if subsection (3) or (5) applies.
- (3) This subsection applies if the court is satisfied that the property—
 - (a) has been used for the purpose of committing, or facilitating the commission of, any offence, or
 - (b) was intended by the offender to be used for that purpose.
- (4) For the purposes of subsection (3), facilitating the commission of an offence includes taking any steps after it has been committed for the purpose of—
 - (a) disposing of any property to which the offence relates, or
 - (b) avoiding apprehension or detection.
- (5) This subsection applies if—
 - (a) the offence mentioned in subsection (1), or
 - (b) an offence which is taken into consideration by the court in determining the offender’s sentence,
 consists of unlawful possession of the property.
- (6) Subsection (1) is subject to—
 - (a) any restriction on forfeiture in any enactment contained in an Act passed on or after 29 July 1988,
 - (b) section 33C(8) of the Environmental Protection Act 1990 (subsection (1) not to apply where section 33C of that Act provides for forfeiture of vehicles in connection with offence under that section), and
 - (c) paragraph 7 of Schedule 5 to the Wireless Telegraphy Act 2006 (subsection (1) not to apply where person convicted of offence under Part 2, 3 or 5 of that Act).

154 Vehicle to be treated as used for purpose of certain offences

- (1) This section applies where a person commits an offence listed in subsection (2) by—
 - (a) driving, attempting to drive, or being in charge of, a vehicle,

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- (b) failing to comply with a requirement made under section 7 or 7A of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test or to give permission for such a test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive, or being in charge of, a vehicle, or
 - (c) failing, as the driver of a vehicle, to comply with subsection (2) or (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident).
- (2) Those offences are—
- (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment;
 - (b) an offence of manslaughter;
 - (c) an offence under section 35 of the Offences against the Person Act 1861 (wanton and furious driving).
- (3) The vehicle is to be regarded for the purposes of section 153 (and section 157(3)(b)) as used for the purpose of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).

155 Exercise of power to make deprivation order

- (1) In considering whether to make a deprivation order in respect of any property, a court must have regard to—
- (a) the value of the property, and
 - (b) the likely financial and other effects on the offender of making the order (taken together with any other order that the court contemplates making).
- (2) Where a deprivation order is available for an offence, the court may make such an order whether or not it deals with the offender in any other way for the offence.
- (3) For the effect of proceedings relating to confiscation orders on the court's powers under this section, see the following provisions of the Proceeds of Crime Act 2002—
- (a) section 13(2) (where confiscation order is made);
 - (b) section 15 (where proceedings in relation to confiscation orders are postponed).

156 Deprivation order: property to be taken into possession of police or Secretary of State

- (1) Where the court makes a deprivation order in respect of an offender for an offence, this section applies to the property to which the order relates.
- (2) If the court considers that the offence—
- (a) related to immigration or asylum, or
 - (b) was committed for a purpose in connection with immigration or asylum,
- it may order that the property is to be taken into the possession of the Secretary of State.
- (3) Property that is taken into the possession of the Secretary of State by virtue of subsection (2) is to be treated for the purposes of section 26 of the UK Borders Act 2007 (disposal of property) as property that has come into the possession of the Secretary of State as mentioned in subsection (1)(b) of that section.

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- (4) Unless the court makes an order under subsection (2), the property is to be taken into the possession of the police (if it is not already in their possession).

157 Property to which a deprivation order applies: orders by magistrates' court

- (1) This section applies where property to which a deprivation order relates is in the possession of the police by virtue of section 156(4).
- (2) A magistrates' court may, on the application of a police officer or a claimant of the property—
- (a) order the delivery of the property to the person appearing to the court to be its owner, or
 - (b) if its owner cannot be ascertained, make any other order about the property.

This is subject to subsection (3).

- (3) If the application is made by a claimant of the property, the court may make an order under subsection (2) only if—
- (a) the application is made before the end of the period of 6 months beginning with the day on which the deprivation order is made, and
 - (b) the claimant satisfies the court—
 - (i) that the claimant did not consent to the offender's possession of the property, or
 - (ii) if the deprivation order was made by virtue of section 153(3) (property used for purposes of offence), that the claimant did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in section 153(3).
- (4) Any right of a person to take legal proceedings against a person in possession of property by virtue of an order under subsection (2)—
- (a) ceases at the end of the 6 month period mentioned in subsection (3)(a), but
 - (b) is not otherwise affected by the order.

158 Regulations about unclaimed property to which deprivation order applies

- (1) The property about which regulations under section 2 of the Police (Property) Act 1897 (disposal of unclaimed property in possession of the police) may be made includes property which is in the possession of the police by virtue of section 156(4) and in respect of which—
- (a) no application under section 157 was made by a claimant of the property during the 6 month period mentioned in subsection (3)(a) of that section, or
 - (b) no such application has succeeded.
- (2) Where section 2 of the Police (Property) Act 1897 applies by virtue of this section the restrictions in subsections (2A)(a) and (3) of that section (restrictions about dealing with property within a year) do not apply.
- (3) Regulations made by virtue of this section may not provide for the local policing body to become the owner of property which is the subject of an order under section 159 (court order as to application of property subject to deprivation order).

159 Application of proceeds of property subject to deprivation order

- (1) This section applies where a court makes a deprivation order in respect of any property and—
- (a) the offence was one which resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence.
- (2) The court may also make an order that any proceeds which—
- (a) arise out of the disposal of the property, and
 - (b) do not exceed a sum specified by the court,
- are to be paid to the person.
- (3) The court may make an order under this section only if it is satisfied that, but for the inadequacy of the offender's means, it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the amount specified under subsection (2)(b).
- (4) An order under this section has no effect—
- (a) before the end of the 6 month period mentioned in section 157(3)(a), or
 - (b) if a successful application under—
 - (i) section 157, or
 - (ii) section 1(1) of the Police (Property) Act 1897,has been made.

160 Orders for forfeiture etc under other Acts

- (1) For circumstances in which the court may be required to order forfeiture of certain material, see—

<i>Function of making order</i>	<i>Description of order</i>
section 4A(1) of the Dangerous Dogs Act 1991	certain offences under that Act: contingent order for destruction of dog
section 25 or 29I of the Public Order Act 1986	forfeiture of written material or recordings to which certain offences under Part 3 or 3A of that Act apply (racial or religious hatred or hatred on grounds of sexual orientation)
section 1(4) of the Obscene Publications Act 1964	forfeiture of articles seized under section 3 of the Obscene Publications Act 1959 where person convicted under section 2 of that Act.

- (2) For provision about other forfeiture orders and deprivation orders etc that are available to courts dealing with offenders for particular offences, see—

<i>Power to make order</i>	<i>Description of order</i>
section 18 of the Cultural Property (Armed Conflicts) Act 2017	offence under section 17 of that Act: forfeiture of unlawfully exported property

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<i>Power to make order</i>	<i>Description of order</i>
section 11 of the Modern Slavery Act 2015	forfeiture of vehicle, ship or aircraft on conviction of offence under section 2 of that Act (human trafficking)
sections 7 and 11A of the Terrorism Act 2006	forfeiture of certain things in offender's possession for purposes of offence under— (a) section 6 of that Act (training for terrorism), or (b) section 9 or 10 of that Act (misuse of or threats connected with radioactive device or material)
sections 33, 35, 37, 38 and 40 of the Animal Welfare Act 2006	deprivation and destruction of animals and equipment on conviction of certain offences under that Act
section 23 of the Terrorism Act 2000	forfeiture of money and property on conviction of certain offences under that Act (terrorist property offences)
section 23A of the Terrorism Act 2000	forfeiture of money and property on conviction of— (a) certain offences under that Act or the Terrorism Act 2006, or (b) offences specified in Schedule 1 to this Act which have a terrorist connection
section 120A of the Terrorism Act 2000	supplementary power to forfeit items on conviction of certain offences under that Act (weapons training and possessing things and collecting information for the purposes of terrorism)
section 6 of the Knives Act 1997	offences under sections 1 and 2 of that Act: forfeiture of knives and publications
sections 4 and 4A(4) of the Dangerous Dogs Act 1991	order for destruction of dog, or contingent destruction order, on conviction of certain offences under that Act
section 33C of the Environmental Protection Act 1990	deprivation of rights in vehicle used for certain offences under— (a) section 33 of that Act, or (b) the Environmental Permitting Regulations consisting of the disposal or deposit of waste
section 6 of the Crossbows Act 1987	offence under that Act: forfeiture or disposal of crossbow or any part
section 7 of the Forgery and Counterfeiting Act 1981	order for forfeiture of objects relating to offences under Part 1 of that Act (forgery and kindred offences)
section 24(3) of the Forgery and Counterfeiting Act 1981	forfeiture of anything related to an offence under section 19 of that Act (reproducing British currency notes or making imitation British coins)
section 42(3) of the Health and Safety at Work etc Act 1974	offence under relevant statutory provisions (within the meaning of that Act): forfeiture of explosive article or substance
section 25C of the Immigration Act 1971	forfeiture of ship, vehicle or aircraft connected with offence under section 25, 25A or 25B of that Act (assisting unlawful immigration to member State or entry to the UK in certain circumstances)

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<i>Power to make order</i>	<i>Description of order</i>
section 27 of the Misuse of Drugs Act 1971	forfeiture order in case of certain offences under— (a) that Act, or (b) certain provisions of the Proceeds of Crime Act 2002
section 52 of the Firearms Act 1968	forfeiture and disposal of firearm in certain cases including— (a) offences under that Act, (b) offence for which custodial sentence is imposed, (c) certain offences under the Violent Crime Reduction Act 2006, and (d) other circumstances where conditions are imposed on offender with respect to firearms
section 3 of the Children and Young Persons (Harmful Publications) Act 1955	forfeiture of copies of work to which the Act applies and other articles on conviction under section 2 of that Act
section 1(2) of the Prevention of Crime Act 1953	offence under section 1(1) of that Act (carrying offensive weapon without reasonable excuse or lawful authority)
section 3 of the Incitement to Disaffection Act 1934	power to order destruction etc of documents connected with offence under that Act.

(3) Nothing in this section is to be taken to affect—

- (a) the power of a court to make an order under this Chapter,
- (b) any function of a court of making an order mentioned in the table in subsection (1) or (2), or
- (c) any other power or duty of a court to make an order for the forfeiture or destruction of any material.

161 Confiscation orders under other Acts

For provision about confiscation orders, see—

- (a) the Proceeds of Crime Act 2002, or
- (b) in relation to an offence committed before 24 March 2003—
 - (i) the Drug Trafficking Act 1994;
 - (ii) Part 6 of the Criminal Justice Act 1988.

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PART 8

DISQUALIFICATION

CHAPTER 1

DRIVING DISQUALIFICATION

162 Driving disqualification order

In this Code “driving disqualification order” means an order made under this Chapter in respect of an offender that the offender is disqualified, for the period specified in the order, for holding or obtaining a driving licence.

163 Driving disqualification: availability for any offence

- (1) A driving disqualification order is available to the court by or before which an offender is convicted of an offence if—
 - (a) the offence was committed on or after 1 January 1998, and
 - (b) the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court (and the notice has not been withdrawn).
- (2) Where a driving disqualification order is available by virtue of this section, the court may make a driving disqualification order whether or not it also deals with the offender for the offence in any other way.

164 Driving disqualification order: availability where vehicle used for purposes of crime

- (1) A driving disqualification order is available also where—
 - (a) an offender is convicted on indictment of an offence,
 - (b) the offence is punishable on indictment with imprisonment for a term of 2 years or more, and
 - (c) the Crown Court is satisfied that a motor vehicle was used (by the offender or by anyone else) for the purpose of committing, or facilitating the commission of, the offence.
- (2) For the purposes of subsection (1), facilitating the commission of an offence includes taking any steps after it has been committed for the purpose of—
 - (a) disposing of any property to which the offence relates, or
 - (b) avoiding apprehension or detection.
- (3) A driving disqualification order is available to the court by or before which an offender is convicted of an offence also where—
 - (a) the offence is—
 - (i) common assault, or
 - (ii) any other offence involving an assault (including an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) related to, or incitement to commit, an offence),

- (b) the offence was committed on or after 1 July 1992, and
- (c) the court is satisfied that the assault was committed by driving a motor vehicle.

165 Disqualification period

Where a court makes a driving disqualification order in respect of an offender for an offence, the disqualification period must be such period as the court considers appropriate.

166 Extension of disqualification where custodial sentence also imposed

- (1) This section applies where a court—
 - (a) imposes a custodial sentence on an offender for an offence, and
 - (b) makes a driving disqualification order in respect of the offender for the same offence.
- (2) But this section does not apply where the custodial sentence is—
 - (a) a suspended sentence, or
 - (b) a life sentence in relation to which the court makes a whole life order under section 321(3).
- (3) The disqualification period must be—
 - (a) the discretionary disqualification period, and
 - (b) the appropriate extension period.
- (4) The discretionary disqualification period is the period which the court would, in the absence of this section, have specified in the driving disqualification order.
- (5) The appropriate extension period for a sentence specified in column 2 is equal to the period calculated in accordance with column 3—

	<i>Sentence</i>	<i>Length of appropriate extension period</i>
1	a detention and training order under section 233 (offenders under 18: detention and training orders)	half the term of the detention and training order
2	an extended sentence of detention under section 254 (persons under 18)	two-thirds of the term imposed pursuant to section 254(a) (the appropriate custodial term)
3	a sentence under section 265 (special custodial sentence for certain offenders of particular concern: adults aged 18 to 20)	half the term imposed pursuant to section 265(2)(a) (the appropriate custodial term)
4	an extended sentence of detention in a young offender institution	two-thirds of the term imposed pursuant to section 266(a) (the appropriate custodial term)
5	a sentence under section 278 (special custodial sentence for certain offenders of particular concern: adults aged 21 and over)	half the term imposed pursuant to section 278(2)(a) (the appropriate custodial term)

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	<i>Sentence</i>	<i>Length of appropriate extension period</i>
6	an extended sentence of imprisonment	two-thirds of the term imposed pursuant to section 279(a) (the appropriate custodial term)
7	a life sentence in relation to which a minimum term order is made under section 321(2)	the term specified in the minimum term order
8	any other case	half the custodial sentence imposed.

(6) Any period determined under subsection (5) which includes a fraction of a day must be rounded up to the nearest number of whole days.

(7) Where—

- (a) an order (“the amending order”) is made under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence), and
- (b) the amending order provides that the proportion of a custodial sentence for the time being referred to in section 243A(3)(a) or 244(3)(a) of that Act (release of prisoners in certain circumstances) is to be read as a reference to another proportion (the “new proportion”),

the Secretary of State may by regulations provide that the table in subsection (5) is to be read as if, in relation to such a sentence, paragraph 8 specified the new proportion.

(8) Regulations under subsection (7) are subject to the affirmative resolution procedure.

(9) Subsections (4) and (6) of section 407 (general powers to make provision in regulations) do not apply to the power conferred by subsection (7).

167 Effect of custodial sentence in other cases

(1) This section applies where a court makes a driving disqualification order in respect of an offender for an offence, and—

- (a) it imposes a custodial sentence (other than a suspended sentence) on the offender for another offence, or
- (b) a custodial sentence previously imposed on the offender has not expired.

(2) In determining the disqualification period, the court must, so far as it is appropriate to do so, have regard to the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

But the court may not take into account for this purpose any custodial sentence that it imposes on the offender for the offence.

(3) In this section, “custodial sentence” includes a pre-Code custodial sentence (see section 222(4)).

168 Requirement to produce licences where driving disqualification order made

A court which makes a driving disqualification order in respect of an offender must require the offender to produce any (and, if more than one, all) of the following held by the offender—

- (a) a driving licence;

- (b) a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988);
- (c) a Community licence (within the meaning of Part 3 of the Road Traffic Act 1988).

169 Driving disqualification orders: interpretation

In this Chapter—

“disqualification period”, in relation to a driving disqualification order made in respect of an offender, means the period specified in the order as the period for which the offender is disqualified for holding or obtaining a driving licence;

“driving licence” means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988.

170 Road Traffic Offenders Act 1988: further provision about driving disqualification etc

- (1) Part 2 of the Road Traffic Offenders Act 1988 makes further provision about driving disqualification.

Provision applying to driving disqualification orders under this Chapter

- (2) For provision about the effect of driving disqualification orders under this Chapter see in particular—
 - (a) section 37 (effect of order of disqualification);
 - (b) sections 39, 40 and 42 (suspension and removal of disqualification);
 - (c) section 43 (rule for determining end of period of disqualification).

Other orders under that Act available on conviction of certain offences

- (3) For other orders available on conviction of certain road traffic offences see, in particular, the following provisions of that Act—
 - (a) section 34 (disqualification);
 - (b) section 35 (disqualification for repeated offences);
 - (c) section 36 (disqualification until test is passed);
 - (d) section 44 (endorsement of driving record).

CHAPTER 2

DISQUALIFICATION ETC UNDER OTHER ACTS

171 Offences relating to animals

- (1) For orders relating to disqualification and licensing in the case of offences under the Animal Welfare Act 2006, see the following provisions of that Act—
 - (a) section 34 (disqualification);
 - (b) section 42 (orders with respect to licences).
- (2) See section 4 of the Dangerous Dogs Act 1991 for orders relating to disqualification in the case of offences under that Act.

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172 Company directors

See sections 2 and 5 of the Company Directors Disqualification Act 1986 (company director disqualification orders) for provision about orders available in relation to certain offences relating to companies, building societies and other bodies.

PART 9

COMMUNITY SENTENCES

CHAPTER 1

YOUTH REHABILITATION ORDERS

What a youth rehabilitation order is

173 Youth rehabilitation order

- (1) In this Code, “youth rehabilitation order” means an order imposing one or more youth rehabilitation requirements.
- (2) The youth rehabilitation requirements are listed in column 1 of the youth rehabilitation requirements table (see section 174).
- (3) Provision about each requirement is made by the Part of Schedule 6 mentioned in the corresponding entry in column 2 of that table.

174 Youth rehabilitation requirements table

The youth rehabilitation requirements table referred to in sections 173, 184 and 186 is—

<i>Requirement</i>	<i>Part of Schedule 6 relating to requirement</i>	<i>Restrictions on availability</i>
activity requirement	Part 1	
extended activity requirement	Part 1	section 185(1)
supervision requirement	Part 2	
unpaid work requirement	Part 3	section 185(2)
programme requirement	Part 4	
attendance centre requirement	Part 5	
prohibited activity requirement	Part 6	
curfew requirement	Part 7	
exclusion requirement	Part 8	

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<i>Requirement</i>	<i>Part of Schedule 6 relating to requirement</i>	<i>Restrictions on availability</i>
residence requirement	Part 9	
local authority residence requirement	Part 10	
fostering requirement	Part 11	section 175(2)(b), section 185(3)
mental health treatment requirement	Part 12	
drug treatment requirement	Part 13	
drug testing requirement	Part 14	
intoxicating substance treatment requirement	Part 15	
education requirement	Part 16	
electronic monitoring requirement	Part 17	section 185(4)

175 Youth rehabilitation order with intensive supervision and surveillance

- (1) In this Code “youth rehabilitation order with intensive supervision and surveillance” means a youth rehabilitation order which imposes—
- an extended activity requirement (see paragraph 2 of Schedule 6),
 - a supervision requirement, and
 - a curfew requirement (and, accordingly, if so required by paragraph 19(3) of Schedule 6, an electronic monitoring requirement).
- (2) A youth rehabilitation order with intensive supervision and surveillance—
- may impose other youth rehabilitation requirements, but
 - may not impose a fostering requirement.

176 Youth rehabilitation order with fostering

- (1) In this Code “youth rehabilitation order with fostering” means a youth rehabilitation order which imposes—
- a fostering requirement (see Part 11 of Schedule 6), and
 - a supervision requirement.
- (2) A youth rehabilitation order with fostering may also impose other requirements.

But this is subject to section 175(2) (fostering requirement not available with intensive supervision and surveillance).

Availability

177 Youth rehabilitation order: availability

- (1) A youth rehabilitation order is available to a court by or before which an offender is convicted of an offence if the offender is aged under 18 at the time of the conviction.

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- (2) Subsection (1) is subject to—
- (a) subsection (3), and
 - (b) section 37(8) of the Mental Health Act 1983 (youth rehabilitation order not to be made in combination with hospital order or guardianship order in respect of same offence).
- (3) A youth rehabilitation order is not available if a mandatory sentence requirement applies in relation to the offence (see section 399)—
- (a) because the sentence is fixed by law, or
 - (b) by virtue of—
 - (i) section 258 (required sentence of detention for life), or
 - (ii) section 311 (minimum sentence for certain offences involving firearms that are prohibited weapons).

But this is subject to section 74 and Chapter 4 of Part 12 (reduction of sentence for assistance to prosecution).

178 Youth rehabilitation order with intensive supervision and surveillance or fostering: availability

- (1) A youth rehabilitation order which is—
- (a) a youth rehabilitation order with intensive supervision and surveillance, or
 - (b) a youth rehabilitation order with fostering,
- is available only in respect of an imprisonable offence.
- (2) This is subject to paragraph 11(2) of Schedule 7 (powers of court in case of wilful and persistent failure to comply with youth rehabilitation order).

Exercise of power to make youth rehabilitation order

179 Exercise of power to make youth rehabilitation order: general considerations

- (1) This section applies where a court is dealing with an offender for an offence and a youth rehabilitation order is available.
- (2) The court must not make a youth rehabilitation order 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 serious enough to warrant the making of such an order.
- (3) 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 any associated offence or offences, including any aggravating or mitigating factors.
- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (5) The fact that, by virtue of subsection (2), the court may make a youth rehabilitation order does not require it to do so.

- (6) Before making a youth rehabilitation order, the court must obtain and consider information about—
- (a) the offender’s family circumstances, and
 - (b) the likely effect of a youth rehabilitation order on those circumstances.

180 Making youth rehabilitation order with intensive supervision and surveillance or fostering

- (1) This section applies where either of the following orders is available to a court dealing with an offender for an offence—
- (a) a youth rehabilitation order with intensive supervision and surveillance;
 - (b) a youth rehabilitation order with fostering.
- (2) The court must not make an order of either of those kinds unless it is of the opinion—
- (a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that, if such an order were not available, a custodial sentence—
 - (i) would be appropriate, or
 - (ii) where the offender is aged under 12 when convicted, would be appropriate if the offender were aged 12, and
 - (b) if the offender is aged under 15 when convicted, that the offender is a persistent offender.
- (3) 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.
- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

181 Making youth rehabilitation order where offender subject to other order

Offender subject to detention and training order

- (1) Where a court makes a youth rehabilitation order in respect of an offender who is subject to a detention and training order, the court may order that the youth rehabilitation order is to take effect—
- (a) when the period of supervision in respect of the detention and training order begins in accordance with section 242 (the period of supervision), or
 - (b) on the expiry of the detention and training order.
- (2) For the purposes of subsection (1)—
- (a) the references to a detention and training order include an order made under section 211 of the Armed Forces Act 2006 (detention and training orders made by service courts), and
 - (b) the reference to section 242 includes that provision as applied by section 213 of that Act.
- (3) For those purposes, the references in subsections (1) and (2) to a detention and training order include an order under section 100 of the Powers of Criminal Courts

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(Sentencing) Act 2000 (and references to section 242 include references to section 103 of that Act).

