



**Law
Commission**
Reforming the law

Sentencing law in England and Wales Legislation currently in force

Part 2 – Pre-sentence matters and matters pertaining to
the sentencing hearing

9 October 2015

Part 2. Pre-sentence matters and matters pertaining to the sentencing hearing

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2.1 Committal/Remitting juvenile for sentence

2.1.1. Adults (aged 18+)

PCC(S)A 2000 s.3³⁷: committal after conviction on summary trial for either way offence

- s.3(1) - subject to subsection (4) below, this section applies where on the summary trial of an offence triable either way a person aged 18 or over is convicted of the offence.
- s.3(2) - if the court 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 the Crown Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment,
- the court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 5(1) below.
- s.3(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.3(4) - this section does not apply in relation to an offence as regards which this section is excluded by section 17D or 33 of the Magistrates' Courts Act 1980 (certain offences where value involved is small).
- s.3(5) - the preceding provisions of this section shall apply in relation to a corporation as if—
- (a) the corporation were an individual aged 18 or over; and
- (b) in subsection (2) above, the words "in custody or on bail" were omitted.

PCC(S)A 2000 s.4³⁸: Guilty plea indicated for either way offence, with related offences³⁹

- s.4(1) - this section applies where—
- (a) a person aged 18 or over appears or is brought before a magistrates' court ("the court") on an information charging him with an offence triable either way ("the offence");
- (b) he or (where applicable) his representative indicates under section 17A, 17B or 20(7) of the Magistrates' Courts Act 1980 that he would plead guilty if the offence were to proceed to trial; and
- (c) proceeding as if section 9(1) of that Act were complied with and he pleaded guilty under it, the court convicts him of the offence.
- s.4(1A) - but this section does not apply to an offence as regards which this section is excluded by section 17D of that Act (certain offences where value involved is small).

³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁹ This section may only be used where the court has sent the adult defendant for trial for some offences but has to deal with the defendant for other either way offences in relation to which he has indicated a guilty plea. The defendant may be committed even though the magistrates are not of the view that greater sentencing powers are required.

- s.4(2) - if the court has sent the offender to the Crown Court for trial for one or more related offences, that is to say, one or more offences which, in its opinion, are related to the offence, it may commit him in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 5(1) below.
- s.4(3) - if the power conferred by subsection (2) above is not exercisable but the court is still to determine to, or to determine 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—
- (a) it shall adjourn the proceedings relating to the offence until after it has made those determinations; and
 - (b) if it sends the offender to the Crown Court for trial for one or more related offences, it may then exercise that power.
- s.4(4) - where the court—
- (a) under subsection (2) above commits the offender to the Crown Court to be dealt with in respect of the offence, and
 - (b) does not state that, in its opinion, it also has power so to commit him under section 3(2) or, as the case may be, section 3A(2) above,
- section 5(1) below shall not apply unless he is convicted before the Crown Court of one or more of the related offences.
- s.4(5) - where section 5(1) below does not apply, the Crown Court may 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 the offence.
- s.4(6) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.4(7) - for the purposes of this section 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.
- s.4(8) - in reaching any decision under or taking any step contemplated by this section—
- (a) the court shall not be 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); and
 - (b) 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 not consistent with an indication of sentence.

PCC(S)A 2000 s.5⁴⁰: Powers of Crown Court on committal under ss.3, 3A and 4

- s.5(1) - where an offender is committed by a magistrates' court for sentence under section 3, 3A or 4 above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.

⁴⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.5(2) - in relation to committals under section 4 above, subsection (1) above has effect subject to section 4(4) and (5) above.
- s.5(3) - 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) shall not apply in respect of any specified offence (within the meaning of section 224 of the Criminal Justice Act 2003)—
- (a) in respect of which the offender is committed under section 3A(2) above; or
 - (b) in respect of which—
 - (i) the offender is committed under section 4(2) above; and
 - (ii) the court states under section 4(4) above that, in its opinion, it also has power to commit the offender under section 3A(2) above.

2.1.2. Youths (aged under 18)

PCC(S)A 2000 s.3B⁴¹: Committal for sentence of young offenders on summary trial of certain serious offences

- s.3B(1) - this section applies where on the summary trial of an offence mentioned in section 91(1) of this Act a person aged under 18 is convicted of the offence.
- s.3B(2) - if the court is of the opinion that—
- (a) the offence; or
 - (b) the combination of the offence and one or more offences associated with it,
- was such that the Crown Court should, in the court's opinion, have power to deal with the offender as if the provisions of section 91(3) below applied, the court may commit him in custody or on bail to the Crown Court for sentence in accordance with section 5A(1) below.
- s.3B(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.

⁴¹ As inserted by CJA 2003 Sch.3 para.23, in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c) and 2(2). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4

PCC(S)A 2000 s.4A⁴²: Youth indicated guilty plea, with related offences: defendant sent for trial on some offences, convicted/pleaded to other offences for which court would have power to impose detention under s.91⁴³

- s.4A(1) - this section applies where—
- (a) a person aged under 18 appears or brought before a magistrates' court ("the court") on an information charging him with an offence mentioned in subsection (1) of section 91 below ("the offence");
 - (b) he or his representative indicates under section 24A or (as the case may be) 24B of the Magistrates' Courts Act 1980 (child or young person to indicate intention as to plea in certain cases) that he would plead guilty if the offence were to proceed to trial; and
 - (c) proceeding as if section 9(1) of that Act were complied with and he pleaded guilty under it, the court convicts him of the offence.
- s.4A(2) - if the court has sent the offender to the Crown Court for trial for one or more related offences, that is to say one or more offences which, in its opinion, are related to the offence, it may commit him in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 5A(1) below.
- s.4A(3) - if the power conferred by subsection (2) above is not exercisable but the court is still to determine to, or to determine 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—
- (a) it shall adjourn the proceedings relating to the offence until after it has made those determinations; and
 - (b) if it sends the offender to the Crown Court for trial for one or more related offences, it may then exercise that power.
- s.4A(4) - where the court—
- (a) under subsection (2) above commits the offender to the Crown Court to be dealt with in respect of the offence; and
 - (b) does not state that, in its opinion, it also has power so to commit him under section 3B(2) or, as the case may be, section 3C(2) above,

⁴² As inserted by CJA 2003 Sch.3 para.25, in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 (see art.4) dealing with the effect of the commencement in relation to justice areas which had been combined since the original commencement. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c), 2(2) and 2(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4. The 2013 brought into force the new procedure for all local justice areas and abolished the old committal procedure, see the 2013 order and accompanying explanatory note for further information.

⁴³ This section may only be used where the court has sent the juvenile defendant for trial in relation to some offences, but has to deal with him for other offences for which the court would have the power to impose detention under PCC(S)A 2000 s.91 in respect of which he has indicated a guilty plea

section 5A(1) below shall not apply unless he is convicted before the Crown Court of one or more of the related offences.

- s.4A(5) - where section 5A(1) below does not apply, the Crown Court may 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 the offence.
- s.4A(6) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.4A(7) - Section 4(7) above applies for the purposes of this section as it applies for the purposes of that section.

PCC(S)A 2000 s.5A⁴⁴: Powers of Crown Court on committal under ss.3B, 3C and 4A

- s.5A(1) - where an offender is committed by a magistrates' court for sentence under section 3B, 3C or 4A above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.
- s.5A(2) - in relation to committals under section 4A above, subsection (1) above has effect subject to section 4A(4) and (5) above.

⁴⁴ As inserted by CJA 2003 Sch.3 para.27, (see 2005/950 Sch.1 para.29(c)) in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c), 2(2) and 2(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4. The 2013 order brought into force the new procedure for all local justice areas and abolished the old committal procedure, see the 2013 order and accompanying explanatory note for further information.

2.1.3. Dangerous offenders

PCC(S)A 2000 s.3A⁴⁵: Committal for sentence of dangerous adult offenders

- s.3A(1) - this section applies where on the summary trial of a specified offence triable either way a person aged 18 or over is convicted of the offence.
- s.3A(2) - if, in relation to the offence, it appears to the court that the criteria for the imposition of a sentence under section 226A of the Criminal Justice Act 2003 would be met, the court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 5(1) below.
- s.3A(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.3A(4) - in reaching any decision under or taking any step contemplated by this section—
 - (a) the court shall not be 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); and
 - (b) 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 not consistent with an indication of sentence.
- s.3A(5) - nothing in this section shall prevent the court from committing an offender convicted of a specified offence to the Crown Court for sentence under section 3 above if the provisions of that section are satisfied.
- s.3A(6) - in this section, references to a specified offence are to a specified offence within the meaning of section 224 of the Criminal Justice Act 2003.

PCC(S)A 2000 s.5⁴⁶: Powers of Crown Court on committal under ss.3, 3A and 4

- s.5(1) - where an offender is committed by a magistrates' court for sentence under section 3, 3A or 4 above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.
- s.5(2) - in relation to committals under section 4 above, subsection (1) above has effect subject to section 4(4) and (5) above.

⁴⁵ As inserted by CJA 2003 Sch.3 para.23, in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c) and 2(2). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4

⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.5(3) - 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) shall not apply in respect of any specified offence (within the meaning of section 224 of the Criminal Justice Act 2003)—
- (a) in respect of which the offender is committed under section 3A(2) above; or
 - (b) in respect of which—
 - (i) the offender is committed under section 4(2) above; and
 - (ii) the court states under section 4(4) above that, in its opinion, it also has power to commit the offender under section 3A(2) above.

PCC(S)A 2000 s.3C⁴⁷: Committal for sentence of dangerous young offenders

- s.3C(1) - this section applies where on the summary trial of a specified offence a person aged under 18 is convicted of the offence.
- s.3C(2) - if, in relation to the offence, it appears to the court that the criteria for the imposition of a sentence under section 226B of the Criminal Justice Act 2003 would be met, the court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 5A(1) below.
- s.3C(3) - where the court commits a person under subsection (2) above, section 6 below (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.
- s.3C(4) - nothing in this section shall prevent the court from committing a specified offence to the Crown Court for sentence under section 3B above if the provisions of that section are satisfied.
- s.3C(5) - in this section, references to a specified offence are to a specified offence within the meaning of section 224 of the Criminal Justice Act 2003.

PCC(S)A 2000 s.5A⁴⁸: Powers of Crown Court on committal under ss.3B, 3C and 4A

- s.5A(1) - where an offender is committed by a magistrates' court for sentence under section 3B, 3C or 4A above, the Crown Court shall inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him if he had just been convicted of the offence on indictment before the court.

⁴⁷ As inserted by PCC(S)A 2000 Sch.3 para.23, in force 4 April 2005, 2005/950 Sch.1 para.29(b)

⁴⁸ As inserted by CJA 2003 Sch.3 para.27, (see 2005/950 Sch.1 para.29(c)) in force 18 June 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/1320 arts.4(1)(c), 4(2) and 4(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 18 June 2012, see 2012/1320 art.5. In force 5 November 2012 in certain local justice areas and the Crown Court for certain purposes, 2012/2574 arts.2(1)(c), 2(2), 2(3) and Sch.1 para.1. There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 5 November 2012, see 2012/2574 art.3. There is a transitional provision in 2012/2574 art.4 dealing with the effect of the commencement in relation to justice areas which were combined. In force 28 May 2013 in certain local justice areas and the Crown Court for certain purposes, 2013/1103 arts.2(1)(c), 2(2) and 2(3). There are saving provisions in force in relation to offences for which first appearances etc. were made prior to 28 May 2013, see 2013/1103 art.3. There is a provision which brings to an end the saving provisions in 2012/1320 art.4 and 5(1), 2012/2574 art.2 and 3(1) and 2013/1103 art.2 and 3(1), see 2013/1103 art.4. The 2013 order brought into force the new procedure for all local justice areas and abolished the old committal procedure, see the 2013 order and accompanying explanatory note for further information.

s.5A(2) - in relation to committals under section 4A above, subsection (1) above has effect subject to section 4A(4) and (5) above.

2.1.4. Corporations

See 'Adults' above, specifically PCC(S)A 2000 s.3(5)

2.1.5. Subsidiary (or "related") offences

Note: Where an offender is committed under any of the sections above (or provisions relating to specific sentencing orders) the magistrates' court may commit the offender for other offences which could not be committed under the principal provision.

PCC(S)A 2000 s.6⁴⁹: Committal where defendant committed in respect of another offence

- s.6(1) - this section applies where a magistrates' court ("the committing court") commits a person in custody or on bail to the Crown Court under any enactment mentioned in subsection (4) below to be sentenced or otherwise dealt with in respect of an offence ("the relevant offence").
- s.6(2) - where this section applies and the relevant offence is an indictable offence, the committing court may also commit the offender, in custody or on bail as the case may require, to the Crown Court to be dealt with in respect of any other offence whatsoever in respect of which the committing court has power to deal with him (being an offence of which he has been convicted by that or any other court).
- s.6(3) - where this section applies and the relevant offence is a summary offence, the committing court may commit the offender, in custody or on bail as the case may require, to the Crown Court to be dealt with in respect of—
- (a) any other offence of which the committing court has convicted him, being either—
 - (i) an offence punishable with imprisonment; or
 - (ii) an offence in respect of which the committing court has a power or duty to order him to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences); or
 - (b) any suspended sentence in respect of which the committing court has under paragraph 11(1) of Schedule 12 to the Criminal Justice Act 2003 power to deal with him.
- s.6(4) - the enactments referred to in subsection (1) above are—
- (a) the Vagrancy Act 1824 (incorrigible rogues);
 - (b) sections 3 to 4A above (committal for sentence for offences triable either way);
 - (c) section 13(5) below (conditionally discharged person convicted of further offence);
 - (e) paragraph 11(2) of Schedule 12 to the Criminal Justice Act 2003 (committal to Crown Court where offender convicted during operational period of suspended sentence).

⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

PCC(S)A 2000 s.7⁵⁰: Powers of Crown Court on committal under s.6

- s.7(1) - where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence, the Crown Court may after inquiring into the circumstances of the case deal with him in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.
- s.7(2) - subsection (1) above does not apply where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence, but in such a case the powers under paragraphs 8 and 9 of Schedule 12 to the Criminal Justice Act 2003 (power of court to deal with suspended sentence) shall be exercisable by the Crown Court.
- s.7(3) - without prejudice to subsections (1) and (2) above, where under section 6 above or any enactment mentioned in subsection (4) of that section a magistrates' court commits a person to be dealt with by the Crown Court, any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court shall not be discharged or exercised by that court but shall instead be discharged or may instead be exercisable by the Crown Court.
- 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.

2.1.6. Specific offences or sentencing orders

Adjournment prior to committal

R v Southwark Crown Court ex parte Commissioner of the Metropolis (1984) 6 Cr. App. R. (S.) 304

A court may adjourn for the purpose of obtaining a pre-sentence report prior to committal.⁵¹

Attendance Centre Order, Breach of

PCC(S)A 2000 Sch.5

para.2(1)(c)⁵² - if it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under paragraph 1 above that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) of that paragraph or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b) of that paragraph, that court may deal with him in any one of the following ways—

[...]

⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁵¹ However, it is necessary to consider the case law surrounding "legitimate expectation".

⁵² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (c) where the order was made by the Crown Court, it may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.3(1)⁵³ - where by virtue of paragraph 2(1)(c) above the offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court—

- (a) that he has failed without reasonable excuse to attend as mentioned in paragraph 1(1)(a) above, or
- (b) that he has committed such a breach of rules as is mentioned in paragraph 1(1)(b) above,

that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.

para.3(2) - where the Crown Court deals with an offender under sub-paragraph (1) above, it shall revoke the attendance centre order if it is still in force.

Bail, Failing to surrender

BA 1976 s.6⁵⁴

- s.6(6) - where a magistrates' court convicts a person of an offence under subsection (1) or (2) above the court may, if it thinks—
- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or
- (b) in a case where it sends that person for trial to the Crown Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) above by the court before which he is tried for the other offence,

commit him in custody or on bail to the Crown Court for sentence.

- s.6(7) - a person who is convicted summarily of an offence under subsection (1) or (2) above and is not committed to the Crown Court for sentence shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or to both and a person who is so committed for sentence or is dealt with as for such a contempt shall be liable to imprisonment for a term not exceeding 12 months or to a fine or to both.

Conditional discharge, Breach of⁵⁵

PCC(S)A 2000 s.13⁵⁶: ***Commission of further offence by person conditionally discharged***

PCC(S)A 2000 s.13(5) - if a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—

- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and

⁵³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁵⁴ Commencement: 17 April 1978, 1978/132 art.2

⁵⁵ Where the order is breached by the commission of another offence

⁵⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) if it does so, shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the designated officer by whom the register is kept.

s.13(6) - where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.

Community Order, Breach of (failure to comply with requirement)

CJA 2003 Sch.8⁵⁷

para.9(6) - where a community order was made by the Crown Court and a magistrates' court would (apart from this sub-paragraph) be required to deal with the offender under subparagraph (1)(a), (aa), (b) or (c), it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.10(1) - (1) Where under paragraph 8 or by virtue of paragraph 9(6) an offender appears or is brought before the Crown Court and it is proved to the satisfaction of that court that he has failed without reasonable excuse to comply with any of the requirements of the community order, the Crown Court must deal with him in respect of the failure in any one of the following ways—

- (a) by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could impose if it were then making the order;
- (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
- (b) by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (c) where—
 - (i) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (ii) the offender is aged 18 or over,
 - (iii) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months.

⁵⁷ Commencement: 4 April 2005, except for the purposes specified in 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect for offences committed before 4 April 2005, see 2005/950 Sch.2 para.5(2)(a). The relevant SIs are amended by 2007/391 and 2009/616 but the amendments have since been repealed. They deal with persons aged 16 and 17 and were never commenced.

Community order, Breach of (subsequent conviction)

CJA 2003 Sch.8⁵⁸

para.22(1) - where an offender in respect of whom a community order made by the Crown Court is in force is convicted of an offence by a magistrates' court, the magistrates' court may commit the offender in custody or release him on bail until he can be brought before the Crown Court.

para.22(2) - where the magistrates' court deals with an offender's case under subparagraph (1), it must send to the Crown Court such particulars of the case as may be desirable.

para.23(2) - the Crown Court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

Note: See R. v De Brito [2013] EWCA Crim 1134; [2014] 1 Cr. App. R. (S.) 38 (p.223) for an example of the way in which the committal provisions under the 2000 Act and other provisions conflict.

Confiscation order

POCA 2002 s.70⁵⁹: Committal by magistrates' court

s.70(1) - this section applies if—

- (a) a defendant is convicted of an offence by a magistrates' court, and
- (b) the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order being considered under section 6.

s.70(2) - in such a case the magistrates' court—

- (a) must commit the defendant to the Crown Court in respect of the offence, and
- (b) may commit him to the Crown Court in respect of any other offence falling within subsection (3).

s.70(3) - an offence falls within this subsection if—

- (a) the defendant has been convicted of it by the magistrates' court or any other court, and
- (b) the magistrates' court has power to deal with him in respect of it.

s.70(4) - if a committal is made under this section in respect of an offence or offences—

- (a) section 6 applies accordingly, and
- (b) the committal operates as a committal of the defendant to be dealt with by the Crown Court in accordance with section 71.

⁵⁸ Commencement: 4 April 2005, 2005/950 art.2, Sch.1 para.32 and Sch.2 para.5(2)(a), 2007/391 art.2 (repealed) and 2009/616 art.2 (repealed)

⁵⁹ Commencement: 24 March 2003, 2003/333 art.2 and Sch.1 para.1

s.70(5) - if a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under section 3(2) of the Sentencing Act (offences triable either way) or under section 3B(2) of that Act (committal of child or young person) the court must state whether it would have done so.

s.70(6) - a committal under this section may be in custody or on bail.

POCA 2002 s.6⁶⁰: Making of order

s.6(1) - the Crown Court must proceed under this section if the following two conditions are satisfied.

s.6(2) - the first condition is that a defendant falls within any of the following paragraphs—

- (a) he is convicted of an offence or offences in proceedings before the Crown Court;
- (b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 3A, 3B, 3C, 4, 4A or 6 of the Sentencing Act;
- (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).

s.6(3) - the second condition is that—

- (a) the prosecutor asks the court to proceed under this section, or
- (b) the court believes it is appropriate for it to do so.

s.6(4) - the court must proceed as follows—

- (a) it must decide whether the defendant has a criminal lifestyle;
- (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
- (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

s.6(5) - if the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

- (a) decide the recoverable amount, and
- (b) make an order (a confiscation order) requiring him to pay that amount.

s.6(6) - but the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.

s.6(6A) - the court must also treat the duty in subsection (5) as a power if—

- (a) an order has been made, or it believes an order may be made, against the defendant under section 4 (criminal unlawful profit orders) of the Prevention of Social Housing Fraud Act 2013 in respect of profit made by the defendant in connection with the conduct, or

⁶⁰ Commencement: 24 March 2003, 2003/333 art.2 and Sch.1 para.1

- (b) it believes that a person has at any time started or intends to start proceedings against the defendant under section 5 (civil unlawful profit orders) of that Act in respect of such profit.

s.6(7) - the court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

s.6(8) - the first condition is not satisfied if the defendant absconds (but section 27 may apply).

