



**Law
Commission**
Reforming the law

Sentencing law in England and Wales
Legislation currently in force
Part 3.2 – Custodial penalties

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Part 3. Sentencing powers and duties

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3.2 Custodial penalties

3.2.1. General principles

3.2.1.1. General

Meaning of “custodial sentence”

PCC(S)A 2000 s.76²⁹⁴: Meaning of “custodial sentence”

- s.76(1) - in the PCC(S)A 2000 “custodial sentence” means:
- (a) a sentence of imprisonment (as to which, see s.89(1)(a) below);
 - (b) a sentence of detention under ss.90 or 91;
 - (bb) a sentence of detention for public protection under CJA 2003 s.226;
 - (bc) a sentence of detention under CJA 2003 s.226B or 228;
 - (c) a sentence of custody for life under PCC(S)A 2000 ss.93 or 94;
 - (d) a sentence of detention in a young offender institution (under s.96 or otherwise);
or
 - (e) a detention and training order (under s.100 below).

- s.76(2) - in s.76(1), “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence

3.2.1.2. Limits on imposing custodial sentences

Maximum sentence on indictment

PCC(S)A 2000 s.77²⁹⁵: Liability to imprisonment on conviction on indictment

- s.77 - Where a person is convicted on indictment of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, the person so convicted shall be liable to imprisonment for not more than two years

Maximum sentence in magistrates’ court

PCC(S)A 2000 s.78²⁹⁶: General limit on magistrates’ court’s power to impose imprisonment or detention in a young offender institution

- s.78(1) - a magistrates’ court shall not have power to impose imprisonment, or detention in a young offender institution, for more than six months in respect of any one offence
- s.78(2) - unless expressly excluded, subsec.(1) applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than six months

²⁹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

²⁹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

²⁹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.78(3) - subsec.(1) is without prejudice to MCA 1980 s.133 (consecutive terms of imprisonment)
- s.78(4) - any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine etc. is not limited by subsec.(1)
- s.78(4A) - supplementary to subsec.(4) re want of sufficient goods to satisfy a fine
- s.78(5) - definition of "fine": it includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation
- s.78(6) - definition of "impose imprisonment": it means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone
- s.78(7) - MCA 1980 s.132 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court.

MCA 1980 s.32²⁹⁷: Penalties on summary conviction for offences triable either way

- s.32(1) - on summary conviction of any of the offences triable either way listed in Schedule 1 to this Act a person shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding the prescribed sum or both, except that—
 - (a) a magistrates' court shall not have power to impose imprisonment for an offence so listed if the Crown Court would not have that power in the case of an adult convicted of it on indictment.
- s.32(2) - for any offence triable either way which is not listed in Schedule 1 to this Act, being an offence under a relevant enactment, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the prescribed sum unless the offence is one for which by virtue of an enactment other than this subsection a larger fine may be imposed on summary conviction.
- s.32(3) - where, by virtue of any relevant enactment, a person summarily convicted of an offence triable either way would, apart from this section, be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, subsection (2) above shall apply irrespective of whether the conviction is a first, second or subsequent one.
- s.32(4) - subsection (2) above shall not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event.
- s.32(5) - subsection (2) above shall not apply on summary conviction of any of the following offences:—
 - (a) offences under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug;

²⁹⁷ Commencement: 6 July 1981, SI 1981/457 art.2.

- (b) offences under the following provisions of that Act, where the controlled drug in relation to which the offence was committed was a Class C drug, namely—
 - (i) section 4(2) (production, or being concerned in the production, of a controlled drug);
 - (ii) section 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another);
 - (iii) section 5(3) (having possession of a controlled drug with intent to supply it to another);
 - (iv) section 8 (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there);
 - (v) section 12(6) (contravention of direction prohibiting practitioner etc. from possessing, supplying etc. controlled drugs); or
 - (vi) section 13(3) (contravention of direction prohibiting practitioner etc. from prescribing, supplying etc. controlled drugs).

s.32(6) - where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence—

- (a) subsection (2) above shall not affect that power or override any restriction imposed in the exercise of that power; and
- (b) the amount to which that fine may be restricted in the exercise of that power shall be any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed.

s.32(8) - in subsection (5) above “*controlled drug*”, “*Class B drug*” and “*Class C drug*” have the same meaning as in the Misuse of Drugs Act 1971.

s.32(9) - in this section—

“*fine*” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;

“*the prescribed sum*” means £5,000 or such sum as is for the time being substituted in this definition by an order in force under section 143(1) below;

“*relevant enactment*” means an enactment contained in the Criminal Law Act 1977 or in any Act passed before, or in the same Session as, that Act.

s.32(10) - Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates’ court) makes provision that affects the application of this section.

MCA 1980 Sch.1²⁹⁸: Offences triable either way by virtue of section 17

Note: The list of offences is not reproduced here.

Note: CJA 2003 s.154 (not in force) concerns the general limit on magistrates’ courts power to impose imprisonment.

²⁹⁸ Commencement: 6 July 1981, SI 1981/457 art.2.

Minimum sentence in magistrates' court

PCC(S)A 2000 s.78²⁹⁹: General limit on magistrates' court's power to impose imprisonment or detention in a young offender institution

s.78(7) - MCA 1980 s.132 contains provision about the minimum term of imprisonment which may be imposed by a magistrates' court

MCA 1980 s.132³⁰⁰: Minimum term

s.132 - a magistrates' court shall not impose imprisonment for less than five days

Magistrates' Court may impose sentence less than the specified maximum

MCA 1980 s.34³⁰¹: Mitigation of penalties, etc.

s.34(1) - where under any enactment whether passed before or after the commencement of this Act a magistrates' court has power to sentence an offender to imprisonment for a period specified by the enactment, or to a fine of an amount specified by the enactment, then, except where an Act passed after 31st December 1879 expressly provides to the contrary, the court may sentence him to imprisonment for less than that period or, as the case may be, to a fine of less than that amount.

s.34(2) - where under any such enactment an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognizance with or without sureties to keep the peace or observe any other condition, the court convicting him may dispense with or modify the requirement.

s.34(3) - where under any such enactment a magistrates' court has power to sentence an offender to imprisonment or other detention but not to a fine, then, except where an Act passed after 31st December 1879 expressly provides to the contrary, the court may, instead of sentencing him to imprisonment or other detention, impose a fine which—

(a) for an offence triable either way, shall not exceed the prescribed sum within the meaning of section 32 above; and

(b) for a summary offence, shall—

(i) not exceed level 3 on the standard scale; and

(ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.

Detention in court house etc.

MCA 1980 s.135³⁰²: Detention of offender for one day in court-house or police station

s.135(1) - a magistrates' court that has power to commit to prison a person convicted of an offence, or would have that power but for section 82 or 88 above, may order him to be detained within the precincts of the court-house or at any police station until such hour,

²⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁰⁰ Commencement: 6 July 1981, SI 1981/457 art.2

³⁰¹ Commencement: 6 July 1981, SI 1981/457 art.2

³⁰² Commencement: 6 July 1981, SI 1981/457 art.2

not later than 8 o'clock in the evening of the day on which the order is made, as the court may direct, and, if it does so, shall not, where it has power to commit him to prison, exercise that power.

- s.135(2) - a court shall not make such an order under this section as will deprive the offender of a reasonable opportunity of returning to his abode on the day of the order.
- s.135(3) - this section shall have effect in relation to a person aged 18 or over but less than 21 as if references in it to prison were references to detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention of persons aged 18 to 20 for default).

Conspiracy cases

CLA 1977 s.3³⁰³: Penalties for conspiracy

- s.3(1) - a person guilty by virtue of section 1 above of conspiracy to commit any offence or offences shall be liable on conviction on indictment—
 - (a) in a case falling within subsection (2) or (3) below, to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to below in this section as the relevant offence or offences); and
 - (b) in any other case, to a fine.

Paragraph (b) above shall not be taken as prejudicing the application of section 163 of the Criminal Justice Act 2003 (general power of court to fine offender convicted on indictment) in a case falling within subsection (2) or (3) below.

- s.3(2) - where the relevant offence or any of the relevant offences is an offence of any of the following descriptions, that is to say—
 - (a) murder, or any other offence the sentence for which is fixed by law;
 - (b) an offence for which a sentence extending to imprisonment for life is provided; or
 - (c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided,the person convicted shall be liable to imprisonment for life.

- s.3(3) - where in a case other than one to which subsection (2) above applies the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

In the case of an offence triable either way the references above in this subsection to the maximum term provided for that offence are references to the maximum term so provided on conviction on indictment.

³⁰³ Commencement: 1 December 1977, SI 1977/1682 art.2 and Sch.1 para.1.

Attempts

CAA 1981 s.4³⁰⁴: Trial and penalties

- s.4(1) - a person guilty by virtue of section 1 above of attempting to commit an offence shall—
- (a) if the offence attempted is murder or any other offence the sentence for which is fixed by law, be liable on conviction on indictment to imprisonment for life; and
 - (b) if the offence attempted is indictable but does not fall within paragraph (a) above, be liable on conviction on indictment to any penalty to which he would have been liable on conviction on indictment of that offence; and
 - (c) if the offence attempted is triable either way, or is low-value shoplifting (which is defined in, and is triable only summarily by virtue of, section 22A of the Magistrates' Courts Act 1980), be liable on summary conviction to any penalty to which he would have been liable on summary conviction of that offence.

[...]

- s.4(5) - subsection (1) above shall have effect—
- (b) notwithstanding anything—
 - (i) in section 32(1) (no limit to fine on conviction on indictment) of the Criminal Law Act 1977; or
 - (ii) in section 78(1) and (2) (maximum of six months' imprisonment on summary conviction unless express provision made to the contrary) of the Powers of Criminal Courts (Sentencing) Act 2000.