Offender subject to youth rehabilitation order or reparation order

- (4) A court must not make a youth rehabilitation order in respect of an offender when—
- (a) another youth rehabilitation order, or
 - (b) a reparation order,
- is in force in respect of the offender, unless when it makes the order it revokes the earlier order.
- (5) For the purposes of subsection (4)—
- (a) the reference in paragraph (a) to another youth rehabilitation order includes an order under section 1 of the Criminal Justice and Immigration Act 2008, and
 - (b) the reference in paragraph (b) to a reparation order includes an order under section 73 of the Powers of Criminal Courts (Sentencing) Act 2000.

Court dealing with offender for offences including one of which the offender is convicted when aged 18

- (6) A court may not make a youth rehabilitation order in respect of an offence if it makes a suspended sentence order for any other offence for which it deals with the offender.

182 Youth rehabilitation order: effect of remand in custody

- (1) In determining the restrictions on liberty to be imposed by a youth rehabilitation order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with—
- (a) the offence, or
 - (b) any other offence the charge for which was founded on the same facts or evidence.
- (2) For this purpose a person is remanded in custody if—
- (a) remanded in or committed to custody by order of a court,
 - (b) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail), or
 - (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

183 Concurrent and consecutive orders

- (1) This section applies where a court is dealing with an offender for two or more offences.
- (2) If the court makes an order of any of the following kinds in respect of one of the offences—
- (a) a youth rehabilitation order with intensive supervision and surveillance,
 - (b) a youth rehabilitation order with fostering, or
 - (c) any other youth rehabilitation order,
- it may not make a youth rehabilitation order of another of those kinds in respect of the other offence, or any of the other offences.

- (3) If the court makes—
 - (a) two or more youth rehabilitation orders with intensive supervision and surveillance, or
 - (b) two or more youth rehabilitation orders with fostering,
those orders must take effect at the same time (in accordance with section 198).
- (4) Subsections (5) to (7) apply where the court includes requirements of the same kind in two or more youth rehabilitation orders.
- (5) The court must direct, for each kind of requirement—
 - (a) whether the requirements are to be concurrent or consecutive, or
 - (b) if more than two requirements of that kind are imposed, which are to be concurrent and which consecutive.
- (6) But the court may not direct that two or more fostering requirements are to be consecutive.
- (7) Where the court directs that two or more requirements of the same kind are to be consecutive, the numbers of hours, days or months specified in relation to each of them—
 - (a) are to be aggregated, but
 - (b) in aggregate, must not exceed the maximum number which may be specified in relation to any one of them.
- (8) For the purposes of subsections (4) to (7), requirements are of the same kind if they fall within the same Part of Schedule 6.

Available requirements

184 Youth rehabilitation order: available requirements

- (1) Any youth rehabilitation requirement imposed by a youth rehabilitation order must be a requirement that is available to the court which makes the order.
- (2) A youth rehabilitation requirement is available unless a provision mentioned in column 3 of the entry for that requirement in the youth rehabilitation requirements table (see section 174) provides otherwise.

185 Youth rehabilitation order: availability of particular requirements

Extended activity requirement

- (1) An extended activity requirement is not available for a youth rehabilitation order other than a youth rehabilitation order with intensive supervision and surveillance.

Unpaid work requirement

- (2) An unpaid work requirement is not available for a youth rehabilitation order in respect of an offence unless the offender is aged 16 or 17 when convicted of the offence.

Fostering requirement

Status: This is the original version (as it was originally enacted).

- (3) A fostering requirement is not available for a youth rehabilitation order other than a youth rehabilitation order with fostering.

Electronic monitoring requirement

- (4) An electronic monitoring requirement is not available for a youth rehabilitation order unless the order imposes at least one other youth rehabilitation requirement.

Exercise of power to impose particular requirements

186 Youth rehabilitation order: exercise of power to impose particular requirements

- (1) This section applies where a court makes a youth rehabilitation order in respect of an offence.

Restrictions and obligations relating to imposing particular requirements

- (2) The power to impose a particular youth rehabilitation requirement is subject to the provisions of the Part of Schedule 6 relating to requirements of that kind (see column 2 of the table in section 174).

Suitability

- (3) The particular youth rehabilitation requirement or combination of youth rehabilitation requirements imposed by the order must, in the opinion of the court, be the most suitable for the offender.

In the case of a youth rehabilitation order with intensive supervision and surveillance, this is subject to section 175 (by virtue of which the order must impose certain requirements).

- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming any opinion on whether a particular youth rehabilitation requirement or combination of youth rehabilitation requirements is suitable for the offender.
- (5) In forming its opinion for the purposes of subsection (3) on which requirement or combination of requirements is the most suitable for the offender, the court may take into account any information about the offender which is before it.

Restrictions on liberty to be commensurate with seriousness

- (6) The restrictions on liberty imposed by the order must be such as are in the opinion of the court commensurate with the seriousness of—
- (a) the offence, or
 - (b) the combination of the offence and one or more offences associated with it.

In the case of a youth rehabilitation order with intensive supervision and surveillance, this is subject to section 175 (by virtue of which the order must impose certain requirements).

- (7) In forming its opinion for the purposes of subsection (6), 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.

Status: This is the original version (as it was originally enacted).

- (8) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (9) The fact that, by virtue of subsection (6), particular restrictions on liberty may be imposed by a youth rehabilitation order does not require the court to impose those restrictions.

Compatibility with other requirements and other matters

- (10) If the order imposes two or more requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.

This is subject to sections 175 and 176 and paragraphs 19(3) and 21 of Schedule 6 (certain types of youth rehabilitation order to contain certain requirements).

- (11) The court must ensure, as far as practicable, that any requirement imposed by the order is such as to avoid—
 - (a) any conflict with the offender’s religious beliefs,
 - (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
 - (c) any conflict with the requirements of any other court order to which the offender may be subject,and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (12) Regulations under subsection (11) are subject to the negative resolution procedure.

Making a youth rehabilitation order: contents

187 Youth rehabilitation order to specify end date

- (1) A youth rehabilitation order must specify a date (the “end date”) by which all the requirements in it must have been complied with.
- (2) The end date must be—
 - (a) not more than 3 years, and
 - (b) in the case of a youth rehabilitation order with intensive supervision and surveillance, not less than 6 months,after the date on which the order takes effect.
- (3) If a youth rehabilitation order imposes two or more different youth rehabilitation requirements—
 - (a) the order may also specify, for each of the requirements, a date by which the requirement must have been complied with;
 - (b) if it does so, the last of those dates must be the same as the end date.

188 Youth rehabilitation order to specify offender’s home local justice area

- (1) A youth rehabilitation order must specify which local justice area is the offender’s home local justice area.

Status: This is the original version (as it was originally enacted).

- (2) The area specified must be the local justice area in which the offender resides or will reside.

189 Power for Crown Court to direct magistrates' court supervision

- (1) This section applies where the Crown Court makes a youth rehabilitation order otherwise than on appeal from a magistrates' court.
- (2) The Crown Court may include a direction that the order is to be subject to magistrates' court supervision.

For the effect of such a direction, see Schedule 7 (breach, revocation or amendment of youth rehabilitation order).

190 Provision of copies of youth rehabilitation order and related documents

- (1) This section applies when a court makes a youth rehabilitation order.
- (2) The court must forthwith provide copies of the order—
- (a) to the offender,
 - (b) if the offender is aged under 14, to the offender's parent or guardian,
 - (c) to a member of a youth offending team assigned to the court or to an officer who is acting at the court and is an officer of a provider of probation services, and
 - (d) if the court does not act in the offender's home local justice area, to a provider of probation services operating in that area.
- (3) If the order imposes a requirement specified in column 1 of the following table, the court must also forthwith provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

<i>Requirement</i>	<i>Person to whom copy of requirement is to be given</i>
An activity requirement which comprises or includes a specified place obligation	The person in charge of each place specified under paragraph 3(1)(b) of Schedule 6
An activity requirement which comprises or includes a specified activities obligation	The person in charge of each activity specified under paragraph 4(1)(b) of Schedule 6
An activity requirement which comprises or includes a specified residential exercise obligation	The person in charge of each place or activity specified under paragraph 5(1)(b) of Schedule 6
An attendance centre requirement	The officer in charge of the attendance centre specified under paragraph 14(2)(a) of Schedule 6
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender	The person intended to be protected
A residence requirement requiring residence with an individual	The individual specified under paragraph 22(2)(b) of Schedule 6

Status: This is the original version (as it was originally enacted).

<i>Requirement</i>	<i>Person to whom copy of requirement is to be given</i>
A place of residence requirement (within the meaning of paragraph 22 of Schedule 6) relating to residence in an institution	The person in charge of the institution
A local authority residence requirement	The local authority specified under paragraph 24(3)(b) of Schedule 6
A mental health treatment requirement	The person in charge of the institution or place specified under sub-paragraph (3)(b)(i) or (ii) of paragraph 28 of Schedule 6, or the person specified under sub-paragraph (3)(b)(iii) of that paragraph
A drug treatment requirement	The treatment director specified under paragraph 31(3)(b)(i) of Schedule 6
A drug testing requirement	The treatment director specified under paragraph 31(3)(b)(i) of Schedule 6
An intoxicating substance treatment requirement	The treatment director specified under paragraph 36(3)(b)(i) of Schedule 6
An education requirement	The relevant authority specified under paragraph 39(2)(a) of Schedule 6
An electronic monitoring requirement	Any person who by virtue of paragraph 42(1) of Schedule 6 will be responsible for the electronic monitoring Any person without whose consent the requirement could not be included in the order.

- (4) If the court does not act in the offender’s home local justice area, it must provide the magistrates’ court acting in the offender’s home local justice area with—
- (a) a copy of the order, and
 - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

Obligations of responsible officer and offender

191 The responsible officer

- (1) For the purposes of this Chapter, “the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, means the person identified in subsection (2), (3) or (4).
- (2) If the order imposes the following requirements, and no other youth rehabilitation requirements—
 - (a) an electronic monitoring requirement, and
 - (b) a curfew requirement or an exclusion requirement (or both),
 the responsible officer is the person who under paragraph 42(1) of Schedule 6 is responsible for the electronic monitoring required by the order.

Status: This is the original version (as it was originally enacted).

- (3) If the only youth rehabilitation requirement imposed by the order is an attendance centre requirement, the responsible officer is the officer in charge of the attendance centre specified in the order.
- (4) In any other case the responsible officer is the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Chapter on the responsible officer.
- (5) In subsection (4) “qualifying officer”, means—
 - (a) a member of a youth offending team established by a local authority specified in the order for the purposes of this section, or
 - (b) an officer of a provider of probation services acting in the offender’s home local justice area.

192 Obligations of responsible officer

- (1) This section applies where a youth rehabilitation order is in force.

Functions of the responsible officer

- (2) The responsible officer must—
 - (a) make any arrangements that are necessary in connection with the requirements imposed by the order,
 - (b) promote the offender’s compliance with those requirements, and
 - (c) where appropriate, take steps to enforce those requirements.
- (3) But subsection (2) does not apply to a person who is a responsible officer by virtue of section 191(2) (person responsible for electronic monitoring).

Exercise of functions by responsible officer

- (4) In giving instructions to the offender in pursuance of the order, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid—
 - (a) any conflict with the offender’s religious beliefs,
 - (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
 - (c) any conflict with the requirements of any other court order to which the offender may be subject,
 and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

193 Duty of offender to keep in touch with responsible officer etc

- (1) This section applies where a youth rehabilitation order is in force.
- (2) The offender—
 - (a) must keep in touch with the responsible officer in accordance with any instructions the responsible officer may give the offender from time to time, and
 - (b) must notify the responsible officer of any change of address.

- (3) This obligation is enforceable as if it were a youth rehabilitation requirement of the youth rehabilitation order.

Review

194 Power to provide for court review of youth rehabilitation orders

- (1) The Secretary of State may by regulations—
- (a) enable or require a court making a youth rehabilitation order to provide for the order to be reviewed periodically by that or another court,
 - (b) enable a court to amend a youth rehabilitation order so as to include or remove a provision for review by a court, and
 - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- (2) Regulations under this section may, in particular, make provision in relation to youth rehabilitation orders corresponding to any provision made by sections 293 to 295 in relation to suspended sentence orders.
- (3) Regulations under this section may repeal or amend any provision of this Chapter.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

Breach, revocation or amendment of order

195 Breach, revocation or amendment of youth rehabilitation order

Schedule 7 makes provision about—

- (a) failures to comply with the requirements of youth rehabilitation orders, and
- (b) revocation and amendment of youth rehabilitation orders.

Transferring order to Northern Ireland

196 Transfer of youth rehabilitation orders to Northern Ireland

Schedule 8 makes provision about the transfer of youth rehabilitation orders to Northern Ireland.

Youth rehabilitation orders: supplementary

197 Youth rehabilitation orders: interpretation

In this Chapter, except where the contrary intention appears—

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

- (a) section 187 (youth rehabilitation order to specify end date),
- (b) paragraph 10(4) of Schedule 7 (power to substitute later end date on breach), or
- (c) paragraph 18(1) of that Schedule (extension of order);

Status: This is the original version (as it was originally enacted).

“home local justice area”, in relation to a youth rehabilitation order, means the local justice area for the time being specified in the order under—

- (a) section 188, or
- (b) paragraph 15(2) of Schedule 7;

“the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, has the meaning given by section 191;

“youth rehabilitation requirement” has the meaning given by section 173.

198 When a youth rehabilitation order is in force

- (1) A youth rehabilitation order takes effect at the beginning of the day on which it is made.
- (2) But a court making a youth rehabilitation order may order that it is to take effect instead on a later date (and see, in particular, section 181(1)).
- (3) A youth rehabilitation order is in force for the period—
 - (a) beginning when it takes effect, and
 - (b) ending—
 - (i) with the end date, or
 - (ii) if later, when the offender has completed any unpaid work requirement imposed by the order.
- (4) But a youth rehabilitation order ceases to be in force when it is revoked.
- (5) An unpaid work requirement is completed when the offender has worked under it for the number of hours specified in the order.

199 Youth rehabilitation orders: Isles of Scilly

- (1) This Chapter has effect in relation to the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may by regulations specify.
- (2) Regulations under this section are subject to the negative resolution procedure.

CHAPTER 2

COMMUNITY ORDERS

What a community order is

200 Community order

- (1) In this Code “community order” means an order imposing one or more community order requirements.
- (2) The community order requirements are listed in column 1 of the community order requirements table (see section 201).
- (3) Provision about each requirement is made by the Part of Schedule 9 mentioned in the corresponding entry in column 2 of that table.

201 Community order requirements table

The community order requirements table referred to in sections 200, 206 and 208 is—

<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
unpaid work requirement	Part 1	
rehabilitation activity requirement	Part 2	
programme requirement	Part 3	
prohibited activity requirement	Part 4	
curfew requirement	Part 5	
exclusion requirement	Part 6	
residence requirement	Part 7	
foreign travel prohibition requirement	Part 8	
mental health treatment requirement	Part 9	
drug rehabilitation requirement	Part 10	
alcohol treatment requirement	Part 11	
alcohol abstinence and monitoring requirement	Part 12	section 207(1) or (2)
attendance centre requirement	Part 13	section 207(3)
electronic compliance monitoring requirement	Part 14	section 207(4)
electronic whereabouts monitoring requirement	Part 14	

Availability

202 Community order: availability

- (1) A community order is available to a court by or before which an offender is convicted of an offence if—
 - (a) the offender is aged 18 or over when convicted, and
 - (b) the offence is punishable with imprisonment by that court.
- (2) Subsection (1) is subject to—
 - (a) subsection (3),
 - (b) section 203 (restriction on making both community order and suspended sentence order), and
 - (c) section 37(8) of the Mental Health Act 1983 (community order not to be made in combination with hospital order or guardianship order in respect of same offence).
- (3) A community order is not available in respect of an offence in relation to which a mandatory sentence requirement applies (see section 399).

Status: This is the original version (as it was originally enacted).

But this is subject to section 74 and Chapter 4 of Part 12 (reduction of sentence for assistance to prosecution).

203 Restriction on making both community order and suspended sentence order

A court may not make a community order in respect of an offence if it makes a suspended sentence order in respect of—

- (a) the offence,
- (b) any other offence of which the offender is convicted by or before it, or
- (c) any other offence for which it deals with the offender.

Exercise of power to make community order

204 Exercise of power to impose community order: general considerations

- (1) This section applies where a community order is available.
- (2) The court must not make a community order 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 serious enough to warrant the making of such an order.
- (3) 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.
- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (5) The fact that, by virtue of subsection (2), the court may make a community order does not require it to do so.

205 Community order: effect of remand in custody

- (1) In determining the restrictions on liberty to be imposed by a community order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with—
 - (a) the offence, or
 - (b) any other offence the charge for which was founded on the same facts or evidence.
- (2) For this purpose, a person is remanded in custody if—
 - (a) remanded in or committed to custody by order of a court,
 - (b) remanded to youth detention accommodation (see subsection (3)), or
 - (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.
- (3) The reference in subsection (2)(b) to being remanded to youth detention accommodation—

Status: This is the original version (as it was originally enacted).

- (a) has the same meaning as in Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail): see, in particular, section 91 of that Act, but
- (b) also includes a reference to being remanded or committed before 3 December 2012 to local authority accommodation under section 23 of the Children and Young Persons Act 1969 and—
 - (i) kept in secure accommodation (within the meaning of that section), or
 - (ii) detained in a secure training centre pursuant to arrangements under subsection (7A) of that section.

Available requirements

206 Community order: available requirements

- (1) A court may not make a community order which imposes a community order requirement that is not an available requirement.
- (2) A community order requirement is an available requirement unless a provision mentioned in column 3 of the entry for that requirement in the community order requirements table (see section 201) provides otherwise.

207 Community order: availability of particular requirements

Alcohol abstinence and monitoring requirement

- (1) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 9 (prescribed arrangements for monitoring).
- (2) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 9 (alcohol level to be kept below specified level) is not an available requirement unless regulations are in force under 25(7)(b) of that Schedule (prescribed alcohol level).

Attendance centre requirement

- (3) An attendance centre requirement is not an available requirement unless the offender is aged under 25 when convicted of the offence.

Electronic compliance monitoring requirement

- (4) An electronic compliance monitoring requirement is not an available requirement in relation to a community order unless the community order imposes at least one other available requirement, other than—
 - (a) an alcohol abstinence and monitoring requirement;
 - (b) an electronic whereabouts monitoring requirement.

Exercise of power to impose requirements

208 Community order: exercise of power to impose particular requirements

- (1) This section applies where a court makes a community order in respect of an offence.

Status: This is the original version (as it was originally enacted).

Restrictions and obligations relating to imposing particular requirements

- (2) The power to impose a particular community order requirement is subject to the provisions of the Part of Schedule 9 relating to requirements of that kind (see column 2 of the table in section 201).

Suitability of requirements

- (3) The particular community order requirement or community order requirements imposed by the order must, in the opinion of the court, be the most suitable for the offender.

This is subject to subsection (10).

- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming any opinion on whether a particular requirement or combination of requirements is suitable for the offender.
- (5) In forming its opinion for the purposes of subsection (3) on which requirement or combination of requirements is most suitable for the offender, the court may take into account any information about the offender which is before it.

Considerations of seriousness and punishment etc

- (6) The restrictions on liberty imposed by the order must be such as are in the opinion of the court commensurate with the seriousness of—
- (a) the offence, or
 - (b) the combination of the offence and one or more offences associated with it.

This is subject to subsection (10).

- (7) In forming its opinion for the purposes of subsection (6), 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.
- (9) The fact that, by virtue of subsection (6), particular restrictions on liberty may be imposed by a community order does not require the court to impose those restrictions.
- (10) The order must include at least one community order requirement imposed for the purpose of punishment.
- (11) Subsection (10) does not apply where—
- (a) the court also imposes a fine, or
 - (b) there are exceptional circumstances relating to the offence or to the offender which—
 - (i) would make it unjust in all the circumstances for the court to impose a requirement for the purpose of punishment in the particular case, and
 - (ii) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.

Compatibility with other matters

Status: This is the original version (as it was originally enacted).

- (12) If the order imposes two or more different community order requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (13) The court must ensure, so far as practicable, that any community order requirement imposed by the order is such as to avoid—
- (a) any conflict with the offender’s religious beliefs,
 - (b) any conflict with the requirements of any other court order to which the offender may be subject, and
 - (c) any interference with the times, if any, at which the offender normally—
 - (i) works, or
 - (ii) attends any educational establishment,
- and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (14) Regulations under subsection (13) are subject to the negative resolution procedure.

Making a community order

209 Community order to specify end date etc

- (1) A community order must specify a date (the “end date”) by which all the requirements in it must have been complied with.
- (2) The end date must not be more than 3 years after the date of the order.
- (3) If a community order imposes two or more different community order requirements—
- (a) the order may also specify, for each of the requirements, a date by which the requirement must have been complied with;
 - (b) if it does so, the last of those dates must be the same as the end date.
- (4) Section 220 sets out the effect of the end date.

210 Community order to specify offender’s home local justice area

- (1) A community order must specify which local justice area is the offender’s home local justice area.
- (2) The area specified must be the local justice area in which the offender resides or will reside.

211 Power for Crown Court to direct magistrates’ court supervision

Where the Crown Court makes a community order, it may include a direction that the order is to be subject to magistrates’ court supervision.

212 Provision of copies of community order and related documents

- (1) This section applies when a court makes a community order.
- (2) The court must forthwith provide copies of the order—
- (a) to the offender,

Status: This is the original version (as it was originally enacted).

- (b) to the responsible officer,
- (c) to an officer of a provider of probation services that is a public sector provider who is acting at the court, and
- (d) if the court does not act in the offender’s home local justice area, to a provider of probation services that is a public sector provider and is operating in that area.