- (9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2)

POCA 2002 s.71⁶¹: Sentencing by Crown Court

s.71(1) - if a defendant is committed to the Crown Court under section 70 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 6).

s.71(2) - in the case of an offence in respect of which the magistrates' court has stated under section 70(5) that it would have committed the defendant for sentence, the Crown Court—

- (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.

s.71(3) - in the case of any other offence the Crown Court—

- (a) must inquire into the circumstances of the case, and
- (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

Disqualification from driving (interim)

RTOA 1988 s.26⁶²: Interim disqualification

s.26(1) - where a magistrates' court—

- (a) commits an offender to the Crown Court under section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 or any enactment mentioned in subsection (4) of that section, or
- (b) remits an offender to another magistrates' court under section 10 of that Act, to be dealt with for an offence involving obligatory or discretionary disqualification, it may order him to be disqualified until he has been dealt with in respect of the offence.

⁶¹ Commencement: 24 March 2003, 2003/333 art.2 and Sch.1 para.1

⁶² Commencement: 15 May 1989, RTOA 1988 s.99(2).

Restriction order, Committal for

MHA 1983 s.43⁶³: Power of magistrates' courts to commit for restriction order

- s.43(1) - if in the case of a person of or over the age of 14 years who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment—
- (a) the conditions which under section 37(1) above are required to be satisfied for the making of a hospital order are satisfied in respect of the offender; but
 - (b) it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that if a hospital order is made a restriction order should also be made, the court may, instead of making a hospital order or dealing with him in any other manner, commit him in custody to the Crown Court to be dealt with in respect of the offence.
- s.43(2) - where an offender is committed to the Crown Court under this section, the Crown Court shall inquire into the circumstances of the case and may—
- (a) if that court would have power so to do under the foregoing provisions of this Part of this Act upon the conviction of the offender before that court of such an offence as is described in section 37(1) above, make a hospital order in his case, with or without a restriction order;
 - (b) if the court does not make such an order, deal with the offender in any other manner in which the magistrates' court might have dealt with him.
- s.43(3) - the Crown Court shall have the same power to make orders under sections 35, 36 and 38 above in the case of a person committed to the court under this section as the Crown Court has under those sections in the case of an accused person within the meaning of section 35 or 36 above or of a person convicted before that court as mentioned in section 38 above.
- s.43(4) - the powers of a magistrates' court under section 3 or 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (which enable such a court to commit an offender to the Crown Court where the court is of the opinion, or it appears to the court, as mentioned in the section in question) shall also be exercisable by a magistrates' court where it is of that opinion (or it so appears to it) unless a hospital order is made in the offender's case with a restriction order.
- s.43(5) - the power of the Crown Court to make a hospital order, with or without a restriction order, in the case of a person convicted before that court of an offence may, in the same circumstances and subject to the same conditions, be exercised by such a court in the case of a person committed to the court under section 5 of the Vagrancy Act 1824 (which provides for the committal to the Crown Court of persons who are incorrigible rogues within the meaning of that section).

⁶³ Commencement: 30 September 1983, MHA 1983 s.149(2)

Hospital where court has committed to Crown Court for Restriction order, Admission to⁶⁴

MHA 1983 s.44⁶⁵: Committal to hospital under s. 43

- s.44(1) - where an offender is committed under section 43(1) above and the magistrates' court by which he is committed is satisfied on written or oral evidence that arrangements have been made for the admission of the offender to a hospital in the event of an order being made under this section, the court may, instead of committing him in custody, by order direct him to be admitted to that hospital, specifying it, and to be detained there until the case is disposed of by the Crown Court, and may give such directions as it thinks fit for his production from the hospital to attend the Crown Court by which his case is to be dealt with.
- s.44(2) - the evidence required by subsection (1) above shall be given by the approved clinician who would have overall responsibility for the offender's case or by some other person representing the managers of the hospital in question.
- s.44(3) - the power to give directions under section 37(4) above, section 37(5) above and section 40(1) above shall apply in relation to an order under this section as they apply in relation to a hospital order, but as if references to the period of 28 days mentioned in section 40(1) above were omitted; and subject as aforesaid an order under this section shall, until the offender's case is disposed of by the Crown Court, have the same effect as a hospital order together with a restriction order

Incorrigible rogues

VA 1824 s.5⁶⁶: Who shall be deemed incorrigible rogues

- s.5 - every person committing any offence against this Act which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be, and duly convicted thereof; shall, subject to section 70 of the Criminal Justice Act 1982, be deemed an incorrigible rogue within the true intent and meaning of this Act; and, subject to section 70 of the Criminal Justice Act 1982, it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the Crown Court, either in custody or on bail.

Suspended Sentence Order, Breach of

CJA 2003 Sch.12⁶⁷

para.8(1) - this paragraph applies where—

- (a) it is proved to the satisfaction of a court before which an offender appears or is brought under paragraph 6 or 7 or by virtue of section 192(6) that he has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order, or
- (b) an offender is convicted of an offence committed during the operational period of a suspended sentence (other than one which has already taken effect) and either—

⁶⁴ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶⁵ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶⁶ Commencement: 21 June 1824

⁶⁷ Commencement: 4 April 2005, 2005/950 art.2, Sch.1 para.34 and Sch.2 para.5. The commencement is of no effect in relation to offences committed before 4 April 2005.

- (i) he is so convicted by or before a court having power under paragraph 11 to deal with him in respect of the suspended sentence, or
- (ii) he subsequently appears or is brought before such a court.

para.8(2) - the court must consider his case and deal with him in one of the following ways—

- (a) the court may order that the suspended sentence is to take effect with its original term unaltered,
- (b) the court may order that the sentence is to take effect with the substitution for the original term of a lesser term,
- (ba) the court may order the offender to pay a fine of an amount not exceeding £2,500,
- (c) in the case of a suspended sentence order that imposes one or more community requirements, the court may amend the order by doing any one or more of the following—
 - (i) imposing more onerous community requirements which the court could include if it were then making the order,
 - (ii) subject to subsections (3) and (4) of section 189, extending the supervision period, or
 - (iii) subject to subsection (3) of that section, extending the operational period,
- (d) in the case of a suspended sentence order that does not impose any community requirements, the court may, subject to section 189(3), amend the order by extending the operational period.⁶⁸

para.8(6) - where a suspended sentence order was made by the Crown Court and a magistrates' court would (apart from this sub-paragraph) be required to deal with the offender under sub-paragraph (2)(a), (b), (ba) or (c) it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.8(7) - a magistrates' court which deals with an offender's case under subparagraph (6) must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the community requirements of the suspended sentence order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

para.11(2) - where an offender is convicted by a magistrates' court of any offence and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court—

- (a) the court may, if it thinks fit, commit him in custody or on bail to the Crown Court, and
- (b) if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court.

⁶⁸ The subsequent provisions of para.8 and para.10 contain, inter alia, supplementary provisions concerning the sentencing powers of the court. These powers are not dealt with here, in the committals section, and are instead dealt with in the Suspended Sentence Order section below.

PCC(S)A 2000 s.7⁶⁹:

s.7(2) - subsection (1) above does not apply where under section 6 above a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence, but in such a case the powers under paragraphs 8 and 9 of Schedule 12 to the Criminal Justice Act 2003 (power of court to deal with suspended sentence) shall be exercisable by the Crown Court.⁷⁰

Youth Rehabilitation Order, Breach of

CJIA 2008 Sch.2⁷¹

para.7(1) - sub-paragraph (2) applies if—

- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (b) a youth court or other magistrates' court would (apart from that subparagraph) be required, or has the power, to deal with the offender in one of the ways mentioned in paragraph 6(2).

para.7(2) - the court may instead—

- (a) commit the offender in custody, or
- (b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

para.7(3) - where a court deals with the offender's case under sub-paragraph (2) it must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation order in the respect specified in the certificate, and

- (b) such other particulars of the case as may be desirable;

and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

para.8(1) - this paragraph applies where—

- (a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 7(2), and
- (b) it is proved to the satisfaction of that court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.

(2) The Crown Court may deal with the offender in respect of that failure in any one of the following ways—

- (a) by ordering the offender to pay a fine of an amount not exceeding £2,500,
- (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—

⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰ For an example of the complications which can arise with committals and related offences, see *R. v Bateman* [2012] EWCA Crim 2518; [2013] 2 Cr. App. R. (S.) 26 (p.174). The case also explains the rationale for the different provisions.

⁷¹ Commencement: 30 November 2009, 2009/3074 art.2(n)

- (i) in addition to, or
- (ii) in substitution for,

any requirement or requirements already imposed by the order;

- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.

para.8(12) - the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).

para.8(13) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,

the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).

para.8(14) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of paragraph 6(13) or sub-paragraph (12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,

for the purposes of dealing with the offender under sub-paragraph (2)(c), the Crown Court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

2.1.7. Remitting juvenile for sentence

PCC(S)A 2000 s.8⁷²: Power and duty to remit young offender to youth court for sentence

s.8(1) - subsection (2) below applies where a child or young person (that is to say, any person aged under 18) is convicted by or before any court of an offence other than homicide.

s.8(2) - the court may and, if it is not a youth court, shall unless satisfied that it would be undesirable to do so, remit the case—

- (a) if the offender was sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, to a youth court acting for the place where he was sent to the Crown Court for trial;
- (b) in any other case, to a youth court acting either for the same place as the remitting court or for the place where the offender habitually resides;

but in relation to a magistrates' court other than a youth court this subsection has effect subject to subsection (6) below.

s.8(3) - where a case is remitted under subsection (2) above, the offender shall be brought before a youth court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and convicted by that court.

⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.8(4) - a court by which an order remitting a case to a youth court is made under subsection (2) above—
- (a) 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 with respect to the custody of the offender or for his release on bail until he can be brought before the youth court; and
 - (b) shall cause to be transmitted to the designated officer for the youth court a certificate setting out the nature of the offence and stating—
 - (i) that the offender has been convicted of the offence; and
 - (ii) that the case has been remitted for the purpose of being dealt with under the preceding provisions of this section.
- s.8(5) - where a case is remitted under subsection (2) above, the offender shall have no right of appeal against the order of remission, but shall have the same right of appeal against any order of the court to which the case is remitted as if he had been convicted by that court.
- s.8(6) - without prejudice to the power to remit any case to a youth court which is conferred on a magistrates' court other than a youth court by subsections (1) and (2) above, where such a magistrates' court convicts a child or young person of an offence it must exercise that power unless the case falls within subsection (7) or (8) below.
- s.8(7) - the case falls within this subsection if the court would, were it not so to remit the case, be required by section 16(2) below to refer the offender to a youth offender panel (in which event the court may, but need not, so remit the case).
- s.8(8) - the case falls within this subsection if it does not fall within subsection (7) above but the court is of the opinion that the case is one which can properly be dealt with by means of—
- (a) an order discharging the offender absolutely or conditionally, or
 - (b) an order for the payment of a fine, or
 - (c) an order (under section 150 below) requiring the offender's parent or guardian to enter into a recognizance to take proper care of him and exercise proper control over him,
- with or without any other order that the court has power to make when absolutely or conditionally discharging an offender.
- s.8(9) - in subsection (8) above "*care*" and "*control*" shall be construed in accordance with section 150(11) below.
- s.8(10) - a document purporting to be a copy of an order made by a court under this section shall, if it purports to be certified as a true copy by the designated officer for the court, be evidence of the order.

PCC(S)A 2000 s.9⁷³: Power of youth court to remit offender who attains age of 18 to magistrates' court other than youth court for sentence

- s.9(1) - where a person who appears or is brought before a youth court charged with an offence subsequently attains the age of 18, the youth court may, at any time after conviction and before sentence, remit him for sentence to a magistrates' court (other than a youth court).
- s.9(2) - where an offender is remitted under subsection (1) above, the youth court shall adjourn proceedings in relation to the offence, and—
- (a) section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) and all other enactments, whenever passed, relating to remand or the granting of bail in criminal proceedings shall have effect, in relation to the youth 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 court to which he is being remitted; and
 - (b) subject to subsection (3) below, the court to which the offender is remitted ("the other court") may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the offence which took place before the youth court had taken place before the other court.
- s.9(3) - where an offender is remitted under subsection (1) above, section 8(6) above (duty of adult magistrates' court to remit young offenders to youth court for sentence) shall not apply to the court to which he is remitted.
- s.9(4) - where an offender is remitted under subsection (1) above he shall have no right of appeal against the order of remission (but without prejudice to any right of appeal against an order made in respect of the offence by the court to which he is remitted).
- s.9(5) - in this section—
- (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.

PCC(S)A 2000 s.10⁷⁴: Power of magistrates' court to remit case to another magistrates' court for sentence

- s.10(1) - where a person aged 18 or over ("the offender") has been convicted by a magistrates' court ("the convicting court") of an offence to which this section applies ("the instant offence") and—
- (a) it appears to the convicting court that some other magistrates' court ("the other court") has convicted him of another such offence in respect of which the other court has neither passed sentence on him nor committed him to the Crown Court for sentence nor dealt with him in any other way, and
 - (b) the other court consents to his being remitted under this section to the other court,
- the convicting court may remit him to the other court to be dealt with in respect of the instant offence by the other court instead of by the convicting court.

⁷³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.10(2) - this section applies to—
- (a) any offence punishable with imprisonment; and
 - (b) any offence in respect of which the convicting 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).
- s.10(3) - where the convicting court remits the offender to the other court under this section, it shall adjourn the trial of the information charging him with the instant offence, and—
- (a) section 128 of the Magistrates' Court Act 1980 (remand in custody or on bail) and all other enactments, whenever passed, relating to remand or the granting of bail in criminal proceedings shall have effect, in relation to the convicting 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 court to which he is being remitted; and
 - (b) subject to subsection (7) below, the other court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the instant offence which took place before the convicting court had taken place before the other court.
- s.10(4) - the power conferred on the other court by subsection (3)(b) above includes, where applicable, the power to remit the offender under this section to another magistrates' court in respect of the instant offence.
- s.10(5) - where the convicting court has remitted the offender under this section to the other court, the other court may remit him back to the convicting court; and the provisions of subsections (3) and (4) above (so far as applicable) shall apply with the necessary modifications in relation to any remission under this subsection.
- s.10(6) - the offender, if remitted under this section, shall have no right of appeal against the order of remission (but without prejudice to any right of appeal against any other order made in respect of the instant offence by the court to which he is remitted).
- s.10(7) - nothing in this section shall preclude the convicting court from making any order which it has power to make under section 148 below (restitution orders) by virtue of the offender's conviction of the instant offence.
- s.10(8) - in this section—
- (a) "*conviction*" includes a finding under section 11(1) below (remand for medical examination) that the person in question did the act or made the omission charged, and "*convicted*" shall be construed accordingly;
 - (b) "*enactment*" includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act; and
 - (c) "*bail in criminal proceedings*" has the same meaning as in the Bail Act 1976.

2.1.8. Common law rules/principles concerning committals/remission for sentence

2.1.8.1. Committals

Magistrates' Court

Where a magistrates' court has accepted jurisdiction to summarily try an either-way offence, there is an unfettered discretion to commit to Crown Court where it subsequently considers that the offence(s) require(s) greater punishment.⁷⁵

MCA 1980 s 20: Procedure where summary trial appears more suitable

- s.20(2) The court shall explain to the accused in ordinary language—
- (a) that it appears to the court more suitable for him to be tried summarily for the offence;
 - (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and
 - (c) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 3 or (if applicable) section 3A of the Powers of Criminal Courts (Sentencing) Act 2000 if the court is of such opinion as is mentioned in subsection (2) of the applicable section.

Having adjourned sentence, indicating that the offender will not be committed for sentence, the court may not thereafter commit for sentence absent a change in relevant circumstances.⁷⁶

Having committed for sentence, a magistrates' court may not exercise the powers of a sentencing court, save for imposing a driving disqualification.⁷⁷

A court which adjourns a case after conviction to obtain a PSR is not prevented from committing the defendant for sentence.⁷⁸

A magistrates' court may commit a defendant for sentence if it considers its power to impose a financial penalty is insufficient to deal with the offence.⁷⁹

Invalid committals: where a committal has been made under the appropriate section, but the memorandum of conviction records the provision(s) incorrectly, the committal is not invalid.⁸⁰

⁷⁵ *R. v Dover Magistrates' Court, ex p. Pamment* (1994) 15 Cr. App. R. (S.) 778, cited with approval in *R. v Lawson* [2001] EWCA Crim 691.

⁷⁶ *R. v Nottingham Magistrates' Court, ex p. Davidson* [2000] 1 Cr. App. R. (S.) 167 (LCJ)

⁷⁷ *R. v Brogan* (1975) 60 Cr. App. R. 279; on the particular facts, the court held it was inappropriate for the committing court to impose a compensation order.

⁷⁸ *R. v Southwark Crown Court Ex p. Commissioner of Police for the Metropolis* (1984) 6 Cr. App. R. (S.) 304, however, where a legitimate expectation of a non-custodial sentence is held by the defendant, the Crown Court should not impose a custodial sentence, see *R. v Rennes* (1985) 7 Cr. App. R. (S.) 343. Other case law in relation to legitimate expectations will be relevant to this point.

⁷⁹ *R. v North Essex Justices ex parte Lloyd* [2001] 2 Cr.App.R.(S.) 15 (LCJ)

⁸⁰ *R. v Ayhan* [2011] EWCA Crim 3184; [2012] 2 Cr. App. R. (S.) 37 (p.207) (LCJ)

Crown Court

Where an offender who appears before a magistrates' court and ask for offences to be taken into consideration is thereafter committed for sentence, there is no obligation to ask for those offences to be taken into consideration by the Crown Court, and the sentencer in the Crown Court should follow the normal procedure for taking offences into consideration as in the case of a conviction on indictment.⁸¹

Where it appears to the Crown Court that a defendant is not guilty of the offences in respect of which he has indicated an intention to plead guilty before the magistrates' court, the Crown Court may allow him to change his plea and remit the case to the magistrates' court.⁸²

When an offender appears before the Crown Court for sentence following a committal for sentence, formal evidence of identity and conviction should be given; it is not sufficient to rely on the offender's own admission.⁸³

2.1.8.2. Remission

Where a juvenile is found guilty of an offence before the Crown Court, it will normally be appropriate for the Crown Court to deal with the juvenile without remitting him to a youth court.⁸⁴

Before dealing with an offender who has been committed for sentence, the Crown Court should ascertain whether an appeal against his conviction is pending.⁸⁵ However, the fact that the Crown Court has imposed sentence following a committal does not deprive it of power to hear an appeal subsequently.⁸⁶

Where a person who has been convicted by a magistrates' court appeals to the Crown Court, the Crown Court may not in the exercise of its power as an appellate court commit the appellant to the Crown Court for sentence.⁸⁷

⁸¹ *R. v Davies* (1980) 2 Cr. App. R. (S.) 364

⁸² *R. v Isleworth Crown Court and Uxbridge Magistrates' Court Ex p. Buda* [2000] 1 Cr. App. R. (S.) 538

⁸³ *R. v Jefferies* Unreported, 24 May 1963, see Current Sentencing Practice L12-4A

⁸⁴ *R. v Lewis* (1984) 6 Cr. App. R. (S.) 44. This was cited, with tacit approval of the principles, in *R. v Gaskell* [2006] EWCA Crim 2938.

⁸⁵ *R. v Faithful* (1950) 34 Cr. App. R. 220

⁸⁶ *R. v Croydon Crown Court Ex p. Bernard* (1980) 2 Cr. App. R. (S.) 144

⁸⁷ *R. v Bullock* (1963) 47 Cr. App. R. 288

2.2 Advance indication of sentence

2.2.1. Goodyear indications

Note: The procedure is not available in the magistrates' court.

The right to ask for an indication

R. v Goodyear [2005] EWCA Crim 888; [2006] 1 Cr. App. R. (S.) 6 (p.23) at [53]-[78]

“Guidelines

- 53 The objective of these guidelines is to ensure common process and continuing safeguards against the creation or appearance of judicial pressure on the defendant. The potential advantages include, first and foremost, that the defendant himself would make a better informed decision whether to plead, or not. Experience tends to suggest that this would result in an increased number of early guilty pleas, with a consequent reduction in the number of trials, and the number of cases which are listed for trial, and then, to use current language, “crack” at the last minute, usually at considerable inconvenience to those involved in the intended trial, and in particular, victims and witnesses. Properly applied, too, there may be a reduced number of sentences to be considered by the Attorney General, and where appropriate, referred to this court as unduly lenient. In short, an increase in the efficient administration of justice will not impinge on the defendant’s entitlement to tender a voluntary plea.
- 54 In our judgment, any advance indication of sentence to be given by the judge should normally be confined to the maximum sentence if a plea of guilty were tendered at the stage at which the indication is sought. In essence we accept the recommendation of the Report of the Royal Commission that the judge should treat the request for a sentence indication, in whatever form it reaches him, as if he were being asked to indicate the maximum sentence on the defendant at that stage. For the process to go further, and the judge to indicate his view of the maximum possible level of sentence following conviction by the jury, as well as its level after a plea of guilty, would have two specific disadvantages. First, by definition, the judge could not be sufficiently informed of the likely impact of the trial on him (or the trial judge) in the sentencing context. It would be unwise for him to bind himself to any indication of the sentence after a trial in advance of it, in effect on a hypothetical basis. If he were to do so, to cover all eventualities he would probably have to indicate a very substantial possible maximum sentence. This would lead to a second problem, arising from the comparison between the two alternatives available to the defendant, that is the maximum level after a trial, and the maximum level following an immediate plea. With some defendants at any rate, the very process of comparing the two alternatives would create pressure to tender a guilty plea.