3.2.1.3. Consecutive sentences

MCA 1980 s.133³⁰⁵: Consecutive sentences

- s.133(1) - subject to CJA 2003 s.265 (restriction on consecutive sentences for released prisoners), a magistrates' court imposing imprisonment may order that the term of imprisonment shall commence on the expiration of any other term of imprisonment imposed by that or any other court; but where a magistrates' court imposes two or more terms of imprisonment to run consecutively, the aggregate may not, subject to the provisions of MCA 1980 s.133, exceed 6 months
- s.133(2) - if two or more of the terms imposed are imposed in respect of an offence triable either way which was tried summarily (otherwise than in pursuance of MCA 1980 s.22(2) (certain offences triable either way to be tried summarily if value involved is small)), the aggregate of the terms and any other terms imposed by the court may exceed 6 months but may not, subject to the following provisions of MCA 1980 s.133, exceed 12 months
- s.133(2A) - in relation to the imposition of terms of detention in a young offender institution, MCA 1980 s.133(2) shall have effect as if the reference to an offence triable either way were a reference to such an offence or an offence triable only on indictment

³⁰⁴ Commencement: 27 August 1981, CAA 1981 s.11(1).

³⁰⁵ Commencement: 6 July 1981, SI 1981/457 art.2

- s.133(3) - the limitations imposed by MCA 1980 s.133(1)-(2A) shall not operate to reduce the aggregate of the terms that the court may impose in respect of any offences below the term which the court has power to impose in respect of any one of those offences
- s.133(4) - where a person has been sentenced by a magistrates' court to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine etc., shall not be subject to the limitations imposed by MCA 1980 s.133(1)-(3)
- s.133(5) - for the purposes of MCA 1980 s.133, a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction etc.

CJA 2003 s.265³⁰⁶: Restriction on consecutive sentences for released prisoners

- s.265(1) - a court sentencing a person to a term of imprisonment may not order the term to commence on the expiry of any other sentence of imprisonment from which he has been released: (a) under CJA 2003 Part 12 Chapter 6; or (b) under Criminal Justice Act 1991 Part 2
- s.265(2) - definition of "imprisonment": includes PCC(S)A 2000 ss.91 and 96, CJA 2003 ss.227, 228, 226A, 226B

Note: CJA 2003 ss.154 and 155 (concerning the general limit on magistrates' courts power to impose imprisonment) are not currently in force.

3.2.1.4. Sentence start date

Sentences cannot be backdated

PCC(S)A 2000 s.154³⁰⁷: Commencement of Crown Court sentence

- s.154(1) - a sentence imposed...by the Crown Court when dealing with a defendant shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs

R. v Gilbert [1974] 60 Cr. App. R. 220

Having reviewed the predecessor to PCC(S)A 2000 s.154, the court concluded that there was not, nor had there ever been, a power to order that a sentence should commence at a time earlier than the date upon which it was pronounced.

³⁰⁶ Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. In force 4 April 2005 otherwise, SI 2005/950 art.2(1) and Sch.1 para.19.

³⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.2.1.5. Legal representation

Legal representation

PCC(S)A 2000 s.83³⁰⁸: Restriction on imposing custodial sentences on persons not legally represented

- s.83(1) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not pass a sentence of imprisonment on a person who (a) is not legally represented in that court, and (b) has not been previously sentenced to that punishment by a court in any part of the United Kingdom, subsection (3) applies
- s.83(2) - a magistrates' court on summary conviction, or the Crown Court on committal for sentence or on conviction on indictment, shall not: (a) pass a sentence of detention under section 90 or 91, (b) pass a sentence of custody for life under section 93 or 94, (c) pass a sentence of detention in a young offender institution, or (d) impose a detention and training order, on a person who is not legally represented in that court unless subsection (3) applies
- s.83(3) - this subsection applies if either: (a) representation was made available for the purposes of the proceedings under LASPOA 2012 Part 1 but was withdrawn because of his conduct or because it appeared that his financial resources were such that he was not eligible; (aa) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible; or (b) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply
- s.83(4) - for the purposes of PCC(S)A 2000 s.83 a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced
- s.83(5) - for the purposes of s.83(1)(b) a previous sentence of imprisonment which has been suspended and which has not taken effect under section 119 or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968 shall be disregarded³⁰⁹
- s.83(6) - in s.83 "*sentence of imprisonment*" does not include a committal for contempt of court or any kindred offence

CJA 2003 s.189³¹⁰: Suspended sentences of imprisonment

- s.189(6) - subject to any provision to the contrary contained in the CJA 1967, PCC(S)A 2000 or any other enactment passed or instrument made under any enactment after 31 December 1967, a suspended sentence which has not taken effect under CJA 2003 Sch.12 para.8 is to be treated as a sentence of imprisonment or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for the purposes of all enactments and instruments made under enactments

³⁰⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

³⁰⁹ Note that this subsection has not been amended to include a suspended sentence order under CJA 2003.

³¹⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.9. The commencement is of no effect in relation to offences committed prior to the commencement date, SI 2005/950 Sch.2 para.5(2)(a).

3.2.1.6. Imposing a custodial sentence

Offence must be so serious that a fine or community order cannot be justified

CJA 2003 s.152³¹¹: General restrictions on imposing discretionary custodial sentences

- s.152(1) - application of section: a person is convicted of an offence punishable with imprisonment other than one: (a) fixed by law, or (b) falling to be imposed under a provision mentioned in subsection (1A).
- s.152(1A) - the provisions referred to in subsection (1)(b) are—
- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
 - (b) section 51A(2) of the Firearms Act 1968;
 - (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
 - (d) section 110(2) or 111(2) of the Sentencing Act;
 - (e) section 224A, 225(2) or 226(2) of this Act;
 - (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.
- s.152(2) - the court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified
- s.152(3) - exceptions: nothing in s.152(2) prevents a court from imposing a custodial sentence if: (a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness, or (b) he fails to comply with an order under section 161(2) (pre-sentence drug testing)

Custodial sentence must be for the shortest period

CJA 2003 s.153³¹²: Length of discretionary custodial sentences: general provision

- s.153(1) - this section applies where a court passes a custodial sentence other than one fixed by law or imposed under section 224A, 225 or 226.
- s.153(2) - subject to the provisions listed in subsection (3), the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- s.153(3) - the provisions referred to in subsection (2) are—
- (a) sections 1(2B) and 1A(5) of the Prevention of Crime Act 1953;
 - (b) section 51A(2) of the Firearms Act 1968;
 - (c) sections 139(6B), 139A(5B) and 139AA(7) of the Criminal Justice Act 1988;
 - (d) sections 110(2) and 111(2) of the Sentencing Act;

³¹¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to an offence committed prior to the commencement date, SI 2005/950 Sch.2 para.5(2)(a).

³¹² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to an offence committed prior to the commencement date, SI 2005/950 Sch.2 para.5(2)(a).

- (e) sections 226A(4) and 226B(2) of this Act;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

Duty to take account of all information

CJA 2003 s.156³¹³: Pre-sentence reports and other requirements

- s.156(1) - in forming any such opinion as is mentioned in section 148(1) or (2)(b), section 152(2) or section 153(2), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering), a court must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.
- 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).

3.2.1.7. Interaction with other sentencing orders

Criminal Behaviour Orders

R. v P [2004] EWCA Crim 287; [2004] 2 Cr. App. R. (S.) 63 (p.343)

Where custodial sentences in excess of a few months are imposed and offenders are able to be released on licence, circumstances in which there is a demonstrable need to make an ASBO are likely to be limited.

Note: The similarity between ASBOs and the new Criminal Behaviour Order make it very likely much of the caselaw will continue to apply. For that reason, this case has been listed under 'Criminal Behaviour Order'.

Compensation orders

TICs and Totality Guideline, Sentencing Council p.16

A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

Costs

Practice Direction (Costs in Criminal Proceedings) Amendment No.2 2015 para 3.4

The order is not intended to be in the nature of a penalty which can only be satisfied on the defendant's release from prison.

³¹³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

Fines

TICs and Totality Guideline, Sentencing Council p.13

A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:

- the sentence is suspended;
- a confiscation order is not contemplated; and
- there is no obvious victim to whom compensation can be awarded; and
- the offender has, or will have, resources from which a fine can be paid.

Magistrates' Court Sentencing Guidelines, Sentencing Guidelines Council p.152

A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.

Care must be taken to ensure that the overall sentence is proportionate to the seriousness of the offence and that better off offenders are not able to 'buy themselves out of custody'.

Hospital/Guardianship order

Mental Health Act 1983 s.37³¹⁴: Powers of courts to order hospital admission or guardianship

s.37(8) - where a hospital or guardianship order is made under s.37, the court shall not: (a) impose a sentence of imprisonment ... in respect of the offence ... but the court may make any other order which it has power to make apart from s.37; and for the purposes of s.37(8) "sentence of imprisonment" includes any sentence or order for detention.