(3) If the order imposes any requirement specified in column 1 of the following table, the court must also forthwith provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

<i>The requirement</i>	<i>The person to whom a copy must be provided</i>
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender	The person intended to be protected
A residence requirement relating to residence in an institution	The person in charge of the institution
A mental health treatment requirement	The person specified under paragraph 16(3)(b)(iii) of Schedule 9 or the person in charge of the institution or place specified under paragraph 16(3)(b)(i) or (ii) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(5)(b) or (c) of Schedule 9
An alcohol treatment requirement	The person in charge of the institution or place specified under paragraph 23(5)(c) or (d) of Schedule 9 or, in the case of practitioner-based treatment, the person specified under paragraph 23(5)(a) of that Schedule
An electronic monitoring requirement	Any person who by virtue of paragraph 31(1) of Schedule 9 will be responsible for the electronic monitoring Any person without whose consent the requirement could not be included in the order.

- (4) If the court does not act in the offender’s home local justice area, it must provide the magistrates’ court acting in that area with—
- (a) a copy of the order, and
 - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.
- (5) In subsection (2) “public sector provider” means—
- (a) a probation trust or other public body, or
 - (b) the Secretary of State.

Obligations of responsible officer and offender

213 The responsible officer

- (1) For the purposes of this Chapter, “the responsible officer”, in relation to an offender to whom a community order relates, means the person who is for the time being responsible for discharging the functions conferred by this Code on the responsible officer in accordance with arrangements made by the Secretary of State.
- (2) The responsible officer must be—
 - (a) an officer of a provider of probation services, or
 - (b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the community order.

214 Obligations of responsible officer

- (1) This section applies where a community order is in force.

Functions of the responsible officer

- (2) The responsible officer must—
 - (a) make any arrangements that are necessary in connection with the requirements imposed by the order, and
 - (b) promote the offender’s compliance with those requirements.
- (3) This is subject to paragraph 16(6) of Schedule 9 (in-patient treatment under mental health treatment requirement).

Exercise of functions by responsible officer

- (4) The responsible officer must ensure, as far as practicable, that any instruction given by the responsible officer is such as to avoid—
 - (a) any conflict with the offender’s religious beliefs,
 - (b) any conflict with the requirements of any other court order to which the offender may be subject, and
 - (c) any interference with the times, if any, at which the offender normally—
 - (i) works, or
 - (ii) attends any educational establishment,and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

215 Duty of offender to keep in touch with responsible officer

- (1) This section applies where a community order is in force.
- (2) The offender must keep in touch with the responsible officer in accordance with any instructions the responsible officer may give the offender from time to time.
- (3) This obligation is enforceable as if it were a community order requirement of the community order.

Status: This is the original version (as it was originally enacted).

216 Duty of offender to obtain permission before changing residence

- (1) This section applies where a community order—
 - (a) is in force, and
 - (b) does not include a residence requirement imposed under paragraph 13 of Schedule 9.
- (2) The offender must not change residence except with permission given in accordance with this section by—
 - (a) the responsible officer, or
 - (b) a court.
- (3) This obligation has effect as if it were a community order requirement of the community order.
- (4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.

For this purpose, “appropriate court” has the same meaning as in Schedule 10 (see paragraph 1 of that Schedule).
- (5) A court may also give permission in any proceedings before it under Schedule 10 (breach or amendment of order etc).
- (6) The grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
 - (a) is likely to prevent the offender complying with a requirement imposed by the community order, or
 - (b) would hinder the offender’s rehabilitation.
- (7) The responsible officer must refuse an application for permission if—
 - (a) the offender’s present residence is in England or Wales, and
 - (b) the offender’s proposed residence is outside England and Wales.
- (8) For cases in which a community order has to be amended because of permission given under this section, see paragraph 16 of Schedule 10 (amendment to reflect change in local justice area).

Review

217 Power to provide for court review of community orders

- (1) The Secretary of State may by regulations—
 - (a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,
 - (b) enable a court to amend a community order so as to include or remove a provision for review by a court, and
 - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- (2) Regulations under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 293 to 295 in relation to suspended sentence orders.

Status: This is the original version (as it was originally enacted).

- (3) Regulations under this section may repeal or amend any provision of this Chapter.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

Breach, revocation or amendment of community order

218 Breach, revocation or amendment of community order

Schedule 10 makes provision about—

- (a) failures to comply with the requirements of community orders;
- (b) revocation of community orders;
- (c) amendment of community orders.

Transferring order to Scotland or Northern Ireland

219 Transfer of community orders to Scotland or Northern Ireland

Schedule 11 makes provision about transfers of community orders to Scotland or Northern Ireland.

Community orders: supplementary

220 When a community order ceases to be in force

- (1) A community order ceases to be in force—
 - (a) at the end of the end date (see section 209), or
 - (b) if later, when the offender has completed any unpaid work requirement imposed by the order.
- (2) But a community order ceases to be in force when it is revoked.
- (3) An unpaid work requirement is completed when the offender has worked under it for the number of hours specified in the order.

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.

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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);
 - (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, and
 - (iii) extended 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, 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.

222 Meaning of “custodial sentence”

- (1) In this Code “custodial sentence” means—
- (a) a detention and training order under section 233,

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- (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.

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
 - (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.

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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 6 months in respect of any one offence.
- (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 6 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
 - (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.

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—
 - (a) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall), or

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- (b) Part 2 of the Criminal Justice Act 1991 (early release of prisoners).
- (2) In this section “relevant custodial term” means a term of—
 - (a) detention under Chapter 2 of this Part,
 - (b) detention in a young offender institution (under this Code), or
 - (c) imprisonment.
- (3) In this section, “current custodial sentence” means a sentence that has not yet expired which is—
 - (a) a sentence of imprisonment,
 - (b) a sentence of detention in a young offender institution, or
 - (c) a sentence of detention imposed under any of the following—
 - (i) section 250,
 - (ii) section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006),
 - (iii) 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),
 - (iv) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (v) section 53(3) of the Children and Young Persons Act 1933,
 - (vi) section 209 of the Armed Forces Act 2006, or
 - (vii) section 71A(4) of the Army Act 1955 or the Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957.

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) 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

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- (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).

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.

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—
 - (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.

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.

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.

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

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(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—

- (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).

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).

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- (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 mandatory sentences and extended 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).

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.

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

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- (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
 - (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.

CHAPTER 2

OFFENDERS AGED UNDER 18

Detention and training orders

233 Detention and training order

A detention and training order in respect of an offender is an order that the offender is subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

234 Detention and training order: availability

- (1) A detention and training order is available where a court is dealing with an offender for an offence if—
 - (a) the offender is aged under 18, but at least 12, when convicted,
 - (b) the offence is an imprisonable offence, and
 - (c) the court is not required to pass—
 - (i) a sentence of detention under section 250 (see section 249(2)), or
 - (ii) a sentence of detention during Her Majesty’s pleasure under section 259.
- (2) For circumstances in which the court is required to impose a detention and training order, see—

- (a) section 312 (minimum sentence for offences of threatening with weapon or bladed article);
- (b) section 315 (minimum sentence for repeat offence involving weapon or bladed article).

235 Exercise of power to make a detention and training order

- (1) This section applies where a detention and training order is available.
- (2) The court may not make a detention and training order if it imposes—
 - (a) a sentence of detention under section 250, or
 - (b) an extended sentence of detention under section 254,in respect of the offence.
- (3) If the offender is aged under 15 when convicted the court may not make a detention and training order unless it is of the opinion that the offender is a persistent offender.
- (4) The court’s power to make a detention and training order is subject to (in particular) section 230 (threshold for imposing discretionary custodial sentence).

236 Term of detention and training order

- (1) The term of a detention and training order made in respect of an offence (whether by a magistrates’ court or otherwise) must be 4, 6, 8, 10, 12, 18 or 24 months.
This is subject to subsection (2).
- (2) The term of a detention and training order in respect of an offence may not exceed—
 - (a) in the case of a summary offence, the maximum sentence of imprisonment that could be imposed (in the case of an offender aged 21 or over) for the offence;
 - (b) in the case of any other offence, the maximum term of imprisonment that the Crown Court could impose (in the case of an offender aged 21 or over) for the offence.
- (3) Section 231 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a detention and training order.
- (4) A detention and training order takes effect at the beginning of the day on which it is made, unless the court orders otherwise under section 237.

237 Making of order where offender subject to other order or sentence of detention

- (1) This section applies where a court makes a detention and training order.
- (2) The court may order that the term of the detention and training order is to take effect on the expiry of any other detention and training order which it imposes on the same occasion.
This is subject to section 238(1).
- (3) If the offender—
 - (a) is subject to another relevant detention and training order (“the existing order”), and
 - (b) has not at any time been released for supervision under the existing order,

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the court may order that the detention and training order is to take effect on the expiry of the existing order.

This is subject to section 238(1).

- (4) If the offender—
- (a) is subject to a relevant sentence of detention (see section 248), and
 - (b) has not at any time been released under Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence of fixed-term prisoners),
- the court may order that the detention and training order is to take effect at the time when the offender would otherwise be released under that Chapter.
- (5) Section 246 of that Act (power of Secretary of State to release prisoners on licence earlier than required to do so) is to be disregarded in determining for this purpose when an offender would otherwise be released under that Chapter.
- (6) If the offender is subject to a further period of detention imposed—
- (a) under paragraph 3(2)(a) of Schedule 12 (breach of supervision requirement of existing detention and training order),
 - (b) under section 104(3)(a) of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (c) under either of those provisions by virtue section 213 of the Armed Forces Act 2006,
- the court may order that the detention and training order is to take effect at the end of the further period of detention.

238 Offender subject to more than one order: maximum overall term

- (1) A court may not make a detention and training order as a result of which the offender would be subject to relevant detention and training orders for a term exceeding 24 months.
- (2) Where—
- (a) a court makes a detention and training order, and
 - (b) the term of the relevant detention and training orders to which the offender would otherwise be subject exceeds 24 months,
- the excess is to be treated as remitted.
- (3) Where—
- (a) a court makes a detention and training order, and
 - (b) as a result the offender is subject to two or more relevant detention and training orders,
- the terms of those orders are to be treated for the purposes of sections 241 to 243 and 247 and Schedule 12 as a single term.
- (4) See section 248 for the meaning of “relevant detention and training order”.

239 Period on remand etc: effect on term of detention and training order

- (1) Subsection (2) applies where—
- (a) a court proposes to make a detention and training order in respect of an offence, and

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- (b) the offender has been remanded—
 - (i) in custody, or
 - (ii) on bail subject to a qualifying curfew condition and an electronic monitoring condition,in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.
- (2) In determining the term of the detention and training order, the court must take account of the period for which the offender was so remanded.
- (3) If the court proposes to make two or more detention and training orders in respect of two or more offences—
 - (a) subsection (2) does not apply, but
 - (b) in determining the total term of those detention and training orders, the court must take account of the total period for which the offender has been remanded as mentioned in subsection (1)(b)(i) and (ii) in connection with—
 - (i) any of those offences, or
 - (ii) any other offence the charge for which was founded on the same facts or evidence.
- (4) A period of remand may be taken account of under this section only once.
- (5) For the purposes of this section, an offender is remanded in custody when—
 - (a) in police detention for the purposes of the Police and Criminal Evidence Act 1984,
 - (b) detained under section 41 of the Terrorism Act 2000 (arrest without warrant),
 - (c) remanded in or committed to custody by an order of a court,
 - (d) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
 - (e) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.
- (6) For the purposes of this section, “qualifying curfew condition” and “electronic monitoring condition” have the same meanings as in section 325 (direction for time on bail under certain conditions to count as time served): see section 326(3).

240 Period of custody awaiting extradition: effect on term of detention and training order

- (1) This section applies where—
 - (a) a court proposes to make a detention and training order in respect of an offence,
 - (b) the offender was tried for the offence, or is to be sentenced—
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (c) the offender was kept in custody for any period while awaiting extradition to the United Kingdom.
- (2) The court must—

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- (a) specify in open court the number of days for which the offender was kept in custody while awaiting extradition, and
- (b) take account of those days in determining the term of the detention and training order.

241 The period of detention and training

- (1) An offender must serve the period of detention and training under a detention and training order in such youth detention accommodation as may be determined by the Secretary of State.

Release at half-way point

- (2) Subject to subsections (3) to (5), the period of detention and training under a detention and training order is half of the term of the order.

Early release on compassionate grounds

- (3) The Secretary of State may release the offender at any time if satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds.

Release before half-way point

- (4) The Secretary of State may release the offender—
- (a) in the case of an order for a term of—
 - (i) 8 months or more, but
 - (ii) less than 18 months,
 at any time during the period of 1 month ending with the half-way point of the term of the order, and
 - (b) in the case of an order for a term of 18 months or more, at any time during the period of 2 months ending with that point.

Release after half-way point

- (5) If a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State must release the offender—
- (a) in the case of an order for a term of—
 - (i) 8 months or more, but
 - (ii) less than 18 months,
 1 month after the half-way point of the term of the order, and
 - (b) in the case of an order for a term of 18 months or more, 1 month or 2 months after that point.
- (6) Where—
- (a) the court makes an order under subsection (5), and
 - (b) the offender is also subject to a sentence of any of the following kinds that is to take effect, by virtue of an order to which subsection (7) applies, when the offender would otherwise be released for supervision—
 - (i) a sentence of detention under section 250,
 - (ii) a sentence of detention under section 209 of the Armed Forces Act 2006, or

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- (iii) an extended sentence of detention under section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006), the order under subsection (5) must be expressed as an order that the period of detention and training attributable to the detention and training order is to end at the time determined under that subsection.
- (7) This subsection applies to orders under the following provisions (which provide for sentences of detention to take effect when an offender is released for supervision under a detention and training order)—
- (a) section 253(2) (offender under 18: sentence of detention to take effect on release for supervision under detention and training order),
 - (b) section 257(2) (offender under 18: extended sentence of detention), or
 - (c) any corresponding provision relating to an order under section 209 of, or made as a result of section 221A of, the Armed Forces Act 2006.

Detention to be legal custody

- (8) An offender detained under a detention and training order is deemed to be in legal custody.

242 The period of supervision

- (1) The period of supervision of an offender who is subject to a detention and training order—
- (a) begins when the offender is released for supervision (whether at the half-way point of the term of the order or otherwise), and
 - (b) ends when the term of the order ends.
- (2) During the period of supervision, the offender—
- (a) is to be under the supervision of—
 - (i) an officer of a provider of probation services, or
 - (ii) a member of a youth offending team, and
 - (b) may be required to comply with particular requirements.
- (3) Any such requirements, and the category of person to supervise the offender, are to be determined from time to time by the Secretary of State.
- (4) The offender must be notified by the Secretary of State of—
- (a) the category of person responsible for the offender's supervision, and
 - (b) any requirements with which the offender must comply.
- (5) A notice under subsection (4) must be given to the offender—
- (a) before the period of supervision begins, and
 - (b) before any change in the matters mentioned in that subsection.
- (6) Where the supervision is to be provided by an officer of a provider of probation services, the officer must be an officer acting in the local justice area within which the offender resides for the time being.
- (7) Where the supervision is to be provided by a member of a youth offending team, the member must be a member of a youth offending team established by the local authority in whose area the offender resides for the time being.

Status: This is the original version (as it was originally enacted).

243 Breach of supervision requirement and further offences during order

Schedule 12 makes provision about—

- (a) breach of supervision requirements imposed under a detention and training order etc, and
- (b) offences committed during the term of a detention and training order.

244 Offender subject concurrently to detention and training order and sentence of detention in a young offender institution

- (1) This section applies where an offender is subject concurrently—
 - (a) to a relevant detention and training order (see section 248), and
 - (b) to a sentence of detention in a young offender institution,at least one of which is imposed in respect of an offence of which the offender was convicted on or after the commencement date.
- (2) The offender is to be treated for the purposes of the following provisions as if subject only to the sentence of detention in a young offender institution—
 - (a) sections 241 to 243 and Schedule 12 (periods of detention and training and supervision, breach of supervision requirements and further offences);
 - (b) section 271 (detention in a young offender institution: place of detention);
 - (c) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall).

This is subject to subsection (3).

- (3) Nothing in subsection (2) requires the offender to be released in respect of either the order or the sentence unless and until the offender is required to be released in respect of each of them.
- (4) In subsection (1), “sentence of detention in a young offender institution” includes any sentence of detention in a young offender institution, whether imposed under this Code or otherwise.
- (5) Subsection (2) has effect in relation to an order or sentence imposed in respect of an offence of which the offender was convicted before the commencement date as if the provisions referred to in paragraphs (a) to (c) included the provisions referred to in section 106(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (interaction of detention and training orders with sentences of detention in a young offender institution).

245 Offender subject concurrently to detention and training order and other sentence of detention

- (1) This section applies where an offender is subject concurrently to—
 - (a) a relevant detention and training order, and
 - (b) a relevant sentence of detention,at least one of which is imposed in respect of an offence of which the offender was convicted on or after the commencement date.

(See section 248 for the meaning of “relevant detention and training order” and “relevant sentence of detention”.)

Status: This is the original version (as it was originally enacted).

- (2) The offender is to be treated as if subject only to the relevant sentence of detention for the purposes of the following provisions—
- (a) sections 241 to 243 and Schedule 12 (periods of detention and training and supervision, breach of supervision requirements and further offences);
 - (b) section 260 and section 261 (place of detention);
 - (c) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release and supervision following release);
 - (d) section 210 of the Armed Forces Act 2006 (place of detention etc);
 - (e) section 214 of the Armed Forces Act 2006 (offences committed during a detention and training order under that Act).

This is subject to subsection (3).

- (3) Nothing in subsection (2) requires the offender to be released in respect of either the order or the sentence unless and until the offender is required to be released in respect of each of them.
- (4) Subsection (2) has effect in relation to a relevant detention and training order or relevant sentence of detention that is imposed in respect of an offence of which the offender was convicted before the commencement date as if the provisions referred to in paragraphs (a) to (e) included the provisions referred to in section 106A(8) of the Powers of Criminal Courts (Sentencing) Act 2000.

246 Effect of detention and training order made where offender has reached 18

- (1) This section applies where—
- (a) a court has power, by virtue of any enactment, to deal with a person for an offence in any way in which—
 - (i) a court could have dealt with the person on a previous occasion, or
 - (ii) a court could deal with the person if the person were the same age as when convicted,
 - (b) in exercise of the power, the court makes a detention and training order for any term, and
 - (c) the person has reached the age of 18.
- (2) The person is to be treated as if sentenced to detention in a young offender institution for the same term.

247 Further supervision after end of term of detention and training order

- (1) This section applies where a detention and training order is made in respect of an offender if—
- (a) the offender is aged 18 or over at the half-way point of the term of the order,
 - (b) the term of the order is less than 24 months, and
 - (c) the order was imposed in respect of an offence committed on or after 1 February 2015.
- (2) The following provisions of the Criminal Justice Act 2003 (which relate to supervision after end of sentence) apply as they apply in cases described in section 256AA(1) of that Act—
- (a) sections 256AA(2) to (11), 256AB and 256AC,

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- (b) sections 256D and 256E, and
 - (c) Schedule 19A,
- but with the following modifications.
- (3) “The supervision period”, in relation to the offender, is the period which—
 - (a) begins on the expiry of the term of the detention and training order, and
 - (b) ends on the expiry of the period of 12 months beginning immediately after the half-way point of the term of the order.
 - (4) “The supervisor”, in relation to the offender, must be—
 - (a) an officer of a provider of probation services, or
 - (b) a member of a youth offending team established by the local authority in whose area the offender resides for the time being.
 - (5) The power in section 256AB(4) of the Criminal Justice Act 2003 (power of Secretary of State to amend requirements that may be imposed) includes power—
 - (a) to make provision about the supervision requirements that may be imposed under section 256AA of that Act as applied by this section, and
 - (b) to amend any provision of the Powers of Criminal Courts (Sentencing) Act 2000 or any provision of this Code derived from that Act.
 - (6) Subsection (7) applies where the term of the detention and training order is determined by section 238(3) (offender subject to two or more detention and training orders).
 - (7) The offender is subject to supervision under section 256AA of the Criminal Justice Act 2003 (as applied by this section) if that section (as applied) so requires in respect of one or more of the detention and training orders.
 - (8) For the purposes of subsection (1), where an offence is found to have been committed—
 - (a) over a period of 2 or more days, or
 - (b) at some time during a period of 2 or more days,
 it is taken to have been committed on the last of those days.

248 Detention and training orders: interpretation

- (1) In section 241 and Schedule 12 “youth detention accommodation” means—
 - (a) a secure training centre,
 - (b) a secure college,
 - (c) a young offender institution,
 - (d) accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons,
 - (e) accommodation provided for that purpose under section 82(5) of the Children Act 1989 (financial support by the Secretary of State), or
 - (f) such other accommodation or descriptions of accommodation as the Secretary of State may specify by regulations.
- (2) In sections 241, 242 and 247 and in Schedule 12, references to the term of a detention and training order are to be read in accordance with section 238(3).
- (3) In sections 237, 238, 244 and 245 and Schedule 12, “relevant detention and training order” means—

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- (a) a detention and training order under section 233,
 - (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
 - (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before Code comes into force).
- (4) In sections 237 and 245, “relevant sentence of detention” means—
- (a) a sentence of detention under section 250,
 - (b) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18 convicted of certain serious offences: power to detain for specified period),
 - (c) a sentence of detention under section 209 of the Armed Forces Act 2006 (whether passed before or after this Code comes into force),
 - (d) an extended sentence of detention under section 254, including one passed as a result of section 221A of the Armed Forces Act 2006, or
 - (e) a sentence under section 226B or 228 of the Criminal Justice Act 2003 (extended sentence of detention: offenders aged under 18 convicted before this Code comes into force), including one passed as a result of section 221A or 222 of the Armed Forces Act 2006.
- (5) For the purposes of this Code, an offender who is subject to a detention and training order or an order mentioned in subsection (3)(b) or (c) is released for supervision when released by virtue of—
- (a) section 241(2), (3), (4) or (5), or
 - (b) in the case of an order to which section 102 of the Powers of Criminal Courts (Sentencing) Act 2000 (the “2000 Act”) applies (including one made under section 211 of the Armed Forces Act 2006), subsection (2), (3), (4) or (5) of section 102 of the 2000 Act.
- (6) Regulations under subsection (1)(f) are subject to the affirmative resolution procedure.
- (7) Subsection (4) of section 407 (general powers to make provision in regulations) does not apply to the power conferred by subsection (1)(f).

Detention for specified period

249 Sentence of detention under section 250: availability

- (1) A sentence of detention under section 250 is available where a person aged under 18 is convicted on indictment of an offence listed in the following table—

Offences punishable with imprisonment for at least 14 years

- (a) an offence which—
 - (i) is not an offence for which the sentence is fixed by law, and
 - (ii) is punishable in the case of a person aged 21 or over with imprisonment for 14 years or more;

Sexual offences

- (b) an offence under any of the following provisions of the Sexual Offences Act 2003—

Status: This is the original version (as it was originally enacted).