The judge

- 55 The judge should not give an advance indication of sentence unless one has been sought by the defendant.
- 56 He remains entitled, if he sees fit, to exercise the power recognised in Turner [1970] 2 QB 321 to indicate that the sentence, or type of sentence, on the defendant would be the same, whether the case proceeded as a plea of guilty or went to trial, with a resulting conviction. Nowadays, given the guidance published by the Sentencing Guidelines Council on the credit to be given for a guilty plea, this would be unusual. He is also entitled in an appropriate case to remind the defence advocate that the defendant is entitled to seek an advance indication of sentence.

- 57 In whatever circumstances an advance indication of sentence is sought, the judge retains an unfettered discretion to refuse to give one. It may indeed be inappropriate for him to give any indication at all. For example, he may consider that for a variety of reasons the defendant is already under pressure (perhaps from a co-accused), or vulnerable, and that to give the requested indication, even in answer to a request, may create additional pressure. Similarly, he may be troubled that the particular defendant may not fully have appreciated that he should not plead guilty unless in fact he is guilty. Again, the judge may believe that if he were to give a sentence indication at the stage when it is sought, he would not properly be able to judge the true culpability of the defendant, or the differing levels of responsibility between defendants. In a case involving a number of defendants, he may be concerned that an indication given to one defendant who seeks it, may itself create pressure on another defendant. Yet again, the judge may consider that the application is no less than a “try on” by a defendant who intends or would be likely to plead guilty in any event, seeking to take a tactical advantage of the changed process envisaged in this judgment. If so, he would probably refuse to say anything at all, and indeed, a guilty plea tendered after such tactical manoeuvrings may strike the judge as a plea tendered later than the first reasonable opportunity for doing so, with a consequent reduction in the discount for the guilty plea.
- 58 Just as the judge may refuse to give an indication, he may reserve his position until such time as he feels able to give one, for example, until a pre-sentence report is available. There will be occasions when experience will remind him that in some cases the psychiatric or other reports may provide valuable insight into the level of risk posed by the defendant, and if so, he may justifiably feel disinclined to give an indication at the stage when it is sought. Another problem may simply be that the judge is not sufficiently familiar with the case to give an informed indication, and if so, he may defer doing so until he is.
- 59 In short, the judge may refuse altogether to give an indication, or may postpone doing so. He may or may not give reasons. In many cases involving an outright refusal, he would probably conclude that it would be inappropriate to give his reasons. If he has in mind to defer an indication, the probability is that he would explain his reasons, and further indicate the circumstances in which, and when, he would be prepared to respond to a request for a sentence indication.
- 60 If at any stage the judge refuses to give an indication (as opposed to deferring it) it remains open to the defendant to seek a further indication at a later stage. However once the judge has refused to give an indication, he should not normally initiate the process, except, where it arises, to indicate that the circumstances had changed sufficiently for him to be prepared to consider a renewed application for an indication.
- 61 Once an indication has been given, it is binding and remains binding on the judge who has given it, and it also binds any other judge who becomes responsible for the case. In principle, the judge who has given an indication should, where possible, deal with the case immediately, and if that is not possible, any subsequent hearings should be listed before him. This cannot always apply. We recognise that a new judge has his own sentencing responsibilities, but judicial comity as well as the expectation aroused in a defendant that he will not receive a sentence in excess of whatever the first judge indicated, requires that a later sentencing judge should not exceed the earlier indication. If, after a reasonable opportunity to consider his position in the light of the indication, the defendant does not plead guilty, the indication will cease to have effect. In straightforward cases, once an indication has been sought and given, we do not anticipate an adjournment for the plea to be taken on another day.
- 62 Later in this judgment we will deal with the obligations of the defence and the prosecution, and to the extent that they may be relevant to the judge’s decision, they should be applied. For example, an indication should not be sought on a basis of

hypothetical facts. Where appropriate, there must be an agreed, written basis of plea. Unless there is, the judge should refuse to give an indication: otherwise he may become inappropriately involved in negotiations about the acceptance of pleas, and any agreed basis of plea.

The defence

- 63 Subject to the judge's power to give an appropriate reminder to the advocate for the defendant (para 51) the process of seeking a sentence indication should normally be started by the defendant.
- 64 Whether or not the judge has given an appropriate reminder, the defendant's advocate should not seek an indication without written authority, signed by his client, that he, the client wishes to seek an indication.
- 65 The advocate is personally responsible for ensuring that his client fully appreciates that:
- (a) he should not plead guilty unless he is guilty;
 - (b) any sentence indication given by the judge remains subject to the entitlement of the Attorney General (where it arises) to refer an unduly lenient sentence to the Court of Appeal;
 - (c) any indication given by the judge reflects the situation at the time when it is given, and that if a "guilty plea" is not tendered in the light of that indication the indication ceases to have effect;
 - (d) any indication which may be given relates only to the matters about which an indication is sought. Thus, certain steps, like confiscation proceedings, follow automatically, and the judge cannot dispense with them, nor, by giving an indication of sentence, create an expectation that they will be dispensed with.
- 66 An indication should not be sought while there is any uncertainty between the prosecution and the defence about an acceptable plea or pleas to the indictment, or any factual basis relating to the plea. Any agreed basis should be reduced into writing before an indication is sought. Where there is a dispute about a particular fact which counsel for the defendant believes to be effectively immaterial to the sentencing decision, the difference should be recorded, so that the judge can make up his own mind.
- 67 The judge should never be invited to give an indication on the basis of what would be, or what would appear to be a "plea bargain". He should not be asked or become involved in discussions linking the acceptability to the prosecution of a plea or basis of plea, and the sentence which may be imposed. He is not conducting nor involving himself in any plea bargaining. In short, he is not to be asked to indicate levels of sentence which he may have in mind depending on possible different pleas. Thus, for example, he should refuse to give an indication based on the possibility that the defendant might plead guilty to section 18, alternatively section 20, alternatively section 47 of the Offences against the Person Act 1861 (24 & 25 Vict c 100).
- 68 In the unusual event that the defendant is unrepresented, he would be entitled to seek a sentence indication of his own initiative. There would be difficulties in either the judge or prosecuting counsel taking any initiative, and informing an unrepresented defendant of this right. That might too readily be interpreted as or subsequently argued to have been improper pressure.

The prosecution

- 69 As the request for an indication comes from the defence, the prosecution is obliged to react, rather than initiate the process. This presented no problem in the days before *R v Turner* [1970] 2 QB 321, when the common understanding, universally applied, was that the prosecution did not, indeed was obliged not to involve itself in or appeal against a sentencing decision. None of that continues to apply.
- 70 We must expressly identify a number of specific matters for which the advocate for the prosecution is responsible.
- (a) If there is no final agreement about the plea to the indictment, or the basis of plea, and the defence nevertheless proceeds to seek an indication, which the judge appears minded to give, prosecuting counsel should remind him of this guidance, that normally speaking an indication of sentence should not be given until the basis of the plea has been agreed, or the judge has concluded that he can properly deal with the case without the need for a *Newton* hearing (*R v Newton* (1982) 77 Cr App R 13).
 - (b) If an indication is sought, the prosecution should normally inquire whether the judge is in possession of or has had access to all the evidence relied on by the prosecution, including any personal impact statement from the victim of the crime, as well as any information of relevant previous convictions recorded against the defendant.
 - (c) If the process has been properly followed, it should not normally be necessary for counsel for the prosecution, before the judge gives any indication, to do more than, first, draw the judge's attention to any minimum or mandatory statutory sentencing requirements, and where he would be expected to offer the judge assistance with relevant guideline cases, or the views of the Sentencing Guidelines Council, to invite the judge to allow him to do so, and second, where it applies, to remind the judge that the position of the Attorney General to refer any eventual sentencing decision as unduly lenient is not affected.
 - (d) In any event, counsel should not say anything which may create the impression that the sentence indication has the support or approval of the Crown.

Section 36 of the Criminal Justice Act 1988

- 71 We have reflected on the possible impact of these changes on the exercise by the Attorney General of his responsibilities to refer unduly lenient sentences to this court, in the light of further submissions received in writing from counsel for the prosecution after the conclusion of the hearing. We do not envisage a process by which the judge should give some kind of preliminary indication, leading to comments on it by counsel for the Crown, with the judge then reconsidering his indication, and perhaps raising it to a higher level, with counsel for the defendant then making further submissions to persuade the judge, after all, to reduce his indication. If nothing else, such a process would smack of precisely the kind of bargaining process which should be avoided. In our judgment, if counsel for the prosecution has addressed his responsibilities in accordance with the previous paragraph, the discretion of the Attorney General to refer a sentence would be wholly unaffected by the advance sentence indication process. Of course, if a sentence indication has been given in accordance with these guidelines, before referring the eventual sentencing decision to this court, the Attorney General's decision would no doubt reflect that the defendant had indeed pleaded guilty in response to the sentence indication, properly sought from and given by the judge. As we have explained, we do not anticipate that counsel for the Crown will have said or done anything which may indicate or convey support for or approval of the sentence indication. If however he has done so, the question whether the sentence should nevertheless be referred to this court as unduly lenient, and the decision of the court

whether to interfere with and increase it, will be examined on a case by case basis, in the light of everything said and done by counsel for the Crown.

Appeal against sentence

72 We have expressly dealt with the position of the Attorney General if, in the event, an unduly lenient sentence is imposed. The defendant's entitlement to apply for leave to appeal against sentence if, for example, insufficient allowance has been made for matters of genuine mitigation, is similarly unaffected.

Process

73 We anticipate that any sentence indication would normally be sought at the plea and case management hearing. In cases "sent" to the Crown Court under section 51 of the Crime and Disorder Act 1998, or transferred under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991, this is usually the first opportunity for the defendant to plead guilty and therefore the moment when the maximum discount for the guilty plea will be available to the defendant. For victims and witnesses, too, there is a huge advantage in the earliest possible conclusion to the case. That said, as the judgment makes clear, we do not rule out the entitlement of a defendant to seek an indication at a later stage, or even, in what we know would be a rare case, during the course of the trial itself.

74 The judge is most unlikely to be able to give an indication, even if it is sought, in complicated or difficult cases, unless issues between the prosecution and the defence have been addressed and resolved. Therefore in such cases, no less than seven days' notice in writing of an intention to seek an indication should normally be given in writing to the prosecution, and the court. If an application is made without notice when it should have been given, the judge may conclude that any inevitable adjournment should have been avoided and that the discount for the guilty plea should be reduced accordingly. It may be that in due course the Criminal Procedure Rules Committee will wish to consider the question of notice, and its length, and indeed whether either of the relevant case progression forms should be amended.

75 The hearing should normally take place in open court, with a full recording of the entire proceedings, and both sides represented, in the defendant's presence.

76 As already indicated, in cases of any complexity or difficulty, proper notice should be given to the Crown that a sentence indication will be sought. The fact that notice has been given, and any reference to a request for a sentence indication, or the circumstances in which it was sought, would be inadmissible in any subsequent trial.

77 If the process we envisage is properly followed, there should be very little need for the judge to involve himself in the discussions with the advocates, although obviously he may wish to seek better information on any aspect of the case which is troubling him. We do not anticipate an opening by the Crown, or a mitigation plea by the defence. That must be postponed until after the defendant has pleaded guilty. Generally speaking, we assume that the process will be very short, the judge bearing in mind that the defendant and the public are present, and that he (the judge) may be the trial judge, and that he is simply deciding whether to respond, and if so how, to a request that he give an indication of the maximum sentence he would pass if the defendant pleaded guilty at that stage. The fact that the case may yet proceed as a trial, and that if it does so, no reference may be made to the request for a sentence indication, leads to the conclusion that reporting restrictions should normally be imposed, to be lifted if and when the defendant pleads or is found guilty.

Magistrates' court

78 In our judgment it would be impracticable for these new arrangements to be extended to proceedings in the magistrates' court. We are not at present satisfied that an advance sentence indication can readily be applied to and processed there. We believe that it would be better for the new arrangements in the Crown Court to settle in for some time before considering whether and, if so how, similar arrangements can be made in the context of summary trials. Accordingly, for the time being, the magistrates should confine themselves to the statutory arrangements in Schedule 3 to the 2003 Act."

Criminal Practice Directions 2015 VII Sentencing C.1

C.1 Prior to pleading guilty, it is open to a defendant in the Crown Court to request from the judge an indication of the maximum sentence that would be imposed if a guilty plea were to be tendered at that stage in the proceedings, in accordance with the guidance in *R v Goodyear* [2005] EWCA Crim 888, [2005] 1 W.L.R. 2532, [2005] 2 Cr. App. R. 20. The defence should notify the court and the prosecution of the intention to seek an indication in advance of any hearing.

C.2 Attention is drawn to the guidance set out in paragraphs 53 and following of *R v Goodyear*. The objective of the *Goodyear* guidelines is to safeguard against the creation or appearance of judicial pressure on a defendant. Any advance indication given should be the maximum sentence if a guilty plea were to be tendered at that stage of the proceedings only; the judge should not indicate the maximum possible sentence following conviction by a jury after trial. The judge should only give a *Goodyear* indication if one is requested by the defendant, although the judge can, in an appropriate case, remind the defence advocate of the defendant's entitlement to seek an advance indication of sentence.

C.3 Whether to give a *Goodyear* indication, and whether to give reasons for a refusal, is a matter for the discretion of the judge, to be exercised in accordance with the principles outlined by the Court of Appeal in that case. Such indications should normally not be given if there is a dispute as to the basis of plea unless the judge concludes that he or she can properly deal with the case without the need for a *Newton* hearing. If there is a basis of plea agreed by the prosecution and defence, it must be reduced into writing and a copy provided to the judge. As always, any basis of plea will be subject to the approval of the court. In cases where a dispute arises, the procedure in *R v Underwood* should be followed prior to the court considering a sentence indication further, as set out above. The judge should not become involved in negotiations about the acceptance of pleas or any agreed basis of plea, nor should a request be made for an indication of the different sentences that might be imposed if various different pleas were to be offered.

C.4 There should be no prosecution opening nor should the judge hear mitigation. However, during the sentence indication process the prosecution advocate is expected to assist the court by ensuring that the court has received all of the prosecution evidence, any statement from the victim about the impact of the offence, and any relevant previous convictions. Further, where appropriate, the prosecution should provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court requires.

C.5 Attention is drawn to paragraph 70(d) of *Goodyear* which emphasises that the prosecution "should not say anything which may create the impression that the sentence indication has the support or approval of the Crown." This prohibition against the Crown indicating its approval of a particular sentence applies in all circumstances

when a defendant is being sentenced, including when joint sentencing submissions are made.

- C.6 An indication, once given, is, save in exceptional circumstances (such as arose in *R v Newman* [2010] EWCA Crim 1566, [2011] 1 Cr. App. R. (S.) 68), binding on the judge who gave it, and any other judge, subject to overriding statutory obligations such as those following a finding of “dangerousness”. In circumstances where a judge proposes to depart from a *Goodyear* indication this must only be done in a way that does not give rise to unfairness (see *Newman*). However, if the defendant does not plead guilty, the indication will not thereafter bind the court.
- C.7 If the offence is a specified offence such that the defendant might be liable to an assessment of ‘dangerousness’ in accordance with the Criminal Justice Act 2003 it is unlikely that the necessary material for such an assessment will be available. The court can still proceed to give an indication of sentence, but should state clearly the limitations of the indication that can be given.
- C.8 A *Goodyear* indication should be given in open court in the presence of the defendant but any reference to the hearing is not admissible in any subsequent trial; and reporting restrictions should normally be imposed.

Additional common law guidance

Judges should not give *Goodyear* indications in advance of *Newton* hearings.⁸⁸

Goodyear indications are not to be taken into account when considering the appropriate discount for a guilty plea.⁸⁹

An indication should conform to the guidance given in *Goodyear*; it is not permissible to seek an indication as to which category in a Sentencing Council guideline an offence “falls” in.⁹⁰

Where the issue of dangerousness is live, an indication may be given but the court should make clear to the defendant the limitations of the indication, as it is unlikely that the necessary material to make such a determination would be present at that stage.⁹¹

Indications have to be able to be relied upon and although revisions are possible, they must be applied in a manner equitable to the defendant. That course may involve allowing the defendant to change his or her plea.⁹²

Multiple *Goodyear* applications may be made, but where subsequent applications are made before a different judge, the judge should be informed of the earlier indication and the reasons for it being declined.⁹³

⁸⁸ *R. v Martin* [2013] EWCA Crim 2565; [2014] 2 Cr. App. R. (S.) 21 (p.144)

⁸⁹ *R. v Hackney* [2013] EWCA Crim 1156

⁹⁰ *R. v Omole* [2011] EWCA Crim 1428; [2012] 1 Cr. App. R. (S.) 41 (p.240)

⁹¹ See for example, *R. v Kulah* [2007] EWCA Crim 1701; [2008] 1 Cr. App. R. (S.) 85 (p.494)

⁹² *R. v Newman* [2010] EWCA Crim 1566; [2011] 1 Cr. App. R. (S.) 68 (p.419)

⁹³ *R. v Kulah* [2007] EWCA Crim 1701; [2008] 1 Cr. App. R. (S.) 85 (p.494)

2.2.2. Indications in the Magistrates' Courts

MCA 1980 s.20⁹⁴: Procedure where summary trial appears more suitable

- s.20(1) - if the court decides under section 19 above that the offence appears to it more suitable for summary trial, the following provisions of this section shall apply (unless they are excluded by section 23 below).
- s.20(2) - the court shall explain to the accused in ordinary language—
- (a) that it appears to the court more suitable for him to be tried summarily for the offence;
 - (b) that he can either consent to be so tried or, if he wishes, be tried on indictment; and
 - (c) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 3 or (if applicable) section 3A of the Powers of Criminal Courts (Sentencing) Act 2000 if the court is of such opinion as is mentioned in subsection (2) of the applicable section.
- s.20(3) - the accused may then request an indication (“an indication of sentence”) of whether a custodial sentence or non-custodial sentence would be more likely to be imposed if he were to be tried summarily for the offence and to plead guilty.
- s.20(4) - if the accused requests an indication of sentence, the court may, but need not, give such an indication.
- s.20(5) - if the accused requests and the court gives an indication of sentence, the court shall ask the accused whether he wishes, on the basis of the indication, to reconsider the indication of plea which was given, or is taken to have been given, under section 17A or 17B above.
- s.20(6) - if the accused indicates that he wishes to reconsider the indication under section 17A or 17B above, the court shall ask the accused whether (if the offence were to proceed to trial) he would plead guilty or not guilty.

Note: See also CJA 2003 Sch.3 which made amendments to the allocation and sending procedure (including substituting a new MCA 1980 s.20).

⁹⁴ Commencement: 6 July 1981, SI 1981/457 art.2.

2.3 Factual basis for sentence

Note: The area is governed by the common law and though fairly settled is rather piecemeal. The Criminal Practice Directions 2015 (see CPD VII Sentencing B) set out the approach to be taken, though of course very few references are provided for the statements of the law.

2.3.1. General

The defendant should be given the benefit of any doubt as to the factual basis for sentencing.⁹⁵

Burden and standard of proof

The judge should openly direct him/herself however a failure to do so is not fatal. The defence version of events must be accepted unless the judge is sure that they are wrong.⁹⁶

Where the defendant raises extraneous issues in mitigation which are of doubtful validity, there is a civil burden of proof upon the defendant and he should be given the opportunity to call evidence in support. Ordinarily however, the court would accept the accuracy of the advocate's statement.⁹⁷

Bad character

The offender must be sentenced only for the offences of which they have been convicted.⁹⁸ Even where evidence which serves to establish the defendant's guilt of an offence charged on the indictment is deployed as evidence of bad character, sentencing cannot proceed on the basis that the defendant is guilty of a distinct and separate offence of which he has not been convicted and which he denies.⁹⁹

These principles apply to ancillary orders too.¹⁰⁰

Note: An exception to the principle in Chadderton would be where the defendant asks for offences to be taken into consideration or counts represent sample counts and are so treated by consent.