Prison in default

PCC(S)A 2000 s.139³¹⁵: Powers and duties of Crown Court in relation to fines and forfeited recognizances

s.139(5) - where any person liable for the payment of a fine or a sum due under a recognizance ... is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment or detention in a young offender institution etc., the court may order that any prison in default term shall not being to run until after the end of the first-mentioned term

³¹⁴ Commencement: 30 September 1983, MHA 1983 s.149(2)

³¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.2. Adults

3.2.2.1. Determinate custodial sentences

3.2.2.1.1 Imprisonment

3.2.2.1.1.1 Availability

PCC(S)A 2000 s.89³¹⁶: Restriction on imposing imprisonment on persons under 21

s.89(1) - subject to s.189(2), no court shall:

- (a) pass a sentence of imprisonment on a person for an offence if he is aged under 21 when convicted; or
- (b) commit a person aged under 21 to prison for any reason

s.89(2) - nothing in s.89(1) prevents the committal to prison of a person aged under 21 who is:

- (a) remanded in custody;
- (b) committed in custody for sentence; or
- (c) sent in custody for trial under CDA 1998 s.51 or 51A

3.2.2.1.1.2 Interaction with other sentencing orders

Detention in Young Offender Institution

PCC(S)A 2000 s.97³¹⁷: Term of detention in a young offender institution, and consecutive sentences

s.97(5) - subject to PCC(S)A 2000 s.84 (restriction on consecutive sentences for released prisoners), where a defendant who:

- (a) is serving a sentence of detention in a young offender institution, and
- (b) is aged 21 or over,

is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution

Suspended sentence order

R. v Butters and Fitzgerald (1971) 55 Cr. App. R. 515

The offender had been made subject to immediate and suspended sentences of imprisonment at the same time. The Court of Appeal held that that was undesirable as a matter of sentencing practice, notwithstanding that there was no statutory bar to so doing. In general, courts should avoid mixing sentences which fall into different categories.

³¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³¹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.2.1.2 Detention in a young offender institution

3.2.2.1.2.1 Availability and power to impose

PCC(S)A 2000 s.96³¹⁸: Detention in a young offender institution for other cases where offender at least 18 but under 21

- s.96 - subject to PCC(S)A 2000 ss.90 (detention during HM's Pleasure) , 93 (duty to impose custody for life) and 94 (power to impose custody for life), where:
- (a) a person aged at least 18 but under 21 is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
 - (b) the court is of the opinion that either or both of PCC(S)A 2000 s.79(2)(a) and (b) (general restrictions on imposing discretionary custodial sentences: repealed) apply or the case falls within PCC(S)A 2000 s.79(3) (general restrictions on imposing discretionary custodial sentences: repealed), the sentence that the court is to pass is a sentence of detention in a young offender institution.

Maximum term

PCC(S)A 2000 s.97³¹⁹: Term of detention in a young offender institution, and consecutive sentences

- s.97(1) - the maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence

Minimum term

PCC(S)A 2000 s.97³²⁰: Term of detention in a young offender institution, and consecutive sentences

- s.97(2) - a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days

Note: Section 97 was amended by CJA 2015 s.15 on 13 April 2015 to omit subsection (3).

3.2.2.1.2.2 Consecutive sentences

PCC(S)A 2000 s.97³²¹: Term of detention in a young offender institution, and consecutive sentences

- s.97(4) - where: (a) a defendant is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution, or (b) a defendant who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,
- the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment

³¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.2.1.2.3 Place of detention

PCC(S)A 2000 s.98³²²: Detention in a young offender institution: Place of detention

- (1) subject to Prison Act 1952 s.22(2)(b) (removal to hospital etc.), a defendant sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under PCC(S)A 2000 s.98(2) is in force in relation to him.
- (2) the Secretary of State may from time to time direct that a defendant sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution.

3.2.2.1.2.4 Interaction with other sentencing orders

PCC(S)A 2000 s.97³²³: Term of detention in a young offender institution, and consecutive sentences

- s.97(5) - subject to PCC(S)A 2000 s.84 (restriction on consecutive sentences for released prisoners), where a defendant who:
- (a) is serving a sentence of detention in a young offender institution, and
 - (b) is aged 21 or over,
- is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution

3.2.2.1.3 Suspended sentence orders

3.2.2.1.3.1 Making the order

CJA 2003 s.189³²⁴: Suspended sentences of imprisonment

- s.189(1) - if a court passes a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for a term of least 14 days but not more than 2 years, it may make an order providing that the sentence of imprisonment or detention in a young offender institution is not to take effect unless—
- (a) during a period specified in the order for the purposes of this paragraph (“the operational period”) the offender commits another offence in the United Kingdom (whether or not punishable with imprisonment), and
 - (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- s.189(1A) - an order under subsection (1) may also provide that the offender must comply during a period specified in the order for the purposes of this subsection (“the supervision period”) with one or more requirements falling within section 190(1) and specified in the order.

³²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³²⁴ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

- s.189(1B) - where an order under subsection (1) contains provision under subsection (1A), it must provide that the sentence of imprisonment or detention in a young offender institution will also take effect if—
- (a) during the supervision period the offender fails to comply with a requirement imposed under subsection (1A), and
 - (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- s.189(2) - where two or more sentences imposed on the same occasion are to be served consecutively, the power conferred by subsection (1) is not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 2 years.
- s.189(3) - the supervision period (if any) and the operational period must each be a period of not less than six months and not more than two years beginning with the date of the order.
- s.189(4) - where an order under subsection (1) imposes one or more community requirements, the supervision period must not end later than the operational period.
- s.189(5) - a court which passes a suspended sentence on any person for an offence may not impose a community sentence in his case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court.
- s.189(6) - subject to any provision to the contrary contained in the Criminal Justice Act 1967 (c. 80), the Sentencing Act or any other enactment passed or instrument made under any enactment after 31st December 1967, a suspended sentence which has not taken effect under paragraph 8 of Schedule 12 is to be treated as a sentence of imprisonment or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for the purposes of all enactments and instruments made under enactments.
- s.189(7) - in this Part—
- (a) “*suspended sentence order*” means an order under subsection (1),
 - (b) “*suspended sentence*” means a sentence to which a suspended sentence order relates, and
 - (c) “*community requirement*”, in relation to a suspended sentence order, means a requirement imposed under subsection (1A).

3.2.2.1.3.2 Requirements

CJA 2003 s.190³²⁵: Imposition of requirements by suspended sentence order

- s.190(1) - the requirements falling within this subsection are—
- (a) an unpaid work requirement (as defined by section 199),
 - (aa) a rehabilitation activity requirement (as defined by section 200A),
 - (c) a programme requirement (as defined by section 202),
 - (d) a prohibited activity requirement (as defined by section 203),

³²⁵ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

- (e) a curfew requirement (as defined by section 204),
- (f) an exclusion requirement (as defined by section 205),
- (g) a residence requirement (as defined by section 206),
- (ga) a foreign travel prohibition requirement (as defined by section 206A),
- (h) a mental health treatment requirement (as defined by section 207),
- (i) a drug rehabilitation requirement (as defined by section 209),
- (j) an alcohol treatment requirement (as defined by section 212),
- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

s.190(2) - Section 189(1A) has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—

- (a) section 199(3) (unpaid work requirement),
- (d) section 203(2) (prohibited activity requirement),
- (e) section 207(3) (mental health treatment requirement),
- (f) section 209(2) (drug rehabilitation requirement), and
- (g) section 212(2) and (3) (alcohol treatment requirement).

s.190(3) - where the court makes a suspended sentence order imposing a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined by section 215) unless—

- (a) the court is prevented from doing so by section 215(2) or 218(4), or
- (b) in the particular circumstances of the case, it considers it inappropriate to do so.

s.190(4) - where the court makes a suspended sentence order imposing an unpaid work requirement, a rehabilitation activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a foreign travel prohibition requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).

s.190(5) - before making a suspended sentence order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

Note: There is a modified version of this section in force in relation to the south London justice area, see SI 2014/1777 as amended by SIs 2015/1480 and 2015/1482

Note: For the details of the requirements, see the community orders section.

3.2.2.1.3.3 Reviews of suspended sentence orders

CJA 2003 s.191³²⁶: Power to provide for review of suspended sentence order

- s.191(1) - a suspended sentence order that imposes one or more community requirements may—
- (a) provide for the order to be reviewed periodically at specified intervals,
 - (b) provide for each review to be made, subject to section 192(4), at a hearing held for the purpose by the court responsible for the order (a “review hearing”),
 - (c) require the offender to attend each review hearing, and
 - (d) provide for an officer of a provider of probation services to make to the court responsible for the order, before each review, a report on the offender’s progress in complying with the community requirements of the order.
- s.191(2) - subsection (1) does not apply in the case of an order imposing a drug rehabilitation requirement (provision for such a requirement to be subject to review being made by section 210).
- s.191(3) - in this section references to the court responsible for a suspended sentence order are references—
- (a) where a court is specified in the order in accordance with subsection (4), to that court;
 - (b) in any other case, to the court by which the order is made.
- s.191(4) - where the area specified in a suspended sentence order made by a magistrates’ court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purpose of subsection (3) a magistrates’ court which acts for the area specified in the order.
- s.191(5) - where a suspended sentence order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken for the purposes of subsection (3)(b) to have been made by the Crown Court.

CJA 2003 s.192³²⁷: Periodic reviews of suspended sentence order

- s.192(1) - at a review hearing (within the meaning of subsection (1) of section 191) the court may, after considering the officer’s report referred to in that subsection (“the review officer’s report”), amend the community requirements of the suspended sentence order, or any provision of the order which relates to those requirements.
- s.192(2) - the court—
- (a) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses his willingness to comply with that requirement,
 - (b) may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended,

³²⁶ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

³²⁷ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

- (c) may amend the supervision period only if the period as amended complies with section 189(3) and (4),
- (d) may not amend the operational period of the suspended sentence, and
- (e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.

s.192(3) - for the purposes of subsection (2)(a)—

- (a) a community requirement falling within any paragraph of section 190(1) is of the same kind as any other community requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a community requirement of the same kind as any requirement falling within section 190(1) to which it relates.

s.192(4) - if before a review hearing is held at any review the court, after considering the review officer's report, is of the opinion that the offender's progress in complying with the community requirements of the order is satisfactory, it may order that no review hearing is to be held at that review; and if before a review hearing is held at any review, or at a review hearing, the court, after considering that report, is of that opinion, it may amend the suspended sentence order so as to provide for each subsequent review to be held without a hearing.

s.192(5) - if at a review held without a hearing the court, after considering the review officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

s.192(6) - if at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the community requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 8 of Schedule 12.

s.192(7) - at a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 191(1).

s.192(8) - in this section any reference to the court, in relation to a review without a hearing, is to be read—

- (a) in the case of the Crown Court, as a reference to a judge of the court, and
- (b) in the case of a magistrates' court, as a reference to a justice of the peace.

