



**Law
Commission**
Reforming the law

Sentencing law in England and Wales
Legislation currently in force
Part 1 – General provisions and general principles

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1.1 Aims and purposes of sentencing

1.1.1. Adults (Aged 18+ at conviction)

CJA 2003 s.142²: Purposes of sentencing

s.142(1) - any court dealing with an offender in respect of his offence 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

s.142(2) - subsection (1) does not apply—

- (a) in relation to an offender who is aged under 18 at the time of conviction,
- (b) to an offence the sentence for which is fixed by law,
- (c) to an offence the sentence for which falls to be imposed under a provision mentioned in subsection (2A), or
- (d) in relation to the making under Part 3 of the Mental Health Act 1983 (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

s.142(2AA) - the provisions referred to in subsection (2)(c) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (b) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences);
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);
- (d) section 110(2) or 111(2) of the Sentencing Act (minimum sentence for certain drug trafficking and burglary offences);
- (e) section 224A of this Act (life sentence for second listed offence for certain dangerous offenders);
- (f) section 225(2) or 226(2) of this Act (imprisonment or detention for life for certain dangerous offenders);
- (g) section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentence in certain cases of using someone to mind a weapon).

² Commencement: 4 April 2005, 2005/950, art.2 and Sch.1 para.7

³ *R. v Rakib* [2011] EWCA Crim 870; [2012] 1 Cr. App. R. (S.) 1 (p.1) underlined the importance of the provision, stressing that courts must have regard to rehabilitation as an aim of any sentence they are imposing. Merely repeating the statute, the case has no effect other than to, albeit briefly, remind judges of their obligations.

s.142(3) - in this Chapter “sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and “sentencing” is to be construed accordingly.

Note: “sentence” and “sentencing” includes “any order made by a court when dealing with the offender in respect of his offence” but does not include offences for which minimum or required sentences must be imposed, or hospital orders, interim hospital orders or “hybrid” orders under s.45A of the Mental Health Act 1983.

1.1.2. Youths (Aged under 18 at sentence)

CDA 1998 s.37⁴: Aim of the youth justice system⁵

s.37(1) - it shall be the principal aim of the youth justice system to prevent offending by children and young persons.

s.37(2) - in addition to any other duty to which they are subject, it shall be the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim.

CJA 2003 s.142A: Purposes etc. of sentencing: offenders under 18 [not in force]

s.142A(1) - this section applies where a court is dealing with an offender aged under 18 in respect of an offence.

s.142A(2) - the court must have regard to—

- (a) the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37(1) of the Crime and Disorder Act 1998),
- (b) in accordance with section 44 of the Children and Young Persons Act 1933, the welfare of the offender, and
- (c) the purposes of sentencing mentioned in subsection (3) (so far as it is not required to do so by paragraph (a)).

s.142A(3) - those purposes of sentencing are—

- (a) the punishment of offenders,
- (b) the reform and rehabilitation of offenders,
- (c) the protection of the public, and
- (d) the making of reparation by offenders to persons affected by their offences.

s.142A(4) - this section does not apply—

- (a) to an offence the sentence for which is fixed by law,
- (b) to an offence the sentence for which falls to be imposed under a provision mentioned in subsection (5), or,
- (c) in relation to the making under Part 3 of the Mental Health Act 1983 of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

⁴ Commencement: 30 September 1998, 1998/2327 art.2(1)(g)

⁵ “youth justice system” means the system of criminal justice in so far as it relates to children and young persons, CDA 1998 s.42(1).

s.142A(5) - the provisions referred to in subsection (4)(b) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (b) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences);
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);
- (d) section 226(2) of this Act (detention for life for certain dangerous offenders);
- (e) section 29(6) of the Violent Crime Reduction Act 2006 (minimum sentence in certain cases of using someone to mind a weapon).