Using bad character to demonstrate offence was not an isolated incident/refute false mitigation

Where a defendant fell to be sentenced for drug offences and had made a statement detailing his involvement in drugs, to require the court to sentence him only for the drugs detailed in the counts was entirely artificial. The court was entitled to look at the statement to consider whether the incident was isolated.¹⁰¹

Such bad character is able to be used to refute a claim that an incident was isolated, where the contrary was in fact the truth.¹⁰²

Where there is a documented albeit unproven history of violence towards the victim, the offender cannot have the benefit of positive good character, however where allegations of assault are denied, and remain unproven the violence cannot be an aggravating feature.¹⁰³

⁹⁵ See for example *R. v Stosiek* (1982) 4 Cr. App. R. (S.) 205

⁹⁶ See for example *R. v Kerrigan* (1993) 14 Cr. App. R. (S.) 179

⁹⁷ *R. v Guppy* (1995) 16 Cr. App. R. (S.) 25

⁹⁸ *R. v Chadderton* (1980) 2 Cr. App. R. (S.) 272

⁹⁹ *R. v Oakes* [2012] EWCA Crim 2435; [2013] 2 Cr. App. R. (S.) 22 (p.132) (See the case of *Restivo*)

¹⁰⁰ See *Anderson v DPP* (1978) 67 Cr. App. R. 185, HL

¹⁰¹ *R. v Russen* (1981) 3 Cr. App. R. (S.) 134

¹⁰² *R. v Twisse* [2001] 2 Cr. App. R. (S.) 9 (p.37)

Non-criminal behaviour

It is open to a judge to have regard to the defendant's antecedent behaviour, not all of which is evidenced by previous convictions. PSRs frequently refer to attitude and behaviour and allow for example the court to determine whether or not the use of violence reveals an entrenched disregard for others or represents a "one-off".¹⁰⁴

Evidence

In determining the factual basis for sentence, a judge is not bound by the rules of admissibility which would be applicable in a trial. The aim is to provide the judge with the fullest information possible whilst ensuring that the defendant has the opportunity to put his side of the picture.¹⁰⁵

It is inappropriate for a judge to rely on evidence in a co-defendant's trial in order to reject the defendant's account and sentence on the prosecution's case.¹⁰⁶

Judge or magistrate making findings of fact

Mitigation does not have to be accepted.¹⁰⁷ The judge is entitled to determine any matter before him or her, however any doubt is to be resolved in the defendant's favour.¹⁰⁸

When rejecting the defendant's account in circumstances where the Crown feels it cannot accept the account or cannot challenge it, the court should state clearly that it is rejecting the account and give its reasons.¹⁰⁹

Where a judge "rubber stamped" a draft football banning order having not given the defence the chance to deal with an adverse finding, the order would have to be quashed.¹¹⁰

2.3.2. Following a trial

The judge must remain faithful to the verdict of the jury, even where it was logically incomprehensible.¹¹¹

Jury riders etc.

Regarding jury riders and answers, the only instance the Court of Appeal has found where it might be common practice to go behind the general verdict of the jury and enquire as to its basis is that of manslaughter where the jury may have reached their decision on alternative grounds left to them by the judge.¹¹²

¹⁰³ *Attorney General's Reference (No. 80 of 2009)* [2010] EWCA Crim 470

¹⁰⁴ *R. v Thomas* [2009] EWCA Crim 904; [2010] 1 Cr. App. R. (S.) 14 (p 75)

¹⁰⁵ *R. v Smith* (1988) 10 Cr. App. R. (S.) 271

¹⁰⁶ *R. v Michaels* (1981) 3 Cr. App. R. (S.) 188. See also Banks on Sentence (9th ed) Volume 1 para 73.21

¹⁰⁷ *R. v Worley* [1978] Crim LR 101

¹⁰⁸ *R. v Taggart* (1979) 1 Cr. App. R. (S.) 183

¹⁰⁹ *R. v Tolera* [1999] 1 Cr. App. R. (S.) 25

¹¹⁰ *R. v Irving* [2013] EWCA Crim 1932

¹¹¹ *R. v Baldwin* [1989] 11 Cr. App. R. (S.) 139

¹¹² *R. v Soloman* (1984) 6 Cr. App. R. (S.) 120. See also *R. v Jones* (The Times 17 February 1999).

Where the jury have expressed an opinion, the judge remains entitled to his own view of the facts, where the evidence supports such a conclusion.¹¹³

Uncertainty as to factual basis arising from jury's verdict

Where there is uncertainty over the jury's verdict, the judge is bound to sentence on the version most favourable to the defendant. In such a situation, the judge is not entitled to reject the defendant's account without holding a *Newton* hearing.¹¹⁴

2.3.3. Bases of plea

The key case is that of *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478), which sets out the basic principles where the defendant admits guilt but disputes the factual basis as alleged by the prosecution. The principles are reproduced in the Criminal Practice Directions [2013] EWCA Crim 1631 Sentencing B.8.¹¹⁵

Prosecution acceptance of the basis of plea

If the prosecution accepts the defendant's basis of plea, it must ensure that the basis of plea is factually accurate and enables the sentencing judge to impose a sentence appropriate to reflect the justice of the case.¹¹⁶

Whatever view may be formed by the Crown on any proposed basis of plea, it is deemed to be conditional on the judge's acceptance of it.¹¹⁷

The Crown may reject the defendant's version. If so, the areas of dispute should be identified in writing and the document should focus the court's attention on the precise fact or facts which are in dispute.¹¹⁸

Where an issue raised by the defence is outside the knowledge of the prosecution, the prosecution's position may well be that it had no evidence to contradict the defence assertions. That does not mean that the truth of matters outside its own knowledge should be agreed. In those circumstances, particularly if the facts relied on by the defendant arise from his personal knowledge and depend on his own account of the facts, the Crown should not normally agree the defendant's account unless it is supported by other material. There is an important distinction between assertions about the facts which the Crown is prepared to agree, and its possible agreement to facts about which, in truth, the prosecution is ignorant. Neither the prosecution nor the judge is bound to agree facts merely because the prosecution cannot "gainsay" the defendant's account. The court should be notified of the points in issue in writing.¹¹⁹

The prosecution's acceptance of a basis of plea is conditional upon the approval of the judge and the defence cannot hold the prosecution to it without that approval. Where following such an acceptance, a second judge rejects the basis of plea, the prosecution are not barred from advancing a different, more serious case than was the subject of the agreement.¹²⁰

¹¹³ *R. v Warner* (1967) 51 Cr. App. R. 437 and *R. v Cairns* [2013] EWCA Crim 467; [2013] 2 Cr. App. R. (S.) 73 (p.474)

¹¹⁴ *R. v Finch* (1993) 14 Cr. App. R. (S.) 226

¹¹⁵ Listed here are only those principles which relate to procedure to be adopted by the court. The case also lists advocates' duties.

¹¹⁶ CPD 2015 VII Sentencing para B.8(a).

¹¹⁷ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [3]

¹¹⁸ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [4]

¹¹⁹ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [5]

¹²⁰ *R. v Beswick* (1996) 1 Cr. App. R. (S.) 343

Prosecution does not, or cannot, challenge the basis of plea

Where the defendant, having pleaded guilty, advances an account of the offence which the prosecution does not, or feels it cannot, challenge, but which the court feels unable to accept, it is desirable that the court should make it clear that it does not accept the defence account and why. Failing any other resolution, a hearing can be held and evidence called to resolve the matter. That will ordinarily involve calling the defendant and the prosecutor should ask appropriate questions to test the defendant's evidence, adopting for this purpose the role of an amicus, exploring matters which the court wishes to be explored. It is not generally desirable that the prosecutor, on the ground that he has no evidence to contradict that of the defendant, should simply fold his hands and leave the questioning to the judge.¹²¹

The form and contents of the basis of plea

If the prosecution does accept the defendant's basis of plea, it must be reduced to writing, be signed by advocates for both sides, and made available to the judge prior to the prosecution's opening.¹²²

If a plea has already been accepted and approved, then it should be available before the sentencing hearing begins. If the written basis of plea is not signed by the advocates for both sides, the judge is entitled to ignore it; similarly, if the document is not legible.¹²³

In conspiracy cases, it is vital that the basis of plea is clear as to whether the plea is a) guilty to involvement in the overall conspiracy but only to an active role in limited incidents, or b) guilty to an active role in limited incidents and limited involvement in the conspiracy.¹²⁴

Judicial approach to the basis of plea

Whether or not the basis of plea is "agreed", the judge is not bound by any such agreement and is entitled of his own motion to insist that any evidence relevant to the facts in dispute should be called before him.¹²⁵

The judge is responsible for the sentencing decision and he may therefore order a *Newton* hearing to ascertain the truth about disputed facts.¹²⁶

Neither the prosecution nor the judge is bound to agree facts merely because the prosecution cannot "gainsay" the defendant's account. The court should be notified of the points in issue in writing.¹²⁷

If a defendant seeks to mitigate on the basis of assertions of fact outside the prosecutor's knowledge (for example as to his state of mind), the judge should be invited not to accept this version unless given on oath and tested in cross examination as set out in CPD [2013] EWCA Crim 1631 Sentencing B12. If evidence is not given in this way, then the judge might draw such inferences as he thought fit from that fact.¹²⁸

¹²¹ *R. v Tolera* [1999] 1 Cr. App. R. (S.) 25

¹²² *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [4]

¹²³ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [4]

¹²⁴ *R. v McFeeley* [1998] 2 Cr. App. R. (S.) 26

¹²⁵ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [6]

¹²⁶ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [6]

¹²⁷ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [5]

¹²⁸ *R. v Cairns* [2013] EWCA Crim 467; [2013] 2 Cr. App. R. (S.) 73 (p.474)

Judge rejects basis of plea

If a judge does not accept an important and relevant part of the basis of plea, he or she should make that clear to the defence so that they can decide how they wish to proceed.¹²⁹

Where a judge rejects the basis of plea and directs a trial of issue, this does not create a ground upon which the defendant should be permitted to vacate a plea of guilty when it is clear that unreal though the agreed facts may be, it does amount to an admission to the offence.¹³⁰

The prosecution's acceptance of a basis of plea is conditional upon the approval of the judge and the defence cannot hold the prosecution to it without that approval.¹³¹

Multi-defendant cases and cases involving multi-count indictments

At the end of the *Newton* hearing the judge cannot make findings of fact and sentence on a basis which is inconsistent with the pleas to counts which have already been accepted by the Crown and approved by the court. Particular care is needed in relation to a multi-count indictment involving one defendant, or an indictment involving a number of defendants, and to circumstances in which the Crown accepts, and the court approves, a guilty plea to a reduced charge.¹³²

In cases involving multiple defendants, the bases of plea for each defendant must be factually consistent with each other.¹³³

2.3.4. Dispute as to factual basis for sentencing: *Newton* hearings

General

Where the defendant pleads guilty, but disputes the basis of offending alleged by the prosecution and agreement as to that has not been reached, the following procedure should be followed:

- (a) The defendant's basis of plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;
- (b) The prosecution must respond in writing setting out their alternative contentions and indicating whether or not they submit that a *Newton* hearing is necessary;
- (c) The court may invite the parties to make representations about whether the dispute is material to sentence; and
- (d) If the court decides that it is a material dispute, the court will invite such further representations or evidence as it may require and resolve the dispute in accordance with the principles set out in *R v Newton*.¹³⁴

¹²⁹ *R. v Lucien* [2009] EWCA Crim 2004

¹³⁰ *R. v Beswick* [1996] 1 Cr. App. R. (S.) 343

¹³¹ *R. v Beswick* [1996] 1 Cr. App. R. (S.) 343

¹³² *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [10]

¹³³ *R. v Cairns* [2013] EWCA Crim 467; [2013] 2 Cr. App. R. (S.) 73 (p.474) at [5]

¹³⁴ CPD 2015 VII Sentencing B11

The *Newton* principles

Where there is a sharp¹³⁵ divergence on a question of fact which is relevant to sentence, there are three ways of approaching the problem of determining the matter:

- (a) obtain an answer from the jury, where the verdict of the jury on one count or another will determine the issue;
- (b) the judge can hear evidence and come to a conclusion
- (c) the judge can hear the submissions of an advocate only and come to a conclusion, but if he or she does that, they must come down on the side of the defendant, where there is a substantial conflict between the two sides: the version of the defendant must so far as is possible be accepted.¹³⁶

The procedure

The prosecuting advocate should assist the judge by calling any appropriate evidence and testing the evidence advanced by the defence. The defence advocate should similarly call any relevant evidence and, in particular, where the issue arises from facts which are within the exclusive knowledge of the offender and the offender is willing to give evidence in support of his case, be prepared to call the offender. If he is not, and subject to any explanation which may be proffered, the court may draw such inferences as it thinks fit from that fact. The court must then make up its mind about the facts in dispute. The court must direct itself in accordance with ordinary principles, such as, for example, the burden and standard of proof. In short, these self-directions should reflect the relevant directions the judge would have given to the jury. Having reached such conclusions, the judge should explain them in a judgment.¹³⁷

Account obviously false: No need for a *Newton*

A judge is not entitled to reject a defendant's basis of plea absent a *Newton* hearing unless it is determined by the court that the basis is manifestly false and as such does not merit examination by way of the calling of evidence or alternatively the defendant declines the opportunity to engage in the process of the *Newton* hearing whether by giving evidence on his own behalf or otherwise.¹³⁸

A judge is entitled to decline to hear evidence about disputed facts if the case advanced on the defendant's behalf is, for good reason, to be regarded as absurd or obviously untenable. If so, the judge should explain why he or she has reached that conclusion.¹³⁹

Judge declines to hold a *Newton* hearing because divergence of fact not substantial

In such a circumstance, the defendant should be sentenced on his or her version of events.¹⁴⁰

Magistrates' Courts

The procedure for determining factual disputes outlined in *Newton* is perfectly appropriate for the magistrates' courts.¹⁴¹

¹³⁵ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90

¹³⁶ *R. v Newton* (1982) 4 Cr. App. R. (S.) 388

¹³⁷ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [7]-[9]

¹³⁸ CPD 2015 VII Sentencing B.10

¹³⁹ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [10]

¹⁴⁰ *R. v McCreesh* [2010] EWCA Crim 314

¹⁴¹ *R. v Waltham Forrest Justices ex p. Barton* [1990] RTR 49

Committals for sentence

Where, upon a committal for sentence, there is a factual dispute relevant to sentence, the Crown Court has the jurisdiction to remit the case in order to determine the dispute, or alternatively it may hear evidence. Which is appropriate will depend on when the dispute arises; if it arises at the magistrates' court, they should determine the issue. If the magistrates' court then commits for sentence, the Crown Court should be informed of their findings. If it arises at the Crown Court, they should determine the issue.¹⁴²

Findings cannot be inconsistent with pleas which have already been accepted

At the end of the *Newton* hearing the judge cannot make findings of fact and sentence on a basis which is inconsistent with the pleas to counts which have already been accepted by the Crown and approved by the court. Particular care is needed in relation to a multi-count indictment involving one defendant, or an indictment involving a number of defendants, and to circumstances in which the Crown accepts, and the court approves, a guilty plea to a reduced charge.¹⁴³

Reduction for pleading guilty following a *Newton* hearing

If the issues at the *Newton* hearing are wholly resolved in the defendant's favour, the credit due to him should not be reduced. If for example, however, the defendant is disbelieved, or obliges the prosecution to call evidence from the victim, who is then subjected to a cross-examination, which, because it is entirely unfounded, causes unnecessary and inappropriate distress, or if the defendant conveys to the judge that he has no insight into the consequences of his offence and no genuine remorse for it, these are all matters which may lead the judge to reduce the discount which the defendant would otherwise have received for his guilty plea, particularly if that plea is tendered at a very late stage. Accordingly, there may even be exceptional cases in which the normal entitlement to credit for a plea of guilty is wholly dissipated by the *Newton* hearing. In such cases, again, the judge should explain his reasons.¹⁴⁴

Appeals

The Court of Appeal can hold a *Newton* hearing.¹⁴⁵ However the court cannot order an appellant to give evidence.¹⁴⁶

If findings of fact were not made at the Crown Court, the Court of Appeal are to determine the issue.¹⁴⁷

¹⁴² *Munroe v DPP* (1988) 152 JP 657, QBD

¹⁴³ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [10]

¹⁴⁴ *R. v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr. App. R. (S.) 90 (p.478) at [11]

¹⁴⁵ *Attorney General's reference (Nos.3 and 4 of 1996)* [1997] 1 Cr. App. R. (S.) 29

¹⁴⁶ *R. v Guppy* (1995) 16 Cr. App. R. (S.) 25

¹⁴⁷ *R. v Bowden* [2001] 1 Cr. App. R. (S.) 82 (p.282)

2.4 Reports (including mental health)

2.4.1. Pre-sentence

What is a pre-sentence report?

CJA 2003 s.158¹⁴⁸: Meaning of “pre-sentence report”

s.158(1) - in this Part “pre-sentence report” means a report which—

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by an appropriate officer, and
- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

s.158(1A) - subject to any rules made under subsection (1)(b) and to subsection (1B), the court may accept a pre-sentence report given orally in open court.

s.158(1B) - but a pre-sentence report that—

- (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 section 156(3)(a),

must be in writing.

s.158(2) - in subsection (1) “an appropriate officer” means—

- (a) where the offender is aged 18 or over, an officer of a local probation board or an officer of a provider of probation services, and
- (b) where the offender is aged under 18, an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team.

Duty to obtain pre-sentence report

CJA 2003 s.156¹⁴⁹: Pre-sentence reports and other requirements

s.156(3) - subject to subsection (4), a court must obtain and consider a pre-sentence report before—

- (a) in the case of a custodial sentence, forming any such opinion as is mentioned in section 152(2), section 153(2), section 225(1)(b), section 226(1)(b), section 226A(1)(b) or section 226B(1)(b), or
- (b) in the case of a community sentence, forming any such opinion as is mentioned in section 148(1) or (2)(b), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008, or any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order or youth rehabilitation order.

s.156(4) - subsection (3) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

¹⁴⁸ Commencement: Section 158(1)(a) and (2) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. Section 158(1)(b) in force 7 March 2005, SI 2005/373 art.2(2)(b). Section 158(1A) and (1B) in force 14 July 2008, as inserted by CJA 2008 s.12, SI 2008/1586 art.2(1) and Sch.1 para.3.

¹⁴⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

- s.156(5) - in a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (4) unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender, and
 - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- s.156(9) - references in subsections (1) and (3) to a court forming the opinions mentioned in sections 152(2) and 153(2) include a court forming those opinions for the purposes of section 224A(3).
- s.156(10) - the reference in subsection (1) to a court forming the opinion mentioned in section 153(2) includes a court forming that opinion for the purposes of section 226A(6) or 226B(4).

Effect of not obtaining pre-sentence report

CJA 2003 s.156¹⁵⁰: Pre-sentence reports and other requirements

- s.156(6) - no custodial sentence or community sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (3), but any court on an appeal against such a sentence—
- (a) must, subject to subsection (7), obtain a pre-sentence report if none was obtained by the court below, and
 - (b) must consider any such report obtained by it or by that court.
- s.156(7) - subsection (6)(a) does not apply if the court is of the opinion—
- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
 - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.
- s.156(8) - in a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (7) unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender, and
 - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

Disclosure of reports

CJA 2003 s.159¹⁵¹: Disclosure of pre-sentence reports

- s.159(1) - this section applies where the court obtains a pre-sentence report, other than a report given orally in open court.
- s.159(2) - subject to subsections (3) and (4), the court must give a copy of the report—

¹⁵⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

¹⁵¹ Commencement: Section 159(1) to (3) and (5) to (7) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. Section 159(4) in force 7 March 2005, SI 2005/373 art.2(2)(c).

- (a) to the offender or his legal representative,
- (b) if the offender is aged under 18, to any parent or guardian of his who is present in court, and
- (c) to the prosecutor, that is to say, the person having the conduct of the proceedings in respect of the offence.

s.159(3) - if the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report 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.

s.159(4) - if the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for him to be given it.

s.159(5) - no information obtained by virtue of subsection (2)(c) 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.

s.159(6) - in relation to an offender aged under 18 for whom a local authority have parental responsibility and who—

- (a) is in their care, or
- (b) is provided with accommodation by them in the exercise of any social services functions,

references in this section to his parent or guardian are to be read as references to that authority.

s.159(7) - in this section and section 160—

“*harm*” has the same meaning as in section 31 of the Children Act 1989 (c. 41);

“*local authority*” and “*parental responsibility*” have the same meanings as in that Act;

“*social services functions*”, in relation to a local authority, has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42).

2.4.2. Medical reports

Mentally disordered offender: Duty to obtain report

CJA 2003 s.157¹⁵²: Additional requirements in case of mentally disordered offender

s.157(1) - subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

s.157(2) - subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

¹⁵² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

- s.157(3) - before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court must consider—
- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise), and
 - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- s.157(4) - no custodial sentence which is passed in a case to which subsection (1) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
- (a) must obtain a medical report if none was obtained by the court below, and
 - (b) must consider any such report obtained by it or by that court.
- s.157(5) - in this section “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983 (c. 20).
- s.157(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 by the Secretary of State or 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.
- s.157(7) - nothing in this section is to be taken to limit the generality of section 156.