3.2.2.1.3.4 Breach

CJA 2003 s.193³²⁸: Breach, revocation or amendment of suspended sentence order, and effect of further conviction

s.193 - Schedule 12 (which relates to the breach, revocation or amendment of the community requirements of suspended sentence orders, and to the effect of any further conviction) shall have effect.

³²⁸ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

Interpretation

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1 - in this Schedule—

“*the offender*”, in relation to a suspended sentence order, means the person in respect of whom the order is made;

“*the local justice area concerned*”, in relation to a suspended sentence order, means the local justice area for the time being specified in the order;

“*the responsible officer*” has the meaning given by section 197.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1A(1) - in this Schedule “*enforcement officer*” means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

para.1A(2) - an enforcement officer must be an officer of a provider of probation services that is a public sector provider.

para.1A(3) - in sub-paragraph (2) “*public sector provider*” means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.2 - in this Schedule—

(a) any reference to a suspended sentence order being subject to review is a reference to such an order being subject to review in accordance with section 191(1)(b) or to a drug rehabilitation requirement of such an order being subject to review in accordance with section 210(1)(b);

(b) any reference to the court responsible for a suspended sentence order which is subject to review is to be construed in accordance with section 191(3) or, as the case may be, 210(2).

Orders made on appeal

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.3 - where a suspended sentence order is made on appeal it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

Duty to give warning in relation to community requirement

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.4(1) - if the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the community requirements of a suspended sentence order, the officer must give him a warning under this paragraph unless—

- (a) the offender has within the previous twelve months been given a warning under this paragraph in relation to a failure to comply with any of the community requirements of the order, or
- (b) the officer refers the matter to an enforcement officer (see paragraph 5A).

para.4(2) - a warning under this paragraph must—

- (a) describe the circumstances of the failure,
- (b) state that the failure is unacceptable, and
- (c) inform the offender that if within the next twelve months he again fails to comply with any requirement of the order, he will be liable to be brought before a court.

para.4(3) - the responsible officer must, as soon as practicable after the warning has been given, record that fact.

para.4(4) - in relation to any suspended sentence order which is made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1)(b) to a justice of the peace is to be read as a reference to the Crown Court.

Breach of order after warning

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.5(1) - if—

- (a) the responsible officer has given a warning under paragraph 4 to the offender in respect of a suspended sentence order, and
- (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the community requirements of the order,

the officer must refer the matter to an enforcement officer (see paragraph 5A).

para.5(2) - in relation to any suspended sentence order which is made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

Role of enforcement officer

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.5A(1) - where a matter is referred to an enforcement officer under paragraph 4(1)(b) or 5(1), it is the duty of the enforcement officer to consider the case and, where appropriate, to cause an information to be laid before a justice of the peace in respect of the offender's failure to comply with the requirement.

para.5A(2) - in relation to any suspended sentence order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

Issue of summons or warrant by justice of the peace

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.6(1) - this paragraph applies to—

- (a) a suspended sentence order made by a magistrates' court, or
- (b) any suspended sentence order which was made by the Crown Court and includes a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court.

para.6(2) - if at any time while a suspended sentence order to which this paragraph applies is in force it appears on information to a justice of the peace that the offender has failed to comply with any of the community requirements of the order, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
- (b) if the information is in writing and on oath, issue a warrant for his arrest.

para.6(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

- (a) in the case of a suspended sentence order which is subject to review, before the court responsible for the order,
- (b) in any other case, before a magistrates' court acting in the local justice area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned.

para.6(4) - where a summons issued under sub-paragraph (2)(a) requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender.

Issue of summons or warrant by Crown Court

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.7(1) - this paragraph applies to a suspended sentence order made by the Crown Court which does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court.

- para.7(2) - if at any time while a suspended sentence order to which this paragraph applies is in force it appears on information to the Crown Court that the offender has failed to comply with any of the community requirements of the order, the Crown Court may—
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- para.7(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.
- para.7(4) - where a summons issued under sub-paragraph (1)(a) requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender.

Powers of court on breach of community requirement or conviction of further offence

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- 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—
 - (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.

- para.8(3) - the court must make an order under sub-paragraph (2)(a) or (b) unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the matters mentioned in sub-paragraph (4); and where it is of that opinion the court must state its reasons.
- para.8(4) - the matters referred to in sub-paragraph (3) are—
- (a) the extent to which the offender has complied with any community requirements of the suspended sentence order, and
 - (b) in a case falling within sub-paragraph (1)(b), the facts of the subsequent offence.
- para.8(4ZA) - a fine imposed under sub-paragraph (2)(ba) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- para.8(5) - where a court deals with an offender under sub-paragraph (2) in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.
- 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.8(8) - in proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with any community requirements of the suspended sentence order and any question whether the offender has been convicted of an offence committed during the operational period of the suspended sentence is to be determined by the court and not by the verdict of a jury.

Further provisions as to order that suspended sentence is to take effect

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

- para.9(1) - when making an order under paragraph 8(2)(a) or (b) that a sentence is to take effect (with or without any variation of the original term), the court—
- (b) may order that the sentence is to take effect immediately or that the term of that sentence is to commence on the expiry of another term of imprisonment passed on the offender by that or another court.
- para.9(2) - the power to make an order under sub-paragraph (1)(b) has effect subject to section 265 (restriction on consecutive sentences for released prisoners).

para.9(3) - for the purpose of any enactment conferring rights of appeal in criminal cases, each of the following orders—

- (a) an order made by the court under paragraph 8(2)(a) or (b);
- (b) an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when making an order described in paragraph (a),
is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Restriction of powers in paragraph 8 where treatment required

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.10(1) - an offender who is required by any of the following community requirements of a suspended sentence order—

- (a) a mental health treatment requirement,
- (b) a drug rehabilitation requirement, or
- (c) an alcohol treatment requirement,

to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for the purposes of paragraph 8(1)(a) as having failed to comply with that requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

para.10(2) - a court may not under paragraph 8(2)(c)(i) amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

Court by which suspended sentence may be dealt with under paragraph 8(1)(b)

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.11(1) - an offender may be dealt with under paragraph 8(1)(b) in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought.

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.

Procedure where court convicting of further offence does not deal with suspended sentence

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.12(1) - if it appears to the Crown Court, where that court has jurisdiction in accordance with sub-paragraph (2), or to a justice of the peace having jurisdiction in accordance with that sub-paragraph—

- (a) that an offender has been convicted in the United Kingdom of an offence committed during the operational period of a suspended sentence, and
 - (b) that he has not been dealt with in respect of the suspended sentence,
- that court or justice may, subject to the following provisions of this paragraph, issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his arrest.

para.12(2) - jurisdiction for the purposes of sub-paragraph (1) may be exercised—

- (a) if the suspended sentence was passed by the Crown Court, by that court;
- (b) if it was passed by a magistrates' court, by a justice acting in the local justice area in which the court acted.

para.12(3) - where—

- (a) an offender is convicted in Scotland or Northern Ireland of an offence, and
- (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales,

the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed.

para.12(4) - unless he is acting in consequence of a notice under sub-paragraph (3), a justice of the peace may not issue a summons under this paragraph except on information and may not issue a warrant under this paragraph except on information in writing and on oath.

para.12(5) - a summons or warrant issued under this paragraph must direct the offender to appear or be brought before the court by which the suspended sentence was passed.

Power to amend amount of fine

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.12A(1) - the Secretary of State may by order amend the sum for the time being specified in paragraph 8(2)(ba).

para.12A(2) - the power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.

para.12A(3) - in sub-paragraph (2), "*the relevant date*" means—

- (a) if the sum specified in paragraph 8(2)(ba) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;

- (b) otherwise, the date on which section 69 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.

para.12A(4) - an order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any suspended sentence order made in respect of an offence committed before the fine amendment order comes into force.

3.2.2.1.3.5 Amendment of suspended sentence order

CJA 2003 s.193³²⁹: Breach, revocation or amendment of suspended sentence order, and effect of further conviction

s.193 - Schedule 12 (which relates to the breach, revocation or amendment of the community requirements of suspended sentence orders, and to the effect of any further conviction) shall have effect.

Interpretation

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1 - in this Schedule—

“*the offender*”, in relation to a suspended sentence order, means the person in respect of whom the order is made;

“*the local justice area concerned*”, in relation to a suspended sentence order, means the local justice area for the time being specified in the order;

“*the responsible officer*” has the meaning given by section 197.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.1A(1) - in this Schedule “*enforcement officer*” means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

para.1A(2) - an enforcement officer must be an officer of a provider of probation services that is a public sector provider.

para.1A(3) - in sub-paragraph (2) “*public sector provider*” means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

³²⁹ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.9 and Sch.2 para.5.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.2 - in this Schedule—

- (a) any reference to a suspended sentence order being subject to review is a reference to such an order being subject to review in accordance with section 191(1)(b) or to a drug rehabilitation requirement of such an order being subject to review in accordance with section 210(1)(b);
- (b) any reference to the court responsible for a suspended sentence order which is subject to review is to be construed in accordance with section 191(3) or, as the case may be, 210(2).