CYPA 1933 s.44⁶: General considerations

s.44(1) - every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

CYPA 1933 s.59⁷: Miscellaneous provisions as to summary proceedings against juvenile offenders

s.59(1) - the words “conviction” and “sentence” shall cease to be used in relation to children and young persons dealt with summarily and any reference in any enactment whether passed before or after the commencement of this Act to a person convicted, a conviction or a sentence shall, in the case of a child or young person, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be:

⁶ Commencement: 1 November 1933, CYPA 1933 s.109(2) and SI 1933/663 art.1.

⁷ Commencement: 1 November 1933, CYPA 1933 s.109(2) and SI 1933/663 art.1.

1.2 Legal representation

PCC(S)A 2000 s.83⁸: Restriction on imposing custodial sentences on persons not legally represented

- s.83(1) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who:
- (a) is not legally represented in that court, and
 - (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom,
- unless he is a person to whom subsection (3) below applies.
- s.83(2) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not:
- (a) pass a sentence of detention under section 90 or 91 below,
 - (b) pass a sentence of custody for life under section 93 or 94 below,
 - (c) pass a sentence of detention in a young offender institution, or
 - (d) make a detention and training order,
- on or in respect of a person who is not legally represented in that court unless he is a person to whom subsection (3) below applies.
- s.83(3) - this subsection applies to a person if either:
- (a) representation was made available to him for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of his conduct or because it appeared that his financial resources were such that he was not eligible [for such representation;
 - (aa) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible for such representation; or
 - (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply.
- s.83(4) - for the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced.
- s.83(5) - for the purposes of subsection (1)(b) above a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 below or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded.
- s.83(6) - in this section "*sentence of imprisonment*" does not include a committal for contempt of court or any kindred offence.

⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

1.3 Determining the seriousness of an offence and statutory aggravating factors

1.3.1. Seriousness

CJA 2003 s.143⁹: Determining the seriousness of an offence

- s.143(1) - in considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.
- s.143(2) - in considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—
- (a) the nature of the offence to which the conviction relates and its relevance to the current offence, and
 - (b) the time that has elapsed since the conviction.
- s.143(3) - in considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.¹⁰
- s.143(4) - any reference in subsection (2) to a previous conviction is to be read as a reference to—
- (a) a previous conviction by a court in the United Kingdom,
 - (aa) a previous conviction by a court in another member State of a relevant offence under the law of that State,
 - (b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction), or
 - (c) a finding of guilt in respect of a member State service offence.
- s.143(5) - subsections (2) and (4) do not prevent the court from treating:
- (a) a previous conviction by a court outside both the United Kingdom and any other member State, or
 - (b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence,
- as an aggravating factor in any case where the court considers it appropriate to do so.
- s.143(6) - for the purposes of this section—
- (a) 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 defendant for the current offence,
 - (b) “*member State service offence*” means an offence which—

⁹ Commencement: 4 April 2005, 2005/950 art.2 and Sch.1 para.7.

¹⁰ Note: There is no discretion in this provision.

- (i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
- (ii) 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 defendant for the current offence,
- (c) "*Her Majesty's forces*" has the same meaning as in the Armed Forces Act 2006, and
- (d) "*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.

Note: This section has to be read in conjunction with the section detailing the custody threshold and when a community sentence can be imposed.

Note: The Sentencing Guidelines Council's Overarching Principles: Seriousness Guideline contains guidance as to the assessment of culpability and harm as a part of the assessment of seriousness of an offence.

1.3.2. Racial/religious aggravation

CDA 1998 s.28¹¹: Meaning of "racially or religiously aggravated"

- s.28(1) - an offence is [racially or religiously aggravated for the purposes of sections 29 to 32 below if—
- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a [racial or religious group; or
 - (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.
- s.28(2) - in subsection (1)(a) above—
- "membership"*, in relation to a racial or religious group, includes association with members of that group;
- "presumed"* means presumed by the offender.
- s.28(3) - it is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
- s.28(4) - in this section "*racial group*" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.
- s.28(5) - in this section "*religious group*" means a group of persons defined by reference to religious belief or lack of religious belief.