Magistrates’ Courts

PCC(S)A 2000 s.11¹⁵³: Remand by magistrates’ court for medical examination

- s.11(1) - if, on the trial by a magistrates’ court of an offence punishable on summary conviction with imprisonment, the court—
- (a) is satisfied that the accused did the act or made the omission charged, but
 - (b) is of the opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined,
- the court shall adjourn the case to enable a medical examination and report to be made, and shall remand him.
- s.11(2) - an adjournment under subsection (1) above shall not be for more than three weeks at a time where the court remands the accused in custody, nor for more than four weeks at a time where it remands him on bail.
- s.11(3) - where on an adjournment under subsection (1) above the accused is remanded on bail, the court shall impose conditions under paragraph (d) of section 3(6) of the Bail Act 1976 and the requirements imposed as conditions under that paragraph shall be or shall include requirements that the accused—
- (a) undergo medical examination by a registered medical practitioner or, where the inquiry is into his mental condition and the court so directs, two such practitioners; and
 - (b) for that purpose attend such an institution or place, or on such practitioner, as the court directs and, where the inquiry is into his mental condition, comply with any

¹⁵³ Commencement: 25 August 2000 s.168(1).

other directions which may be given to him for that purpose by any person specified by the court or by a person of any class so specified.

Crown Court

MHA 1983 s.35¹⁵⁴: Remand to hospital for report on accused's mental condition

- s.35(1) - subject to the provisions of this section, the Crown Court or a magistrates' court may remand an accused person to a hospital specified by the court for a report on his mental condition.
- s.35(2) - for the purposes of this section an accused person is—
- (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
 - (b) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by this section.
- s.35(3) - subject to subsection (4) below, the powers conferred by this section may be exercised if—
- (a) the court is satisfied, on the written or oral evidence of a registered medical practitioner, that there is reason to suspect that the accused person is suffering from mental disorder; and
 - (b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;
- but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.
- s.35(4) - the court shall not remand an accused person to a hospital under this section unless satisfied, on the written or oral evidence of the approved clinician who would be responsible for making the report or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- s.35(5) - where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the approved clinician responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.
- s.35(6) - the power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

¹⁵⁴ Commencement: 1 October 1984, SI 1984/1357 art.2.

- s.35(7) - an accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- s.35(8) - an accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (7) above.
- s.35(9) - where an accused person is remanded under this section—
- (a) a constable or any other person directed to do so by the court shall convey the accused person to the hospital specified by the court within the period mentioned in subsection (4) above; and
 - (b) the managers of the hospital shall admit him within that period and thereafter detain him in accordance with the provisions of this section.
- s.35(10) - if an accused person absconds from a hospital to which he has been remanded under this section, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been remanded under this section.

MHA 1983 s.36¹⁵⁵: Remand of accused person to hospital for treatment

- s.36(1) - subject to the provisions of this section, the Crown Court may, instead of remanding an accused person in custody, remand him to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners, that
- (a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
 - (b) appropriate medical treatment is available for him.
- s.36(2) - for the purposes of this section an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence.
- s.36(3) - the court shall not remand an accused person under this section to a hospital unless it is satisfied, on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand; and if the court is so satisfied it may, pending his admission, give directions for his conveyance to and detention in a place of safety.
- s.36(4) - where a court has remanded an accused person under this section it may further remand him if it appears to the court, on the written or oral evidence of the responsible clinician, that a further remand is warranted.
- s.36(5) - the power of further remanding an accused person under this section may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard.

¹⁵⁵ Commencement: 1 October 1984, SI 1984/1357 art.2.

- s.36(6) - an accused person shall not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.
- s.36(7) - an accused person remanded to hospital under this section shall be entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner or approved clinician chosen by him and to apply to the court on the basis of it for his remand to be terminated under subsection (6) above.
- s.36(8) - Subsections (9) and (10) of section 35 above shall have effect in relation to a remand under this section as they have effect in relation to a remand under that section.

2.4.3. Other reports

Other reports

CJA 2003 s.160¹⁵⁶: Other reports of local probation boards, providers of probation services and members of youth offending teams

- s.160(1) - this section applies where—
 - (a) a report by an officer of a local probation board, an officer of a provider of probation services or 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
 - (b) the report is not a pre-sentence report.
- s.160(2) - subject to subsection (3), the court must give a copy of the report—
 - (a) to the offender or his legal representative, and
 - (b) if the offender is aged under 18, to any parent or guardian of his who is present in court.
- s.160(3) - if the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report 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.
- s.160(4) - in relation to an offender aged under 18 for whom a local authority have parental responsibility and who—
 - (a) is in their care, or
 - (b) is provided with accommodation by them in the exercise of any social services functions,references in this section to his parent or guardian are to be read as references to that authority.

¹⁵⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

Youth Court

CYPA 1933 s.48¹⁵⁷: *Miscellaneous provisions as to powers of juvenile courts*

- s.48(3) - when a youth court has remanded a child or young person for information to be obtained with respect to him, any youth court acting in the same local justice area—
- (a) may in his absence extend the period for which he is remanded, so, however, that he appears before a court or a justice of the peace at least once in every twenty-one days;
 - (b) when the required information has been obtained, may deal with him finally

¹⁵⁷ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1

2.5 Deferred sentences

2.5.1. Deferring sentence

Availability and power to defer sentence

PCC(S)A 2000 s.1¹⁵⁸: Deferment of sentence

- s.1(1) - the Crown Court or a magistrates' court may defer passing sentence on an offender for the purpose of enabling the court, or any other court to which it falls to deal with him, to have regard in dealing with him to—
- (a) his conduct after conviction (including, where appropriate, the making by him of reparation for his offence); or
 - (b) any change in his circumstances;
- but this is subject to subsections (3) and (4) below.

Test to apply and power to impose undertakings

PCC(S)A 2000 s.1¹⁵⁹: Deferment of sentence

- s.1(3) - the power conferred by subsection (1) above shall be exercisable only if—
- (a) the offender consents;
 - (b) the offender undertakes to comply with any requirements as to his conduct during the period of the deferment that the court considers it appropriate to impose; and
 - (c) 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 exercise the power.
- s.1(4) - any deferment under this section shall be until such date as may be specified by the court, not being more than six months after the date on which the deferment is announced by the court; and, subject to section 1D(3) below, where the passing of sentence has been deferred under this section it shall not be further so deferred.

Undertakings

PCC(S)A 2000 s.1A¹⁶⁰: Further provision about undertakings

- s.1A(1) - without prejudice to the generality of paragraph (b) of section 1(3) above, the requirements that may be imposed by virtue of that paragraph include requirements as to the residence of the offender during the whole or any part of the period of deferment.
- s.1A(2) - where an offender has undertaken to comply with any requirements imposed under section 1(3)(b) above the court may appoint—
- (a) an officer of a local probation board or an officer of a provider of probation services, or
 - (b) any other person whom the court thinks appropriate,

¹⁵⁸ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁵⁹ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶⁰ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

to act as a supervisor in relation to him.

s.1A(3) - a person shall not be appointed under subsection (2)(b) above without his consent.

s.1A(4) - it shall be the duty of a supervisor appointed under subsection (2) above—

- (a) to monitor the offender’s compliance with the requirements; and
- (b) to provide the court to which it falls to deal with the offender in respect of the offence in question with such information as the court may require relating to the offender’s compliance with the requirements.

Copies of the order to be given to offender etc.

PCC(S)A 2000 s.1¹⁶¹: Deferment of sentence

s.1(5) - where a court has under this section deferred passing sentence on an offender, it shall forthwith give a copy of the order deferring the passing of sentence and setting out any requirements imposed under subsection (3)(b) above—

- (a) to the offender,
- (b) where an officer of a local probation board has been appointed to act as a supervisor in relation to him, to that board,
- (ba) where an officer of a provider of probation services has been appointed to act as a supervisor in relation to him, to that provider, and
- (c) where a person has been appointed under section 1A(2)(b) below to act as a supervisor in relation to him, to that person.

Cannot remand offender subject to deferred sentence

PCC(S)A 2000 s.1¹⁶²: Deferment of sentence

s.1(6) - notwithstanding any enactment, a court which under this section defers passing sentence on an offender shall not on the same occasion remand him.

Power to make restorative justice undertakings

PCC(S)A 2000 s.1ZA¹⁶³: Undertakings to participate in restorative justice activities

s.1ZA(1) - without prejudice to the generality of paragraph (b) of section 1(3), the requirements that may be imposed under that paragraph include restorative justice requirements.

s.1ZA(2) - any reference in this section 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.

¹⁶¹ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶² Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶³ Commencement: 11 December 2003, as inserted by CCA 2013 Sch.16 para.5, SI 2013/2981 art.2(d).

- s.1ZA(3) - imposition under section 1(3)(b) of a restorative justice requirement requires, in addition to the offender's consent and undertaking under section 1(3), the consent of every other person who would be a participant in the activity concerned.
- s.1ZA(4) - for the purposes of subsection (3), a supervisor appointed under section 1A(2) does not count as a proposed participant.
- s.1ZA(5) - where a restorative justice requirement is imposed under section 1(3)(b), the duty under section 1(5) (to give copies of order) extends to every person who would be a participant in the activity concerned.
- s.1ZA(6) - in a case where there is such a restorative justice requirement, a person running the activity concerned must in doing that have regard to any guidance that is issued, with a view to encouraging good practice in connection with such an activity, by the Secretary of State.
- s.1ZA(7) - in this section "victim" means a victim of, or other person affected by, the offending concerned.

Effect of deferral order

PCC(S)A 2000 s.1¹⁶⁴: Deferment of sentence

- s.1(8) - nothing in this section or sections 1ZA to 1D below shall affect—
 - (a) the power of the Crown Court to bind over an offender to come up for judgment when called upon; or
 - (b) the power of any court to defer passing sentence for any purpose for which it may lawfully do so apart from this section.

PCC(S)A 2000 s.1D¹⁶⁵: Deferment of sentence: supplementary

- s.1D(1) - in deferring the passing of sentence under section 1 above a magistrates' court shall be regarded as exercising the power of adjourning the trial conferred by section 10(1) of the Magistrates' Courts Act 1980, and accordingly sections 11(1) and 13(1) to (3A) and (5) of that Act (non-appearance of the accused) apply (without prejudice to section 1(7) above) if the offender does not appear on the date specified under section 1(4) above.

R. v Dwyer (1974) 60 Cr. App. R. 39

A court deferring sentence may not impose any other sentence on the same occasion in respect of the offence for which sentence is deferred, except a restitution order or a disqualification from driving.

R. v McQuaide (1974) 60 Cr. App. R. 239

Where a court has deferred sentence, it may not impose a sentence before the expiration of the period of deferment except under its powers to alter sentence, unless the offender is convicted of an offence during the period of deferment.

Attorney General's Reference (Nos. 36 and 38 of 1998) (R. v Jones) [1999] 2 Cr. App. R. (S.) 7

Where a court has deferred sentence, the Attorney may refer the case to the Court of Appeal under the unduly lenient sentence scheme.

¹⁶⁴ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶⁵ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

2.5.2. Breach of undertakings

PCC(S)A 2000 s.1B¹⁶⁶: Breach of undertakings

- s.1B(1) - a court which under section 1 above has deferred passing sentence on an offender may deal with him before the end of the period of deferment if—
- (a) he appears or is brought before the court under subsection (3) below; and
 - (b) the court is satisfied that he has failed to comply with one or more requirements imposed under section 1(3)(b) above in connection with the deferment.
- s.1B(2) - subsection (3) below applies where—
- (a) a court has under section 1 above deferred passing sentence on an offender;
 - (b) the offender undertook to comply with one or more requirements imposed under section 1(3)(b) above in connection with the deferment; and
 - (c) a person appointed under section 1A(2) above to act as a supervisor in relation to the offender has reported to the court that the offender has failed to comply with one or more of those requirements.
- s.1B(3) - where this subsection applies, the court may issue—
- (a) a summons requiring the offender to appear before the court at a time and place specified in the summons; or
 - (b) a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

2.5.3. Conviction during period of deferment

PCC(S)A 2000 s.1C¹⁶⁷: Conviction of offence during period of deferment

- s.1C(1) - a court which under section 1 above has deferred passing sentence on an offender may deal with him before the end of the period of deferment if during that period he is convicted in Great Britain of any offence.
- s.1C(2) - subsection (3) below applies where a court has under section 1 above deferred passing sentence on an offender in respect of one or more offences and during the period of deferment the offender is convicted in England and Wales of any offence (“the later offence”).
- s.1C(3) - where this subsection applies, then (without prejudice to subsection (1) above and whether or not the offender is sentenced for the later offence during the period of deferment), the court which passes sentence on him for the later offence may also, if this has not already been done, deal with him for the offence or offences for which passing of sentence has been deferred, except that—
- (a) the power conferred by this subsection shall not be exercised by a magistrates’ court if the court which deferred passing sentence was the Crown Court; and
 - (b) the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates’ court, shall not pass any sentence

¹⁶⁶ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

¹⁶⁷ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

which could not have been passed by a magistrates' court in exercising that power.

- s.1C(4) - where a court which under section 1 above has deferred passing sentence on an offender proposes to deal with him by virtue of subsection (1) above before the end of the period of deferment, the court may issue—
- (a) a summons requiring him to appear before the court at a time and place specified in the summons; or
 - (b) a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

2.5.4. Sentencing after period of deferment

Discretion to take account of compliance with conditions imposed under deferred sentence

PCC(S)A 2000 s.1¹⁶⁸: Deferment of sentence

- s.1(2) - without prejudice to the generality of subsection (1) above, the matters to which the court to which it falls to deal with the offender may have regard by virtue of paragraph (a) of that subsection include the extent to which the offender has complied with any requirements imposed under subsection (3)(b) below.

Power to postpone sentence

R. v Ingle (1974) 59 Cr. App. R. 306

Where an offender appears before a court at the end of a period of deferment, the court may postpone sentence in the exercise of its ordinary powers of adjournment, but should not do so unless there are strong reasons for so doing.

Offender subject to deferred sentence does not attend at new sentencing hearing

PCC(S)A 2000 s.1¹⁶⁹: Deferment of sentence

- s.1(7) - where—
- (a) a court which under this section has deferred passing sentence on an offender proposes to deal with him on the date originally specified by the court, or
 - (b) the offender does not appear on the day so specified,
- the court may issue a summons requiring him to appear before the court at a time and place specified in the summons, or may issue a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

Powers

PCC(S)A 2000 s.1D¹⁷⁰: Deferment of sentence: supplementary

- s.1D(2) - where the passing of sentence on an offender has been deferred by a court (“the original court”) under section 1 above, the power of that court under that section to deal with the offender at the end of the period of deferment and any power of that court

¹⁶⁸ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁶⁹ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

¹⁷⁰ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

under section 1B(1) or 1C(1) above, or of any court under section 1C(3) above, to deal with the offender—

- (a) is power to deal with him, in respect of the offence for which passing of sentence has been deferred, in any way in which the original court could have dealt with him if it had not deferred passing sentence; and
- (b) without prejudice to the generality of paragraph (a) above, in the case of a magistrates' court, includes the power conferred by section 3 below to commit him to the Crown Court for sentence.

s.1D(3) - where—

- (a) the passing of sentence on an offender in respect of one or more offences has been deferred under section 1 above, and
- (b) a magistrates' court deals with him in respect of the offence or any of the offences by committing him to the Crown Court under section 3 below,

the power of the Crown Court to deal with him includes the same power to defer passing sentence on him as if he had just been convicted of the offence or offences on indictment before the court.

Compelling witnesses etc.

PCC(S)A 2000 s.1D¹⁷¹: Deferment of sentence: supplementary

s.1D(4) - subsection (5) below applies where—

- (a) the passing of sentence on an offender in respect of one or more offences has been deferred under section 1 above;
- (b) it falls to a magistrates' court to determine a relevant matter; and
- (c) a justice of the peace is satisfied—
 - (i) that a person appointed under section 1A(2)(b) above to act as a supervisor in relation to the offender is likely to be able to give evidence that may assist the court in determining that matter; and
 - (ii) that that person will not voluntarily attend as a witness.

s.1D(5) - the justice may issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence.

s.1D(6) - for the purposes of subsection (4) above a court determines a relevant matter if it—

- (a) deals with the offender in respect of the offence, or any of the offences, for which the passing of sentence has been deferred; or
- (b) determines, for the purposes of section 1B(1)(b) above, whether the offender has failed to comply with any requirements imposed under section 1(3)(b) above.

¹⁷¹ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.23 para.1, SI 2005/950 art.2 and Sch.1 para.20.

2.6 Absent defendants

2.6.1. General

R v Allan [2011] EWCA Crim 1022

Short of extreme circumstances or voluntary absence, each defendant should be present throughout the hearing.

2.6.2. Magistrates' Courts

Note: See also the Criminal Procedure Rules.

MCA 1980 s.11¹⁷²: Non-appearance of accused: general provisions

- s.11(3) - in proceedings to which this subsection applies, the court shall not in a person's absence sentence him to imprisonment or detention in a young offender institution or make a detention and training order or an order under paragraph 8(2)(a) or (b) of Schedule 12 to the Criminal Justice Act 2003 that a suspended sentence passed on him shall take effect.
- s.11(3A) - but where a sentence or order of a kind mentioned in subsection (3) is imposed or given in the absence of the offender, the offender must be brought before the court before being taken to a prison or other institution to begin serving his sentence (and the sentence or order is not to be regarded as taking effect until he is brought before the court).
- s.11(4) - in proceedings to which this subsection applies, the court shall not in a person's absence impose any disqualification on him, except on resumption of the hearing after an adjournment under section 10(3) above; and where a trial is adjourned in pursuance of this subsection the notice required by section 10(2) above shall include notice of the reason for the adjournment.
- s.11(5) - subsections (3) and (4) apply to—
 - (a) proceedings instituted by an information, where a summons has been issued; and
 - (b) proceedings instituted by a written charge.
- s.11(6) - nothing in this section requires the court to enquire into the reasons for the accused's failure to appear before deciding whether to proceed in his absence.
- s.11(7) - the court shall state in open court its reasons for not proceeding under this section in the absence of an accused who has attained the age of 18 years; and the court shall cause those reasons to be entered in its register of proceedings.

Note: See also MCA 1980 s.12, 12A and 13 regarding non appearance of the accused in summary proceedings, and notifications of defendant's intention to plead guilty in absence.

¹⁷² Commencement: 6 July 1981, SI 1981/457 art.2.

2.6.3. Live link

CDA 1998 s.57A¹⁷³: Introductory

s.57A(1) - this Part–

- (a) applies to preliminary hearings and sentencing hearings in the course of proceedings for an offence and enforcement hearings relating to confiscation orders; and
- (b) enables the court in the circumstances provided for in sections 57B, 57C, 57E and 57F to direct the use of a live link for securing the accused’s attendance at a hearing to which this Part applies.

s.57A(2) - the accused is to be treated as present in court when, by virtue of a live link direction under this Part, he attends a hearing through a live link.

s.57A(3) - in this Part–

“*confiscation order*” means an order made under—

- (a) section 71 of the Criminal Justice Act 1988;
- (b) section 2 of the Drug Trafficking Act 1994; or
- (c) section 6 of the Proceeds of Crime Act 2002;

“*custody*”–

- (a) includes local authority accommodation or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; but
- (b) does not include police detention;

“*enforcement hearing*” means a hearing under section 82 of the Magistrates’ Courts Act 1980 to consider the issuing of a warrant of committal or to inquire into a person’s means;

“*live link*” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

“*police detention*” has the meaning given by section 118(2) of the Police and Criminal Evidence Act 1984;

“*preliminary hearing*” means a hearing in the proceedings held before the start of the trial (within the meaning of subsection (11A) or (11B) of section 22 of the 1985 Act) including, in the case of proceedings in the Crown Court, a preparatory hearing held under–

- (a) section 7 of the Criminal Justice Act 1987 (cases of serious or complex fraud); or
- (b) section 29 of the Criminal Procedure and Investigations Act 1996 (other serious, complex or lengthy cases);

¹⁷³ Commencement: Inserted by Police and Justice Act 2006 s.45. In force 15 January 2007, other than to the extent it substitutes new section 57C (use of live link at preliminary hearings where accused is at police station) and subject to the transitional provisions set out in art.4, SI 2006/3364 art.2(g). In force 1 April 2007 to the extent not already in force, in Lambeth and Southwark, SI 2007/709 art.3(n). In force 1 November 2008, to the extent not already in force in the local areas listed in SI 2008/2785 art.2. In force 3 October 2011 to the extent not already in force, in the areas listed in art.2(2), SI 2011/2144 art.2. In force 8 October 2012 to the extent not already in force, SI 2012/2373 art.2.

“*sentencing hearing*” means any hearing following conviction which is held for the purpose of–

- (a) proceedings relating to the giving or rescinding of a direction under section 57E;
- (b) proceedings (in a magistrates’ court) relating to committal to the Crown Court for sentencing; or
- (c) sentencing the offender or determining how the court should deal with him in respect of the offence.