- (i) section 3 (sexual assault);
- (ii) section 13 (child sex offences committed by children or young persons);
- (iii) section 25 (sexual activity with a child family member);
- (iv) section 26 (inciting a child family member to engage in sexual activity);

Offences related to firearms

- (c) an offence (other than one within paragraph (a)) which—
 - (i) is listed in Schedule 20 (firearms offences to which minimum sentence applies), and
 - (ii) was committed when the offender was aged 16 or over.
-
- (2) For circumstances in which a court is required to impose a sentence of detention under section 250, see—
 - (a) section 258 (required sentence of detention for life);
 - (b) section 311 (minimum sentence for certain offences involving firearms that are prohibited weapons).
 - (3) Where an offence is found to have been committed—
 - (a) over a period of 2 or more days, or
 - (b) at some time during a period of 2 or more days,
 it is to be taken for the purposes of paragraph (c)(ii) of the table in subsection (1) to have been committed on the last of those days.

250 Sentence of detention: offender convicted of certain serious offences

A sentence of detention under this section is a sentence requiring the offender to be detained for the period specified in the sentence.

251 Exercise of power to impose sentence of detention under section 250

- (1) Subsection (2) applies where a sentence of detention under section 250 is available by virtue of section 249(1).
- (2) The court may impose such a sentence if it is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable.
- (3) This is subject to (in particular) section 230 (threshold for imposing discretionary custodial sentence) and section 231 (length of discretionary custodial sentences: general provision).

252 Maximum sentence

- (1) This section applies where the court imposes a sentence of detention under section 250 by virtue of—
 - (a) section 251, or
 - (b) section 311 (minimum sentence for certain offences involving firearms that are prohibited weapons).
- (2) The period of detention specified in the sentence must not exceed—
 - (a) the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, or

- (b) life, if the offence is punishable with imprisonment for life in the case of a person aged 21 or over.

253 Sentence of detention passed on offender subject to detention and training order

- (1) This section applies where a court imposes a sentence of detention under section 250 in the case of an offender who is subject to a relevant detention and training order.
- (2) If the offender has not at any time been released for supervision under the relevant detention and training order, the court may order that the sentence of detention is to take effect at the time when the offender would otherwise be released for supervision under the relevant detention and training order (see section 248(5)).
- (3) Otherwise, the sentence of detention takes effect at the beginning of the day on which it is passed.
- (4) In this section “relevant detention and training order” means—
 - (a) a detention and training order under section 233,
 - (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
 - (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

Extended sentences

254 Extended sentence for certain violent, sexual or terrorism offences

An extended sentence of detention under this section is a sentence of detention the term of which is equal to the aggregate of—

- (a) the appropriate custodial term (see section 256), and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

255 Extended sentence of detention: availability

- (1) An extended sentence of detention under section 254 is available where a court is dealing with an offender for an offence if—
 - (a) the offence—
 - (i) is a specified offence (see section 306(1)), and
 - (ii) is listed in the table in section 249(1) (sentence of detention under section 250: availability),
 - (b) the offender is aged under 18 when convicted,
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
 - (d) the court is not required by section 258(2) to impose a sentence of detention for life under section 250, and
 - (e) if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term (see section 256) would be at least 4 years.

Status: This is the original version (as it was originally enacted).

- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion referred to in subsection (1)(c).

256 Term of extended sentence of detention under section 254

- (1) This section applies where a court is determining—
- (a) the appropriate custodial term, and
 - (b) the extension period,
- of an extended sentence of detention under section 254 to be imposed on an offender in respect of an offence.
- (2) The appropriate custodial term is the term of detention that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.
- (3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

- (4) The extension period must—
- (a) be at least 1 year, and
 - (b) not exceed—
 - (i) 5 years in the case of a specified violent offence;
 - (ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of “specified violent offence”, “specified sexual offence” and “specified terrorism offence”.

- (5) The term of the extended sentence of detention under section 254 must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

257 Extended sentence under section 254 where offender subject to detention and training order

- (1) This section applies where the court imposes an extended sentence of detention under section 254 in the case of an offender who is subject to a relevant detention and training order.
- (2) If the offender has not at any time been released for supervision under the relevant detention and training order, the court may order that the extended sentence of detention is to take effect at the time when the offender would otherwise be released for supervision under the relevant detention and training order (see section 248(5)).
- (3) Otherwise, the extended sentence of detention takes effect at the beginning of the day on which it is passed.
- (4) In this section “relevant detention and training order” means—
- (a) a detention and training order under section 233,

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- (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
- (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

Detention for life etc

258 Required sentence of detention for life for offence carrying life sentence

- (1) This section applies where—
 - (a) a person aged under 18 is convicted of a Schedule 19 offence (see section 307),
 - (b) the court considers that the seriousness of—
 - (i) the offence, or
 - (ii) the offence and one or more offences associated with it,is such as to justify the imposition of a sentence of detention for life, and
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).
- (2) The court must impose a sentence of detention for life under section 250.
- (3) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
- (4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

259 Offenders who commit murder etc when under 18: duty to detain at Her Majesty's pleasure

- (1) This section applies where—
 - (a) a court is dealing with a person convicted of—
 - (i) murder, or
 - (ii) any other offence the sentence for which is fixed by law as life imprisonment, and
 - (b) the person appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must sentence the offender to be detained during Her Majesty's pleasure.
- (3) Subsection (2) applies notwithstanding anything in this or any other Act.

Detention under this Chapter

260 Detention under section 250 or 259

- (1) Detention under section 250 or 259 is to be in such place and under such conditions—
 - (a) as the Secretary of State may direct, or
 - (b) as the Secretary of State may arrange with any person.

Status: This is the original version (as it was originally enacted).

- (2) A person detained pursuant to directions or arrangements made by the Secretary of State under this section is deemed to be in legal custody.

261 Detention in pursuance of extended sentence

Detention under section 254 (extended sentence of detention) is to be in a place and under conditions determined by, or by a person authorised for the purpose by, the Secretary of State.

CHAPTER 3

ADULTS AGED UNDER 21

Detention in a young offender institution

262 Detention in a young offender institution for offender at least 18 but under 21

- (1) A sentence of detention in a young offender institution is available to a court dealing with an offender for an offence where—
- (a) the offender is aged at least 18 but under 21 when convicted,
 - (b) the offence is punishable by that court with imprisonment in the case of a person aged 21 or over, and
 - (c) the court is not required to pass a sentence of—
 - (i) detention during Her Majesty’s pleasure (see section 259), or
 - (ii) custody for life (see sections 272 and 275).
- (2) Where—
- (a) a sentence of detention in a young offender institution is available, and
 - (b) the court is not required to impose such a sentence,
- the power of the court to impose such a sentence is subject (in particular) to section 230 (threshold for imposing discretionary custodial sentence).
- (3) For circumstances in which a court is required to impose a sentence of detention in a young offender institution, see the provisions mentioned in section 399(c) (mandatory minimum sentences).

263 Term of detention in a young offender institution

- (1) The maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for the offence in the case of a person aged 21 or over.
- (2) The minimum term of a sentence of detention in a young offender institution is 21 days.
- (3) Section 231 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a sentence of detention in a young offender institution.

Status: This is the original version (as it was originally enacted).

- (4) For further provision about the term of a sentence of detention in a young offender institution, see—
- (a) section 265 (special sentence for certain offenders of particular concern);
 - (b) section 268 (extended sentence).

Suspended sentence of detention in a young offender institution

264 Suspended sentence order for offender under 21: availability

- (1) This section applies where, in dealing with an offender for an offence, the court imposes a sentence of detention in a young offender institution.
- (2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of detention in a young offender institution is not more than 2 years.
- (3) But a suspended sentence order is not available in relation to that sentence if—
- (a) the sentence of detention in a young offender institution is one of two or more sentences imposed on the same occasion which are to be served consecutively, and
 - (b) the terms of those sentences are in aggregate more than 2 years.
- (4) For provision about suspended sentences see Chapter 5 .

Special custodial sentence for certain offenders of particular concern

265 Required special sentence for certain offenders of particular concern

- (1) This section applies where a court imposes a sentence of detention in a young offender institution for an offence where—
- (a) the offence is listed in Schedule 13,
 - (b) the offender—
 - (i) was aged 18 or over when the offence was committed, and
 - (ii) is aged under 21 when convicted of the offence, and
 - (c) the court does not impose either of the following for the offence (or for an offence associated with it)—
 - (i) an extended sentence under section 266, or
 - (ii) a sentence of custody for life under section 272.
- (2) The term of the sentence must be equal to the aggregate of—
- (a) the appropriate custodial term, and
 - (b) a further period of 1 year for which the offender is to be subject to a licence, and must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.
- (3) For the purposes of subsection (2), the “appropriate custodial term” is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Status: This is the original version (as it was originally enacted).

Extended sentence of detention in a young offender institution

266 Extended sentence of detention in a young offender institution for certain violent, sexual or terrorism offences

An extended sentence of detention in a young offender institution is a sentence of detention in a young offender institution the term of which is equal to the aggregate of—

- (a) the appropriate custodial term (see section 268), and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

267 Extended sentence of detention in a young offender institution: availability

- (1) An extended sentence of detention in a young offender institution is available in respect of an offence where—
 - (a) the offence is a specified offence (see section 306(1)),
 - (b) the offender is aged at least 18 but under 21 when convicted of the offence,
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
 - (d) the court is not required by section 273 or 274 to impose a sentence of custody for life, and
 - (e) the earlier offence condition or the 4 year term condition is met.
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
- (3) The earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Schedule 14.
- (4) The 4 year term condition is that, if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term (see section 268) would be at least 4 years.

268 Term of extended sentence of detention in a young offender institution

- (1) This section applies where a court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of detention in a young offender institution under section 266.
- (2) The appropriate custodial term is the term of detention in a young offender institution that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.
- (3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

- (4) The extension period must—

- (a) be at least 1 year, and
- (b) not exceed—
 - (i) 5 years in the case of a specified violent offence, or
 - (ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of “specified violent offence”, “specified sexual offence” and “specified terrorism offence”.

- (5) The term of the extended sentence must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

Detention in a young offender institution: consecutive sentences etc

269 Detention in a young offender institution: consecutive sentences

- (1) Where—
 - (a) an offender is convicted of more than one offence for which a sentence of detention in a young offender institution is available, or
 - (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which a sentence of detention in a young offender institution is available,the court has the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

- (2) Where an offender who—
 - (a) is serving a sentence of detention in a young offender institution, and
 - (b) is aged 21 or over,is convicted of one or more further offences for which the offender is liable to imprisonment, the court has the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

This is subject to section 225 (restriction on consecutive sentences for released prisoners).

270 Sentence of detention in a young offender institution where offender subject to detention and training order

- (1) This section applies where the court imposes a sentence of detention in a young offender institution in the case of an offender who is subject to a relevant detention and training order.
- (2) If the offender has not at any time been released for supervision under the detention and training order, the court may order that the sentence of detention in a young offender institution is to take effect at the time when the offender would otherwise be released under the relevant detention and training order (see section 248(5)).
- (3) Otherwise, the sentence of detention in a young offender institution takes effect at the beginning of the day on which it is passed.
- (4) In this section “relevant detention and training order” means—

Status: This is the original version (as it was originally enacted).

- (a) a detention and training order under section 233,
- (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
- (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

Detention in a young offender institution: further provision

271 Detention in a young offender institution: place of detention

- (1) An offender sentenced to detention in a young offender institution is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.

This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).

- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution is to be detained in a prison instead of a young offender institution.

Custody for life

272 Offences other than murder

- (1) This section applies where a person aged at least 18 but under 21 is convicted of an offence for which the sentence is not fixed by law.
- (2) The court must sentence the offender to custody for life if—
- (a) the offence is punishable in the case of a person aged 21 or over with imprisonment for life, and the court considers that a sentence for life would be appropriate, or
 - (b) the court is required by section 273 or 274 to impose a sentence of custody for life.
- (3) Sections 230 (threshold for imposing discretionary custodial sentence) and 231 (length of discretionary custodial sentences: general provision), in particular, apply for the purposes of subsection (2)(a).

273 Custody for life for second listed offence

- (1) Subsection (3) applies where—
- (a) a court is dealing with an offender for an offence (“the index offence”) that is listed in Part 1 of Schedule 15,
 - (b) the index offence was committed on or after the relevant date,
 - (c) the offender is aged 18 or over but under 21 when convicted of the index offence, and
 - (d) the sentence condition and the previous offence condition are met.
- (2) In subsection (1)(b), “relevant date”, in relation to an offence, means the date specified for that offence in Part 1 of Schedule 15.

Status: This is the original version (as it was originally enacted).

- (3) The court must impose a sentence of custody for life under section 272 unless the court is of the opinion that there are particular circumstances which—
- (a) relate to—
 - (i) the index offence,
 - (ii) the previous offence referred to in subsection (5), or
 - (iii) the offender, and
 - (b) would make it unjust to do so in all the circumstances.

- (4) The sentence condition is that, but for this section, the court would impose a sentence of detention in a young offender institution for 10 years or more, disregarding any extension period that it would impose under section 266.

Sections 230(2) and 231(2) apply for this purpose.

- (5) The previous offence condition is that—
- (a) when the index offence was committed, the offender had been convicted of an offence (“the previous offence”) listed in Schedule 15, and
 - (b) a relevant life sentence or a relevant sentence of detention for a determinate period was imposed on the offender for the previous offence.
- (6) For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include any offence for which the date specified in that Part is after the date on which the index offence was committed.
- (7) A life sentence is relevant for the purposes of subsection (5)(b) if—
- (a) the offender was not eligible for release during the first 5 years of the sentence, or
 - (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.
- (8) An extended sentence imposed under the Criminal Justice Act 2003 or this Code (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (5)(b) if the appropriate custodial term imposed was 10 years or more.
- (9) Any other extended sentence is relevant for the purposes of subsection (5)(b) if the custodial term imposed was 10 years or more.
- (10) Any other sentence of detention for a determinate period is relevant for the purposes of subsection (5)(b) if it was for a period of 10 years or more.
- (11) An extended sentence or other sentence of detention is also relevant if it would have been relevant under subsection (9) or (10) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.
- (12) For the purposes of subsections (5) to (11)—
- “extended sentence” means—
- (a) a sentence imposed under section 254 or 266 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006), or
 - (b) a sentence imposed under section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003 (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006),

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or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

“life sentence” means—

- (a) a sentence of detention for life under—
 - (i) section 250,
 - (ii) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (iii) section 209 of the Armed Forces Act 2006,
- (b) a sentence of detention during Her Majesty’s pleasure under—
 - (i) section 259,
 - (ii) section 90 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (iii) section 218 of the Armed Forces Act 2006, or
- (c) a sentence of custody for life under—
 - (i) section 272 or 275 (including one passed as a result of section 210A, 217, 218A or 219 of the Armed Forces Act 2006), or
 - (ii) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (including one passed as a result of paragraph 6 or 7 of Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059)),

or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

“relevant pre-sentence period”, in relation to the previous offence referred to in subsection (5), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

“sentence of detention” includes any sentence of a period in custody (however expressed).

- (13) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.
- (14) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (1)(b), (5)(a) and (6) to have been committed on the last of those days.

274 Required sentence of custody for life for offence carrying life sentence

- (1) This section applies where a court is dealing with an offender for an offence where—
 - (a) the offender is aged 18 or over but under 21 when convicted of the offence,
 - (b) the offence is a Schedule 19 offence (see section 307), and
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
- (3) If the court considers that the seriousness of—
 - (a) the offence, or

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(b) the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of custody for life, the court must impose a sentence of custody for life under section 272.

- (4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

275 Duty to impose custody for life for offence of murder

- (1) Where a person aged under 21 is convicted of—
- (a) murder, or
 - (b) any other offence the sentence for which is fixed by law as life imprisonment, the court must sentence the offender to custody for life.
- (2) Subsection (1) does not apply where the offender is liable to be detained under section 259 (detention at Her Majesty’s pleasure for offender under 18).

276 Custody for life: place of detention

- (1) An offender sentenced to custody for life is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender. This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).
- (2) The Secretary of State may from time to time direct that an offender sentenced to custody for life is to be detained in a prison instead of a young offender institution.

CHAPTER 4

ADULTS AGED 21 AND OVER

Suspended sentence of imprisonment

277 Suspended sentence order for person aged 21 or over: availability

- (1) This section applies where, in dealing with an offender for an offence, a court passes a sentence of imprisonment.
- (2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of imprisonment is—
- (a) at least 14 days, but
 - (b) not more than 2 years.
- (3) But a suspended sentence order is not available in relation to that sentence if—
- (a) the sentence of imprisonment is one of two or more sentences imposed on the same occasion which are to be served consecutively, and
 - (b) the terms of those sentences are in aggregate more than 2 years.
- (4) For provision about suspended sentences, see Chapter 5 .

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Special custodial sentence for certain offenders of particular concern

278 Required special custodial sentence for certain offenders of particular concern

- (1) This section applies where the court imposes a sentence of imprisonment for an offence where—
 - (a) the offence is listed in Schedule 13,
 - (b) the person—
 - (i) was aged 18 or over when the offence was committed, and
 - (ii) is aged 21 or over when convicted of the offence, and
 - (c) the court does not impose either of the following for the offence (or for an offence associated with it)—
 - (i) an extended sentence under section 279, or
 - (ii) a sentence of imprisonment for life.
- (2) The term of the sentence must be equal to the aggregate of—
 - (a) the appropriate custodial term, and
 - (b) a further period of 1 year for which the offender is to be subject to a licence, and must not exceed the maximum term of imprisonment with which the offence is punishable.
- (3) For the purposes of subsection (2), the “appropriate custodial term” is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Extended sentences

279 Extended sentence of imprisonment for certain violent, sexual or terrorism offences: persons 21 or over

An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—

- (a) the appropriate custodial term (see section 281), and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

280 Extended sentence of imprisonment: availability

- (1) An extended sentence of imprisonment is available in respect of an offence where—
 - (a) the offence is a specified offence (see section 306(1)),
 - (b) the offender is aged 21 or over when convicted of the offence,
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
 - (d) the court is not required by section 283 or 285 to impose a sentence of imprisonment for life, and
 - (e) the earlier offence condition or the 4 year term condition is met.
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

- (3) The earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Schedule 14.
- (4) The 4 year term condition is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term (see section 281) would be at least 4 years.

281 Term of extended sentence of imprisonment

- (1) This section applies where the court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of imprisonment under section 279.
- (2) The appropriate custodial term is the term of imprisonment that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence of imprisonment.
- (3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

- (4) The extension period must—
 - (a) be at least 1 year, and
 - (b) not exceed—
 - (i) 5 years in the case of a specified violent offence;
 - (ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of “specified violent offence”, “specified sexual offence” and “specified terrorism offence”.

- (5) The term of the extended sentence of imprisonment must not exceed the maximum term of imprisonment with which the offence is punishable.

282 Extended sentences for offences committed before 4 April 2005

In section 280(1)(a) and section 281(4)(b), references to a specified offence, a specified violent offence, a specified sexual offence and a specified terrorism offence include an offence that—

- (a) was abolished before 4 April 2005, and
- (b) would have constituted such an offence if committed on the day on which the offender is convicted of the offence.

Life sentences

283 Life sentence for second listed offence

- (1) Subsection (3) applies where—

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- (a) a court is dealing with an offender for an offence (“the index offence”) that is listed in Part 1 of Schedule 15,
 - (b) the index offence was committed on or after the relevant date,
 - (c) the offender is aged 21 or over when convicted of the index offence, and
 - (d) the sentence condition and the previous offence condition are met.
- (2) In subsection (1)(b), “relevant date”, in relation to an offence, means the date specified for that offence in Part 1 of Schedule 15.
- (3) The court must impose a sentence of imprisonment for life unless the court is of the opinion that there are particular circumstances which—
- (a) relate to—
 - (i) the index offence,
 - (ii) the previous offence referred to in subsection (5), or
 - (iii) the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (4) The sentence condition is that, but for this section, the court would impose a sentence of imprisonment for 10 years or more, disregarding any extension period it would impose under section 279.
- Sections 230(2) and 231(2) apply for this purpose.
- (5) The previous offence condition is that—
- (a) when the index offence was committed, the offender had been convicted of an offence (“the previous offence”) listed in Schedule 15, and
 - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include any offence for which the date specified in that Part is after the date on which the index offence was committed.
- (7) A life sentence is relevant for the purposes of subsection (5)(b) if—
- (a) the offender was not eligible for release during the first 5 years of the sentence, or
 - (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.
- (8) An extended sentence imposed under the Criminal Justice Act 2003 or this Code (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (5)(b) if the appropriate custodial term imposed was 10 years or more.
- (9) Any other extended sentence is relevant for the purposes of subsection (5)(b) if the custodial term imposed was 10 years or more.
- (10) Any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (5)(b) if it was for a period of 10 years or more.
- (11) An extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (9) or (10) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.

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(12) For the purposes of subsections (5) to (11)—

“extended sentence” means—

- (a) a sentence under section 254, 266 or 279 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006),
- (b) a sentence under section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003 (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or
- (c) a sentence under—
 - (i) section 85 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (ii) section 58 of the Crime and Disorder Act 1998,

or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

“life sentence” means—

- (a) a sentence of imprisonment for life;
- (b) a sentence of detention for life under—
 - (i) section 250,
 - (ii) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000;
 - (iii) section 53(3) of the Children and Young Persons Act 1933;
 - (iv) section 209 of the Armed Forces Act 2006;
 - (v) section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957;
- (c) a sentence of detention during Her Majesty’s pleasure under—
 - (i) section 259,
 - (ii) section 90 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (iii) section 53(1) of the Children and Young Persons Act 1933,
 - (iv) section 218 of the Armed Forces Act 2006, or
 - (v) section 71A(3) of the Army Act 1955 or Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957;
- (d) a sentence of custody for life under—
 - (i) section 272 or 275 (including one passed as a result of section 210A, 217, 218A or 219 of the Armed Forces Act 2006),
 - (ii) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (including one passed as a result of paragraph 6 or 7 of Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059)),
 - (iii) section 8 of the Criminal Justice Act 1982, or
 - (iv) section 71A(1A) or (1B) of the Army Act 1955 or Air Force Act 1955 or section 43(1A) or (1B) of the Naval Discipline Act 1957;
- (e) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006);

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- (f) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);
 or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
 “relevant pre-sentence period”, in relation to the previous offence referred to in subsection (5), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;
 “sentence of imprisonment or detention” includes any sentence of a period in custody (however expressed).
- (13) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.
- (14) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (1)(b), (5)(a) and (6) to have been committed on the last of those days.