Orders made on appeal

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.3 - where a suspended sentence order is made on appeal it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

When does this part apply?

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.12B - this Part of this Schedule applies only in relation to a suspended sentence order that imposes one or more community requirements.

Power to cancel requirements due to change of circumstances

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.13(1) - where at any time while a suspended sentence order is in force, it appears to the appropriate court on the application of the offender or an officer of a provider of probation services that, having regard to the circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may cancel the community requirements of the suspended sentence order.

para.13(2) - the circumstances in which the appropriate court may exercise its power under subparagraph (1) include the offender's making good progress or his responding satisfactorily to supervision.

para.13(3) - in this paragraph "*the appropriate court*" means—

- (a) in the case of a suspended sentence order which is subject to review, the court responsible for the order,
- (b) in the case of a suspended sentence order which was made by the Crown Court and does not include any direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the Crown Court, and
- (c) in any other case, a magistrates' court acting in the local justice area concerned.

Change of residence etc.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.14(1) - this paragraph applies where at any time while a suspended sentence order is in force in respect of an offender—

- (a) the offender is given permission under section 220A to change residence, and
- (b) the local justice area in which the new residence is situated (“the new local justice area”) is different from the local justice area specified in the order.

para.14(2) - if the permission is given by a court, the court must amend the order to specify the new local justice area.

para.14(3) - the court may not amend under this paragraph a suspended sentence order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender resides in the local justice area concerned unless, in accordance with paragraph 15 it either—

- (a) cancels those requirements, or
- (b) substitutes for those requirements other requirements which can be complied with if the offender does not reside in that area.

para.14(4) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 13.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.14A(1) - this paragraph applies where at any time while a suspended sentence order is in force in respect of an offender—

- (a) a court amends the order,
- (b) the order as amended includes a residence requirement requiring the offender to reside at a specified place, and
- (c) the local justice area in which that place is situated (“the new local justice area”) is different from the local justice area specified in the order.

para.14A(2) - the court must amend the order to specify the new local justice area.

Note: Para. 14A came into force on 1 February 2015, except as specified in SI 2015/40 art.2(p)(ii).

Power to cancel/amend/replace requirement

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.15(1) - at any time during the supervision period, the appropriate court may, on the application of the offender or an officer of a provider of probation services, by order amend any community requirement of a suspended sentence order—

- (a) by cancelling the requirement, or
- (b) by replacing it with a requirement of the same kind, which the court could include if it were then making the order.

para.15(2) - for the purposes of sub-paragraph (1)—

- (a) a requirement falling within any paragraph of section 190(1) is of the same kind as any other requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 190(1) to which it relates.

para.15(3) - the court may not under this paragraph amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

para.15(4) - if the offender fails to express his willingness to comply with a mental health treatment requirement, drug rehabilitation requirement or alcohol treatment requirement as proposed to be amended by the court under this paragraph, the court may—

- (a) revoke the suspended sentence order and the suspended sentence to which it relates, and
- (b) deal with him, for the offence in respect of which the suspended sentence was imposed, in any way in which it could deal with him if he had just been convicted by or before the court of the offence.

para.15(5) - in dealing with the offender under sub-paragraph (4)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.

para.15(6) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 13.

Mental health, drugs and alcohol

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.16(1) - where the medical practitioner or other person by whom or under whose direction an offender is, in pursuance of any requirement to which this sub-paragraph applies, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol—

- (a) is of the opinion mentioned in sub-paragraph (3), or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he must make a report in writing to that effect to the responsible officer and that officer must [cause an application to be made]¹ under paragraph 15 to the appropriate court for the variation or cancellation of the requirement.

para.16(2) - the requirements to which sub-paragraph (1) applies are—

- (a) a mental health treatment requirement,
- (b) a drug rehabilitation requirement, and
- (c) an alcohol treatment requirement.

para.16(3) - the opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order,
- (b) that the offender needs different treatment,
- (c) that the offender is not susceptible to treatment, or

- (d) that the offender does not require further treatment.

para.16(4) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 13.

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.17 - where an officer of a provider of probation services is of the opinion that a suspended sentence order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each periodic review (required by section 211) to be made without a hearing instead of at a review hearing, or vice versa, he must apply under paragraph 15 to the court responsible for the order for the variation of the order.

Unpaid work

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.18(1) - where—

- (a) a suspended sentence order imposing an unpaid work requirement is in force in respect of the offender, and
- (b) on the application of the offender or an officer of a provider of probation services, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may, in relation to the order, extend the period of twelve months specified in section 200(2).

para.18(2) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 13.

No amendment where appeal pending

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.19(1) - no application may be made under paragraph 13, 15 or 18 while an appeal against the suspended sentence is pending.

para.19(2) - sub-paragraph (1) does not apply to an application under paragraph 15 which—

- (a) relates to a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement, and
- (b) is made by an officer of a provider of probation services with the consent of the offender.

Procedure

CJA 2003 Sch.12: Breach or amendment of suspended sentence order and effect of further conviction

para.20(1) - subject to sub-paragraph (2), where a court proposes to exercise its powers under paragraph 15, otherwise than on the application of the offender, the court—

- (a) must summon him to appear before the court, and
- (b) if he does not appear in answer to the summons, may issue a warrant for his arrest.

para.20(2) - this paragraph does not apply to an order cancelling any community requirement of a suspended sentence order.

para.21 - Paragraphs 8(2)(c) and 15(1)(b) have effect subject to the provisions mentioned in subsection (2) of section 190, and to subsections (3) and (5) of that section.

para.22(1) - on the making under this Schedule of an order amending a suspended sentence order, the proper officer of the court must—

- (a) provide copies of the amending order to the offender and the responsible officer,
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to—
 - (i) a provider of probation services that is a public sector provider operating in that area, and
 - (ii) the magistrates' court acting in that area, and
- (c) in the case of an amending order which imposes or amends a requirement specified in the first column of Schedule 14, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Schedule, and
- (d) where the court acts in a local justice area other than the one specified in the order prior to the revocation or amendment, provide a copy of the revoking or amending order to a magistrates' court acts in a local justice area so specified.

para.22(2) - where under sub-paragraph (1)(b) the proper officer of the court provides a copy of an amending order to a magistrates' court [acting in a different area, the officer must also provide to that court such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

para.22(3) - in this paragraph "*proper officer*" means—

- (a) in relation to a magistrates' court, the designated officer for the court; and
- (b) in relation to the Crown Court, the appropriate officer.

para.22(4) - in this paragraph "*public sector provider*" means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

3.2.2.1.3.6 Transfer of orders to Scotland or Northern Ireland

Note: CJA 2003 s.194 and Sch.13 sets out the provisions dealing with the transfer of orders. They are not reproduced here.

Note: CJA 2003 s.195 concerns the interpretation of Part 3 of the Act dealing with suspended sentence orders.

3.2.2.2. Extended sentences (EDS)

3.2.2.2.1 General

CJA 2003 s.226A³³⁰: Extended sentence for certain violent or sexual offences: persons 18 or over

What is an extended sentence?

CJA 2003 s.226A³³¹: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(5) - an extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of:

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

3.2.2.2.2 Availability and power to order

Availability and power to order

R. v Robson [2006] EWCA Crim 1414; [2007] 1 Cr. App. R. (S.) 54 (p.301)

As a matter of statutory construction, we conclude that the age of the offender for the purpose of determining which of the statutory regimes under Chapter 5 of Part 12 of the 2003 Act applies to him is the offender’s age at the date of conviction (Keith J, at [13])

CJA 2003 s.226A³³²: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(1) - application of section:

- (a) a person aged 18 or over is convicted of a specified offence (whether the offence was committed before or after the section came into force),
- (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences,
- (c) the court is not required by CJA 2003 ss.224A or 225(2) to impose a sentence of imprisonment for life, and
- (d) condition A or B is met

s.226A(4) - the court may impose an extended sentence of imprisonment on the defendant

³³⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³³¹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³³² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

CJA 2003 s.224³³³: Meaning of “specified offence”

s.224(1) - an offence is a “specified offence” for the purposes of CJA 2003 Part 12 Chapter 5 if it is a specified violent offence or a specified sexual offence

s.224(3) in CJA 2003 Part 12 Chapter 5:

“serious harm” means death or serious personal injury, whether physical or psychological;

“specified violent offence” means an offence specified in Part 1 of Schedule 15;

“specified sexual offence” means an offence specified in Part 2 of Schedule 15

CJA 2003 Sch.15³³⁴: Specified offences for the purposes of CJA 2003 Part 5 Chapter 12

Note: The schedule lists the offences for the purposes of the dangerous offender provisions. There are pending amendments to the schedule and some paragraphs are not yet in force. The Schedule was amended by SI 2015/778 art.3 and Sch.1 on 13 April 2015, SI 2015/820 reg.2(r)(ix) on 3 May 2015 and SI 2015/1476 reg2(a) on 31 July 2015.

Specified violent offences

- 1 Manslaughter.
- 2 Kidnapping.
- 3 False imprisonment.
- 4 An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).
- 5 An offence under section 16 of that Act (threats to kill).
- 6 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 7 An offence under section 20 of that Act (malicious wounding).
- 8 An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).
- 9 An offence under section 22 of that Act (using chloroform etc. to commit or assist in the committing of any indictable offence).
- 10 An offence under section 23 of that Act (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm).
- 11 An offence under section 27 of that Act (abandoning children).
- 12 An offence under section 28 of that Act (causing bodily injury by explosives).

³³³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 224 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.15

³³⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.37.