CDA 1998 s.57D¹⁷⁴: Continued use of live link for sentencing hearing following a preliminary hearing

s.57D(1) - subsection (2) applies where–

- (a) a live link direction under section 57B or 57C is in force;
- (b) the accused is attending a preliminary hearing through a live link by virtue of the direction;
- (c) the court convicts him of the offence in the course of that hearing (whether by virtue of a guilty plea or an indication of an intention to plead guilty); and
- (d) the court proposes to continue the hearing as a sentencing hearing in relation to the offence.

s.57D(2) - the accused may continue to attend through the live link by virtue of the direction if–

- (a) the hearing is continued as a sentencing hearing in relation to the offence; and
- (c) the court is satisfied that [the accused continuing to attend through the live link is not contrary to the interests of justice.

s.57D(3) - but the accused may not give oral evidence through the live link during a continued hearing under subsection (2) unless–

- (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

CDA 1998 s.57E¹⁷⁵: Use of live link in sentencing hearings

s.57E(1) - this section applies where the accused is convicted of the offence.

s.57E(2) - if it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this section in relation to that hearing.

¹⁷⁴ Commencement: Inserted by Police and Justice Act 2006 s.45. In force 15 January 2007, other than to the extent it substitutes new section 57C (use of live link at preliminary hearings where accused is at police station) and subject to the transitional provisions set out in art.4, SI 2006/3364 art.2(g). In force 1 April 2007 to the extent not already in force, in Lambeth and Southwark, SI 2007/709 art.3(n). In force 14 November 2008, to the extent not already in force in the local areas listed in SI 2008/2785 art.2. In force 3 October 2011 to the extent not already in force, in the areas listed in art.2(2), SI 2011/2144 art.2. In force 8 October 2012 to the extent not already in force, SI 2012/2373 art.2.

¹⁷⁵ Commencement: Inserted by Police and Justice Act 2006 s.45. In force 15 January 2007, other than to the extent it substitutes new section 57C (use of live link at preliminary hearings where accused is at police station) and subject to the transitional provisions set out in art.4, SI 2006/3364 art.2(g). In force 1 April 2007 to the extent not already in force, in Lambeth and Southwark, SI 2007/709 art.3(n). In force 14 November 2008, to the extent not already in force in the local areas listed in SI 2008/2785 art.2. In force 3 October 2011 to the extent not already in force, in the areas listed in art.2(2), SI 2011/2144 art.2. In force 8 October 2012 to the extent not already in force, SI 2012/2373 art.2.

- s.57E(3) - a live link direction under this section is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.
- s.57E(4) - such a direction–
- (a) may be given by the court of its own motion or on an application by a party; and
 - (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.
- s.57E(5) - the court may not give such a direction unless–
- (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.
- s.57E(6) - the court may rescind such a direction at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction in relation to the offender).
- The court may exercise this power of its own motion or on an application by a party.
- s.57E(7) - the offender may not give oral evidence while attending a hearing through a live link by virtue of this section unless–
- (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.
- s.57E(8) - the court must–
- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
 - (b) if it is a magistrates' court, cause those reasons to be entered in the register of its proceedings.

2.7 Antecedents

2.7.1. The bundle

Criminal Practice Directions 2015 II Preliminary Proceedings

Copies of record

- 8A.1 The defendant's record (previous convictions, cautions, reprimands, etc) may be taken into account when the court decides not only on sentence but also, for example, about bail, or when allocating a case for trial. It is therefore important that up to date and accurate information is available. Previous convictions must be provided as part of the initial details of the prosecution case under CrimPR Part 8.
- 8A.2 The record should usually be provided in the following format:
Personal details and summary of convictions and cautions – Police National Computer ["PNC"] Court / Defence / Probation Summary Sheet;
Previous convictions – PNC Court / Defence / Probation printout, supplemented by Form MG16 if the police force holds convictions not shown on PNC;
Recorded cautions – PNC Court / Defence / Probation printout, supplemented by Form MG17 if the police force holds cautions not shown on PNC.
- 8A.3 The defence representative should take instructions on the defendant's record and if the defence wish to raise any objection to the record, this should be made known to the prosecutor immediately.
- 8A.4 It is the responsibility of the prosecutor to ensure that a copy of the defendant's record has been provided to the Probation Service.
- 8A.5 Where following conviction a custodial order is made, the court must ensure that a copy is attached to the order sent to the prison.

Additional information

- 8A.6 In the Crown Court, the police should also provide brief details of the circumstances of the last three similar convictions and / or of convictions likely to be of interest to the court, the latter being judged on a case-by-case basis.
- 8A.7 Where the current alleged offence could constitute a breach of an existing sentence such as a suspended sentence, community order or conditional discharge, and it is known that that sentence is still in force then details of the circumstances of the offence leading to the sentence should be included in the antecedents. The detail should be brief and include the date of the offence.
- 8A.8 On occasions the PNC printout provided may not be fully up to date. It is the responsibility of the prosecutor to ensure that all of the necessary information is available to the court and the Probation Service and provided to the defence. Oral updates at the hearing will sometimes be necessary, but it is preferable if this information is available in advance.

2.7.2. Taking account of antecedents

CJA 2003 s.143¹⁷⁶: Determining the seriousness of an offence

- 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(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.

2.7.3. Spent convictions

ROA 1974 s.4¹⁷⁷: Effect of rehabilitation

- s.4(1) - subject to sections 7 and 8 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—
- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and
 - (b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

¹⁷⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

¹⁷⁷ Commencement: 1 July 1975, ROA 1974 s.11(2).

ROA 1974 s.7¹⁷⁸: Limitations on rehabilitation under this Act, etc.

- s.7(2) - nothing in section 4(1) above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto—
- (a) in any criminal proceedings before a court in England and Wales (including any appeal or reference in a criminal matter);
 - (b) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings; [...]

Criminal Practice Directions 2015 V Evidence

- 21A.1 The effect of section 4(1) of the Rehabilitation of Offenders Act 1974 is that a person who has become a rehabilitated person for the purpose of the Act in respect of a conviction (known as a 'spent' conviction) shall be treated for all purposes in law as a person who has not committed, or been charged with or prosecuted for, or convicted of or sentenced for, the offence or offences which were the subject of that conviction.
- 21A.2 Section 4(1) of the 1974 Act does not apply, however, to evidence given in criminal proceedings: section 7(2)(a). During the trial of a criminal charge, reference to previous convictions (and therefore to spent convictions) can arise in a number of ways. The most common is when a bad character application is made under the Criminal Justice Act 2003. When considering bad character applications under the 2003 Act, regard should always be had to the general principles of the Rehabilitation of Offenders Act 1974.
- 21A.3 On conviction, the court must be provided with a statement of the defendant's record for the purposes of sentence. The record supplied should contain all previous convictions, but those which are spent should, so far as practicable, be marked as such. No one should refer in open court to a spent conviction without the authority of the judge, which authority should not be given unless the interests of justice so require. When passing sentence the judge should make no reference to a spent conviction unless it is necessary to do so for the purpose of explaining the sentence to be passed.

¹⁷⁸ Commencement: 1 July 1975, ROA 1974 s.11(2).

2.8 Reporting restrictions and Derogatory Assertion Orders

2.8.1. Reporting restrictions

See the *Reporting Restrictions in the Criminal Courts* guide produced by the Judicial College

On 6 May 2015, the Judicial College produced an update version of the document.¹⁷⁹

2.8.2. Derogatory Assertion Orders

2.8.2.1. Making the order

Availability

CPIA 1996 s.58¹⁸⁰: Orders in respect of certain assertions

- s.58(1) - this section applies where a person has been convicted of an offence and a speech in mitigation is made by him or on his behalf before—
- (a) a court determining what sentence should be passed on him in respect of the offence, or
 - (b) a magistrates' court determining whether he should be committed to the Crown Court for sentence.
- s.58(2) - this section also applies where a sentence has been passed on a person in respect of an offence and a submission relating to the sentence is made by him or on his behalf 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.
- s.58(5) - an order under subsection (7) or (8) must not be made in relation to an assertion if it appears to the court that the assertion was previously made—
- (a) at the trial at which the person was convicted of the offence, or
 - (b) during any other proceedings relating to the offence.

CPIA 1996 s.61¹⁸¹: Reporting of assertions: commencement and supplementary

- s.61(1) - Section 58 applies where the offence mentioned in subsection (1) or (2) of that section is committed on or after the appointed day.
- s.61(2) - the reference in subsection (1) to the appointed day is to such day as is appointed for the purposes of this section by the Secretary of State by order.

¹⁷⁹ See <<https://www.judiciary.gov.uk/wp-content/uploads/2015/05/reporting-restrictions-guide-2015-final.pdf>>

¹⁸⁰ Commencement: 4 July 1996.

¹⁸¹ Commencement: 4 July 1996.

Test to apply

CPIA 1996 s.58¹⁸²: Orders in respect of certain assertions

- s.58(3) - where it appears to the court that there is a real possibility that an order under subsection (8) will be made in relation to the assertion, the court may make an order under subsection (7) in relation to the assertion.
- s.58(4) - where there are substantial grounds for believing—
- (a) that an assertion forming part of the speech or submission is derogatory to a person's character (for instance, because it suggests that his 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, the court may make an order under subsection (8) in relation to the assertion.

The orders

CPIA 1996 s.58¹⁸³: Orders in respect of certain assertions

- s.58(7) - an order under this subsection—
- (a) may be made at any time before the court has made a determination with regard to sentencing;
 - (b) may be revoked at any time by the court;
 - (c) subject to paragraph (b), shall cease to have effect when the court makes a determination with regard to sentencing.
- s.58(8) - an order under this subsection—
- (a) may be made at any time before the court has made a determination with regard to sentencing, but only if it is made as soon as is reasonably practicable after the making of the determination;
 - (b) may be revoked at any time by the court;
 - (c) subject to paragraph (b), shall cease to have effect at the end of the period of 12 months beginning with the day on which it is made;
 - (d) may be made whether or not an order has been made under subsection (7) with regard to the case concerned.

Effect of an order

CPIA 1996 s.58¹⁸⁴: Orders in respect of certain assertions

- s.58(6) - Section 59 has effect where a court makes an order under subsection (7) or (8).

CPIA 1996 s.59¹⁸⁵: Restriction on reporting of assertions

- s.59(1) - where a court makes an order under section 58(7) or (8) in relation to any assertion, at any time when the order has effect the assertion must not—

¹⁸² Commencement: 4 July 1996.

¹⁸³ Commencement: 4 July 1996.

¹⁸⁴ Commencement: 4 July 1996.

¹⁸⁵ Commencement: 4 July 1996.

- (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.

s.59(2) - in this section—

“*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.

s.59(3) - for the purposes of this section 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 him, contains enough to make it likely that members of the public will identify him as the person about whom it is made, and
- (b) reproduces the actual wording of the matter asserted or contains its substance.

CPIA 1996 s.61¹⁸⁶: Reporting of assertions: commencement and supplementary

s.61(3) - nothing in section 58 or 59 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.

Meaning of “determination with regard to sentencing”

CPIA 1996 s.58¹⁸⁷: Orders in respect of certain assertions

s.58(9) - for the purposes of subsection (7) and (8) the court makes a determination with regard to sentencing—

- (a) when it determines what sentence should be passed (where this section applies by virtue of subsection (1)(a));
- (b) when it determines whether the person should be committed to the Crown Court for sentence (where this section applies by virtue of subsection (1)(b));
- (c) when it determines what the sentence should be (where this section applies by virtue of subsection (2)(a));
- (d) when it determines whether to grant leave to appeal (where this section applies by virtue of subsection (2)(b)).

2.8.2.2. Appeals

CPIA 1996 s.61¹⁸⁸: Reporting of assertions: commencement and supplementary

s.61(6) - in section 159 of the Criminal Justice Act 1988 (appeal to Court of Appeal against orders restricting reports etc.) in subsection (1) the following paragraph shall be inserted after paragraph (a)—

“(aa) an order made by the Crown Court under section 58(7) or (8) of the Criminal Procedure and Investigations Act 1996 of the Criminal Procedure and

¹⁸⁶ Commencement: 4 July 1996. It appears that the Act came into force upon Royal Assent.

¹⁸⁷ Commencement: 4 July 1996. It appears that the Act came into force upon Royal Assent.

¹⁸⁸ Commencement: 4 July 1996. It appears that the Act came into force upon Royal Assent.

Investigations Act 1996 in a case where the Court has convicted a person on a trial on indictment;”.

CJA 1988 s.159¹⁸⁹: Crown Court proceedings— orders restricting or preventing reports or restricting public access

- s.159(1) - a person aggrieved may appeal to the Court of Appeal, if that court grants leave, against—
- (a) an order under section 4 or 11 of the Contempt of Court Act 1981 made in relation to a trial on indictment;
 - (aa) an order made by the Crown Court under section 58(7) or (8) of the Criminal Procedure and Investigations Act 1996 in a case where the Court has convicted a person on a trial on indictment;
 - (b) any order restricting the access of the public to the whole or any part of a trial on indictment or to any proceedings ancillary to such a trial; and
 - (c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings;
- and the decision of the Court of Appeal shall be final.
- s.159(2) - subject to Rules of Court, the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this section shall be construed as references to that division.
- s.159(3) - on an application for leave to appeal under this section a judge shall have power to give such directions as appear to him to be appropriate and, without prejudice to the generality of this subsection, power—
- (a) to order the production in court of any transcript or note of proceedings or other document;
 - (b) to give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish and as to service of documents on any person;
- and the Court of Appeal shall have the same powers as the single judge.
- s.159(4) - subject to Rules of Court made by virtue of subsection (6) below, any party to an appeal under this section may give evidence before the Court of Appeal orally or in writing.
- s.159(5) - on the hearing of an appeal under this section the Court of Appeal shall have power—
- (a) to stay any proceedings in any other court until after the appeal is disposed of;
 - (b) to confirm, reverse or vary the order complained of; and
 - (c) to make such order as to costs as it thinks fit.
- s.159(6) - Rules of Court may make in relation to trials satisfying specified conditions special provision as to the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings and may in particular, but without prejudice to the generality of this subsection, provide that subsection (4) above shall not have effect.

¹⁸⁹ Commencement: 31 July 1989, SI 1989/1085 art.2 and Sch.1 para.1

- s.159(7) - in the application of this section to Northern Ireland—
- (a) subsection (2) shall be omitted; and
 - (b) in subsection (6), before “Rules of Court” there shall be inserted “Without prejudice to the generality of sections 52 and 55 of the Judicature (Northern Ireland) Act 1978”.

Note: There are two Home Office Circulars (11/1997 and 24/3/1997) that provides guidance on the making of such orders.

2.8.2.3. Breach

CPIA 1996 s.60¹⁹⁰: Reporting of assertions: offences

- s.60(1) - if an assertion is published or included in a relevant programme in contravention of section 59, 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.
- s.60(2) - a person guilty of an offence under this section is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.
- s.60(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—
- (a) he was not aware, and neither suspected nor had reason to suspect, that an order under section 58(7) or (8) had effect at that time, or
 - (b) he 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.
- s.60(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,
- he as well as the body, corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- s.60(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.
- s.60(6) - Subsections (2) and (3) of section 59 apply for the purposes of this section as they apply for the purposes of that.

¹⁹⁰ Commencement: 4 July 1996.

2.9 Financial circumstances order

Note: There is an offence under CJA 1991 s.20A pertaining to the making of false statements as to financial circumstances.

General power

CJA 2003 s.162¹⁹¹: Powers to order statement as to offender's financial circumstances

- s.162(1) - where an individual has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.
- s.162(2) - where a magistrates' court has been notified in accordance with section 12(4) of the Magistrates' Courts Act 1980 (c. 43) that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.
- s.162(3) - in this section "*a financial circumstances order*" means, in relation to any individual, an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his assets and other financial circumstances as the court may require .
- s.162(4) - an individual who without reasonable excuse fails to comply with a financial circumstances order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- s.162(5) - if an individual, in furnishing any statement in pursuance of a financial circumstances order—
 - (a) makes a statement which he knows to be false in a material particular,
 - (b) recklessly furnishes a statement which is false in a material particular, or
 - (c) knowingly fails to disclose any material fact,he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- s.162(6) - proceedings in respect of an offence under subsection (5) may, notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.

¹⁹¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

Parents and guardians

PCC(S)A 2000 s.136¹⁹²: Power to order statement as to financial circumstances of parent or guardian

- s.136(1) - before exercising its powers under section 137 below (power to order parent or guardian to pay fine, costs, compensation or surcharge) against the parent or guardian of an individual who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.
- s.136(2) - in this section “*financial circumstances order*” has the meaning given by subsection (3) of section 162 of the Criminal Justice Act 2003, and subsections (4) to (6) of that section shall apply in relation to a financial circumstances order made under this section as they apply in relation to such an order made under that section.

¹⁹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

2.10 Adjourment of sentence

Note: This section should be read in conjunction with 2.4.1, the pre-sentence reports section.

Magistrates' Court

MCA 1980 s.10¹⁹³: Adjourment of trial

- s.10(1) - a magistrates' court may at any time, whether before or after beginning to try an information, adjourn the trial, and may do so, notwithstanding anything in this Act, when composed of a single justice.
- s.10(2) - the court may when adjourning either fix the time and place at which the trial is to be resumed, or, unless it remands the accused, leave the time and place to be determined later by the court; but the trial shall not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice thereof.
- s.10(3) - a magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise its power to adjourn after convicting the accused and before sentencing him or otherwise dealing with him; but, if it does so, the adjournment shall not be for more than 4 weeks at a time unless the court remands the accused in custody and, where it so remands him, the adjournment shall not be for more than 3 weeks at a time.
- s.10(3A) - a youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—
 - (a) that the court commits the accused for trial for another offence; or
 - (b) that the accused is charged with another offence.
- s.10(4) - on adjourning the trial of an information the court may remand the accused and, where the accused has attained the age of 18 years, shall do so if the offence is triable either way and—
 - (a) on the occasion on which the accused first appeared, or was brought, before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
 - (b) the accused has been remanded at any time in the course of proceedings on the information;

and, where the court remands the accused, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) below.

¹⁹³ Commencement: 6 July 1981, SI 1981/457 art.2.

Crown Court

R. v Annesley (1976) 62 Cr. App. R. 113

“It is clear from these authorities and statutory provisions that the Crown Court still enjoys the common law jurisdiction vested in its predecessors to put off passing the whole of a sentence, or indeed part of a sentence, if the circumstances make it necessary. While accepting that this will not generally be good practice, there may be circumstances in which it may be very desirable, when all the material necessary to complete all elements of a sentencing problem is not immediately available, to deal with the substantive sentence at once and postpone what may have to be done in addition, rather than postpone the whole of the sentence till all the material is to hand.”

2.11 Bail

2.11.1. General

Note: See also the other provisions of the Bail Act 1974. Section 4 and Sch.1 only are listed below as they create the presumption of bail post-conviction where none of the exceptions apply.

Right to bail etc.

BA 1976 s.4¹⁹⁴: General right to bail of accused persons and others

- s.4(1) - a person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.
- s.4(2) - this section applies to a person who is accused of an offence when—
- (a) he appears or is brought before a magistrates' court or the Crown Court in the course of or in connection with proceedings for the offence, or
 - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- This subsection does not apply as respects proceedings on or after a person's conviction of the offence.
- s.4(2A) - this section also applies to a person whose extradition is sought in respect of an offence, when—
- (a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or
 - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- s.4(2B) - but subsection (2A) above does not apply if the person is alleged to have been convicted of the offence.
- s.4(3) - this section also applies to a person who, having been convicted of an offence, appears or is brought before a magistrates' court or the Crown Court under—
- (za) Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders: referral back to appropriate court),
 - (zb) Schedule 8 to that Act (breach of reparation order),
 - (a) Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation orders),
 - (b) Part 2 of Schedule 8 to the Criminal Justice Act 2003 (breach of requirement of community order), or
 - (c) the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act).
- s.4(4) - this section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

¹⁹⁴ Commencement: 17 April 1978, SI 1978/132 art.2.

- s.4(5) - Schedule 1 to this Act also has effect as respects conditions of bail for a person to whom this section applies.
- s.4(6) - in Schedule 1 to this Act “*the defendant*” means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (4) above.
- s.4(7) - this section is subject to section 41 of the Magistrates’ Courts Act 1980 (restriction of bail by magistrates’ court in cases of treason) and section 115(1) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge).
- s.4(8) - this section is subject to section 25 of the Criminal Justice and Public Order Act 1994 (exclusion of bail in cases of homicide and rape).
- s.4(9) - in taking any decisions required by Part I or II of Schedule 1 to this Act, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant (“*controlled drugs*” and “*misuse*” having the same meanings as in the Misuse of Drugs Act 1971).