284 Required life sentence where second offence committed before 4 April 2005

For cases in which a sentence of life imprisonment must be imposed for an offence which—

- (a) is a second offence, and
- (b) was committed on or after 1 October 1997 but before 4 April 2005,

see section 109 of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence for second serious offence), as it has effect by virtue of paragraph 5(2) of Schedule 2 to the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 ([S.I. 2005/950](#)).

285 Required life sentence for offence carrying life sentence

- (1) This section applies where a court is dealing with an offender for an offence where—
- (a) the offender is aged 21 or over at the time of conviction,
 - (b) the offence is a Schedule 19 offence (see section 307),
 - (c) the offence was committed on or after 4 April 2005, and
 - (d) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(d).
- (3) If the court considers that the seriousness of—
- (a) the offence, or
 - (b) the offence and one or more offences associated with it,
- is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life.
- (4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

CHAPTER 5

SUSPENDED SENTENCES

What a suspended sentence order is

286 Suspended sentence order

- (1) A suspended sentence order is an order providing that a sentence of imprisonment or detention in a young offender institution in respect of an offence is not to take effect unless—
 - (a) an activation event occurs, and
 - (b) a court having power to do so subsequently orders under paragraph 13 of Schedule 16 that the sentence is to take effect.
- (2) A suspended sentence order may also specify one or more available community requirements with which the offender must comply during the supervision period.
- (3) An activation event occurs if the offender—
 - (a) commits another offence in the United Kingdom during the operational period (whether or not punishable with imprisonment), or
 - (b) during the supervision period, contravenes any community requirement imposed by the order.
- (4) The community requirements are listed in column 1 of the community requirements table (see section 287).
- (5) Provision about each requirement is made by the provisions of Schedule 9 mentioned in the corresponding entry in column 2 of that table.
- (6) In this Code—
 - “suspended sentence order” has the meaning given by subsection (1);
 - “suspended sentence” means a sentence to which a suspended sentence order relates.
- (7) In this Code, references to a community requirement of, or imposed by, a suspended sentence order are to a requirement specified in the order under subsection (2).

287 Suspended sentence order: community requirements table

The community requirements table referred to in sections 286, 290 and 292 is—

<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
unpaid work requirement	Part 1	
rehabilitation activity requirement	Part 2	
programme requirement	Part 3	
prohibited activity requirement	Part 4	

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<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
curfew requirement	Part 5	
exclusion requirement	Part 6	
residence requirement	Part 7	
foreign travel prohibition requirement	Part 8	
mental health treatment requirement	Part 9	
drug rehabilitation requirement	Part 10	
alcohol treatment requirement	Part 11	
alcohol abstinence and monitoring requirement	Part 12	section 291(1) or (2)
attendance centre requirement	Part 13	section 291(3)
electronic compliance monitoring requirement	Part 14	section 291(4)
electronic whereabouts monitoring requirement	Part 14	

288 Operational period and supervision period

- (1) A suspended sentence order must specify the operational period (see section 286(3)(a)).
- (2) The operational period must be a period, beginning with the day on which the order is made, of—
 - (a) at least 6 months, and
 - (b) not more than 2 years.
- (3) If a suspended sentence order imposes any community requirement or requirements, the order must specify the supervision period (see section 286(2)).
- (4) The supervision period specified must be a period, beginning with the day on which the order is made, of—
 - (a) at least 6 months, and
 - (b) not more than—
 - (i) 2 years, or
 - (ii) if less, the operational period.
- (5) But if the suspended sentence order imposes an unpaid work requirement, the supervision period—
 - (a) continues until the offender has worked under the order for the number of hours specified in the order under paragraph 2(1) of Schedule 9, but
 - (b) does not continue beyond the end of the operational period.

289 Suspended sentence to be treated generally as sentence of imprisonment etc

- (1) A suspended sentence which has not taken effect under paragraph 13 of Schedule 16 is to be treated as—
 - (a) a sentence of imprisonment, or
 - (b) as the case may be, a sentence of detention in a young offender institution, for the purposes of all enactments and instruments made under enactments.
- (2) Subsection (1) is subject to any provision to the contrary contained in—
 - (a) the Criminal Justice Act 1967,
 - (b) any enactment passed or instrument made under any enactment after 31 December 1967.

Available community requirements

290 Suspended sentence order: available community requirements

- (1) A suspended sentence order may not impose a community requirement that is not an available requirement.
- (2) A community requirement is an available requirement in relation to a suspended sentence order unless a provision mentioned in column 3 of the entry for that requirement in the table in section 287 provides otherwise.

291 Suspended sentence order: availability of particular requirements

Alcohol abstinence and monitoring requirement

- (1) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 9 (prescribed arrangements for monitoring).
- (2) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 9 (alcohol level to be kept below specified level) is not an available requirement unless regulations are in force under paragraph 25(7)(b) of that Schedule (prescribed alcohol level).

Attendance centre requirement

- (3) An attendance centre requirement is not an available requirement unless the offender is aged under 25 when convicted of the offence.

Electronic compliance monitoring requirement

- (4) An electronic compliance monitoring requirement is not an available requirement in relation to a suspended sentence order unless the suspended sentence order imposes at least one other available requirement, other than—
 - (a) an alcohol abstinence and monitoring requirement;
 - (b) an electronic whereabouts monitoring requirement.

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Exercise of power to impose community requirements

292 Suspended sentence order: exercise of power to impose requirements

- (1) This section applies where a court makes a suspended sentence order which imposes community requirements.
- (2) The power to impose a particular community requirement is subject to the provisions of the Part of Schedule 9 relating to requirements of that kind (see column 2 of the table in section 287).
- (3) If the suspended sentence order imposes two or more different community requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (4) The court must also ensure, so far as practicable, that any community requirement imposed by a suspended sentence order is such as to avoid—
 - (a) any conflict with the offender’s religious beliefs,
 - (b) any conflict with any other court order to which the offender may be subject, and
 - (c) any interference with the times, if any, at which the offender normally—
 - (i) works, or
 - (ii) attends any educational establishment,and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

Provision for review of suspended sentence order with community requirements

293 Power to provide for review of suspended sentence order

- (1) A suspended sentence order which imposes one or more community requirements may make provision for the order to be reviewed periodically (“provision for review”).
This is subject to subsection (3).
- (2) Where an order contains provision for review, it must—
 - (a) specify the intervals at which the order is to be reviewed,
 - (b) provide for each review to be made, subject to section 295, at a hearing held for the purpose by the responsible court (a “review hearing”),
 - (c) require the offender to attend each review hearing, and
 - (d) provide for a report by an officer of a provider of probation services on the offender’s progress in complying with the community requirements of the order (“a progress report”) to be made to the responsible court before each review.
- (3) If the suspended sentence order—
 - (a) imposes a drug rehabilitation requirement, and
 - (b) contains provision for review under this section,

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the provision for review must not include provision relating to that requirement (but see paragraph 22 of Schedule 9 for separate provision about review of such a requirement).

- (4) In this section “the responsible court” in relation to a suspended sentence order means—
- (a) if a court is specified in the order in accordance with subsection (5), that court;
 - (b) otherwise, the court by which the order is made.
- (5) Where—
- (a) a suspended sentence order is made by a magistrates’ court, and
 - (b) the offender’s home local justice area is not the area in which the court acts,
- the order may specify that the responsible court is to be a magistrates’ court which acts in the offender’s home local justice area.
- (6) A suspended sentence order made on an appeal from—
- (a) the Crown Court, or
 - (b) the Court of Appeal,
- is to be taken for the purposes of subsection (4)(b) to have been made by the Crown Court.

294 Review hearings: power to amend community requirements etc

- (1) This section applies where a review hearing is held on a review of a suspended sentence order by virtue of section 293.
- (2) The court may, after considering the progress report, amend—
- (a) the community requirements of the suspended sentence order, or
 - (b) any provision of the order which relates to those requirements.
- (3) But the court—
- (a) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses willingness to comply with that requirement,
 - (b) may not amend—
 - (i) a mental health treatment requirement,
 - (ii) a drug rehabilitation requirement, or
 - (iii) an alcohol treatment requirement,unless the offender expresses willingness to comply with the requirement as amended,
 - (c) may amend the supervision period only if the period as amended complies with section 288(4),
 - (d) may not amend the operational period, and
 - (e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.
- (4) For the purposes of subsection (3)(a)—
- (a) a community requirement of a kind within any entry in the table in section 287 is of the same kind as any other community requirement within that entry, and
 - (b) an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

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- (5) If the court is of the opinion that the offender has without reasonable excuse breached a community requirement of the order, the court may adjourn the hearing so that it can deal with the case under paragraph 13 of Schedule 16 (powers of court to deal with offender on breach of requirement or subsequent conviction).
- (6) In this section—
 “review hearing”, and
 “progress report”,
 have the meanings given by section 293(2).

295 Suspended sentence order: alteration of periodic review arrangements

- (1) Subsections (2) and (3) apply where the court—
 (a) considers the progress report relating to a review (the “current review”), and
 (b) forms the opinion that the offender’s progress in complying with the community requirements of the order is satisfactory.
- (2) If the court forms that opinion before a review hearing is held at the current review—
 (a) it may order that no review hearing is to be held at the current review, and
 (b) it may amend the suspended sentence order so as to provide for each subsequent review to be held without a review hearing.
- (3) If a review hearing is held at the current review, the court may at the hearing amend the suspended sentence order so as to provide for each subsequent review to be held without a review hearing.
- (4) If at a review held without a review hearing the court—
 (a) considers the progress report, and
 (b) forms the opinion that the offender’s progress under the order is no longer satisfactory,
 it may require the offender to attend a hearing of the court at a specified time and place.
- (5) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 293(2)(a).
- (6) The functions of a court under this section that are exercisable in relation to a review without a hearing are to be exercised—
 (a) in the case of the Crown Court, by a judge of the court, and
 (b) in the case of a magistrates’ court, by a justice of the peace.
- (7) In this section—
 “review hearing”, and
 “progress report”,
 have the meanings given by section 293(2).

Making a suspended sentence order with community requirements

296 Order to specify offender’s home local justice area

- (1) A suspended sentence order which imposes any community requirement must specify the area which is the offender’s home local justice area.

(2) That area must be the local justice area in which the offender resides or will reside.

297 Power to direct magistrates' court supervision of order

Where the Crown Court makes a suspended sentence order which imposes any community requirement, it may make a direction that the order is to be subject to magistrates' court supervision.

For the effect of such a direction, see Parts 2 and 3 of Schedule 16 (breach or amendment of a community requirement of a suspended sentence order).

298 Provision of copies of order and related documents

(1) This section applies on the making by a court of a suspended sentence order which imposes one or more community requirements.

(2) The court must forthwith provide copies of the order—

- (a) to the offender,
- (b) to the responsible officer,
- (c) to an officer of a provider of probation services that is a public sector provider who is acting at the court, and
- (d) if the court does not act in the offender's home local justice area, to a provider of probation services that is a public sector provider and is operating in that area.

(3) If the order imposes any requirement specified in column 1 of the following table the court must also forthwith provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

<i>The requirement</i>	<i>The person to whom a copy must be provided</i>
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected
A residence requirement relating to residence in an institution.	The person in charge of the institution
A mental health treatment requirement.	The person specified under paragraph 16(3)(b)(iii) of Schedule 9 or the person in charge of the institution or place specified under paragraph 16(3)(b)(i) or (ii) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(5)(b) or (c) of Schedule 9
An alcohol treatment requirement	The person in charge of the institution or place specified under paragraph 23(5)(c) or (d) of Schedule 9 or, in the case of practitioner-based treatment, the person specified under paragraph 23(5)(a) of that Schedule

Status: This is the original version (as it was originally enacted).

<i>The requirement</i>	<i>The person to whom a copy must be provided</i>
An electronic monitoring requirement	Any person who by virtue of paragraph 31(1) of Schedule 9 will be responsible for the electronic monitoring
	Any person without whose consent the requirement could not be included in the order.

- (4) If the court does not act in the offender’s home local justice area, it must provide the magistrates’ court acting in that area with—
- (a) a copy of the order, and
 - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.
- (5) In subsection (2) “public sector provider” means—
- (a) a probation trust or other public body, or
 - (b) the Secretary of State.

*Suspended sentence order with community requirement:
obligations of responsible officer and offender*

299 Responsible officer

- (1) This section applies for the purposes of this Chapter in relation to a suspended sentence order made in respect of an offender which imposes one or more community requirements.
- (2) “The responsible officer”, in relation to the offender, means the person who for the time being is responsible for discharging the functions conferred by this Chapter on the responsible officer in accordance with arrangements made by the Secretary of State.
- (3) The responsible officer must be—
 - (a) an officer of a provider of probation services, or
 - (b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the order.

300 Obligations of responsible officer

- (1) This section applies during the supervision period of a suspended sentence order which imposes any community requirement.

Functions of the responsible officer

- (2) The responsible officer must—
 - (a) make any arrangements that are necessary in connection with the requirements imposed by the order, and
 - (b) promote the offender’s compliance with those requirements.
- (3) This is subject to paragraph 16(6) of Schedule 9 (in-patient treatment under mental health treatment requirement).

Exercise of functions by responsible officer

- (4) The responsible officer must also ensure, as far as practicable, that any instruction given or requirement imposed by the responsible officer is such as to avoid—
- (a) any conflict with the offender’s religious beliefs,
 - (b) any conflict with the requirements of any other court order to which the offender may be subject, and
 - (c) any interference with the times, if any, at which the offender normally—
 - (i) works, or
 - (ii) attends any educational establishment,
- and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

301 Duty of offender to keep in touch with responsible officer

- (1) This section applies during the supervision period of a suspended sentence order which imposes one or more community requirements.
- (2) The offender must keep in touch with the responsible officer in accordance with such instructions as the responsible officer may give the offender from time to time.
- (3) That obligation is enforceable as if it were a community requirement imposed by the suspended sentence order.

302 Duty to obtain permission before changing residence

- (1) This section applies during the supervision period of a suspended sentence order which imposes one or more community requirements.
- But it does not apply if the order includes a residence requirement (see paragraph 13 of Schedule 9).
- (2) The offender must not change residence without permission given in accordance with this section by—
- (a) the responsible officer, or
 - (b) a court.
- (3) The obligation imposed by subsection (2) has effect as if it were a community requirement imposed by the suspended sentence order.
- (4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.
- (5) A court may also give permission in any proceedings before it under Schedule 16 (breach or amendment of orders etc).
- (6) The grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
- (a) is likely to prevent the offender complying with a requirement imposed by the suspended sentence order, or
 - (b) would hinder the offender’s rehabilitation.

Status: This is the original version (as it was originally enacted).

- (7) The responsible officer must refuse an application for permission if—
- (a) the offender’s present residence is in England or Wales, and
 - (b) the offender’s proposed residence is outside England and Wales.
- (8) For cases in which a suspended sentence order has to be amended because of permission given under this section, see paragraph 23 of Schedule 16 (amendment to reflect change in local justice area).
- (9) In this section “the appropriate court” has the same meaning as in Schedule 16.

Activation of sentence and amendment of order etc

303 Breach or amendment of suspended sentence order, and effect of further conviction

Schedule 16 makes provision about—

- (a) the effect of any further conviction where an offender is subject to a suspended sentence order, and
- (b) breach or amendment of the community requirements of a suspended sentence order.

Transferring order with community requirements to Scotland or Northern Ireland

304 Transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements

Schedule 17 makes provision about the transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements.

Interpretation

305 Suspended sentences: interpretation

In this Chapter—

“the operational period”, in relation to a suspended sentence, means the period specified under—

- (a) section 288(1), or
- (b) paragraph 13(1)(d)(iii) of Schedule 16 (extension of operational period on breach of order);

“sentence of imprisonment” does not include a committal for contempt of court or any kindred offence;

“the supervision period”, in relation to a suspended sentence, means the period (if any) specified under—

- (a) section 288(3),
- (b) section 294 (review of order), or
- (c) paragraph 13(1)(d)(ii) of Schedule 16 (extension of supervision period on breach of order),

but subject to section 288(5) (extension to allow completion of unpaid work requirement).

CHAPTER 6

DANGEROUS OFFENDERS

Interpretation

306 Extended sentences: meaning of “specified offence” etc

- (1) An offence is a “specified offence” for the purposes of this Code if it is—
 - (a) a specified violent offence,
 - (b) a specified sexual offence, or
 - (c) a specified terrorism offence.
- (2) In this Part—
 - “serious harm” means death or serious personal injury, whether physical or psychological;
 - “specified violent offence” means an offence specified in Part 1 of Schedule 18;
 - “specified sexual offence” means an offence specified in Part 2 of that Schedule;
 - “specified terrorism offence” means an offence specified in Part 3 of that Schedule.

307 Life sentences: meaning of “Schedule 19 offence”

- (1) In this Part “Schedule 19 offence” means an offence listed in Schedule 19 (certain specified offences carrying maximum sentence on indictment of imprisonment for life).
- (2) For the purposes of Schedule 19, an offence found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, must be taken to have been committed on the last of those days.

The assessment of dangerousness

308 The assessment of dangerousness

- (1) This section applies where it falls to a court to assess under any of the following provisions (which apply where an offender has committed a specified offence, however described) whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences—
 - (a) section 255, 267 or 280 (extended sentence for certain violent, sexual or terrorism offences);
 - (b) section 258, 274 or 285 (required life sentence for Schedule 19 offence).
- (2) In making that assessment, the court—
 - (a) must take into account all the information that is available to it about the nature and circumstances of the offence,

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- (b) may take into account all the information that is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,
 - (c) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (b) forms part, and
 - (d) may take into account any information about the offender which is before it.
- (3) The reference in subsection (2)(b) to a conviction by a court includes a reference to—
- (a) a conviction of an offence in—
 - (i) any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence), or
 - (ii) any proceedings before a Standing Civilian Court;
 (and “conviction” here includes the recording of a finding that a charge in respect of the offence has been proved), and
 - (b) a conviction of—
 - (i) a service offence within the meaning of the Armed Forces Act 2006, or
 - (ii) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059),
 (and “conviction” here includes anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction).

Supplementary

309 Appeals where previous convictions set aside or previous sentences modified

- (1) Subsection (3) applies where—
- (a) a sentence has been imposed on a person under section 273 or 283 (life sentence for second listed offence),
 - (b) a previous conviction of that person has been subsequently set aside on appeal, and
 - (c) without that conviction, the previous offence condition in section 273(5) or 283(5) would not have been met.
- (2) Subsection (3) also applies where—
- (a) a sentence has been imposed on a person under section 266 or 279 (extended sentences for adults),
 - (b) the earlier offence condition was met but the 4 year term condition was not, and
 - (c) any previous conviction of that person’s without which the earlier offence condition would not have been met has been subsequently set aside on appeal.

For this purpose, references to the earlier offence condition and the 4 year term condition are to be read in accordance with 267 or 280 (as the case may be).

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- (3) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.
- (4) Subsection (5) applies where—
 - (a) a sentence has been imposed on a person under section 273 or 283,
 - (b) a previous sentence imposed on that person has been subsequently modified on appeal, and
 - (c) taking account of that modification, the previous offence condition in section 273(5) or 283(5) would not have been met.
- (5) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence mentioned in subsection (4)(a) may be given at any time within 28 days from the date on which the previous sentence was modified.

310 Certificates of conviction

Where—

- (a) a person is convicted in England and Wales of an offence listed in Schedule 14 or 15,
- (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that day, and
- (c) that court subsequently certifies that fact,

that certificate is evidence, for the purposes of section 267, 273, 280 or 283 (extended sentences for adults and life sentences for second listed offence), that the person was convicted of such an offence on that day.

CHAPTER 7

MINIMUM SENTENCES FOR PARTICULAR OFFENCES

Minimum sentence for single offence

311 Minimum sentence for certain offences involving firearms that are prohibited weapons

- (1) This section applies where—
 - (a) a person is convicted of an offence listed in Schedule 20 (certain offences involving firearms that are prohibited weapons), and
 - (b) the offender was aged 16 or over when the offence was committed.
- (2) The court must impose an appropriate custodial sentence for a term of at least the required minimum term unless the court is of the opinion that there are exceptional circumstances which—
 - (a) relate to the offence or to the offender, and
 - (b) justify not doing so.
- (3) In this section “appropriate custodial sentence” means—
 - (a) in the case of a person who is aged under 18 when convicted, a sentence of detention under section 250;

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- (b) in the case of a person who is aged 18 or over but under 21 when convicted, a sentence of detention in a young offender institution (and includes, if the offence is an offence for which a person aged 21 or over would be liable to imprisonment for life, a sentence of custody for life);
 - (c) in the case of a person who is aged 21 or over when convicted, a sentence of imprisonment.
- (4) In this section “the required minimum term” means—
- (a) in the case of an offender who was aged under 18 when the offence was committed, 3 years;
 - (b) in the case of an offender who was aged 18 or over when the offence was committed, 5 years.

But this is subject to subsection (5).

- (5) In the case of an offence within paragraph 5 of Schedule 20, “the required minimum term” means—
- (a) in the case of an offender who was aged under 18 when convicted, 3 years;
 - (b) in the case of an offender who was aged 18 or over when convicted, 5 years.

312 Minimum sentence for offences of threatening with weapon or bladed article

- (1) This section applies where a person aged 16 or over is convicted of an offence under—
- (a) section 1A of the Prevention of Crime Act 1953 (offence of threatening with offensive weapon in public), or
 - (b) section 139AA of the Criminal Justice Act 1988 (offence of threatening with article with blade or point or offensive weapon).
- (2) The court must impose an appropriate custodial sentence unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged 16 or over but under 18 when convicted, a detention and training order of at least 4 months;
 - (b) in the case of a person who is aged 18 or over but under 21 when convicted, a sentence of detention in a young offender institution for a term of at least 6 months;
 - (c) in the case of a person who is aged 21 or over when convicted, a sentence of imprisonment for a term of at least 6 months.