- 13 An offence under section 29 of that Act (using explosives etc. with intent to do grievous bodily harm).
- 14 An offence under section 30 of that Act (placing explosives with intent to do bodily injury).
- 15 An offence under section 31 of that Act (setting spring guns etc. with intent to do grievous bodily harm).
- 16 An offence under section 32 of that Act (endangering the safety of railway passengers).
- 17 An offence under section 35 of that Act (injuring persons by furious driving).
- 18 An offence under section 37 of that Act (assaulting officer preserving wreck).
- 19 An offence under section 38 of that Act (assault with intent to resist arrest).
- 20 An offence under section 47 of that Act (assault occasioning actual bodily harm).
- 21 An offence under section 2 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property).
- 22 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 22A An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).
- 23 An offence under section 1 of the Infant Life (Preservation) Act 1929 (c. 34) (child destruction).
- 24 An offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to children).
- 25 An offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide).
- 26 An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).
- 27 An offence under section 16A of that Act (possession of firearm with intent to cause fear of violence).
- 28 An offence under section 17(1) of that Act (use of firearm to resist arrest).
- 29 An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).
- 30 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 31 An offence under section 8 of the Theft Act 1968 (c. 60) (robbery or assault with intent to rob).
- 32 An offence under section 9 of that Act of burglary with intent to—
(a) inflict grievous bodily harm on a person, or
(b) do unlawful damage to a building or anything in it.
- 33 An offence under section 10 of that Act (aggravated burglary).

- 34 An offence under section 12A of that Act (aggravated vehicle-taking) involving an accident which caused the death of any person.
- 35 An offence of arson under section 1 of the Criminal Damage Act 1971 (c. 48).
- 36 An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.
- 37 An offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking).
- 38 An offence under section 1 of the Aviation Security Act 1982 (c. 36) (hijacking).
- 39 An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).
- 40 An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).
- 41 An offence under section 4 of that Act (offences in relation to certain dangerous articles).
- 42 An offence under section 127 of the Mental Health Act 1983 (c. 20) (ill-treatment of patients).
- 43 An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (c. 38) (prohibition of female circumcision).
- 44 An offence under section 1 of the Public Order Act 1986 (c. 64) (riot).
- 45 An offence under section 2 of that Act (violent disorder).
- 46 An offence under section 3 of that Act (affray).
- 47 An offence under section 134 of the Criminal Justice Act 1988 (c. 33) (torture).
- 48 An offence under section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving).
- 48A. An offence under section 3ZC of that Act (causing death by driving: disqualified drivers).
- 49 An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).
- 50 An offence under section 1 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes).
- 51 An offence under section 9 of that Act (hijacking of ships).
- 52 An offence under section 10 of that Act (seizing or exercising control of fixed platforms).
- 53 An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).
- 54 An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

- 55 An offence under section 13 of that Act (offences involving threats).
- 56 An offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).
- 57 An offence under section 4 or 4A of the Protection from Harassment Act 1997 (c. 40) (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress)
- 58 An offence under section 29 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults).
- 59 An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (c. 64)).
- 59A An offence under section 54 of the Terrorism Act 2000 (weapons training).
- 59B An offence under section 56 of that Act (directing terrorist organisation).
- 59C An offence under section 57 of that Act (possession of article for terrorist purposes).
- 59D An offence under section 59 of that Act (inciting terrorism overseas).
- 60 An offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.
- 60A An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
- 60B An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
- 60C An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
- 61 An offence under section 1 of the Female Genital Mutilation Act 2003 (c. 31) (female genital mutilation).
- 62 An offence under section 2 of that Act (assisting a girl to mutilate her own genitalia).
- 63 An offence under section 3 of that Act (assisting a non-UK person to mutilate overseas a girl's genitalia).
- 63A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm)
- 63B An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
- 63C An offence under section 6 of that Act (training for terrorism).
- 63D An offence under section 9 of that Act (making or possession of radioactive device or material).
- 63E An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).

- 63F An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc).
- 63G An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).
- 63H An offence under section 2 of that Act (human trafficking) which is not within Part 2 of this Schedule.
- 64 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Part of this Schedule.
- (2) An attempt to commit such an offence.
- (3) Conspiracy to commit such an offence.
- (4) Incitement to commit such an offence.
- (5) An offence under Part 2 of the Serious Crime Act 2007 in relation to which an offence specified in the preceding paragraphs of this Part of this Schedule is the offence (or one of the offences) which the person intended or believed would be committed.
- 65 (1) An attempt to commit murder.
- (2) Conspiracy to commit murder.
- (3) Incitement to commit murder.
- (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed.

Specified sexual offences

- 66 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 67 An offence under section 2 of that Act (procurement of woman by threats).
- 68 An offence under section 3 of that Act (procurement of woman by false pretences).
- 69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse).
- 70 An offence under section 5 of that Act (intercourse with girl under thirteen).
- 71 An offence under section 6 of that Act (intercourse with girl under 16).
- 72 An offence under section 7 of that Act (intercourse with a defective).
- 73 An offence under section 9 of that Act (procurement of a defective).
- 74 An offence under section 10 of that Act (incest by a man).
- 75 An offence under section 11 of that Act (incest by a woman).
- 76 An offence under section 14 of that Act (indecent assault on a woman).
- 77 An offence under section 15 of that Act (indecent assault on a man).
- 78 An offence under section 16 of that Act (assault with intent to commit buggery).

- 79 An offence under section 17 of that Act (abduction of woman by force or for the sake of her property).
- 80 An offence under section 19 of that Act (abduction of unmarried girl under eighteen from parent or guardian).
- 81 An offence under section 20 of that Act (abduction of unmarried girl under sixteen from parent or guardian).
- 82 An offence under section 21 of that Act (abduction of defective from parent or guardian).
- 83 An offence under section 22 of that Act (causing prostitution of women).
- 84 An offence under section 23 of that Act (procurement of girl under twenty-one).
- 85 An offence under section 24 of that Act (detention of woman in brothel).
- 86 An offence under section 25 of that Act (permitting girl under thirteen to use premises for intercourse).
- 87 An offence under section 26 of that Act (permitting girl under sixteen to use premises for intercourse).
- 88 An offence under section 27 of that Act (permitting defective to use premises for intercourse).
- 89 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under sixteen).
- 90 An offence under section 29 of that Act (causing or encouraging prostitution of defective).
- 91 An offence under section 32 of that Act (soliciting by men).
- 92A An offence under section 33A of that Act (keeping a brothel used for prostitution).
- 93 An offence under section 128 of the Mental Health Act 1959 (c. 72) (sexual intercourse with patients).
- 94 An offence under section 1 of the Indecency with Children Act 1960 (c. 33) (indecent conduct towards young child).
- 95 An offence under section 4 of the Sexual Offences Act 1967 (c. 60) (procuring others to commit homosexual acts).
- 96 An offence under section 5 of that Act (living on earnings of male prostitution).
- 97 An offence under section 9 of the Theft Act 1968 (c. 60) of burglary with intent to commit rape.
- 98 An offence under section 54 of the Criminal Law Act 1977 (c. 45) (inciting girl under sixteen to have incestuous sexual intercourse).
- 99 An offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children).

- 100 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles).
- 101 An offence under section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of a child).
- 102 An offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape).
- 103 An offence under section 2 of that Act (assault by penetration).
- 104 An offence under section 3 of that Act (sexual assault).
- 105 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent).
- 106 An offence under section 5 of that Act (rape of a child under 13).
- 107 An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 108 An offence under section 7 of that Act (sexual assault of a child under 13).
- 109 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).
- 110 An offence under section 9 of that Act (sexual activity with a child).
- 111 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).
- 112 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).
- 113 An offence under section 12 of that Act (causing a child to watch a sexual act).
- 114 An offence under section 13 of that Act (child sex offences committed by children or young persons).
- 115 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).
- 116 An offence under section 15 of that Act (meeting a child following sexual grooming etc.).
- 117 An offence under section 16 of that Act (abuse of position of trust: sexual activity with a child).
- 118 An offence under section 17 of that Act (abuse of position of trust: causing or inciting a child to engage in sexual activity).
- 119 An offence under section 18 of that Act (abuse of position of trust: sexual activity in the presence of a child).
- 120 An offence under section 19 of that Act (abuse of position of trust: causing a child to watch a sexual act).
- 121 An offence under section 25 of that Act (sexual activity with a child family member).

- 122 An offence under section 26 of that Act (inciting a child family member to engage in sexual activity).
- 123 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice).
- 124 An offence under section 31 of that Act (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity).
- 125 An offence under section 32 of that Act (engaging in sexual activity in the presence of a person with a mental disorder impeding choice).
- 126 An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act).
- 127 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder).
- 128 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception).
- 129 An offence under section 36 of that Act (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder).
- 130 An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception).
- 131 An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder).
- 132 An offence under section 39 of that Act (care workers: causing or inciting sexual activity).
- 133 An offence under section 40 of that Act (care workers: sexual activity in the presence of a person with a mental disorder).
- 134 An offence under section 41 of that Act (care workers: causing a person with a mental disorder to watch a sexual act).
- 135 An offence under section 47 of that Act (paying for sexual services of a child).
- 136 An offence under section 48 of that Act (causing or inciting sexual exploitation of a child or pornography).
- 137 An offence under section 49 of that Act (controlling a child in relation to sexual exploitation).
- 138 An offence under section 50 of that Act (arranging or facilitating sexual exploitation of a child)
- 139 An offence under section 52 of that Act (causing or inciting prostitution for gain).
- 140 An offence under section 53 of that Act (controlling prostitution for gain).
- 141 An offence under section 57 of that Act (trafficking into the UK for sexual exploitation).
- 142 An offence under section 58 of that Act (trafficking within the UK for sexual exploitation).