BA 1976 Sch.1: Persons Entitled To Bail: Supplementary Provisions

Part I Defendants Accused Or Convicted Of Imprisonable Offences

Application of Part 1

para.1¹⁹⁵(1) - subject to sub-paragraph (2) and paragraph 1A, the following provisions of this Part of this Schedule apply to the defendant if—

- (a) the offence or one of the offences of which he is accused or convicted in the proceedings is punishable with imprisonment, or
- (b) his extradition is sought in respect of an offence.

para.1(2) - but those provisions do not apply by virtue of sub-paragraph (1)(a) if the offence, or each of the offences punishable with imprisonment, is—

- (a) a summary offence; or
- (b) an offence mentioned in Schedule 2 to the Magistrates’ Courts Act 1980 (offences for which the value involved is relevant to the mode of trial) in relation to which—
 - (i) a determination has been made under section 22(2) of that Act (certain either way offences to be tried summarily if value involved is less than the relevant sum) that it is clear that the value does not exceed the relevant sum for the purposes of that section; or
 - (ii) a determination has been made under section 9A(4) of this Act to the same effect.

para.1A¹⁹⁶(1) - the paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in non-extradition proceedings where—

- (a) the defendant has attained the age of 18,
- (b) the defendant has not been convicted of an offence in those proceedings, and

¹⁹⁵ Commencement: 17 April 1978, SI 1978/132 art.2.

¹⁹⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

- (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

para.1A(2) - the paragraphs are—

- (a) paragraph 2 (refusal of bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses),
- (b) paragraph 2A (refusal of bail where defendant appears to have committed indictable or either way offence while on bail), and
- (c) paragraph 6 (refusal of bail where defendant has been arrested under section 7).

Exceptions to right to bail

para.2¹⁹⁷(1) - the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—

- (a) fail to surrender to custody, or
- (b) commit an offence while on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

para.2(2) - where the defendant falls within paragraph 6B, this paragraph does not apply unless—

- (a) the court is of the opinion mentioned in paragraph 6A, or
- (b) paragraph 6A does not apply by virtue of paragraph 6C.

para.2ZA¹⁹⁸(1) - the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

- (a) physical or mental injury to an associated person; or
- (b) an associated person to fear physical or mental injury.

para.2ZA(2) In sub-paragraph (1) “*associated person*” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

para.2A¹⁹⁹ - the defendant need not be granted bail if—

- (a) the offence is an indictable offence or an offence triable either way, and
- (b) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence.

para.2B²⁰⁰ - the defendant need not be granted bail in connection with extradition proceedings if—

- (a) the conduct constituting the offence would, if carried out by the defendant in England and Wales, constitute an indictable offence or an offence triable either way; and

¹⁹⁷ Commencement: 17 April 1978, SI 1978/132 art.2.

¹⁹⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

¹⁹⁹ Commencement: 10 April 1995, as inserted by CJPOA 1994 s.26(a), SI 1995/721 art.2 and Sch.1 para.1.

²⁰⁰ Commencement: 1 January 2004, as inserted by Extradition Act 2003 s.198(13), SI 2003/3103 art.2, subject to savings as specified in SI 2003/3103 arts.3 and 4.

(b) it appears to the court that the defendant was on bail on the date of the offence.

para.3²⁰¹ - the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

para.4²⁰² - the defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

para.5²⁰³ - the defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

para.6²⁰⁴ - the defendant need not be granted bail if, having previously been released on bail in, or in connection with, the proceedings, the defendant has been arrested in pursuance of section 7.

para.6ZA²⁰⁵ - if the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.

Exception applicable to drug users in certain areas

para.6A²⁰⁶ - subject to paragraph 6C below, a defendant who falls within paragraph 6B below may not be granted bail unless the court is of the opinion that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

para.6B²⁰⁷(1) - a defendant falls within this paragraph if—

- (a) he is aged 18 or over;
- (b) a sample taken—
 - (i) under section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs) in connection with the offence; or
 - (ii) under section 161 of the Criminal Justice Act 2003 (drug testing after conviction of an offence but before sentence),

has revealed the presence in his body of a specified Class A drug;

- (c) either the offence is one under section 5(2) or (3) of the Misuse of Drugs Act 1971 and relates to a specified Class A drug, or the court is satisfied that there are substantial grounds for believing—
 - (i) that misuse by him of any specified Class A drug caused or contributed to the offence; or

²⁰¹ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰² Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰³ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰⁴ Commencement: 17 April 1978, SI 1978/132 art.2.

²⁰⁵ Commencement: 1 February 2010, as inserted by CJA 2009 s.114(2), SI 2010/145 art.2 and Sch.1 para.7.

²⁰⁶ Commencement: 5 April 2004, as inserted by CJA 2003 s.19(4)(a), SI 2004/829 art.2(2)(b).

²⁰⁷ Commencement: 5 April 2004, as inserted by CJA 2003 s.19(4)(a), SI 2004/829 art.2(2)(b).

- (ii) (even if it did not) that the offence was motivated wholly or partly by his intended misuse of such a drug; and
- (d) the condition set out in sub-paragraph (2) below is satisfied or (if the court is considering on a second or subsequent occasion whether or not to grant bail) has been, and continues to be, satisfied.

para.6B(2) - the condition referred to is that after the taking and analysis of the sample—

- (a) a relevant assessment has been offered to the defendant but he does not agree to undergo it; or
- (b) he has undergone a relevant assessment, and relevant follow-up has been proposed to him, but he does not agree to participate in it.

para.6B(3) - in this paragraph and paragraph 6C below—

- (a) “*Class A drug*” and “*misuse*” have the same meaning as in the Misuse of Drugs Act 1971;
- (b) “*relevant assessment*” and “*relevant follow-up*” have the meaning given by section 3(6E) of this Act;
- (c) “*specified*” (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

para.6C²⁰⁸ - paragraph 6A above does not apply unless—

- (a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the [local justice area] 2 in which it appears to the court that the defendant would reside if granted bail; and
- (b) the notice has not been withdrawn.

Exception applicable only to defendant whose case is adjourned for inquiries or a report

para.7²⁰⁹ - where his case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

Restriction of conditions of bail

para.8²¹⁰(1) - subject to sub-paragraph (3) below, where the defendant is granted bail, no conditions shall be imposed under subsections (4) to (6B) or (7) (except subsection (6)(d) or (e)) of section 3 of this Act unless it appears to the court that it is necessary to do so—

- (a) for the purpose of preventing the occurrence of any of the events mentioned in paragraph 2(1) of this Part of this Schedule, or
- (b) for the defendant’s own protection or, if he is a child or young person, for his own welfare or in his own interests.

para.8(1A) - no condition shall be imposed under section 3(6)(d) of this Act unless it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made.

²⁰⁸ Commencement: 5 April 2004, as inserted by CJA 2003 s.19(4)(a), SI 2004/829 art.2(2)(b).

²⁰⁹ Commencement: 17 April 1978, SI 1978/132 art.2.

²¹⁰ Commencement: 17 April 1978, SI 1978/132 art.2.

para.8(2) - sub-paragraphs (1) and (1A) above also apply on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

para.8(3) - the restriction imposed by sub-paragraph (1A) above shall not apply to the conditions required to be imposed under section 3(6A) of this Act or operate to override the direction in section 11(3) of the Powers of Criminal Courts (Sentencing) Act 2000 to a magistrates' court to impose conditions of bail under section 3(6)(d) of this Act of the description specified in the said section 11(3) in the circumstances so specified.

Decisions under paragraph 2

para.9²¹¹ - in taking the decisions required by paragraph 2(1), or in deciding whether it is satisfied as mentioned in 2ZA(1) or of the opinion mentioned in paragraph 6ZA or 6A, of this Part of this Schedule, the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say—

- (a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it),
- (b) the character, antecedents, associations and community ties of the defendant,
- (c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings,
- (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted,
- (e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant,

as well as to any others which appear to be relevant.

para.9AA²¹²(1) - this paragraph applies if—

- (a) the defendant is a child or young person, and
- (b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

(2) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the court shall give particular weight to the fact that the defendant was on bail in criminal proceedings on the date of the offence.

para.9AB²¹³(1) - subject to sub-paragraph (2) below, this paragraph applies if—

- (a) the defendant is a child or young person, and

²¹¹ Commencement: 17 April 1978, SI 1978/132 art.2.

²¹² Commencement: 1 January 2007, as inserted by CJA 2003 s.14(2), for the purposes specified in SI 2006/3217 arts.2(1)(a) and 3(1). Otherwise, not in force.

²¹³ Commencement: 1 January 2007, as inserted by CJA 2003 s.15(2) for the purposes specified in SI 2006/3217 arts.2(1)(a) and 3(2). Otherwise, not in force.

- (b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.

para.9AB(2) - where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, this paragraph does not apply unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

para.9AB(3) - in deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would fail to surrender to custody, the court shall give particular weight to—

- (a) where the defendant did not have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody, or
- (b) where he did have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

para.9AB(4) - for the purposes of this paragraph, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody.

Cases under section 128A of Magistrates' Courts Act 1980

para.9B²¹⁴ - where the court is considering exercising the power conferred by section 128A of the Magistrates' Courts Act 1980 (power to remand in custody for more than 8 clear days), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.

Part 1A Defendants Accused Or Convicted Of Imprisonable Offences To Which Part 1 Does Not Apply

Application of Part 1A

para.1²¹⁵ - subject to paragraph 1A, the following provisions of this Part apply to the defendant if—

- (a) the offence or one of the offences of which he is accused or convicted is punishable with imprisonment, but
- (b) Part 1 does not apply to him by virtue of paragraph 1(2) of that Part.

para.1A²¹⁶(1) - the paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in, or in connection with, proceedings where—

- (a) the defendant has attained the age of 18,
- (b) the defendant has not been convicted of an offence in those proceedings, and
- (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

para.1A(2) - the paragraphs are—

²¹⁴ Commencement: 12 October 1988, as inserted by CJA 1988 s.155(2), SI 1988/1676 art.2 and Sch.1.

²¹⁵ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²¹⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

- (a) paragraph 2 (refusal of bail for failure to surrender to custody),
- (b) paragraph 3 (refusal of bail where defendant would commit further offences on bail), and
- (c) paragraph 7 (refusal of bail in certain circumstances when arrested under section 7).

Exceptions to right to bail

para.2²¹⁷ - the defendant need not be granted bail if—

- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and
- (b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

para.3²¹⁸ - the defendant need not be granted bail if—

- (a) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence; and
- (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would commit an offence while on bail.

para.4²¹⁹(1) - the defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

- (a) physical or mental injury to an associated person; or
- (b) an associated person to fear physical or mental injury.

para.4(2) - in sub-paragraph (1) “*associated person*” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

para.5²²⁰ - the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

para.6²²¹ - the defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

para.7²²² - the defendant need not be granted bail if—

²¹⁷ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²¹⁸ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²¹⁹ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²⁰ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²¹ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

- (a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and
- (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).

para.8²²³ - the defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.

Application of paragraphs 6A to 6C of Part 1

para.9²²⁴ - paragraphs 6A to 6C of Part 1 (exception applicable to drug users in certain areas and related provisions) apply to a defendant to whom this Part applies as they apply to a defendant to whom that Part applies.

Part II Defendants Accused Or Convicted Of Non-Imprisonable Offences

Defendants to whom Part II applies

para.1²²⁵ - where the offence or every offence of which the defendant is accused or convicted in the proceedings is one which is not punishable with imprisonment the following provisions of this Part of this Schedule apply.

Exceptions to right to bail

para.2²²⁶ - the defendant need not be granted bail if—

- (za) the defendant—
 - (i) is a child or young person, or
 - (ii) has been convicted in the proceedings of an offence;
- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and
- (b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

para.3²²⁷ - the defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

²²² Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²³ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²⁴ Commencement: 14 July 2008, as inserted by CJIA 2008 Sch.12 para.6, SI 2008/1586 art.2(1) and Sch.1 para.27.

²²⁵ Commencement: 17 April 1978, SI 1978/132 art.2.

²²⁶ Commencement: 17 April 1978, SI 1978/132 art.2.

²²⁷ Commencement: 17 April 1978, SI 1978/132 art.2.

para.4²²⁸ - the defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.

para.5²²⁹ - the defendant need not be granted bail if—

(za) the defendant—

(i) is a child or young person, or

(ii) has been convicted in the proceedings of an offence;

(a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).

para.6²³⁰(1) - the defendant need not be granted bail if—

(a) having been released on bail in, or in connection with, the proceedings for the offence, the defendant has been arrested in pursuance of section 7, and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—

(i) physical or mental injury to an associated person, or

(ii) an associated person to fear physical or mental injury.

para.6(2) - in sub-paragraph (1) “*associated person*” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.

Part IIA Decisions Where Bail Refused On Previous Hearing

para.1²³¹ - if the court decides not to grant the defendant bail, it is the court’s duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.

para.2²³² - at the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

para.3²³³ - at subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.

²²⁸ Commencement: 17 April 1978, SI 1978/132 art.2.

²²⁹ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.11 para.13, SI 2012/2096 art.2(i).

²³¹ Commencement: 5 January 1989, as inserted by CJA 1988 s.154, SI 1988/2073 art.2 and Sch.1.

²³² Commencement: 5 January 1989, as inserted by CJA 1988 s.154, SI 1988/2073 art.2 and Sch.1.

²³³ Commencement: 5 January 1989, as inserted by CJA 1988 s.154, SI 1988/2073 art.2 and Sch.1.

Part III Interpretation

para.1²³⁴ - for the purposes of this Schedule the question whether an offence is one which is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

para.2²³⁵ - references in this Schedule to previous grants of bail include—

- (a) bail granted before the coming into force of this Act;
- (b) as respects the reference in paragraph 2A of Part 1 of this Schedule (as substituted by paragraph 16 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012), bail granted before the coming into force of that paragraph;
- (c) as respects the references in paragraph 6 of Part 1 of this Schedule (as substituted by paragraph 17 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012), bail granted before the coming into force of that paragraph;
- (d) as respects the references in paragraph 9AA of Part 1 of this Schedule, bail granted before the coming into force of that paragraph;
- (e) as respects the references in paragraph 9AB of Part 1 of this Schedule, bail granted before the coming into force of that paragraph;
- (f) as respects the reference in paragraph 5 of Part 2 of this Schedule (as substituted by section 13(4) of the Criminal Justice Act 2003), bail granted before the coming into force of that paragraph;
- (g) as respects the reference in paragraph 6 of Part 2 of this Schedule, bail granted before the coming into force of that paragraph.

para.3²³⁶ - references in this Schedule to a defendant's being kept in custody or being in custody include (where the defendant is a child or young person) references to his being kept or being in accommodation pursuant to a remand under section 91(3) or (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands to local authority accommodation or youth detention accommodation).

para.4²³⁷ - in this Schedule—

“*court*”, in the expression “sentence of a court”, includes a service court as defined in section 12(1) of the Visiting Forces Act 1952 and “*sentence*”, in that expression, shall be construed in accordance with that definition;

“*default*”, in relation to the defendant, means the default for which he is to be dealt with under [Part 2 of Schedule 8 to the Criminal Justice Act 2003 (breach of requirement of order)].

Note: Schedule 1 qualifies the general right to bail set out in section 4(1) of the Act. It is not reproduced here.

²³⁴ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁵ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁶ Commencement: 17 April 1978, SI 1978/132 art.2.

²³⁷ Commencement: 17 April 1978, SI 1978/132 art.2.

No issue of bail where sentence is deferred

R. v Ross (1988) 86 Cr. App. R. 337

When sentence is deferred, no question of bail arises.

2.11.2. Magistrates' Courts

Power

MCA 1980 s.128²³⁸: Remand in custody or on bail

s.128(1) - where a magistrates' court has power to remand any person, then, subject to section 4 of the Bail Act 1976 and to any other enactment modifying that power, the court may—

- (a) remand him in custody, that is to say, commit him to custody to be brought before the court, subject to subsection (3A) below, at the end of the period of remand or at such earlier time as the court may require; or
- (b) where it is trying an offence alleged to have been committed by that person or has convicted him of an offence, remand him on bail in accordance with the Bail Act 1976, that is to say, by directing him to appear as provided in subsection (4) below; or
- (c) except in a case falling within paragraph (b) above, remand him on bail by taking from him a recognizance (with or without sureties) conditioned as provided in that subsection;

and may, in a case falling within paragraph (c) above, instead of taking recognizances in accordance with that paragraph, fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 119 above.

s.128(1A) - where—

- (a) on adjourning a case under section 10(1), 17C, 18(4) or 24C above the court proposes to remand or further remand a person in custody; and
- (b) he is before the court; and
- (d) he is legally represented in that court,

it shall be the duty of the court—

- (i) to explain the effect of subsections (3A) and (3B) below to him in ordinary language; and
- (ii) to inform him in ordinary language that, notwithstanding the procedure for a remand without his being brought before a court, he would be brought before a court for the hearing and determination of at least every fourth application for his remand, and of every application for his remand heard at a time when it appeared to the court that he had no legal representative acting for him in the case.

s.128(1B) - for the purposes of subsection (1A) above a person is to be treated as legally represented in a court if, but only if, he has the assistance of a legal representative to represent him in the proceedings in that court.

s.128(1C) - after explaining to an accused as provided by subsection (1A) above the court shall ask him whether he consents to hearing and determination of such applications in his absence.

²³⁸ Commencement: 6 July 1981, SI 1981/457 art.2.

- s.128(2) - where the court fixes the amount of a recognizance under subsection (1) above or section 8(3) of the Bail Act 1976 with a view to its being taken subsequently the court shall in the meantime commit the person so remanded to custody in accordance with paragraph (a) of the said subsection (1).
- s.128(3) - where a person is brought before the court after remand, the court may further remand him.
- s.128(3A) - subject to subsection (3B) below, where a person has been remanded in custody and the remand was not a remand under section 128A below for a period exceeding 8 clear days, the court may further remand him (otherwise than in the exercise of the power conferred by that section) on an adjournment under section 10(1), 17C, 18(4) or 24C above without his being brought before it if it is satisfied—
- (a) that he gave his consent, either in response to a question under subsection (1C) above or otherwise, to the hearing and determination in his absence of any application for his remand on an adjournment of the case under any of those provisions; and
 - (b) that he has not by virtue of this subsection been remanded without being brought before the court on more than two such applications immediately preceding the application which the court is hearing; and
 - (d) that he has not withdrawn his consent to their being so heard and determined.
- s.128(3B) - the court may not exercise the power conferred by subsection (3A) above if it appears to the court, on an application for a further remand being made to it, that the person to whom the application relates has no legal representative acting for him in the case (whether present in court or not).
- s.128(3C) - where—
- (a) a person has been remanded in custody on an adjournment of a case under section 10(1), 17C, 18(4) or 24C above; and
 - (b) an application is subsequently made for his further remand on such an adjournment; and
 - (c) he is not brought before the court which hears and determines the application; and
 - (d) that court is not satisfied as mentioned in subsection (3A) above,
- the court shall adjourn the case and remand him in custody for the period for which it stands adjourned.
- s.128(3D) - an adjournment under subsection (3C) above shall be for the shortest period that appears to the court to make it possible for the accused to be brought before it.
- s.128(3E) - where—
- (a) on an adjournment of a case under section 10(1), 17C, 18(4) or 24C above a person has been remanded in custody without being brought before the court; and
 - (b) it subsequently appears—
 - (i) to the court which remanded him in custody; or
 - (ii) to an alternate magistrates' court to which he is remanded under section 130 below,

that he ought not to have been remanded in custody in his absence, the court shall require him to be brought before it at the earliest time that appears to the court to be possible.

s.128(4) - where a person is remanded on bail under subsection (1) above the court may, where it remands him on bail in accordance with the Bail Act 1976 direct him to appear or, in any other case, direct that his recognizance be conditioned for his appearance—

- (a) before that court at the end of the period of remand; or
- (b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned;

and, where it remands him on bail conditionally on his providing a surety during an inquiry into an offence alleged to have been committed by him, may direct that the recognizance of the surety be conditioned to secure that the person so bailed appears—

- (c) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned and also before the Crown Court in the event of the person so bailed being committed for trial there.

s.128(5) - where a person is directed to appear or a recognizance is conditioned for a person's appearance in accordance with paragraph (b) or (c) of subsection (4) above, the fixing at any time of the time for him next to appear shall be deemed to be a remand; but nothing in this subsection or subsection (4) above shall deprive the court of power at any subsequent hearing to remand him afresh.

s.128(6) - subject to the provisions of sections 128A and 129 below, a magistrates' court shall not remand a person for a period exceeding 8 clear days, except that—

- (a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent;
- (b) where the court adjourns a trial under section 10(3) above or section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, the court may remand him for the period of the adjournment;
- (c) where a person is charged with an offence triable either way, then, if it falls to the court to try the case summarily but the court is not at the time so constituted, and sitting in such a place, as will enable it to proceed with the trial, the court may remand him until the next occasion on which it will be practicable for the court to be so constituted, and to sit in such a place, as aforesaid, notwithstanding that the remand is for a period exceeding 8 clear days.

s.128(7) - a magistrates' court having power to remand a person in custody may, if the remand is for a period not exceeding 3 clear days, commit him to detention at a police station.

s.128(8) - where a person is committed to detention at a police station under subsection (7) above—

- (a) he shall not be kept in such detention unless there is a need for him to be so detained for the purposes of inquiries into other offences;
- (b) if kept in such detention, he shall be brought back before the magistrates' court which committed him as soon as that need ceases;
- (c) he shall be treated as a person in police detention to whom the duties under section 39 of the Police and Criminal Evidence Act 1984 (responsibilities in relation to persons detained) relate;
- (d) his detention shall be subject to periodic review at the times set out in section 40 of that Act (review of police detention).