¹¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(g).

CJA 2003 s.145¹²: Increase in sentences for racial or religious aggravation

- s.145(1) - this section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).
- s.145(2) - if the offence was racially or religiously aggravated, the court:
- (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence was so aggravated.
- s.145(3) - section 28 of the Crime and Disorder Act 1998 (meaning of “racially or religiously aggravated”) applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

Note: There is no discretion as with other provisions e.g. s.143(2).

1.3.3. Disability/sexual orientation or transgender identity

CJA 2003 s.146¹³: Increase in sentences for aggravation related to disability, sexual orientation or transgender identity

- s.146(1) - this section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).
- s.146(2) - those circumstances are—
- (a) that, 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 sexual orientation (or presumed sexual orientation) of the victim,
 - (ii) a disability (or presumed disability) of the victim, or
 - (iii) the victim being (or being presumed to be) transgender, or
 - (b) that the offence is motivated (wholly or partly)—
 - (i) by hostility towards persons who are of a particular sexual orientation,
 - (ii) by hostility towards persons who have a disability or a particular disability, or
 - (iii) by hostility towards persons who are transgender.
- s.146(3) - the court—
- (a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and
 - (b) must state in open court that the offence was committed in such circumstances.
- s.146(4) - it is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

¹² Commencement: 4 April 2005, 2005/950 art.2 and Sch.1 para.7.

¹³ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

- s.146(5) - in this section “*disability*” means any physical or mental impairment.
- s.146(6) - in this section 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 re-assignment.

1.3.4. Drugs

MDA 1971 s.4A¹⁴: Aggravation of offence of supply of controlled drug

- s.4A(1) - this section applies if–
 - (a) a court is considering the seriousness of an offence under section 4(3) of this Act, and
 - (b) at the time the offence was committed the offender had attained the age of 18.
- s.4A(2) - if either of the following conditions is met the court–
 - (a) must treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
 - (b) must state in open court that the offence is so aggravated.
- s.4A(3) - the first condition is that the offence was committed on or in the vicinity of school premises at a relevant time.
- s.4A(4) - the second condition is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.
- s.4A(5) - in subsection (3), a relevant time 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.
- s.4A(6) - for the purposes of subsection (4), a person uses a courier in connection with an offence under section 4(3) of this Act if he 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 himself or a third person.
- s.4A(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.
- s.4A(8) - in this section–
 - “*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; and
 - “*school*” has the same meaning–
 - (a) in England and Wales, as in section 4 of the Education Act 1996;
 - (b) in Scotland, as in section 135(1) of the Education (Scotland) Act 1980;

¹⁴ Commencement: 1 January 2006, as inserted by DA 2006 s.1(1), SI 2005/3053 art.3(a).

- (c) in Northern Ireland, as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

1.3.5. Terrorist connection

CTA 2008 s.30¹⁵: Sentences for offences with a terrorist connection: England and Wales

- s.30(1) - this section applies where a court in England and Wales is considering for the purposes of sentence the seriousness of an offence specified in Schedule 2 (offences where terrorist connection to be considered).
- s.30(2) - if having regard to the material before it for the purposes of sentencing it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case.
- s.30(3) - for that purpose the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence.
- s.30(4) - if the court determines that 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 was so aggravated.
- s.30(5) - in this section “*sentence*”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.
- s.30(6) - this section has effect in relation only to offences committed on or after the day it comes into force.

CTA 2008 Sch.2: Offences where terrorist connection to be considered

Note: The provisions of the schedule are not listed in this document.

Note: There is a power to amend the list in Schedule 2, see CTA 2008 s.33.

¹⁵ Commencement: 18 June 2009, SI 2009/1256 art.2(b).