Minimum sentence for repeat offences

313 Minimum sentence of 7 years for third class A drug trafficking offence

- (1) This section applies where—
- (a) a person is convicted of a class A drug trafficking offence (“the index offence”) committed on or after 1 October 1997,
 - (b) when the index offence was committed, the offender—
 - (i) was aged 18 or over, and

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- (ii) had 2 other relevant drug convictions, and
 - (c) one of the offences to which those other relevant drug convictions related was committed after the offender had been convicted of the other.
- (2) The court must impose an appropriate custodial sentence for a term of at least 7 years unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) For the purposes of subsection (1), “relevant drug conviction” means—
 - (a) a conviction in any part of the United Kingdom of a class A drug trafficking offence,
 - (b) a conviction in another member State of an offence committed on or after 16 August 2010 which would, if committed in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence,
 - (c) a conviction of an offence under section 42 of the Armed Forces Act 2006 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a class A drug trafficking offence,
 - (d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 in respect of which the corresponding civil offence (within the meaning of the Act in question) is a class A drug trafficking offence, or
 - (e) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted a class A drug trafficking offence if committed in England and Wales at the time of conviction.
- (4) Where—
 - (a) a person is charged with a class A drug trafficking offence (which, apart from this subsection, would be triable either way), and
 - (b) the circumstances are such that, if convicted of the offence, the person could be sentenced for it under subsection (2),the offence is to be triable only on indictment.
- (5) In this section “class A drug trafficking offence” means a drug trafficking offence committed in respect of a class A drug; and for this purpose—
 - “class A drug” has the same meaning as in the Misuse of Drugs Act 1971;
 - “drug trafficking offence” means an offence which is specified in—
 - (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
 - (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.
- (6) In this section “an appropriate custodial sentence” means—
 - (a) in relation to an offender who is aged 21 or over when convicted of the index offence, a sentence of imprisonment;
 - (b) in relation to an offender who is aged under 21 when convicted of the index offence, a sentence of detention in a young offender institution (and includes, if the index offence is an offence for which a person aged 21 or over would be liable to imprisonment for life, a sentence of custody for life).

Status: This is the original version (as it was originally enacted).

314 Minimum sentence of 3 years for third domestic burglary

- (1) This section applies where—
- (a) a person is convicted of a domestic burglary (“the index offence”) committed on or after 1 December 1999,
 - (b) when the index offence was committed—
 - (i) the offender was aged 18 or over, and
 - (ii) had 2 other relevant domestic burglary convictions, and
 - (c) one of the burglaries to which those other relevant domestic burglary convictions relate was committed after the person had been convicted of the other.
- (2) The court must impose an appropriate custodial sentence for a term of at least 3 years unless the court is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) For the purposes of subsection (1), “relevant domestic burglary conviction” means—
- (a) a conviction in England and Wales of a domestic burglary committed on or after 1 December 1999,
 - (b) a conviction in another part of the United Kingdom or another member State of an offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary, if committed in England and Wales at the time of the conviction,
 - (c) a conviction of an offence under section 42 of the Armed Forces Act 2006 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is an offence of domestic burglary,
 - (d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 committed on or after 1 December 1999 in respect of which the corresponding civil offence (within the meaning of the Act in question) is an offence of domestic burglary, or
 - (e) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary if committed in England and Wales at the time of conviction.
- (4) Where—
- (a) a person is charged with a domestic burglary which, apart from this subsection, would be triable either way, and
 - (b) the circumstances are such that, if convicted of the burglary, the person could be sentenced for it under subsection (2),
- the burglary is to be triable only on indictment.
- (5) In this section “domestic burglary” means a burglary committed in respect of a building or part of a building which is a dwelling.
- (6) In this section “an appropriate custodial sentence” means—
- (a) in relation to a person who is aged 21 or over when convicted of the index offence, a sentence of imprisonment;
 - (b) in relation to a person who is aged under 21 when convicted of the index offence, a sentence of detention in a young offender institution.

315 Minimum sentence for repeat offence involving weapon or bladed article

- (1) This section applies where—
 - (a) an offender is convicted of an offence (the “index offence”) under—
 - (i) section 1(1) of the Prevention of Crime Act 1953 (carrying offensive weapon without lawful authority or reasonable excuse),
 - (ii) section 139(1) of the Criminal Justice Act 1988 (having article with blade or point in public place), or
 - (iii) section 139A(1) or (2) of that Act (having article with blade or point or offensive weapon on education premises),
 - (b) the offence was committed on or after 17 July 2015, and
 - (c) when the offence was committed, the offender—
 - (i) was aged at least 16, and
 - (ii) had at least one relevant conviction.
- (2) The court must impose an appropriate custodial sentence unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) In subsection (2) “appropriate custodial sentence” means—
 - (a) in the case of a person aged under 18 when convicted of the index offence, a detention and training order of at least 4 months;
 - (b) in the case of a person aged 18 or over but under 21 when convicted of the index offence, a sentence of detention in a young offender institution for a term of at least 6 months;
 - (c) in the case of a person aged 21 or over when convicted of the index offence, a sentence of imprisonment for a term of at least 6 months.
- (4) In this section, “relevant conviction” means—
 - (a) a conviction of a relevant offence,
 - (b) a conviction in another part of the United Kingdom or another member State of a civilian offence which would have constituted a relevant offence if committed in England and Wales at the time of the conviction (whenever the offence was in fact committed),
 - (c) a conviction of an offence under section 42 of the Armed Forces Act 2006 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
 - (d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, or
 - (e) a conviction of a member State service offence which would have constituted a relevant offence if committed in England and Wales at the time of conviction (whenever the offence was in fact committed).
- (5) In this section, “relevant offence” means an offence under—
 - (a) section 1 or 1A of the Prevention of Crime Act 1953 (offences involving offensive weapons), or
 - (b) section 139, 139A or 139AA of the Criminal Justice Act 1988 (offences involving article with blade or point or offensive weapon).

Status: This is the original version (as it was originally enacted).

316 Appeals where previous convictions set aside

- (1) This section applies where—
 - (a) a sentence has been imposed on an offender under subsection (2) of any of the following sections—
 - (i) section 313,
 - (ii) section 314, or
 - (iii) section 315,
 - (b) a previous conviction of the offender is subsequently set aside on appeal, and
 - (c) without the previous conviction the section would not have applied.
- (2) Notice of appeal against the sentence may be given at any time within 28 days from the day on which the previous conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968).

317 Certificates of conviction for purposes of sections 313 and 314

- (1) This section applies where an offender is convicted—
 - (a) in England and Wales of—
 - (i) a class A drug trafficking offence, or
 - (ii) a domestic burglary,
 - (b) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (c) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (d) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence.
- (2) A certificate, given in accordance with subsection (3), of either or both of the following—
 - (a) that the offender was convicted of that offence on the date of the conviction;
 - (b) that the offence was committed on a particular day, or over, or at some time during, a particular period,is evidence for the purposes of section 313 or 314 of the facts so certified.
- (3) A certificate is given in accordance with this subsection if it is—
 - (a) given—
 - (i) by the court by or before which the offender was convicted of the offence, and
 - (ii) in the case of a court in the United Kingdom, after the court has stated in open court the facts certified by it, and
 - (b) in the case of a certificate given by a court outside the United Kingdom, signed by the proper officer of the court.
- (4) In this section—

“proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record;

“class A drug trafficking offence” and “domestic burglary” have the same meanings as in sections 313 and 314 respectively;

“corresponding drug trafficking offence” means an offence within section 313(3)(b);

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“corresponding domestic burglary offence” means an offence within section 314(3)(b).

318 Offences under service law

- (1) In sections 313 to 315 and this section—
- “civilian offence” means an offence other than—
- (a) an offence under section 42 of the Armed Forces Act 2006,
 - (b) an offence under section 70 of the Army Act 1995, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, or
 - (c) a member State service offence;
- “conviction” includes—
- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction, and
 - (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;
- “member State service offence” means an offence which was the subject of proceedings under the law of a member State other than the United Kingdom governing all or any of the naval, military or air forces of that State.
- (2) For the purposes of section 313(3)(c) and (e) (class A drug trafficking which is an offence under section 42 of Armed Forces Act 2006 and corresponding member State service offences), where the offence was committed in a way described in paragraph 10 of Schedule 2 to the Proceeds of Crime Act 2002 (attempting, conspiring, encouraging, assisting, aiding, abetting, etc) in relation to an act that, if done in England and Wales, would have constituted another offence listed in paragraph 1 of that Schedule, it must be assumed that that act was done (or would have been done) in England and Wales.
- (3) For the purposes of—
- (a) section 314(3)(c) and (e) (domestic burglary convictions under section 42 of Armed Forces Act 2006 or corresponding member State service offences), and
 - (b) section 315(4)(c) and (d) (relevant weapons offences under that section or corresponding offences under previous legislation relating to the armed forces),

where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

Minimum sentences: supplementary

319 Mandatory sentence requirement not to affect power to impose fine

Nothing in this Chapter which requires the court to impose a particular term of imprisonment or other custodial sentence is to be taken to prevent the court from exercising any power to impose a fine in addition to the custodial sentence.

Status: This is the original version (as it was originally enacted).

320 Determination of day when offence committed

Where an offence is found to have been committed—

- (a) over a period of 2 or more days, or
- (b) at some time during a period of 2 or more days,

it is to be taken for the purposes of sections 311, 313, 314 and 315 to have been committed on the last of those days.

CHAPTER 8

EFFECT OF LIFE SENTENCES

321 Life sentence: minimum term order or whole life order

- (1) Where a court passes a life sentence, it must make an order under this section.
- (2) The order must be a minimum term order unless the court is required to make a whole life order under subsection (3).
- (3) The order must be a whole life order if—
 - (a) the offender was 21 or over when the offence was committed, and
 - (b) the court is of the opinion that, because of the seriousness of—
 - (i) the offence, or
 - (ii) the combination of the offence and one or more offences associated with it,
 it should not make a minimum term order.
- (4) A minimum term order is an order that the early release provisions (see section 324) are to apply to the offender as soon as the offender has served the part of the sentence which is specified in the order in accordance with section 322 or 323 (“the minimum term”).
- (5) A whole life order is an order that the early release provisions are not to apply to the offender.

322 Mandatory life sentences: further provision

- (1) This section applies where a court passes a life sentence for an offence the sentence for which is fixed by law.

Minimum term

- (2) If the court makes a minimum term order, the minimum term must be such part of the offender’s sentence as the court considers appropriate taking into account—
 - (a) the seriousness of—
 - (i) the offence, or
 - (ii) the combination of the offence and any one or more offences associated with it, and
 - (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

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- (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) and section 240A of that Act (crediting periods on bail subject to certain restrictions);
- including the effect of any declaration that the court would have made under section 325 or 327 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition).

Determination of seriousness

- (3) In considering the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, under—
- (a) section 321(3) (determining whether to make a whole life order), or
 - (b) subsection (2) (determining the minimum term),
- the court must have regard to—
- (i) the general principles set out in Schedule 21, and
 - (ii) any sentencing guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

Duty to give reasons for minimum term order or whole life order

- (4) Where the court makes a minimum term order or a whole life order, in complying with the duty under section 52(2) to state its reasons for deciding on the order made, the court must in particular—
- (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
 - (b) state its reasons for any departure from that starting point.

323 Minimum term order: other life sentences

- (1) This section applies where a court—
- (a) passes a life sentence in circumstances in which the sentence is not fixed by law, and
 - (b) makes a minimum term order.
- (2) The minimum term must be such as the court considers appropriate, taking into account—
- (a) the seriousness of—
 - (i) the offence, or
 - (ii) the combination of the offence and one or more offences associated with it,
 - (b) the early release provisions as compared with section 244(1) of the Criminal Justice Act 2003 (duty to release prisoners), and
 - (c) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—
 - (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 240A of that Act (crediting periods of remand on bail subject to certain restrictions);

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including the effect of any declaration which the court would have made under section 325 or 327 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition).

324 Life sentences: interpretation

In this Chapter—

“the early release provisions” means section 28(5) to (8) of the Crime (Sentences) Act 1997;

“life sentence” means—

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention for life or during Her Majesty’s pleasure (see sections 250 and 259), or
- (c) a sentence of custody for life (see sections 272 and 275);

“minimum term order” and “minimum term” have the meanings given by section 321(4);

“whole life order” has the meaning given by section 321(5).

CHAPTER 9

SENTENCE ADMINISTRATION

Declaration about time to count as served

325 Time on bail under certain conditions: declaration by court

(1) This section applies where—

- (a) a court passes a determinate sentence on an offender in respect of an offence (see subsection (5)),
- (b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, and
- (c) the offender’s bail was subject to a qualifying curfew condition and an electronic monitoring condition (“the relevant conditions”).

(2) The court must specify the credit period for the purposes of section 240A of the Criminal Justice Act 2003 (time remanded on bail to count towards time served) in relation to the sentence.

(3) The credit period is calculated by taking the following steps.

Step 1

Add—

- (a) the day on which the offender’s bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question), and
- (b) the number of other days on which the offender’s bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).

Step 2

Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also—

- (a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender’s compliance with a curfew requirement, or
- (b) on temporary release under rules made under section 47 of the Prison Act 1952.

Step 3

From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

Step 4

Divide the result by 2.

Step 5

If necessary, round up to the nearest whole number.

- (4) Where the court makes a declaration under subsection (2) it must state in open court—
 - (a) the number of days on which the offender was subject to the relevant conditions, and
 - (b) the number of days (if any) which it deducted under each of steps 2 and 3.
- (5) For the purposes of subsection (1)(a), a court passes a determinate sentence if it—
 - (a) sentences the offender to imprisonment for a term,
 - (b) passes a determinate sentence of detention in a young offender institution, or
 - (c) passes a determinate sentence of detention under section 250 or 254 (offenders aged under 18).
- (6) For those purposes, a suspended sentence—
 - (a) is to be treated as a determinate sentence when it is activated under paragraph 13(1)(a) or (b) of Schedule 16, and
 - (b) is to be treated as being imposed by the order under which it is activated.
- (7) Section 240ZA of the Criminal Justice Act 2003 makes provision about time remanded in custody which is to count as time served.

326 Section 325: interpretation

- (1) For the purposes of section 325, “sentence of imprisonment” does not include a committal—
 - (a) in default of payment of any sum of money, other than one adjudged to be paid on a conviction,
 - (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.

This definition has effect in place of the definition of “sentence of imprisonment” in section 397 for those purposes.

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- (2) For the purposes of section 325(1), another offence is “related” to the offence in respect of which the sentence is passed (the “sentenced offence”) if—
- (a) the offender was charged with that other offence, and
 - (b) the charge for that other offence was founded on the same facts or evidence as the sentenced offence.
- (3) In section 325—
- “curfew requirement” means a requirement (however described) to remain at one or more specified places for a specified number of hours in any given day, which—
- (a) is imposed by a court or the Secretary of State, and
 - (b) arises as a result of a conviction;
- “electronic monitoring condition” means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person’s compliance with a qualifying curfew condition;
- “qualifying curfew condition” means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day.

327 Period in custody awaiting extradition: declaration by court

- (1) This section applies where a court imposes a fixed-term sentence on a person who—
- (a) was tried for the offence in respect of which the sentence was imposed, or received the sentence—
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (b) was for any period kept in custody while awaiting extradition to the United Kingdom as mentioned in paragraph (a).
- (2) In this section “fixed term sentence” means—
- (a) a sentence of imprisonment for a determinate term,
 - (b) a determinate sentence of detention in a young offender institution, or
 - (c) a determinate sentence of detention under section 250 or 254.
- (3) The court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.

Recommendations

328 Power of court to recommend licence conditions for adults sentenced to term of 12 months or more

- (1) This section applies where a court sentences an offender to—
- (a) a term of imprisonment, or
 - (b) a term of detention in a young offender institution,
- of 12 months or more in respect of any offence.

- (2) The court may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under Chapter 6 of Part 12 of the Criminal Justice Act 2003 on the offender's release from prison or detention.
- (3) A recommendation under subsection (2) is not to be treated for any purpose as part of the sentence passed on the offender.

Conversion of sentence of detention or custody to sentence of imprisonment

329 Conversion of sentence of detention to sentence of imprisonment

- (1) This section applies where a court has passed a relevant custodial sentence sentencing an offender to a term of detention and the offender—
 - (a) has reached the age of 21, or
 - (b) has reached the age of 18 and has been reported to the Secretary of State by the independent monitoring board of the institution in which the offender is detained as—
 - (i) exercising a bad influence on the other inmates of the institution, or
 - (ii) behaving in a disruptive manner to the detriment of those inmates.
- (2) The Secretary of State may direct that the offender is to be treated as if sentenced to imprisonment for the same term.

This is subject to the following provisions of this section.

Effect of direction

- (3) Subsections (4) and (5) apply where the Secretary of State gives a direction under subsection (2) in relation to the offender.
- (4) The portion of the term of detention imposed under the relevant custodial sentence which the offender has already served is to be deemed to have been a portion of a term of imprisonment.
- (5) If the relevant custodial sentence is—
 - (a) an extended sentence of detention under section 254, or
 - (b) an extended sentence of detention in a young offender institution,the offender is to be treated as if sentenced to an extended sentence of imprisonment under section 279.
- (6) Rules under section 47 of the Prison Act 1952 may provide that any award for an offence against discipline made in respect of an offender serving a relevant custodial sentence is to continue to have effect after a direction under subsection (2) has been given in relation to the offender.

“Relevant custodial sentence”

- (7) In this section “relevant custodial sentence” means any of the following—
 - (a) a sentence of detention under section 250 (including one imposed under section 258 (detention for life));
 - (b) an extended sentence of detention under section 254;

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- (c) a sentence of detention during Her Majesty’s pleasure (see section 259);
 - (d) a sentence of detention in a young offender institution;
 - (e) an extended sentence of detention in a young offender institution (see section 266);
 - (f) a sentence of custody for life (see sections 272 and 275).
- FOURTH GROUP OF PARTS Further powers relating to sentencing

PART 11

BEHAVIOUR ORDERS

CHAPTER 1

CRIMINAL BEHAVIOUR ORDERS

330 Criminal behaviour order

In this Code “criminal behaviour order” means an order which, for the purpose of preventing an offender from engaging in behaviour that is likely to cause harassment, alarm or distress to any person—

- (a) prohibits the offender from doing anything described in the order;
- (b) requires the offender to do anything described in the order.

331 Power to make criminal behaviour order

- (1) This section applies where—
 - (a) a person is convicted of an offence, and
 - (b) the prosecution makes an application to the court for a criminal behaviour order to be made against the offender.
- (2) The court may make a criminal behaviour order against the offender if it—
 - (a) is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and
 - (b) considers that making the order will help in preventing the offender from engaging in such behaviour.
- (3) But the court may make a criminal behaviour order only if it—
 - (a) does so in addition to dealing with the offender for the offence, and
 - (b) does not make an order for absolute discharge under section 79 in respect of the offence.
- (4) Prohibitions and requirements in a criminal behaviour order must, so far as practicable, be such as to avoid—
 - (a) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
 - (b) any conflict with the requirements of any other court order to which the offender may be subject.

- (5) The prosecution must find out the views of the local youth offending team before applying for a criminal behaviour order to be made if the offender will be under the age of 18 when the application is made.
- (6) In this section “local youth offending team” means the youth offending team in whose area it appears to the prosecution that the offender resides.

332 Proceedings on an application for an order

- (1) For the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the offender.
- (2) It does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.
- (3) The court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.
- (4) If the offender does not appear for any adjourned proceedings the court may—
 - (a) further adjourn the proceedings,
 - (b) issue a warrant for the offender’s arrest, or
 - (c) hear the proceedings in the offender’s absence.
- (5) The court may not act under paragraph (b) of subsection (4) unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings.
- (6) The court may not act under paragraph (c) of subsection (4) unless it is satisfied that the offender—
 - (a) has had adequate notice of the time and place of the adjourned proceedings, and
 - (b) has been informed that if the offender does not appear for those proceedings the court may hear the proceedings in the offender’s absence.
- (7) Subsection (8) applies in relation to proceedings in which a criminal behaviour order is made against an offender who is under the age of 18.
- (8) In so far as the proceedings relate to the making of the order—
 - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the offender;
 - (b) section 39 of that Act (power to prohibit publication of certain matters) does so apply.

333 Requirements included in orders

- (1) A criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.
- (2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—
 - (a) the individual to be specified under subsection (1), if an individual is to be specified;

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- (b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.
- (3) Before including two or more requirements, the court must consider their compatibility with each other.
- (4) A person specified under subsection (1) must—
 - (a) make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
 - (b) promote the offender’s compliance with the relevant requirements;
 - (c) if the person considers that the offender—
 - (i) has complied with all the relevant requirements, or
 - (ii) has failed to comply with a relevant requirement,
 inform the prosecution and the appropriate chief officer of police.
- (5) In subsection (4)(c) “the appropriate chief officer of police” means the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender resides.
- (6) An offender subject to a requirement in a criminal behaviour order must—
 - (a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;
 - (b) notify the person of any change of address.

These obligations have effect as requirements of the order.

334 Duration of order etc

- (1) A criminal behaviour order takes effect on the day it is made, subject to subsection (2).
- (2) If on the day a criminal behaviour order (“the new order”) is made the offender is subject to another criminal behaviour order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect.
- (3) A criminal behaviour order must specify the period (“the order period”) for which it has effect.
- (4) In the case of a criminal behaviour order made before the offender has reached the age of 18, the order period must be a fixed period of—
 - (a) not less than 1 year, and
 - (b) not more than 3 years.
- (5) In the case of a criminal behaviour order made after the offender has reached the age of 18, the order period must be—
 - (a) a fixed period of not less than 2 years, or
 - (b) an indefinite period (so that the order has effect until further order).
- (6) A criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

335 Interim order

- (1) This section applies where a court adjourns the hearing of an application for a criminal behaviour order.
- (2) The court may make a criminal behaviour order that lasts until the final hearing of the application or until further order (“an interim order”) if the court thinks it just to do so.
- (3) Section 331(1)(b), (3) and (5) and section 334(3) to (5) do not apply in relation to the making of an interim order.
- (4) Subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

336 Variation or discharge of order

- (1) A criminal behaviour order may be varied or discharged by the court which made it on the application of—
 - (a) the offender, or
 - (b) the prosecution.
- (2) If an application by the offender under this section is dismissed, the offender may make no further application under this section without—
 - (a) the consent of the court which made the order, or
 - (b) the agreement of the prosecution.
- (3) If an application by the prosecution under this section is dismissed, the prosecution may make no further application under this section without—
 - (a) the consent of the court which made the order, or
 - (b) the agreement of the offender.
- (4) The power to vary an order includes power—
 - (a) to include an additional prohibition or requirement in the order, or
 - (b) to extend the period for which a prohibition or requirement has effect.
- (5) Section 333 applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.
- (6) In the case of a criminal behaviour order made by a magistrates’ court, the references in this section to the court which made the order include a reference to any magistrates’ court acting in the same local justice area as that court.