Appeals

B(A)A 1993 s.1²³⁹: Prosecution right of appeal

- s.1(1) - where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail.
- s.1(1A) - where a magistrates' court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the High Court against the granting of bail.
- s.1(1B) - where a judge of the Crown Court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to the High Court against the granting of bail.
- s.1(1C) - an appeal under subsection (1B) may not be made where a judge of the Crown Court has granted bail on an appeal under subsection (1).
- s.1(2) - Subsections (1) and (1B) above apply only where the prosecution is conducted—
- (a) by or on behalf of the Director of Public Prosecutions; or
 - (b) by a person who falls within such class or description of person as may be prescribed for the purposes of this section by order made by the Secretary of State.
- s.1(3) - an appeal under subsection (1), (1A) or (1B) may be made only if—
- (a) the prosecution made representations that bail should not be granted; and
 - (b) the representations were made before it was granted.
- s.1(4) - in the event of the prosecution wishing to exercise the right of appeal set out in subsection (1), (1A) or (1B) above, oral notice of appeal shall be given to the court which has granted bail at the conclusion of the proceedings in which bail has been granted and before the release from custody of the person concerned.
- s.1(5) - written notice of appeal shall thereafter be served on the [court which has granted bail and the person concerned within two hours of the conclusion of such proceedings.
- s.1(6) - upon receipt from the prosecution of oral notice of appeal from its decision to grant bail the court which has granted bail shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.
- s.1(7) - where the prosecution fails, within the period of two hours mentioned in subsection (5) above, to serve one or both of the notices required by that subsection, the appeal shall be deemed to have been disposed of.
- s.1(8) - the hearing of an appeal under subsection (1), (1A) or (1B) above against a decision of the court to grant bail shall be commenced within forty-eight hours, excluding weekends and any public holiday (that is to say, Christmas Day, Good Friday or a bank holiday), from the date on which oral notice of appeal is given.
- s.1(9) - at the hearing of any appeal by the prosecution under this section, such appeal shall be by way of re-hearing, and the judge hearing any such appeal may remand the person concerned in custody or may grant bail subject to such conditions (if any) as he thinks fit.

²³⁹ Commencement: 27 June 1994, SI 1994/1437 art.2.

- s.1(10) - in relation to a person under the age of 18—
- (a) the references in subsections (1) and (1B) above to an offence punishable by imprisonment are to be read as references to an offence which would be so punishable in the case of an adult; and
 - (b) the references in subsections (6) and (9) above to remand in custody are to be read subject to the provisions of Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail).
- s.1(11) - the power to make an order under subsection (2) above shall be exercisable by statutory instrument and any instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.1(12) - in this section—
- “*extradition proceedings*” means proceedings under the Extradition Act 2003;
- “*magistrates’ court*” and “*court*” in relation to extradition proceedings means a District Judge (Magistrates’ Courts) designated in accordance with section 67 or section 139 of the Extradition Act 2003;
- “*prosecution*” in relation to extradition proceedings means the person acting on behalf of the territory to which extradition is sought.

MCA 1980 s.113²⁴⁰: Bail on appeal or case stated

- s.113(1) - where a person has given notice of appeal to the Crown Court against the decision of a magistrates’ court or has applied to a magistrates’ court to state a case for the opinion of the High Court, then, if he is in custody, the magistrates’ court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant him bail.
- s.113(2) - if a person is granted bail under subsection (1) above, the time and place at which he is to appear (except in the event of the determination in respect of which the case is stated being reversed by the High Court) shall be—
- (a) if he has given notice of appeal, the Crown Court at the time appointed for the hearing of the appeal;
 - (b) if he has applied for the statement of a case, the magistrates’ court at such time within 10 days after the judgment of the High Court has been given as may be specified by the magistrates’ court;
- and any recognizance that may be taken from him or from any surety for him shall be conditioned accordingly.
- s.113(3) - subsection (1) above shall not apply where the accused has been committed to the Crown Court for sentence under section 37 above or section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
- s.113(4) - Section 37(6) of the Criminal Justice Act 1948 (which relates to the currency of a sentence while a person is released on bail by the High Court) shall apply to a person released on bail by a magistrates’ court under this section pending the hearing of a case stated as it applies to a person released on bail by the High Court under section 22 of the Criminal Justice Act 1967.

Note: There is also an appeal against conditions of bail under CJA 2003 s.16. Section 18 of the 2003 Act amends the Bail (Amendment) Act 1993.

²⁴⁰ Commencement: 6 July 1982, SI 1981/457 art.2.

2.11.3. Crown Court

SCA 1981 s.81²⁴¹: Bail

- s.81(1) - the Crown Court may, subject to section 25 of the Criminal Justice and Public Order Act 1994, grant bail to any person—
- (a) who has been sent in custody to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998; or
 - (b) who is in custody pursuant to a sentence imposed by a magistrates' court, and who has appealed to the Crown Court against his conviction or sentence; or
 - (c) who is in the custody of the Crown Court pending the disposal of his case by that court; or
 - (d) who, after the decision of his case by the Crown Court, has applied to that court for the statement of a case for the High Court on that decision; or
 - (e) who has applied to the High Court for a quashing order to remove proceedings in the Crown Court in his case into the High Court, or has applied to the High Court for leave to make such an application;
- or
- (f) to whom the Crown Court has granted a certificate under section 1(2) or 11(1A) of the Criminal Appeal Act 1968 or under subsection(1B) below;
- or
- (g) who has been remanded in custody by a magistrates' court on adjourning a case under section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination), section 52(5) of the Crime and Disorder Act 1998 (adjournment of proceedings under section 51 etc) or—
 - (ii) section 10 (adjournment of trial);
 - (iia) section 17C (intention as to plea: adjournment);
 - (iii) section 18 (initial procedure on information against adult for offence triable either way); or
 - (iiia) section 24C (intention as to plea by child or young person: adjournment);
 - (h) in respect of whom a judge of the Crown Court is required to make a decision pursuant to section 115(3) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge);
- and the time during which a person is released on bail under any provision of this subsection shall not count as part of any term of imprisonment or detention under his sentence.
- s.81(1A) - the power conferred by subsection (1)(f) does not extend to a case to which section 12 or 15 of the Criminal Appeal Act 1968 (appeal against verdict of not guilty by reason of insanity or against findings that the accused is under a disability and that he did the act or made the omission charged against him) applies.
- s.81(1B) - a certificate under this subsection is a certificate that a case is fit for appeal on a ground which involves a question of law alone.
- s.81(1C) - the power conferred by subsection (1)(f) is to be exercised—

²⁴¹ Commencement: 1 January 1982, SA 1981 s.153(2).

- (a) where the appeal is under section 1 or 9 of the Criminal Appeal Act 1968, by the judge who tried the case; and
 - (b) where it is under section 10 of that Act, by the judge who passed the sentence.
- s.81(1D) - the power may only be exercised within twenty-eight days from the date of the conviction appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.
- s.81(1E) - the power may not be exercised if the appellant has made an application to the Court of Appeal for bail in respect of the offence or offences to which the appeal relates.
- s.81(1F) - it shall be a condition of bail granted in the exercise of the power that, unless a notice of appeal has previously been lodged in accordance with subsection (1) of section 18 of the Criminal Appeal Act 1968—
 - (a) such a notice shall be so lodged within the period specified in subsection (2) of that section; and
 - (b) not later than 14 days from the end of that period, the appellant shall lodge with the Crown Court a certificate from the registrar of criminal appeals that a notice of appeal was given within that period.
- s.81(1G) - if the Crown Court grants bail to a person in the exercise of the power, it may direct him to appear—
 - (a) if a notice of appeal is lodged within the period specified in section 18(2) of the Criminal Appeal Act 1968 at such time and place as the Court of Appeal may require; and
 - (b) if no such notice is lodged within that period, at such time and place as the Crown Court may require.
- s.81(1H) - where the Crown Court grants a person bail under subsection (1)(g) it may direct him to appear at a time and place which the magistrates' court could have directed and the recognizance of any surety shall be conditioned accordingly.
- s.81(1J) - the Crown Court may only grant bail to a person under subsection(1)(g) if the magistrates' court which remanded him in custody has certified under section 5(6A) of the Bail Act 1976 that it heard full argument on his application for bail before it refused the application.
- s.81(2) - provision may be made by rules of court as respects the powers of the Crown Court relating to bail, including any provision—
 - (a) except in the case of bail in criminal proceedings (within the meaning of the Bail Act 1976), allowing the court instead of requiring a person to enter into a recognizance, to consent to his giving other security;
 - (b) allowing the court to direct that a recognizance shall be entered into or other security given before a magistrates' court or a justice of the peace, or, if the rules so provide, a person of such other description as is specified in the rules;
 - (c) prescribing the manner in which a recognizance is to be entered into or other security given, and the persons by whom and the manner in which the recognizance or security may be enforced;
 - (d) authorising the recommittal, in such cases and by such courts or justices as may be prescribed by the rules, of persons released from custody in pursuance of the powers;

(e) making provision corresponding to sections 118 and 119 of the Magistrates' Courts Act 1980 (varying or dispensing with requirements as to sureties, and postponement of taking recognizances).

s.81(3) - any reference in any enactment to a recognizance shall include, unless the context otherwise requires, a reference to any other description of security given instead of a recognizance, whether in pursuance of subsection (2)(a) or otherwise.

s.81(4) - the Crown Court, on issuing a warrant for the arrest of any person, may endorse the warrant for bail, and in any such case—

(a) the person arrested under the warrant shall, unless the Crown Court otherwise directs, be taken to a police station; and

(b) the officer in charge of the station shall release him from custody if he, and any sureties required by the endorsement and approved by the officer, enter into recognizances of such amount as may be fixed by the endorsement:

Provided that in the case of bail in criminal proceedings (within the meaning of the Bail Act 1976) the person arrested shall not be required to enter into a recognizance.

s.81(5) - a person in custody in pursuance of a warrant issued by the Crown Court with a view to his appearance before that court shall be brought forthwith before—

(a) if the person is charged with murder or with murder and one or more other offences, the Crown Court, and

(b) in any other case, either the Crown Court or a magistrates' court.

s.81(6) - a magistrates' court shall have jurisdiction, and a justice of the peace may act, under or in pursuance of rules under subsection (2) whether or not the offence was committed, or the arrest was made, within the court's area, or the area for which he was appointed.

2.11.4. Pending appeal to the Court of Appeal (Criminal Division)

CAA 1968 s.19²⁴²: Bail

s.19(1) - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if they think fit,—

(a) grant an appellant bail pending the determination of his appeal; or

(b) revoke bail granted to an appellant by the Crown Court under paragraph (f) of section 81(1) of the Senior Courts Act 1981 or paragraph (a) above; or

(c) vary the conditions of bail granted to an appellant in the exercise of the power conferred by either of those paragraphs

s.19(2) - the powers conferred by subsection (1) above may be exercised—

(a) on the application of an appellant; or

(b) if it appears to the registrar of criminal appeals of the Court of Appeal (hereafter referred to as "*the registrar*") that any of them ought to be exercised, on a reference to the court by him.

²⁴² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1967/1234 art.1 and Sch.3.

2.11.5. Pending appeal to the Supreme Court

CAA 1968 s.36²⁴³: Bail on appeal by defendant

s.36 - the Court of Appeal may, subject to section 25 of the Criminal Justice and Public Order Act 1994, if it seems fit, on the application of a person appealing or applying for leave to appeal to the Supreme Court, other than a person appealing or applying for leave to appeal from a decision on an appeal under Part 9 of the Criminal Justice Act 2003 or section 9(11) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 (appeals against orders or rulings at preparatory hearings) or section 47 of the Criminal Justice Act 2003, grant him bail pending the determination of his appeal.

CAA 1968 s.37²⁴⁴: Detention of defendant on appeal by the Crown

- s.37(1) - the following provisions apply where, immediately after a decision of the Court of Appeal from which an appeal lies to the Supreme Court, the prosecutor is granted or gives notice that he intends to apply for, leave to appeal.
- s.37(2) - if, but for the decision of the Court of Appeal, the defendant would be liable to be detained, the Court of Appeal shall make—
- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 36 above), so long as the appeal is pending, or
 - (b) an order that he be released without bail.
- s.37(2A) - the Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.
- s.37(3) - an order under subsection (2)(a) shall (unless the appeal has previously been disposed of) cease to have effect at the expiration of the period for which the defendant would have been liable to be detained but for the decision of the Court of Appeal.
- s.37(4) - where an order is made under subsection (2)(a) in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of—
- (a) an order or direction under Part III of the Mental Health Act 1983 (otherwise than under section 35, 36 or 38 of that Act) (admission to hospital of persons convicted by criminal courts); or
 - (b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc),
- the order under subsection (2)(a) shall be one authorising his continued detention in pursuance of the order or direction referred to in paragraph (a) or (b) of this subsection; and the provisions of the Mental Health Act 1983 with respect to persons liable to be detained as mentioned in this subsection (including provisions as to the renewal of authority for detention and the removal or discharge of patients) shall apply accordingly.

²⁴³ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1967/1234 art.1 and Sch.3.

²⁴⁴ Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1967/1234 art.1 and Sch.3.

- s.37(4A) - where an order is made under subsection (2)(a) in the case of a defendant who, but for the decision of the Court of Appeal, would be liable to be detained in pursuance of a remand under section 36 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act, the order may, if the Court of Appeal thinks fit, be one authorising his continued detention in a hospital or mental nursing home and in that event—
- (a) subsection (3) of this section shall not apply to the order;
 - (b) Part III of the said Act of 1983 shall apply to him as if he had been ordered under this section to be detained in custody so long as an appeal to the Supreme Court is pending and were detained in pursuance of a transfer direction together with a restriction direction; and
 - (c) if the defendant, having been subject to an interim hospital order, is detained by virtue of this subsection and the appeal by the prosecutor succeeds, subsection (2) of the said section 31 (power of court to make hospital order in the absence of an offender who is subject to an interim hospital order) shall apply as if the defendant were still subject to an interim hospital order.
- s.37(5) - the defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if—
- (a) the Court of Appeal have made an order under subsection (2)(b), or
 - (b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).

2.12 Impact statements

Note: See also the *Victims' Code*.

2.12.1. Victims

CPD 2015 VII Sentencing F²⁴⁵

Victim personal statements

- F.1 Victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'). The statement gives victims a formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. The court will take the statement into account when determining sentence. In some circumstances, it may be appropriate for relatives of a victim to make a VPS, for example where the victim has died as a result of the relevant criminal conduct. The revised Code of Practice for Victims of Crime, published on 29 October 2013 gives further information about victims' entitlements within the criminal justice system, and the duties placed on criminal justice agencies when dealing with victims of crime.
- F.2 When a police officer takes a statement from a victim, the victim should be told about the scheme and given the chance to make a VPS. The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear on their decision, and no conclusion should be drawn if they choose not to make such a statement. A VPS or a further VPS may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not normally be appropriate for a VPS to be made after the disposal of the case; there may be rare occasions between sentence and appeal when a further VPS may be necessary, for example, when the victim was injured and the final prognosis was not available at the date of sentence. However, VPS after disposal should be confined to presenting up to date factual material, such as medical information, and should be used sparingly.
- F.3 If the court is presented with a VPS the following approach, subject to the further guidance given by the Court of Appeal in *R v Perkins; Bennett; Hall* [2013] EWCA Crim 323, [2013] Crim L.R. 533, should be adopted:
- (a) The VPS and any evidence in support should be considered and taken into account by the court, prior to passing sentence.
 - (b) Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. The maker of a VPS may be cross-examined on its content.

²⁴⁵ As amended.

- (c) At the discretion of the court, the VPS may also be read aloud or played in open court, in whole or in part, or it may be summarised. If the VPS is to be read aloud, the court should also determine who should do so. In making these decisions, the court should take account of the victim's preferences, and follow them unless there is good reason not to do so; examples of this include the inadmissibility of the content or the potentially harmful consequences for the victim or others. Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS. For the purposes of CPD I General matters 5B: Access to information held by the court, a VPS that is read aloud or played in open court in whole or in part should be considered as such, and no longer treated as a confidential document.
- (d) In all cases it will be appropriate for a VPS to be referred to in the course of the sentencing hearing and/or in the sentencing remarks.
- (e) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

2.12.2. Family

***CPD 2015 VII Sentencing G*²⁴⁶**

Families bereaved by homicide and other criminal conduct

- G.1 In cases in which the victim has died as a result of the relevant criminal conduct, the victim's family is not a party to the proceedings, but does have an interest in the case. Bereaved families have particular entitlements under the Code of Practice for Victims of Crime. All parties should have regard to the needs of the victim's family and ensure that the trial process does not expose bereaved families to avoidable intimidation, humiliation or distress.
- G.2 In so far as it is compatible with family members' roles as witnesses, the court should consider the following measures:
 - (a) Practical arrangements being discussed with the family and made in good time before the trial, such as seating for family members in the courtroom; if appropriate, in an alternative area, away from the public gallery.
 - (b) Warning being given to families if the evidence on a certain day is expected to be particularly distressing.
 - (c) Ensuring that appropriate use is made of the scheme for Victim Personal Statements, in accordance with the paragraphs above.
- G.3 The sentencer should consider providing a written copy of the sentencing remarks to the family after sentence has been passed. Sentencers should tend in favour of providing such a copy, unless there is good reason not to do so, and the copy should be provided as soon as is reasonably practicable after the sentencing hearing.

²⁴⁶ As amended.

2.12.3. Community

CPD 2015 VII Sentencing H²⁴⁷

Community Impact Statements

- H.1 A community impact statement may be prepared by the police to make the court aware of particular crime trends in the local area and the impact of these on the local community.
- H.2 Such statements must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he is not represented.
- H.3 The community impact statement and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court.
- H.4 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the local community. Opinions as to what the sentence should be are therefore not relevant. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
- H.5 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the local community.
- H.6 It will not be appropriate for a Community Impact Statement to be made after disposal of the case but before an appeal.

R. v Skelton [2014] EWCA Crim 2409; [2015] 1 Cr. App. R. (S.) 34 (p.265)

A community impact statement was to be limited to expressing the effect of particular crimes upon a particular community and should not be used as a character assassination of defendants.

²⁴⁷ As amended.

2.12.4. Business

*CPD 2015 VII Sentencing I*²⁴⁸

Impact statements for businesses

- I.1 Individual victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'), see CPD VII Sentencing F. If the victim, or one of the victims, is a business or enterprise (including charities but excluding public sector bodies), of any size, a nominated representative may make an Impact Statement for Business ('ISB'). The ISB gives a formal opportunity for the court to be informed how a crime has affected a business. The court will take the statement into account when determining sentence. This does not prevent individual employees from making a VPS about the impact of the same crime on them as individuals. Indeed the ISB should be about the impact on the business exclusively, and the impact on any individual included within a VPS.
- I.2 When a police officer takes statements about the alleged offence, he or she should also inform the business about the scheme. An ISB may be made to the police at that time, or the ISB template may be downloaded from www.police.uk, completed and emailed or posted to the relevant police contact. Guidance on how to complete the form is available on www.police.uk and on the CPS website. There is no obligation on any business to make an ISB.
- I.3 An ISB or an updated ISB may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not be appropriate for an ISB to be made after disposal of the case but before an appeal.
- I.4 A business wishing to make an ISB should consider carefully who to nominate as the representative to make the statement on its behalf. A person making an ISB on behalf of a business, the nominated representative, must be authorised to do so on behalf of the business, either by nature of their position within the business, such as a director or owner, or by having been suitably authorised, such as by the owner or Board of Directors. The nominated representative must also be in a position to give admissible evidence about the impact of the crime on the business. This will usually be through first hand personal knowledge, or using business documents (as defined in section 117 of the Criminal Justice Act 2003). The most appropriate person will vary depending on the nature of the crime, and the size and structure of the business and may for example include a manager, director, chief executive or shop owner.
- I.5 If the nominated representative leaves the business before the case comes to court, he or she will usually remain the representative, as the ISB made by him or her will still provide the best evidence of the impact of the crime, and he or she could still be asked to attend court. Nominated representatives should be made aware of the on-going nature of the role at the time of making the ISB.
- I.6 If necessary a further ISB may be provided to the police if there is a change in circumstances. This could be made by an alternative nominated representative. However, the new ISB will usually supplement, not replace, the original ISB and again must contain admissible evidence. The prosecutor will decide which ISB to serve on the defence as evidence, and any ISB that is not served in evidence will be included in the unused material and considered for disclosure to the defence.

²⁴⁸ As amended.

- I.7 The ISB must be made in proper form, that is as a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. The maker of an ISB can be cross-examined on its content.
- I.8 The ISB and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court; the views of the business should be taken into account in reaching a decision.
- I.9 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victims, including any business victim. Opinions as to what the sentence should be are therefore not relevant. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
- I.10 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on a business.