1.4 Custody/Custody threshold/Community sentences

1.4.1. General principles relating to discretionary custodial sentences

CJA 2003 s.153¹⁶: Length of discretionary custodial sentences: general provision

- s.153(1) - This section applies where a court passes a custodial sentence other than one fixed by law or imposed under section 224A, 225 or 226
- (2) Subject to section 1A(5) of the Prevention of Crime Act 1953, section 51A(2) of the Firearms Act 1968, section 139AA(7) of the Criminal Justice Act 1988, sections 110(2) and 111(2) of the Sentencing Act, section 29(4) or (6) of the Violent Crime Reduction Act 2006 and sections 226A(4) and 226B(2) of this Act, 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 the offence, or the combination of the offence and one or more offences associated with it.

1.4.2. The custody threshold

CJA 2003 s.152¹⁷: General restrictions on imposing discretionary custodial sentences

- s.152(1) - this section applies where a person is convicted of an offence punishable with a custodial sentence other than one—
- (a) fixed by law, or
- (b) falling to be imposed under section 1A(5) of the Prevention of Crime Act 1953, under section 51A(2) of the Firearms Act 1968, under section 139AA(7) of the Criminal Justice Act 1988, under section 110(2) or 111(2) of the Sentencing Act, under section 29(4) or (6) of the Violent Crime Reduction Act 2006 or under 224A, section 225(2) or 226(2) of this Act.
- s.152(2) - the court must not pass a custodial sentence unless it is of the opinion that the offence, or 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.
- s.152(3) - nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if—
- (a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness, or
- (b) he fails to comply with an order under section 161(2)¹⁸ (pre-sentence drug testing).

¹⁶ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

¹⁷ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

¹⁸ Not in force.

CJA 2003 s.166¹⁹: Savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders

- s.166(1) - nothing in—
- (a) section 148 (imposing community sentences),
 - (b) section 152, 153 or 157 (imposing custodial sentences),
 - (c) section 156 (pre-sentence reports and other requirements),
 - (d) section 164 (fixing of fines),
 - (e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance), or
 - (f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering),
- prevents a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.
- s.166(2) - Section 152(2) does not prevent a court, after taking into account such matters, from passing a community sentence even though it is of the opinion that the offence, or 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.
- s.166(3) - nothing in the sections mentioned in subsection (1)(a) to (f) 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
 - (b) in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- s.166(4) - subsections (2) and (3) are without prejudice to the generality of subsection (1).
- s.166(5) - nothing in the sections mentioned in subsection (1)(a) to (f) is to be taken—
- (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender, or
 - (b) as restricting any power (whether under the Mental Health Act 1983 (c. 20) 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.
- s.166(6) - in subsection (5) "*mentally disordered*", in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983.

¹⁹ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

1.4.3. Community sentences

CJA 2003 s.148²⁰: Restrictions on imposing community sentences²¹

- s.148(1) - a court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- s.148(2) - where a court passes a community sentence—
- (a) the particular requirement or requirements forming part of the community order, or, as the case may be, youth rehabilitation order, comprised in the sentence must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and
 - (b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- s.148(2A) - subsection (2) is subject to section 177(2A) (community orders: punitive elements) and to paragraph 3(4) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance).
- s.148(4) - subsections (1) and (2)(b) have effect subject to section 151(2).
- s.148(5) - the fact that by virtue of any provision of this section—
- (a) a community sentence may be passed in relation to an offence; or
 - (b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,
- does not require a court to pass such a sentence or to impose those restrictions.

²⁰ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

²¹ “Community sentence” means a community order as defined by s.177 or a youth rehabilitation order under the CJIA 2008 s.1

1.5 Concurrent/consecutive sentences

Note: See also the Sentencing Council's Definitive Guideline on Offences Taken into Consideration and Totality

CJA 2003 s.265²²: Restriction on consecutive sentences for released prisoners

- s.265(1) - a court sentencing a person to a term of imprisonment may not order the term to commence on the expiry of any other sentence of imprisonment from which he has been released: (a) under CJA 2003 Part 12 Chapter 6; or (b) under Criminal Justice Act 1991 Part 2
- s.265(2) - in this section "*sentence of imprisonment*" includes a sentence of detention under section 91 or 96 of the Sentencing Act or section 227 or 228 of this Act or a sentence of detention in a young offender institution under section 96 of the Sentencing Act or under section 226A, 226B, 227 of this Act, and "*term of imprisonment*" is to be read accordingly.