337 Review of orders: offenders aged under 18

- (1) If—
 - (a) an offender subject to a criminal behaviour order will be under the age of 18 at the end of a review period (see subsection (2)),
 - (b) the term of the order runs until the end of that period or beyond, and
 - (c) the order is not discharged before the end of that period,a review of the operation of the order must be carried out before the end of that period.
- (2) The “review periods” are—
 - (a) the period of 12 months beginning with—

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- (i) the day on which the criminal behaviour order takes effect, or
- (ii) if during that period the order is varied under section 336, the day on which it is varied (or most recently varied, if the order is varied more than once);
- (b) a period of 12 months beginning with—
 - (i) the day after the end of the previous review period, or
 - (ii) if during that period of 12 months the order is varied under section 336, the day on which it is varied (or most recently varied, if the order is varied more than once).
- (3) A review under this section must include consideration of—
 - (a) the extent to which the offender has complied with the order;
 - (b) the adequacy of any support available to the offender to help the offender comply with it;
 - (c) any matters relevant to the question whether an application should be made for the order to be varied or discharged.
- (4) Those carrying out or participating in a review under this section must have regard to any relevant guidance issued by the Secretary of State under section 341 when considering—
 - (a) how the review should be carried out;
 - (b) what particular matters the review should deal with;
 - (c) what action (if any) it would be appropriate to take as a result of the findings of the review.

338 Carrying out and participating in reviews

- (1) A review under section 337 is to be carried out by the chief officer of police of the police force maintained for the police area in which the offender resides or appears to be residing.
- (2) The chief officer, in carrying out a review under section 337, must act in co-operation with the council for the local government area in which the offender resides or appears to be residing; and the council must co-operate in the carrying out of the review.
- (3) The chief officer may invite the participation in the review of any other person or body.
- (4) In this section “local government area” means—
 - (a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
 - (b) in relation to Wales, a county or a county borough.

For the purposes of this section, the council for the Inner and Middle Temples is the Common Council of the City of London.

339 Breach of order

- (1) It is an offence for a person without reasonable excuse—
 - (a) to do anything he or she is prohibited from doing by a criminal behaviour order, or
 - (b) to fail to do anything he or she is required to do by a criminal behaviour order.

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- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.
- (3) If a person is convicted of an offence under this section, an order for conditional discharge under section 80 is not available to the court by or before which the person is convicted.
- (4) In proceedings for an offence under this section, a copy of the original criminal behaviour order, certified by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.
- (5) In relation to any proceedings for an offence under this section that are brought against a person under the age of 18—
 - (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the person;
 - (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.
- (6) If, in relation to any proceedings mentioned in subsection (5), the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.

340 Special measures for witnesses

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to criminal behaviour order proceedings as it applies to criminal proceedings, but with—
 - (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
 - (b) any other necessary modifications.
- (2) The provisions are—
 - (a) section 17(4) to (7);
 - (b) section 21(4C)(e);
 - (c) section 22A;
 - (d) section 27(10);
 - (e) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to criminal behaviour order proceedings—
 - (a) to the extent provided by rules of court, and
 - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications—
 - (a) to a direction under section 19 of that Act as applied by this section;

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(b) to a direction discharging or varying such a direction.

Sections 49 and 51 of that Act (offences) apply accordingly.

(5) In this section “criminal behaviour order proceedings” means proceedings in a magistrates’ court or the Crown Court so far as relating to the issue whether to make a criminal behaviour order.

341 Guidance

(1) The Secretary of State may issue guidance to—

- (a) chief officers of police, and
- (b) the councils mentioned in section 338(2),

about the exercise of their functions under this Chapter.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

342 Offender aged under 18: parenting order where criminal behaviour order made

See section 8(1)(b) of the Crime and Disorder Act 1998 for requirements and powers of a court to make a parenting order under that Act in a case where it makes a criminal behaviour order against an offender aged under 18.

CHAPTER 2

SEXUAL HARM PREVENTION ORDERS

343 Sexual harm prevention order

(1) In this Code “sexual harm prevention order” means an order under this Chapter made in respect of an offender which prohibits the offender from doing anything described in the order.

(2) The only prohibitions that may be included in a sexual harm prevention order are those necessary for the purpose of—

- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.

344 Meaning of “sexual harm”

(1) In this Chapter, “sexual harm” from a person means physical or psychological harm caused—

- (a) by the person committing one or more offences listed in Schedule 3 to the Sexual Offences Act 2003 (sexual offences for the purposes of Part 2 of that Act), or

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- (b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in that Schedule if done in any part of the United Kingdom.
- (2) Where an offence listed in that Schedule is listed subject to a condition that relates—
- (a) to the way in which the offender is dealt with in respect of an offence so listed, or
 - (b) to the age of any person,
- that condition is to be disregarded in determining for the purposes of subsection (1) whether the offence is listed in that Schedule.

345 Sexual harm prevention order: availability on conviction

- (1) Where a person is convicted of an offence listed in Schedule 3 or 5 to the Sexual Offences Act 2003 (sexual offences, and other offences, for the purposes of Part 2 of that Act), the court dealing with the offender in respect of the offence may make a sexual harm prevention order.
- (2) Where an offence listed in Schedule 3 to that Act is listed subject to a condition that relates—
- (a) to the way in which the offender is dealt with in respect of an offence so listed, or
 - (b) to the age of any person,
- that condition is to be disregarded in determining for the purposes of subsection (1) whether the offence is listed in that Schedule.

346 Exercise of power to make sexual harm prevention order

Where a sexual harm prevention order is available to a court, the court may make such an order only if satisfied that it is necessary to do so for the purpose of—

- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.

347 Sexual harm prevention orders: matters to be specified

- (1) A sexual harm prevention order must specify—
- (a) the prohibitions included in the order, and
 - (b) for each prohibition, the period for which it is to have effect (the “prohibition period”).

See section 348 for further matters to be included in the case of a prohibition on travelling to any country outside the United Kingdom.

- (2) The prohibition period must be—
- (a) a fixed period of not less than 5 years, or
 - (b) an indefinite period (so that the prohibition has effect until further order).

This is subject to section 348(1) (prohibition on foreign travel).

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- (3) A sexual harm prevention order—
- (a) may specify fixed periods for some of its prohibitions and an indefinite period for others;
 - (b) may specify different periods for different prohibitions.

348 Sexual harm prevention orders: prohibitions on foreign travel

- (1) A prohibition on foreign travel contained in a sexual harm prevention order must be for a fixed period of not more than 5 years.
- (2) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than 5 years each time) under section 350.
- (3) A “prohibition on foreign travel” means—
- (a) a prohibition on travelling to any country outside the United Kingdom named or described in the order,
 - (b) a prohibition on travelling to any country outside the United Kingdom other than a country named or described in the order, or
 - (c) a prohibition on travelling to any country outside the United Kingdom.
- (4) A sexual harm prevention order that contains a prohibition within subsection (3)(c)—
- (a) must require the offender to surrender all of the offender’s passports at a police station, and
 - (b) must specify—
 - (i) the police station at which the passports are to be surrendered, and
 - (ii) the period within which they must be surrendered (if not surrendered on or before the date when the prohibition takes effect).
- (5) Any passports surrendered must be returned as soon as reasonably practicable after the offender ceases to be subject to a sexual harm prevention order containing a prohibition within subsection (3)(c) (unless the offender is subject to an equivalent prohibition under another order).
- (6) Subsection (5) does not apply in relation to—
- (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.
- (7) In this section “passport” means—
- (a) a United Kingdom passport within the meaning of the Immigration Act 1971;
 - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport.

349 Making of sexual harm prevention order: effect on other orders

- (1) Where a court makes a sexual harm prevention order in relation to an offender who is already subject to—
- (a) a sexual harm prevention order, or

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- (b) an order under section 103A of the Sexual Offences Act 2003 (sexual harm prevention orders under that Act),
the earlier order ceases to have effect.
- (2) Where a court makes a sexual harm prevention order in relation to an offender who is already subject to—
 - (a) a sexual offences prevention order under section 104 of the Sexual Offences Act 2003, or
 - (b) a foreign travel order under section 114 of that Act,the earlier order ceases to have effect (whichever part of the United Kingdom it was made in) unless the court orders otherwise.

350 Sexual harm prevention orders: variations, renewals and discharges

- (1) Where a sexual harm prevention order has been made in respect of an offender, a person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging the sexual harm prevention order.
- (2) The persons are—
 - (a) the offender;
 - (b) the chief officer of police for the area in which the offender resides;
 - (c) a chief officer of police who believes that the offender is in, or is intending to come to, that officer's police area.
- (3) An application under subsection (1) may be made—
 - (a) where the appropriate court is the Crown Court, in accordance with rules of court;
 - (b) in any other case, by complaint.
- (4) Subsection (5) applies where an application under subsection (1) is made.
- (5) After hearing—
 - (a) the person making the application, and
 - (b) if they wish to be heard, the other persons mentioned in subsection (2),the court may make any order, varying, renewing or discharging the sexual harm prevention order, that it considers appropriate.

This is subject to subsections (6) and (7).
- (6) An order may be renewed, or varied so as to impose additional prohibitions on the offender, only if it is necessary to do so for the purpose of—
 - (a) protecting the public or any particular members of the public from sexual harm from the offender, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose.

- (7) The court must not discharge an order before the end of the period of 5 years beginning with the day on which the order was made, without the consent of the offender and—
 - (a) where the application is made by a chief officer of police, that chief officer, or

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- (b) in any other case, the chief officer of police for the area in which the offender resides.
- (8) Subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.
- (9) In this section “the appropriate court” means—
- (a) where the Crown Court or the Court of Appeal made the sexual harm prevention order, the Crown Court;
 - (b) where a magistrates’ court made the order and the offender is aged 18 or over—
 - (i) the court which made the order, if it is an adult magistrates’ court,
 - (ii) a magistrates’ court acting in the local justice area in which the offender resides, or
 - (iii) if the application is made by a chief officer of police, any magistrates’ court acting for a local justice area that includes any part of the chief officer’s police area;
 - (c) where a youth court made the order and the offender is aged under 18—
 - (i) that court,
 - (ii) a youth court acting in the local justice area in which the offender resides, or
 - (iii) if the application is made by a chief officer of police, any youth court acting for a local justice area that includes any part of the chief officer’s police area.

In this subsection “adult magistrates’ court” means a magistrates’ court that is not a youth court.

- (10) For circumstances in which a sexual harm prevention order ceases to have effect when a court in the United Kingdom makes another order, see the following provisions of the Sexual Offences Act 2003—
- (a) section 103C(6) (sexual harm prevention order under that Act);
 - (b) section 136ZB(2) (certain orders made by a court in Northern Ireland or Scotland).

351 Variation of sexual harm prevention order by court in Northern Ireland

- (1) This section applies where a sexual harm prevention order has been made in respect of an offender who—
- (a) is residing in Northern Ireland, or
 - (b) is in or intends to come to Northern Ireland.
- (2) An application may be made to the appropriate court in Northern Ireland—
- (a) by the offender, or
 - (b) by the Chief Constable of the Police Service of Northern Ireland,
- for an order varying the sexual harm prevention order.
- (3) An application under subsection (2) may be made—
- (a) where the appropriate court is the Crown Court, in accordance with rules of court;
 - (b) in any other case, by complaint.

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- (4) Subsection (5) applies where an application under subsection (2) is made.
- (5) After hearing—
- (a) the person making the application, and
 - (b) the other person mentioned in subsection (2) (if that person wishes to be heard),
- the court may make any order varying the sexual harm prevention order that it considers appropriate.
- This is subject to subsections (6) and (7).
- (6) An order may be varied so as to impose additional prohibitions on the offender only if it is necessary to do so for the purpose of—
- (a) protecting the public in Northern Ireland, or any particular members of the public in Northern Ireland, from sexual harm from the offender, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (7) An order as varied under this section may contain only such prohibitions as are necessary for the purpose of—
- (a) protecting the public or any particular members of the public from sexual harm from the offender, or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the offender outside the United Kingdom.
- (8) The offender may appeal against the making of an order under this section, or the refusal to make such an order—
- (a) where the application for such an order was made to the Crown Court, to the Court of Appeal in Northern Ireland;
 - (b) in any other case, to a county court in Northern Ireland.
- (9) On an appeal under subsection (8)(b), the county court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (10) In this section—
- “the appropriate court” means—
- (a) where the sexual harm prevention order was made by—
 - (i) the Crown Court, otherwise than on appeal from a magistrates’ court, or
 - (ii) the Court of Appeal,
the Crown Court (in Northern Ireland);
 - (b) where—
 - (i) the sexual harm prevention order was made by a magistrates’ court, or by the Crown Court on appeal from a magistrates’ court, and
 - (ii) the offender is aged 18 or over,
any court of summary jurisdiction in Northern Ireland;
 - (c) where—

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- (i) the offender is aged under 18, and
 - (ii) paragraph (a) does not apply,
- any youth court in Northern Ireland;
- “complaint” means a complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

352 Sexual harm prevention orders: notification requirements

- (1) Where—
 - (a) a sexual harm prevention order is made in respect of an offender who was subject to the notification requirements immediately before the making of the order, and
 - (b) the offender would (apart from this subsection) cease to be subject to the notification requirements while the order (as renewed from time to time) has effect,

the offender remains subject to the notification requirements.
- (2) Where a sexual harm prevention order is made in respect of an offender who was not subject to the notification requirements immediately before the making of the order—
 - (a) the order causes the offender to become subject to the notification requirements from the making of the order until the order (as renewed from time to time) ceases to have effect, and
 - (b) Part 2 of the Sexual Offences Act 2003 (notification and orders) applies to the offender, subject to the modification set out in subsection (3).
- (3) References in that Part of that Act to the “relevant date” are references to the date of service of the sexual harm prevention order.
- (4) In this section, “the notification requirements” means the notification requirements of Part 2 of the Sexual Offences Act 2003.

353 Sexual harm prevention orders: appeals

- (1) An offender may appeal against the making of an order under section 350, or the refusal to make such an order—
 - (a) where the application for such an order was made to the Crown Court, to the Court of Appeal;
 - (b) in any other case, to the Crown Court.
- (2) On an appeal under subsection (1)(b), the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

354 Offence: breach of sexual harm prevention order

- (1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by a sexual harm prevention order, commits an offence.
- (2) See section 113 of the Sexual Offences Act 2003 for offences in Scotland and Northern Ireland of doing anything prohibited by such an order.

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- (3) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 348(4) (requirement to surrender passports).
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.
- (5) An order for conditional discharge is not available in respect of an offence under this section.

355 Parenting order where sexual harm prevention order made in case of offender aged under 18

See section 8(1)(b) of the Crime and Disorder Act 1998 for powers of a court to make a parenting order under that Act in a case where it makes a sexual harm prevention order in respect of an offender aged under 18.

356 Sexual harm prevention orders: supplementary

- (1) The Secretary of State must issue guidance to chief officers of police in relation to the exercise by them of their powers with regard to sexual harm prevention orders under this Code.
- (2) The Secretary of State may revise the guidance issued under subsection (1).
- (3) The Secretary of State must arrange for any guidance issued or revised under subsection (1) or (2) to be published in such manner as the Secretary of State considers appropriate.
- (4) Rules of court may, in relation to a person who reaches the age of 18 after proceedings against that person by virtue of section 350, have begun—
 - (a) prescribe circumstances in which the proceedings may or must remain in the youth court;
 - (b) make provision for the transfer of the proceedings from the youth court to a magistrates' court that is not a youth court.

357 Disapplication of time limit for complaints

Section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under any provision of this Chapter.

358 Sexual harm prevention orders: interpretation

In this Chapter—

- “child” means a person under 18;
- “the public” means the public in the United Kingdom;
- “sexual harm” has the meaning given by section 344;
- “vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise.

CHAPTER 3

PROTECTION FROM HARASSMENT

359 Restraining order

- (1) In this Code “restraining order” means an order made under section 360 against a person which prohibits the person from doing anything described in the order.
- (2) A restraining order may have effect—
 - (a) for a period specified in the order, or
 - (b) until further order.

360 Restraining order: availability

- (1) This section applies where a court is dealing with an offender for an offence.
- (2) The court may make a restraining order under this section against the offender for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which—
 - (a) amounts to harassment, or
 - (b) will cause a fear of violence.
- (3) But the court may make a restraining order under this section only if it does so in addition to dealing with the offender for the offence.

361 Procedure for varying or discharging restraining order

- (1) Where a person is subject to a restraining order—
 - (a) that person,
 - (b) the prosecution, or
 - (c) any other person mentioned in the order,may apply to the court which made the order for it to be varied or discharged by a further order.
- (2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).

362 Evidence in proceedings relating to restraining orders

- (1) This section applies to—
 - (a) proceedings under section 360 for the making of a restraining order;
 - (b) proceedings under section 361 or 363(6) for the variation or discharge of a restraining order.
- (2) In any such proceedings, both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3 of the Protection from Harassment Act 1997 (civil remedy).

363 Offence of breaching restraining order

- (1) It is an offence for a person who is subject to a restraining order without reasonable excuse to do anything prohibited by the restraining order.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.
- (3) Subsection (1) does not apply to conduct of a person on a particular occasion if the Secretary of State certifies that, in the opinion of the Secretary of State, anything done by that person on that occasion related to—
 - (a) national security,
 - (b) the economic well-being of the United Kingdom, or
 - (c) the prevention or detection of serious crime,and was done on behalf of the Crown.
- (4) A certificate under subsection (3) is conclusive evidence that subsection (1) does not apply to conduct of that person on that occasion.
- (5) A document purporting to be a certificate under subsection (3) is to be received in evidence and, unless the contrary is proved, to be treated as being such a certificate.
- (6) A court dealing with a person for an offence under this section may vary or discharge the restraining order by a further order.

364 Restraining orders: meaning of “conduct” and “harassment”

For the purposes of this Chapter—

“conduct” includes speech;

“harassment”, in relation to a person, includes—

- (a) alarming the person, or
- (b) causing the person distress.

CHAPTER 4

PARENTING ORDERS

What a parenting order is

365 Parenting order

- (1) A parenting order under this Chapter is an order which requires the person in respect of whom it is made (“the parent”)—
 - (a) to comply, for a period of not more than 12 months, with requirements specified in the order, and
 - (b) to attend, for a concurrent period of not more than 3 months, such counselling or guidance programme as may be specified in directions given by the responsible officer (see section 372).

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- (2) But a parenting order need not include a requirement under subsection (1)(b) if a parenting order (whether under this Chapter or any other enactment) has been made in respect of the parent on any previous occasion.
- (3) If the parenting order provides this in accordance with section 366(7), 368(5) or 369(5), a counselling or guidance programme specified under subsection (1)(b) may be or include a residential course.

Parenting order for parent or guardian of offender aged under 18

366 Parenting order where offender is under 18

- (1) A parenting order under this section is available to a court by or before which an offender aged under 18 is convicted of an offence.

This is subject to section 370.

- (2) Subsections (3) and (4) apply where a parenting order under this section is available.
- (3) If the offender is aged under 16 at the time of conviction, the court must—
 - (a) make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender, or
 - (b) state in open court that it is not so satisfied, and why not.

But this does not apply if the court makes a referral order in respect of the offender.

- (4) If the offender is aged 16 or 17 at the time of conviction, the court may make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender.
- (5) Subsections (6) and (7) apply where a court makes a parenting order under this section in respect of a parent or guardian of an offender.
- (6) The requirements that the court may specify in the order under section 365(1)(a) are requirements that it considers desirable in the interests of preventing the commission of any further offence by the offender.
- (7) If the order contains a requirement under section 365(1)(b) and the court is satisfied that—
 - (a) the attendance of the parent or guardian at a residential course is likely to be more effective than that person’s attendance at a non-residential course in preventing the commission of any further offence by the offender, and
 - (b) any interference with family life which is likely to result from the parent’s or guardian’s attendance at a residential course is proportionate in all the circumstances,
 the court may provide in the order that a counselling or guidance programme which the parent or guardian is required to attend by virtue of the requirement may be or include a residential course.

- (8) Before making a parenting order under this section in respect of a parent or guardian of an offender aged under 16, the court must obtain and consider information about—
 - (a) the offender’s family circumstances, and

- (b) the likely effect of the order on those circumstances.
- (9) Where a parenting order is made under this section, the person in respect of whom it is made has the same right of appeal against it as if—
 - (a) that person had committed the offence mentioned in subsection (1), and
 - (b) the order were a sentence passed on that person for the offence.

367 Report where court proposes both parenting order and referral order

- (1) This section applies if a court proposes to make both—
 - (a) a referral order in respect of an offender, and
 - (b) a parenting order under section 366 (parenting order on conviction of a person aged under 18) in respect of a parent or guardian of the offender.
- (2) Before making the parenting order the court must obtain and consider a report by an appropriate officer—
 - (a) indicating the requirements which that officer proposes should be included in the parenting order;
 - (b) indicating the reasons why the officer considers that those requirements would be desirable in the interests of preventing the commission of any further offence by the offender;
 - (c) if the offender is aged under 16, containing the information required by section 366(8).
- (3) In subsection (2) “an appropriate officer” means—
 - (a) an officer of a provider of probation services,
 - (b) a social worker of a local authority, or
 - (c) a member of a youth offending team.

368 Parenting order where parent or guardian of offender fails to attend meetings of youth offender panel

- (1) A parenting order under this section is available to a youth court where—
 - (a) an offender has been referred to a youth offender panel (see section 83), and
 - (b) a parent or guardian of the offender is referred by the panel to the youth court under section 93 in respect of a failure to comply with an order under section 90 (order requiring attendance at meetings of panel).

This is subject to section 370.

- (2) Where a parenting order under this section is available, the youth court may make such an order if it is satisfied that—
 - (a) the parent or guardian has failed without reasonable excuse to comply with the order under section 90, and
 - (b) the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender.
- (3) Subsections (4) and (5) apply where the court makes a parenting order in respect of a parent or guardian of an offender.

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- (4) The requirements that the court may specify under section 365(1)(a) in an order under this section are requirements that it considers desirable in the interests of preventing the commission of any further offence by the offender.
- (5) If the order contains a requirement under section 365(1)(b) and the court is satisfied that—
- (a) the attendance of the parent or guardian at a residential course is likely to be more effective than that person’s attendance at a non-residential course in preventing the commission of any further offence by the offender, and
 - (b) any interference with family life which is likely to result from the parent’s or guardian’s attendance at a residential course is proportionate in all the circumstances,
- the court may provide in the order that a counselling or guidance programme which the parent or guardian is required to attend by virtue of the requirement may be or include a residential course.
- (6) Before making a parenting order under this section where the offender is aged under 16, the court must obtain and consider information about—
- (a) the offender’s family circumstances, and
 - (b) the likely effect of the order on those circumstances.
- (7) Where a parenting order is made under this section, the person in respect of whom it is made may appeal against it to the Crown Court.
- (8) On an appeal under subsection (7) the Crown Court—
- (a) may make such orders as may be necessary to give effect to its determination of the appeal, and
 - (b) may also make such incidental or consequential orders as appear to it to be just.
- (9) An order of the Crown Court made on an appeal under subsection (7) is to be treated for the purposes of section 374 as having been made by the youth court.