- 143 An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation).
- 143A An offence under section 59A of that Act (trafficking for sexual exploitation).
- 144 An offence under section 61 of that Act (administering a substance with intent).
- 145 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence).
- 146 An offence under section 63 of that Act (trespass with intent to commit a sexual offence).
- 147 An offence under section 64 of that Act (sex with an adult relative: penetration).
- 148 An offence under section 65 of that Act (sex with an adult relative: consenting to penetration).
- 149 An offence under section 66 of that Act (exposure).
- 150 An offence under section 67 of that Act (voyeurism).
- 151 An offence under section 69 of that Act (intercourse with an animal).
- 152 An offence under section 70 of that Act (sexual penetration of a corpse).
- 152A An offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).
- 153 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in this Part of this Schedule.
- (2) An attempt to commit such an offence.
- (3) Conspiracy to commit such an offence.
- (4) Incitement to commit such an offence.
- (5) An offence under Part 2 of the Serious Crime Act 2007 in relation to which an offence specified in this Part of this Schedule is the offence (or one of the offences) which the person intended or believed would be committed.

The assessment of dangerousness

CJA 2003 s.229³³⁵: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

³³⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

Pre-sentence report

CJA 2003 s.156³³⁶: Pre-sentence reports and other requirements

s.156(3) - subject to CJA s.156(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 CJA 2003 ss.152(2), 153(2) [...] or 226A(1)(b) [...]

s.156(4) - CJA 2003 s.156(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

The conditions which must be satisfied

CJA 2003 s.226A³³⁷: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(2) - condition A is that, at the time the offence was committed, the defendant had been convicted of an offence listed in Schedule 15B

s.226A(3) - condition B is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least four years

Note: As to the requirement that the custodial term be at least four years, see R. v Pinnell [2010] EWCA Crim 2848; [2011] 2 Cr. App. R. (S.) 30 (p.168) and the way in which it was applied in R. v S [2014] EWCA Crim 968. See also the TICs and Totality Guideline (Sentencing Council) p.10.

CJA 2003 Sch.15B: Offences listed for the purposes of ss.224A, 226A and 246A

Note: The schedule lists the offences for the purposes of ss.224A, 226A and 246A. There are pending amendments to the schedule and some paragraphs are not yet in force. The Schedule was amended by SI 2015/778 art.3 and Sch.1 on 13 April 2015 SI 2015/820 reg.2(r)(x) on 3 May 2015 and SI 2015/1476 reg2(a) on 31 July 2015.

³³⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

³³⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

Part 1

- 1 Manslaughter.
- 2 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).
- 3 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 3A An offence under section 28 of that Act (causing bodily injury by explosives).
- 3B An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm).
- 3C An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).
- 3D An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 3E An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).
- 4 An offence under section 16 of the Firearms Act 1968 (possession of a firearm with intent to endanger life).
- 5 An offence under section 17(1) of that Act (use of a firearm to resist arrest).
- 6 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 7 An offence of robbery under section 8 of the Theft Act 1968 where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.
- 8 An offence under section 1 of the Protection of Children Act 1978 (indecent images of children).
- 8A An offence under section 54 of the Terrorism Act 2000 (weapons training).
- 9 An offence under section 56 of that Act (directing terrorist organisation).
- 10 An offence under section 57 of that Act (possession of article for terrorist purposes).
- 11 An offence under section 59 of that Act (inciting terrorism overseas) if the offender is liable on conviction on indictment to imprisonment for life.
- 12 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
- 13 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
- 14 An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
- 15 An offence under section 1 of the Sexual Offences Act 2003 (rape).

- 16 An offence under section 2 of that Act (assault by penetration).
- 17 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if the offender is liable on conviction on indictment to imprisonment for life.
- 18 An offence under section 5 of that Act (rape of a child under 13).
- 19 An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 20 An offence under section 7 of that Act (sexual assault of a child under 13).
- 21 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).
- 22 An offence under section 9 of that Act (sexual activity with a child).
- 23 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).
- 24 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).
- 25 An offence under section 12 of that Act (causing a child to watch a sexual act).
- 26 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).
- 27 An offence under section 15 of that Act (meeting a child following sexual grooming etc).
- 28 An offence under section 25 of that Act (sexual activity with a child family member) if the offender is aged 18 or over at the time of the offence.
- 29 An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if the offender is aged 18 or over at the time of the offence.
- 30 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if the offender is liable on conviction on indictment to imprisonment for life.
- 31 An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender is liable on conviction on indictment to imprisonment for life.
- 32 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender is liable on conviction on indictment to imprisonment for life.
- 33 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc) if the offender is liable on conviction on indictment to imprisonment for life.
- 34 An offence under section 47 of that Act (paying for sexual services of a child) against a person aged under 16.
- 35 An offence under section 48 of that Act (causing or inciting sexual exploitation of a child)

- 36 An offence under section 49 of that Act (controlling a child in relation to sexual exploitation)
- 37 An offence under section 50 of that Act (arranging or facilitating sexual exploitation of a child)
- 38 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) if the offender is liable on conviction on indictment to imprisonment for life.
- 39 An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).
- 40 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
- 40A An offence under section 6 of that Act (training for terrorism).
- 41 An offence under section 9 of that Act (making or possession of radioactive device or materials).
- 42 An offence under section 10 of that Act (misuse of radioactive devices or material and misuse and damage of facilities).
- 43 An offence under section 11 of that Act (terrorist threats relating to radioactive devices, materials or facilities).
- 44 (1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule (“a listed offence”) or murder.
- (2) Conspiracy to commit a listed offence or murder.
- (3) Incitement to commit a listed offence or murder.
- (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a listed offence or murder is the offence (or one of the offences) which the person intended or believed would be committed.
- (5) Aiding, abetting, counselling or procuring the commission of a listed offence.
- 43A An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).
- 43B An offence under section 2 of that Act (human trafficking).

Part 2

- 45 Murder.
- 46 (1) Any offence that—
- (a) was abolished (with or without savings) before the coming into force of this Schedule, and
- (b) would, if committed on the relevant day, have constituted an offence specified in Part 1 of this Schedule.
- (2) “Relevant day”, in relation to an offence, means—
- (a) for the purposes of this paragraph as it applies for the purposes of section 246A(2), the day on which the offender was convicted of that offence, and

- (b) for the purposes of this paragraph as it applies for the purposes of sections 224A(4) and 226A(2), the day on which the offender was convicted of the offence referred to in section 224A(1)(a) or 226A(1)(a) (as appropriate).

Part 3

[Service law - not included in this document]

Part 4

[Scots/Nl/other member state law - not included in this document]

Part 5

50 In this Schedule “imprisonment for life” includes custody for life and detention for life.

3.2.2.2.3 Making the order

Determining the length of the custodial portion of the sentence

CJA 2003 s.226A³³⁸: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(6) - the appropriate custodial term is the term of imprisonment that would (apart from CJA 2003 s.226A) be imposed in compliance with CJA 2003 s.153(2)

Determining the length of the extended licence

CJA 2003 s.226A³³⁹: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(7) - the extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the defendant of further specified offences, subject to CJA 2003 s.226A(7A) to (9).

s.226A(7A) - the extension period must be at least 1 year.

s.226A(8) - the extension period must not exceed:

- (a) five years in the case of a specified violent offence, and
- (b) eight years in the case of a specified sexual offence.

³³⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³³⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

Length of total sentence may not exceed the maximum permitted for the offence

CJA 2003 s.226A³⁴⁰: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(9) - the term of an extended sentence of imprisonment imposed under this section in respect of an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

Consecutive sentences

Note: It is permissible to impose consecutive extended sentences but it is not desirable to do so, see e.g. R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13) and R. v Hibbert [2015] EWCA Crim 507.

Judge should give reasons for imposing an extended sentence

R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13)

In accordance with CJA 2003 s.174, sentencers should usually give reasons for all their conclusions, in particular a finding of dangerousness. Such an explanation should briefly identify the information which has been taken into account.

CJA 2003 s.174³⁴¹: Duty to give reasons for and to explain effect of sentence

s.174(1) - a court passing sentence on an offender has the duties in subsections (2) [...]

s.174(2) - the court must state in open court, in ordinary language and in general terms, the court’s reasons for deciding on the sentence

³⁴⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³⁴¹ Commencement: Section 174(4) in force 5 April 2005, SI 2004/829 art.2(2)(e). Section 174(1)-(3)(b) and (5)-(6) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

3.2.2.2.4 Offences committed before 5 April 2005 etc.

Offences which have been abolished/were committed prior to 5 April 2005

CJA 2003 s.226A³⁴²: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(10) - “specified offence”: in subsections (1)(a) and (8), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that:

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

s.226A(11) - where the offence mentioned in subsection (1)(a) was committed before 4 April 2005:

- (a) subsection (1)(c) has effect as if the words “by section 224A or 225(2)” were omitted, and
- (b) subsection (6) has effect as if the words “in compliance with section 153(2)” were omitted.

3.2.2.2.5 Modification in case of offenders aged under 21

Offenders aged under 21

CJA 2003 s.226A³⁴³: Extended sentence for certain violent or sexual offences: persons 18 or over

s.226A(12) - in the case of a person aged at least 18 but under 21, this section has effect as if:

- (a) the reference in subsection (1)(c) to imprisonment for life were to custody for life, and
- (b) other references to imprisonment (including in the expression “extended sentence of imprisonment”) were to detention in a young offender institution.

Note: Section 226A(12) is inserted until the commencement of CJCSA 2000 s.61 is in force, which abolishes sentences of detention in a young offender institution and custody for life.