CJA 2003 s.155²³: Consecutive terms of imprisonment [Not in force]

Note: Section 155 amends MCA 1980 s.133 which deals with the powers of the magistrates' courts to impose consecutive sentences of imprisonment. Section 155 extends the power to impose consecutive sentences for summary only offences from 6 months to 65 weeks. The distinction between summary only and either way offences is removed. However, s.155 has not been amended to take account of the insertion of MCA 1980 s133(2A).

²² Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. In force 4 April 2005 otherwise, SI 2005/950 art.2(1) and Sch.1 para.19.

²³ CJA 2003 s.155 is not yet in force. See CJA 2003 s.336(3). No commencement order has been made.

1.6 Totality

CJA 2003 s.166²⁴: Mitigating sentence

s.166(1) - nothing in—

- (a) section 148 (imposing community sentences),
- (b) section 152, 153 or 157 (imposing custodial sentences),
- (c) section 156 (pre-sentence reports and other requirements),
- (d) section 164 (fixing of fines),
- (e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance), or
- (f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering),

prevents a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

s.166(3) - nothing in the sections mentioned in subsection (1)(a) to (f) 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
- (b) in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.

²⁴ Commencement: 4 April 2005, 2005/950 arts.2 and Sch.1 para.7. The section is of no effect in relation to offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a).

1.7 Disparity

Note: Although not the subject of statutory provisions, this is a frequent complaint on appeal against sentence to the Court of Appeal (Criminal Division). The principle is to be found in R. v Weekes 1980 2 Cr. App. R. (S.) 377. The headnote reads:

“Where on a trial of two or more defendants, one of them pleads guilty and the other or others not guilty, and the one who pleads guilty proposes to give evidence either for his co-defendants or for the Crown, the better sentencing policy is not to sentence that defendant before he gives evidence; but to sentence all the defendants at the same time and that should be done by the same Court, whenever that is possible.

When a question of disparity of sentence is raised on appeal, the Court of Appeal should ask not only whether the appellants labour under a sense of grievance, but whether there is justification for that grievance.”

1.8 Assistance by offender/Informants

1.8.1. Formal agreements

SOCPA 2005 s.73²⁵: Assistance by defendant: reduction in sentence

- s.73(1) - this section applies if a defendant—
- (a) following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence, and
 - (b) has, pursuant to a written agreement made with a specified prosecutor, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.
- s.73(2) - in determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.
- s.73(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.
- s.73(4) - subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of subsection (3) to both the prosecutor and the defendant.
- s.73(5) - nothing in any enactment which—
- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances), or
 - (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),
- affects the power of a court to act under subsection (2).
- s.73(6) - if, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining—
- (a) the sentence, or
 - (b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.
- s.73(7) - if subsection (3) above does not apply by virtue of subsection (4) above, sections 174(1)(a) and 270 of the Criminal Justice Act 2003 (c. 44) (requirement to explain

²⁵ Commencement: 1 April 2006, 2006/378 art.5(1).

reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted in pursuance of this section.

s.73(8) - in this section:

- (a) a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly;
- (b) a reference to imprisonment includes a reference to any other custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or Article 2 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160).

s.73(9) - an agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor.

s.73(10) - references to a specified prosecutor must be construed in accordance with section 71.

Note: Beyond these provisions, the proper approach to discounting sentences for assistance given or offered is to be found in case law. The headnote to R. v King (1985) 7 Cr App R (S) 227 reads, in part, "No hard and fast rule can be laid down as to the amount by which a sentence can be reduced on a large scale informer by reason of the assistance he gives to the police. The Court should first of all turn to the offences which the informer has admitted to assess their gravity and their number, thus enabling a starting figure to be reached... The amount by which the above starting figure should be reduced will depend upon a number of variable features—the quality and quantity of the material disclosed by the informer, its accuracy and his willingness to confront other criminals or give evidence against them and the degree to which he put himself and his family at risk of reprisal. His criminal life would probably be at an end. Consequently, an expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely the information".