Parenting order in case of certain offences related to school attendance

369 Parenting order in respect of certain offences under Education Act 1996

- (1) A parenting order under this section is available to the court by or before which an offender is convicted of an offence under—
- (a) section 443 of the Education Act 1996 (failure to comply with school attendance order), or
 - (b) section 444 of that Act (failure to secure regular attendance at school of registered pupil).

This is subject to section 370.

- (2) Where a parenting order under this section is available, the court may make such an order in respect of the offender if satisfied that the order would be desirable in the interests of preventing the commission of any further offence under section 443 or 444 of the Education Act 1996.
- (3) Subsections (4) and (5) apply where a court makes a parenting order under this section.

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- (4) The requirements that the court may specify under section 365(1)(a) are requirements that it considers desirable in the interests of preventing the commission of any further offence under section 443 or 444 of the Education Act 1996.
- (5) If the order contains a requirement under section 365(1)(b) and the court is satisfied that—
 - (a) the attendance of that offender at a residential course is likely to be more effective than the offender’s attendance at a non-residential course in preventing the commission of any further offence under section 443 or 444 of the Education Act 1996, and
 - (b) any interference with family life which is likely to result from that person’s attendance at a residential course is proportionate in all the circumstances,the court may provide in the order that a counselling or guidance programme which the offender is required to attend by virtue of the requirement may be or include a residential course.
- (6) Before making a parenting order under this section in a case where the offence related to a person aged under 16, the court must obtain and consider information about—
 - (a) that person’s family circumstances, and
 - (b) the likely effect of the order on those circumstances.

Provisions applying generally to parenting orders under Code

370 Parenting order: availability

A court may not make a parenting order under this Chapter in respect of a person unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the person resides or will reside (and the notice has not been withdrawn).

371 Parenting order: references where local authority has parental responsibility

Section 404 (certain references to parent or guardian to be read as references to local authority) does not apply to this Chapter.

372 Making a parenting order

- (1) This section applies where a court makes a parenting order under this Chapter in respect of a person (“the parent”).
- (2) Requirements specified in a parenting order under this Chapter must, as far as practicable, be such as to avoid—
 - (a) any conflict with the parent’s religious beliefs, and
 - (b) any interference with the times, if any, at which the parent normally works or attends an educational establishment.
- (3) Before making a parenting order, a court must explain to the parent in ordinary language—
 - (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow (under section 375) if the parent fails to comply with those requirements, and

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- (c) that the court has power (under section 374) to review the order on the application either of the parent or of the responsible officer.
- (4) The parenting order must specify the responsible officer.
- (5) The responsible officer must be—
 - (a) an officer of a provider of probation services acting in the local justice area in which it appears to the court that the parent resides or will reside,
 - (b) a social worker of the local authority in whose area it appears to the court that the parent resides or will reside,
 - (c) a person nominated by—
 - (i) a person appointed as director of children’s services under section 18 of the Children Act 2004, or
 - (ii) a person appointed as chief education officer under section 532 of the Education Act 1996, or
 - (d) a member of a youth offending team established by the local authority in whose area it appears to the court that the parent resides or will reside.
- (6) For the purposes of this Chapter, the Inner Temple and the Middle Temple form part of the City of London.

373 Directions by the responsible officer

Directions given by a responsible officer under a parenting order under this Code must, as far as practicable, be such as to avoid—

- (a) any conflict with the parent’s religious beliefs, and
- (b) any interference with the times, if any, at which the parent normally works or attends an educational establishment.

For this purpose, “parent” means the person in respect of whom the parenting order is made.

374 Discharge and variation of parenting order

- (1) This section applies where—
 - (a) a parenting order made under this Chapter is in force, and
 - (b) an application is made under this section by—
 - (i) the responsible officer, or
 - (ii) the person in respect of whom it is made
 to the court which made the order.
- (2) The court may make an order—
 - (a) discharging the parenting order, or
 - (b) varying the parenting order—
 - (i) by cancelling any provision included in it, or
 - (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that the court could include, if it were now making the order.

- (3) Where an application under this section for the discharge of a parenting order is dismissed, no-one may make a further application under this section for its discharge except with the consent of the court which made the order.

375 Offence of failure to comply with a requirement of a parenting order

- (1) It is an offence for a person in respect of whom a parenting order made under this Chapter is in force to fail to comply with any requirement—
- (a) included in the order, or
 - (b) specified in directions given by the responsible officer.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

CHAPTER 5

BINDING OVER

376 Binding over of parent or guardian

- (1) This section applies where—
- (a) a person aged under 18 is convicted of an offence, and
 - (b) a court is sentencing the offender for the offence.
- (2) The court has the following powers—
- (a) the court may, with the consent of the offender’s parent or guardian, order the parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over the offender, and
 - (b) if—
 - (i) the parent or guardian refuses consent, and
 - (ii) the court considers the refusal unreasonable,the court may order the parent or guardian to pay a fine not exceeding £1,000.
- (3) For the purposes of this section—
- (a) taking “care” of a person includes giving the person protection and guidance, and
 - (b) “control” includes discipline.
- (4) If the offender is aged under 16 when sentenced, the court must—
- (a) exercise its powers under subsection (2), if satisfied, having regard to the circumstances of the case, that doing so would be desirable in the interests of preventing the offender from committing further offences, or
 - (b) state in open court that it is not so satisfied, and why not.
- (5) Subsections (2) and (4) are subject to section 37(8) of the Mental Health Act 1983 (order under this section not to be made where hospital or guardianship order is made) and to—
- (a) section 89(4)(b), and
 - (b) paragraph 16(2) of Schedule 4, (restrictions on the powers of a court making or extending a referral order).

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- (6) If the court makes a youth rehabilitation order, a recognizance under this section may include a provision that the offender's parent or guardian ensure that the offender complies with the requirements of that order.
- (7) The period of a recognizance under this section—
 - (a) may not be more than 3 years, and
 - (b) must end before the offender reaches the age of 18.
- (8) A recognizance under this section may not be for an amount of more than £1,000.
- (9) In fixing the amount of a recognizance under this section, the court must take into account, in particular, the means of the parent or guardian so far as they appear or are known to the court (whether doing so has the effect of increasing or reducing the amount).
- (10) Section 120 of the Magistrates' Courts Act 1980 (forfeiture of recognizances) applies in relation to a recognizance under this section as it applies in relation to a recognizance to keep the peace.
- (11) A fine imposed under subsection (2)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (12) Section 404 (certain references to parent or guardian to be read as references to local authority) does not apply to this section.

377 Binding over of parent or guardian: appeals, variations and revocations

- (1) A parent or guardian may appeal to the Crown Court against an order under section 376 made by a magistrates' court.
- (2) A parent or guardian may appeal to the Court of Appeal against an order under section 376 made by the Crown Court as if—
 - (a) the parent or guardian had been convicted on indictment, and
 - (b) the order were a sentence passed on the conviction of the parent or guardian.
- (3) A court may vary or discharge an order made by it under section 376 if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

378 Other powers of the court to bind over to keep the peace

- (1) For powers to bind over to keep the peace exercisable on conviction see, in particular—
 - (a) section 1 of the Justices of the Peace Act 1361;
 - (b) section 1(7) of the Justices of the Peace Act 1968.
- (2) This section does not affect the exercise of those powers in other circumstances, or of other powers to bind over.

CHAPTER 6

OTHER ORDERS

379 Other behaviour orders etc

(1) For further orders available to a court dealing with an offender for particular offences in particular circumstances, see the following—

<i>Provision</i>	<i>Type of order</i>	<i>Type of offence</i>
Criminal Justice and Police Act 2001		
section 33	travel restriction order	sentence of imprisonment for certain drug-trafficking offences
Licensed Premises (Exclusion of Certain Persons) Act 1980		
section 1	exclusion order	certain offences committed on licensed premises
Football Spectators Act 1989		
section 14A(3)	banning order under Part 2	relevant offence within the meaning of that Part
Serious Crime Act 2007		
section 19	serious crime prevention order	serious offence in England and Wales
Modern Slavery Act 2015		
section 14	slavery and trafficking prevention order	slavery or human trafficking offence (see Schedule 1)
Psychoactive Substances Act 2016		
section 19	prohibition order	offence under section 4 to 8 of that Act and related offences.

(2) Part 2 of the Sexual Offences Act 2003 makes provision about notification requirements in the case of a person convicted of an offence listed in Schedule 3 to that Act (sexual offences for the purposes of that Part of that Act).

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.
- (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.

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.

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—
 - (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.

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.

Status: This is the original version (as it was originally enacted).

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—
 - (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.

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),
- 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.

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.

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,

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- (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;
 - (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.

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,

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- (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.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;

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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 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.

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.

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.

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.

392 Interpretation of Chapter

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

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.

Status: This is the original version (as it was originally enacted).

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,
 - (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.

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.

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);
- 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).

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—

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- (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),
 - (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;

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“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;

“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—

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- (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).

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)—
- (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.

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

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.

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.

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.
- (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—

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- (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.

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.

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).

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.

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).

SIXTH GROUP OF PARTS Supplementary

PART 14

SUPPLEMENTARY PROVISION

407 Regulations and rules

- (1) This section applies to—
 - (a) any power conferred by this Act on the Secretary of State to make regulations or rules;
 - (b) any power conferred by—
 - (i) sections 44 to 50 (criminal courts charge),
 - (ii) section 416(8) (commencement of amendment of the Code in Schedule 22 relating to determination of tariffs), or
 - (iii) paragraph 19 of Schedule 23 (power to amend minimum term of mandatory life sentence for murder),on the Lord Chancellor to make regulations.
- (2) The power is exercisable by statutory instrument.
- (3) Subsections (4) to (6) apply except where otherwise provided.
- (4) The power includes power to make supplementary, incidental or consequential provision.
- (5) The power also includes power to make transitory, transitional or saving provision.
- (6) The power may be exercised so as to make different provision—
 - (a) for different purposes, or
 - (b) for different areas.

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- (7) Where regulations under this Act are subject to the “affirmative resolution procedure”, the regulations must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (8) Where regulations or rules under this Act are subject to the “negative resolution procedure” the statutory instrument containing the regulations or rules is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Provision that may be made by regulations under this Act for which no Parliamentary procedure is required may be included in regulations that are subject to the negative or affirmative resolution procedure.
- (10) Provision that may be made by regulations under this Act that are subject to the negative resolution procedure may be included in regulations that are subject to the affirmative resolution procedure.

408 Amendments of the Sentencing Code etc

Schedule 22 contains amendments of the Sentencing Code and certain related amendments of other Acts.

See section 417 for provision about when they come into force.

409 Powers to amend the Sentencing Code

- (1) Schedule 23 contains powers to amend the Sentencing Code.
- (2) Provision that may be made in exercise of a power in Schedule 23 includes provision in respect of an offence (whenever committed) of which a person is convicted after the regulations come into force.

This is subject to express provision to the contrary.

410 Consequential amendments

Schedule 24 contains consequential amendments.

411 Armed forces

- (1) Schedule 25 contains consequential amendments of the Armed Forces Act 2006.
- (2) Schedule 26 contains further amendments of provisions of the Armed Forces Act 2006 that apply provisions of this Code or otherwise relate to sentencing.

See section 418 for provision about when those amendments come into force.

412 Transitional provisions and savings

Schedule 27 contains transitional provisions and savings.

413 Repeals and revocations

- (1) The provisions specified in Schedule 28 (which include provisions that are spent) are repealed or revoked to the extent specified.
- (2) The provisions specified in Schedule 29 are repealed or revoked so far as they extend to England and Wales only.
- (3) Subsections (1) and (2) are subject to the following provisions of this section.

Standard scale and powers to amend fines etc

- (4) Nothing in this section or Schedule 28 or 29 affects any provision of—
 - (a) section 37 of the Criminal Justice Act 1982 (standard scale),
 - (b) section 17 of the Criminal Justice Act 1991 (amendments of standard scale), or
 - (c) section 143 of the Magistrates' Courts Act 1980 (amendments of fines etc),so far as it has been, or is capable of being, extended under section 81(11) of the Criminal Justice Act 1982 (as extended by section 102(7) of the Criminal Justice Act 1991) (power to extend certain provisions to Channel Islands or Isle of Man by Order in Council).

Life sentence for second serious offence committed before 4 April 2005

- (5) Nothing in Schedule 28 affects—
 - (a) section 109 of the Powers of Criminal Courts Sentencing Act 2000 (life sentence for second serious offence), as it has effect by virtue of paragraph 5(2) of Schedule 2 to the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 (S.I. 2005/950), or
 - (b) any other provision so far as it continues to have effect, by virtue of paragraph 6 of Schedule 2 to that order, in a case in which a court is dealing with a person whose sentence falls to be imposed under that section.

414 Extent

- (1) Subject to the following provisions of this section and to section 415, the provisions of this Act extend to England and Wales only.
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland—
 - (a) section 219 and Schedule 11 (transfer of community orders to Scotland or Northern Ireland);
 - (b) section 304 and Schedule 17 (transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements);
 - (c) section 349(2) (effect of making sexual harm prevention order where order already exists);
 - (d) this section and sections 416 to 420;
 - (e) paragraph 18 of Schedule 16 (duty of court in Scotland or Northern Ireland when informed of suspended sentence).
- (3) The following provisions extend to England and Wales and Northern Ireland—
 - (a) section 196 and Schedule 8 (transfer of youth rehabilitation orders to Northern Ireland);

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- (b) section 351 (variation of sexual harm prevention order by court in Northern Ireland);
 - (c) section 407 (regulations and rules);
 - (d) paragraph 12 of Schedule 23 (power to amend Schedule 8 in consequence of changes to the law in Northern Ireland).
- (4) The following provisions extend to England and Wales and Scotland—
- (a) sections 38, 40 and 41 (effect of derogatory assertion orders);
 - (b) section 82 (effect of order for absolute discharge and order for conditional discharge);
 - (c) section 396 (execution of process between England and Wales and Scotland).
- (5) Any amendment, repeal or revocation made by—
- (a) Schedule 22 (amendments of the Sentencing Code and related amendments of other legislation),
 - (b) Schedule 24 (consequential amendments),
 - (c) Schedule 25 (amendments of the Armed Forces Act 2006),
 - (d) Schedule 26 (further amendments of the Armed Forces Act 2006), or
 - (e) Schedule 28 (repeals and revocations),
- has the same extent in the United Kingdom as the provision to which it relates.
- (6) Nothing in subsections (1) to (4) affects the extent within the United Kingdom of—
- (a) any provision of or made under this Act so far as it is applied (by whatever words) by the Armed Forces Act 2006, or
 - (b) the repeal by this Act of any provision so far as that provision is applied (by whatever words) by the Armed Forces Act 2006.

415 Channel Islands, Isle of Man and British overseas territories

- (1) Her Majesty may by Order in Council extend any relevant provision, with such modifications as appear to Her Majesty in Council to be appropriate, to any of the Channel Islands or the Isle of Man.
- (2) In subsection (1) “relevant provision”, in relation to any of the Channel Islands or the Isle of Man, means any provision of this Act so far as it restates a provision that, immediately before the commencement date, is capable of being extended there under section 338 of the Criminal Justice Act 2003 (certain provisions of that Act as enacted or subsequently amended by certain other Acts).
- (3) An Order in Council under subsection (1) may—
- (a) make supplementary, incidental or consequential provision;
 - (b) make transitory, transitional or saving provision.
- (4) The armed forces provisions extend to—
- (a) the Isle of Man, and
 - (b) the British overseas territories except Gibraltar.
- (5) The powers conferred by section 384 of the Armed Forces Act 2006 (power to extend Act to the Channel Islands and powers to make provisions of that Act apply with modifications in relation to the Channel Islands, British overseas territories except Gibraltar, and the Isle of Man) are exercisable in relation to any armed forces provision.

- (6) In subsections (4) and (5) “armed forces provision” means—
- (a) a provision of or made under this Act so far as it is applied (by whatever words) by or under the Armed Forces Act 2006,
 - (b) an amendment, modification or repeal made by this Act of a provision of, or made under, the Armed Forces Act 2006, or
 - (c) an amendment, modification or repeal made by this Act of any other provision, so far as the provision is applied (by whatever words) by or under the Armed Forces Act 2006.

416 Commencement

- (1) This Act comes into force on a date specified by the Secretary of State by regulations (referred to in this Act as “the commencement date”).
- (2) Subsections (4) to (6) of section 407 do not apply to the power conferred by subsection (1).
- (3) The Sentencing Code has effect in accordance with section 2.
- (4) Subsection (1) is subject to—
- (a) section 417 (commencement of amendments of the Code and certain consequential amendments of other Acts),
 - (b) section 418 (commencement of certain amendments of the Armed Forces Act 2006),
 - (c) subsection (5), and
 - (d) subsection (9) (commencement of repeal postponed until repeal of connected provisions comes into force).
- (5) Regulations under this Act may be made before the commencement date, but may not—
- (a) come into force before that date, or
 - (b) bring a provision into force before that date.
- (6) An amendment, repeal or revocation made by Schedule 24 (consequential amendments) has effect in accordance with Part 7 of that Schedule.
- (7) An amendment, repeal or revocation made by Schedule 25 (armed forces) or Schedule 28 or 29 (repeals and revocations), so far as it has effect—
- (a) in relation to dealing with a person for an offence, or
 - (b) in relation to a sentence passed for an offence,
- has effect only where the person is convicted of the offence on or after the commencement date.
- (8) But subsection (7) does not apply to the repeal by Schedule 28 of the following provisions—
- (a) paragraphs 6, 36, 37, 47, 85, 86, 88, 123(2), 136, 186(2), 197(b), 200 and 205 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000;
 - (b) paragraphs 21(3), 26 and 64(6) of Schedule 32 to the Criminal Justice Act 2003;
 - (c) paragraph 100 of Schedule 4 to the Criminal Justice and Immigration Act 2008.

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- (9) The repeal in Schedule 28 relating to the Powers of Criminal Courts (Sentencing) Act 2000, so far as it relates to section 159 of that Act (execution of process between England and Wales and Scotland) as it applies to process issued under Schedule 5 to that Act (breach of attendance centre order), comes into force at the same time as the repeal of that Schedule by section 6(1) of the Criminal Justice and Immigration Act 2008.

417 Commencement of Schedule 22

- (1) Schedule 22 comes into force in accordance with regulations made by the Secretary of State, subject to the following.

Abolition of detention in a young offender institution and custody for life

- (2) Paragraphs 65 and 68 come into force at the same time as paragraph 44.
- (3) The following provisions come into force at the same time as section 61 of the Criminal Justice and Courts Services Act 2000 (abolition of sentences of detention in a young offender institution)—
- (a) paragraphs 36 to 38, 40, 41, 45 and 46;
 - (b) paragraph 47(b);
 - (c) paragraphs 51 and 52;
 - (d) paragraph 53, so far as it relates to sections 264, 265, 266 to 268, 273 and 274;
 - (e) paragraphs 54 to 64;
 - (f) paragraphs 69, 70, 72 to 75, 77 and 78;
 - (g) Part 8 of Schedule 22 (amendments of other Acts that are consequential on paragraph (d)).

This is subject to subsection (4).

- (4) If before the commencement date an order has been made under section 80(1) of the Criminal Justice and Court Services Act 2000 in relation to section 61 of that Act, the provisions of Schedule 22 mentioned in subsection (3)—
- (a) come into force on the commencement date or, if later, the date on which section 61 of the Criminal Justice and Court Services Act 2000 comes into force, and
 - (b) so far as they apply—
 - (i) in relation to dealing with a person for an offence, or
 - (ii) in relation to a sentence passed for an offence,
 have effect only where the person is convicted of the offence on or after the commencement date.

Paragraph (b) is subject to section 1 of the Sentencing (Pre-consolidation Amendments) Act 2020 (read with any provision that may be made under it).

Other provisions of Schedule 22

- (5) Paragraph 11 (consequences for imposition of youth rehabilitation order of failure to comply with pre-sentence drug testing order) comes into force at the same time as paragraph 1 (pre-sentence drug testing).

- (6) Paragraphs 21 and 22 (provisions applicable only where community order can be made in respect of offence not punishable with imprisonment) come into force at the same time as paragraph 13 (community order available for offence not punishable with imprisonment in case of wilful and persistent offender).
- (7) Paragraph 28 (repeal of temporary provision resulting from paragraph 27) comes into force 2 years after paragraph 27 (detention and training orders: offenders aged under 12), and has effect only in relation to an offence of which the offender is convicted after paragraph 28 comes into force.
- (8) Paragraph 85 (indeterminate sentences: determination of tariffs) comes into force in accordance with regulations made by the Lord Chancellor.
- (9) Part 6 of Schedule 22 (which makes amendments in consequence of the United Kingdom's withdrawal from the EU) comes into force on IP completion day or, if later, on the commencement date.

418 Commencement of Schedule 26

- (1) Schedule 26 (further amendments of the Armed Forces Act 2006) comes into force as follows.
- (2) Paragraphs 2(a), 3(a), 4(a), 5(a), 6 to 23 and 24(c) (and paragraph 1 so far as it relates to them) come into force at the same time as section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution).
- (3) Subsection (4) of section 417 applies to the provisions of Schedule 26 mentioned in subsection (2) as it applies to the provisions of Schedule 22 mentioned in subsection (3) of that section.
- (4) Paragraphs 2(b), 3(b), 4(b), 5(b) and 24(a) and 24(b) (and paragraph 1 so far as it relates to them) come into force at the same time as paragraph 24 of Schedule 22 (increase in magistrates' court's power to impose imprisonment etc).
- (5) Paragraph 25 (and paragraph 1 so far as it relates to it) comes into force at the same time as section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences), but only in relation to offences committed after that time.

419 Power to state effect of commencement provisions

- (1) The Secretary of State may, in connection with the coming into force of an amendment or repeal made by Schedule 22 or under Schedule 23, by regulations amend this Act to secure that—
 - (a) the Act specifies the purposes for which, or the cases in which, the amendment or repeal has effect;
 - (b) so far as practicable, any provision of the Act which, as a result of the amendment or repeal, is to continue to have effect only for particular purposes or in particular cases remains in place instead of having effect by virtue of transitional, transitory or saving provision.
- (2) The regulations may make consequential amendments to any enactment.

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- (3) Subsections (4) and (5) of section 104 of the Deregulation Act 2015 (restrictions on power to spell out dates described in legislation) apply to regulations under this section as they apply to an order under that section.
- (4) Subsections (4) and (6) of section 407 do not apply to the power conferred by this section.
- (5) In this section “enactment” includes an enactment contained in subordinate legislation.

420 Short title

This Act may be cited as the Sentencing Act 2020.