See also e.g. R. v A and B [1999] 1 Cr App R (S)

SOCPA 2005 s.74²⁶: Assistance by defendant: review of sentence

s.74(1) - this section applies if—

- (a) the Crown Court has passed a sentence on a person in respect of an offence, and
- (b) the person falls within subsection (2).

s.74(2) - a person falls within this subsection if—

- (a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;
- (b) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance;

²⁶ Commencement: 1 April 2006, 2006/378 art.5(1).

- (c) he receives a sentence which is not discounted but in pursuance of a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.
- s.74(3) - a specified prosecutor may at any time refer the case back to the court by which the sentence was passed if—
 - (a) the person is still serving his sentence, and
 - (b) the specified prosecutor thinks it is in the interests of justice to do so.
- s.74(4) - a case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- s.74(5) - if the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.
- s.74(6) - in a case of a person who falls within subsection (2)(b) or (c) 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.
- s.74(7) - any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.
- s.74(8) - a person in respect of whom a reference is made under this section and 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.
- s.74(9) - Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- s.74(10) - a discounted sentence is a sentence passed in pursuance of section 73 or subsection (6) above.
- s.74(11) - references—
 - (a) to a written agreement are to an agreement made in writing with a specified prosecutor;
 - (b) to a specified prosecutor must be construed in accordance with section 71.
- s.74(12) - in relation to any proceedings under this section:
 - (a) the Secretary of State may, in relation to proceedings in England and Wales, make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications);
 - (b) the Department of Justice in Northern Ireland may, in relation to proceedings in Northern Ireland, make an order containing provision corresponding to any provision in the Criminal Appeal (Northern Ireland) Act 1980 (subject to any specified modifications).
- s.74(13) - a person does not fall within subsection (2) if—
 - (a) he was convicted of an offence for which the sentence is fixed by law, and

(b) he did not plead guilty to the offence for which he was sentenced.

s.74(14) - Section 174(1)(a) or 270 of the Criminal Justice Act 2003 (c. 44) (as the case may be) applies to a sentence substituted under subsection (5) above unless the court thinks that it is not in the public interest to disclose that the person falls within subsection (2)(a) above.

s.74(15) - Subsections (3) to (9) of section 73 apply for the purposes of this section as they apply for the purposes of that section and any reference in those subsections to subsection (2) of that section must be construed as a reference to subsection (6) of this section.

SOCPA 2005 s.75²⁷: Proceedings under section 74: exclusion of public

s.75(1) - this section applies to—

- (a) any proceedings relating to a reference made under section 74(3), and
- (b) any other proceedings arising in consequence of such proceedings.

s.75(2) - the court in which the proceedings will be or are being heard may make such order as it thinks appropriate—

- (a) to exclude from the proceedings any person who does not fall within subsection (4);
- (b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made).

s.75(3) - an order under subsection (2) may be made only to the extent that the court thinks—

- (a) that it is necessary to do so to protect the safety of any person, and
- (b) that it is in the interests of justice.

s.75(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.

s.75(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.

SOCPA 2005 s.75A²⁸: Proceedings under section 74: use of live link

s.75A - Section 57E of the Crime and Disorder Act 1998 (use of live link in sentencing hearings) applies to hearings in proceedings relating to a reference under section 74(3) as it applies to sentencing hearings.

²⁷ Commencement: 1 April 2006, 2006/378 art.5(1).

²⁸ Commencement: 15 January 2007, as inserted by Police and Justice Act 2006 Sch.14 para.62, SI 2006/3364 art.2(k) and SI 2007/29 art.2.

SOCPA 2005 s.75B²⁹: Guidance about use of powers under sections 71 to 74

- s.75B(1) - the Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under sections 71 to 74.
- s.75B(2) - the Attorney General may from time to time revise any guidance issued under this section.
- s.75B(3) - in this section “*specified prosecutor*” is to be construed in accordance with section 71.

1.8.2. The “text” regime

See *R. v H* [2009] EWCA Crim 2485; [2010] 2 Cr. App. R. (S.) 18 (p.104) the headnote to which reads, in part, “It was clear that the 2005 Act did not abolish the former system, and that the previous “text” system might still be used where a defendant had provided assistance which did not fall within the new arrangements, and in particular the written agreement. The introduction of the statutory regime did not extinguish the text regime, nor alter the principles which applied to it.

²⁹ Commencement: 6 April 2010, as inserted by CJA 2009 s.113(7), SI 2010/816 art.2 and Sch.1 para.6.

1.9 Prevalence of the offence in the locality etc.

Note: There is guidance in the Sentencing Guidelines Council's Overarching Principles: Seriousness Guideline at para.1.38 as to the approach to take with regard to increasing a sentence on the basis of the offence in question being prevalent in the locality.

1.10 Duty of Secretary of State to publish information about sentencing

CJA 1991 s.95³⁰: Information for financial and other purposes

- s.95(1) - the Secretary of State shall in each year publish such information as he considers expedient for the purpose of—
- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions;
 - (aa) enabling such persons to become aware of the relative effectiveness of different sentences—
 - (i) in preventing re-offending, and
 - (ii) in promoting public confidence in the criminal justice system; or
 - (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.
- s.95(2) - publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

³⁰ Commencement: 31 October 1991, SI 1991/2208 art.2(4) and Sch.3 para.1. The section was amended by CJA 2003 s.175.

1.11 The age of the offender

Duty to enquire as to age of offender where it appears individual is a child or young person

CYPA 1933 s.99³¹: Presumption and determination of age

s.99(1) - where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of eighteen years, that person shall for the purposes of this Act be deemed not to be a child or young person.

Determining the individual's age

CYPA 1933 s.99³²: Presumption and determination of age

s.99(2) - where in any charge or indictment for any offence under this Act or any of the offences mentioned in the First Schedule to this Act except as provided in that Schedule, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or to have attained that age, as the case may be, unless the contrary is proved.

s.99(3) - where, in any charge or indictment for any offence under this Act or any of the offences mentioned in the First Schedule to this Act, it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

s.99(4) - where a person is charged with an offence under this Act in respect of a person apparently under a specified age it shall be a defence to prove that the person was actually of or over that age.

CYPA 1933 Sch.1³³: Offences against children and young persons, with respect to which special provisions of this Act apply

Note: The Schedule contains a list of offences. The list is not reproduced here.

³¹ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

³² Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

³³ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

PCC(S)A 2000 s.164³⁴: Further interpretive provisions

s.164(1) - for the purposes of any provision of this Act which requires the determination of the age of a person by the court or the Secretary of State, his age shall be deemed to be that which it appears to the court or (as the case may be) the Secretary of State to be after considering any available evidence.

Note: See also CJA 1982 s.1(6) which is a similar provision for that Act.

Individuals who attain the age of 18 prior to the conclusion of proceedings

CYPA 1964 s.29³⁵: Provisions as to persons between the ages of 17 and 18

s.29(1) - where proceedings in respect of a young person are begun for an offence and he attains the age of eighteen before the conclusion of the proceedings, the court may deal with the case and make any order which it could have made if he had not attained that age.

PCC(S)A 2000 s.7³⁶: Powers of Crown Court on committal under s.6

s.7(4) - where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence triable only on indictment in the case of an adult (being an offence which was tried summarily because of the offender's being under 18 years of age), the Crown Court's powers under subsection (1) above in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—

- (a) to impose a fine not exceeding £5,000;
- (b) to deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁵ Commencement: 1 February 1964, SI 1964/2056 art.1 and Sch.1 para.1.

³⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)