³⁴² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

³⁴³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

3.2.2.2.6 Appeals

Fresh evidence

CJA 2003 s.229³⁴⁴: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

CAA 1968 s.23: Evidence

s.23(1) - the Court of Appeal may, if they think it necessary or expedient in the interests of justice:

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies

s.23(1A) - the power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to—

- (a) the Court;
- (b) the appellant;
- (c) the respondent.

³⁴⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

- s.23(2) - the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to:
- (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings

R. v Beesley [2011] EWCA Crim 1021; [2012] 1 Cr. App. R. (S.) 15 (p.71)

As the provisions in relation to dangerousness require the court to take into account all information and in the light of the practice set out in *R. v Roberts* [2006] EWCA Crim 2915; [2007] 1 W.L.R. 1109, CAA 1968 s.23 does not constrain the Court of Appeal from receiving further information about the offender where it is right to do so.

Where previous conviction set aside

CJA 2003 s.231³⁴⁵: Appeals where previous convictions set aside

- s.231(1) - application of section: CJA 2003 s.231(2) applies where:
- (a) a sentence has been imposed on any person under ... CJA 2003 s.226A,
 - (b) the condition in s.226A(2) was met but the condition in s.226A(3) was not, and
 - (c) any previous conviction of his without which the condition in section 226A(2) would not have been met has been subsequently set aside on appeal
- s.231(2) - notwithstanding anything in CAA 1968 s.18, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside

3.2.2.2.7 Certificates of conviction

CJA 2003 s.232A³⁴⁶: Certificates of conviction for Sch.15B offence

- s.232A - where:
- (a) after the commencement of CJA 2003 Sch.15B a person is convicted in England and Wales of an offence listed in that Schedule, and
 - (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that date, and
 - (c) that court subsequently certifies that fact,
- that certificate is evidence, for the purposes of CJA 2003 ss.224A and 226A, that the person was convicted of such an offence on that date

³⁴⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.19. Note that this section has been amended to insert a new subsection (A1) which pertains to appeals relevant to sentences imposed under CJA 2003 s.224A.

³⁴⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.19 para.21

3.2.2.2.8 Interaction with other sentencing orders

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225 . If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A . Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.2.2.9 Other sources of guidance

Dangerous Offenders Guide, Sentencing Guidelines Council³⁴⁷

TICs and Totality Guideline, Sentencing Council

³⁴⁷ Note that this is not a definitive guideline and that it concerns the old extended sentences under the CJA 2003.

3.2.2.3. Life imprisonment (discretionary under CJA 2003)

3.2.2.3.1 Power to order and test to apply

CJA 2003 s.225³⁴⁸: Life sentence or imprisonment for public protection for serious offences

s.225(1) - application of section: where:

- (a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and
- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences

s.225(2) - If:

- (a) the offence is one in respect of which the defendant would apart from this section be liable to imprisonment for life, and
- (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,

the court must impose a sentence of imprisonment for life or in the case of a person aged at least 18 but under 21, a sentence of custody for life.

s.225(5) - sentence under s.225 is not regarded as one fixed by law

PCC(S)A 2000 s.94³⁴⁹: Power to impose custody for life in certain other cases where offender at least 18 but under 21

s.94(1) - where a person aged at least 18 but under 21 is convicted of an offence:

- (a) for which the sentence is not fixed by law, but
 - (b) for which a person aged 21 or over would be liable to imprisonment for life,
- the court shall, if it considers that a sentence for life would be appropriate, sentence him to custody for life.

s.94(2) - subsection (1) above is subject to (in particular) sections 79 and 80, but this subsection does not apply in relation to a sentence which falls to be imposed under section 109(2).

PCC(S)A 2000 s.95³⁵⁰: Custody for life: place of detention

s.95(1) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to custody for life shall be detained in a young offender institution unless a direction under subsection (2) below is in force in relation to him.

s.95(2) - the Secretary of State may from time to time direct that an offender sentenced to custody for life shall be detained in a prison or remand centre instead of a young offender institution.

³⁴⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.225 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

³⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

CJA 2003 s.224³⁵¹: Meaning of “specified offence” etc.

- s.224(1) - an offence is a “specified offence” for the purposes of CJA 2003 Part 12 Chapter 5 if it is a specified violent offence or a specified sexual offence
- s.224(2) - an offence is a “serious offence” for the purposes of CJA 2003 Part 12 Chapter 5 if and only if:
- (a) it is a specified offence, and
 - (b) it is, apart from CJA 2003 s.224A, punishable in the case of a person aged 18 or over by
 - (i) imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life, or
 - (ii) imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a determinate period of ten years or more

s.224(3) in CJA 2003 Part 12 Chapter 5:

“*serious harm*” means death or serious personal injury, whether physical or psychological;

“*specified violent offence*” means an offence specified in Part 1 of Schedule 15;

“*specified sexual offence*” means an offence specified in Part 2 of Schedule 15

Note: For offences committed before the 2003 Act was brought into force, the criteria for imposing a sentence of life imprisonment are contained in a number of decisions of the Court of Appeal which are not listed here.

CJA 2003 s.229³⁵²: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and

³⁵¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 224 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.15

³⁵² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

(c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

Guidance

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[...] [T]aking into account the law prior to the coming into force of the CJA 2003 and the whole of the new statutory provisions, the question in s.225(2)(b) as to whether the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify a life sentence requires consideration of:—

- i) The seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of CJA 2003 s.143(1). This is always a matter for the judgment of the court.
- ii) The defendant's previous convictions (in accordance with CJA 2003 s.143(2)).
- iii) The level of danger to the public posed by the defendant and whether there is a reliable estimate of the length of time he will remain a danger.
- iv) The available alternative sentences.

It is inevitable that the application of s.225 in its current form will lead to the imposition of life sentences in circumstances where previously the sentence would have been one of IPP. It is what Parliament intended and also ensures (as Parliament also intended), so far as is possible, the effective protection of the public.

(Lord Thomas CJ, at [22]-[23])

3.2.2.3.2 Setting the minimum term

What is a life sentence?

Criminal Practice Directions 2015 VII Sentencing

- L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.
- L.2 Thus the life sentence falls into two parts:
- (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and
 - (b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

Definitions

PCC(S)A 2000 s.82A³⁵³: Determination of tariffs

s.82A(7) - definitions for s.82A:

“court” includes the Court Martial;

“life sentence” means a sentence mentioned in C(S)A 1997 s.34(2) other than a sentence mentioned in s.34(2)(d) or (e)

s.82A(8) - [provision dealing with service courts]

Duty to specify minimum term

PCC(S)A 2000 s.82A³⁵⁴: Determination of tariffs

s.82A(1) - application of section: where a court passes a life sentence in circumstances where the sentence is not fixed by law

s.82A(2) - the court shall, unless it makes an order under PCC(S)A 2000 s.82A(4), order that C(S)A 1997 s.28(5)-(8) (referred to in this section as the “early release provisions”) shall apply to the defendant as soon as he has served the part of his sentence which is specified in the order

Criminal Practice Directions 2015 VII Sentencing

L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

Determining the length

PCC(S)A 2000 s.82A³⁵⁵: Determination of tariffs

s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
- (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

³⁵³ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁵⁴ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁵⁵ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

- (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition); and
- (c) the early release provisions as compared with CJA 2003 s.244(1) (duty to release prisoners at half-way point of sentence etc.)

Criminal Practice Directions 2015 VII Sentencing

L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

Note: As to the appropriate length of the minimum term, as a proportion of the notional determinate sentence, see R. v Szczerba [2002] EWCA Crim 440; [2002] 2 Cr. App. R. (S.) 86 (p.387).

Power to impose a “whole life” minimum term

PCC(S)A 2000 s.82A³⁵⁶: Determination of tariffs

s.82A(4) - if the defendant was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under PCC(S)A 2000 s.82A(2), the court shall order that, the early release provisions shall not apply

Criminal Practice Directions 2015 VII Sentencing

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

³⁵⁶ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

3.2.2.3.3 Interaction with other sentencing orders

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468)

The court did not say that no SOPO will ever be appropriate in the case of an indefinite sentence, but the court had not on the material before it been able to envisage an instance when it would. The usual rule ought to be that an indeterminate sentence needs no SOPO, at least unless there was some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later.³⁵⁷

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225 . If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A . Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.2.3.5 Other sources of guidance

Dangerous Offenders Guide, Sentencing Guidelines Council³⁵⁸

TICs and Totality Guideline, Sentencing Council

³⁵⁷ It seems likely that this decision would apply with equal force to the new SHPOs, dealt with in part 3(4)

³⁵⁸ Note that this is not a definitive guideline and that it concerns the old extended sentences under the CJA 2003.

3.2.2.4. Life imprisonment (discretionary where offender not “dangerous”)

3.2.2.4.1 The existence of the power

R. v Saunders [2013] EWCA Crim 1027; [2014] 1 Cr. App. R. (S.) 45 (p.258) at [11] and [12]

[...] [N]either the 2003 Act, nor LASPOA 2012, imposed any limit on the power of the court to impose a sentence of life imprisonment in cases where a sentence of life imprisonment may be imposed but the case does not fall within either the statutory life sentence (CJA 2003 s.224A) or the discretionary life sentence (CJA 2003 s.225). Some of these offences may involve a significant risk of serious harm to the public, but are not included within the list of “specified” offences in the dangerousness provisions in the 2003 Act. One obvious example is the offender who commits repeated offences of very serious drug supplying which justifies the imposition of the life sentence. In circumstances like these the court is not obliged to impose the sentence in accordance with s.225(2), but its discretion to do so is unaffected.

In reality, the occasions when this second form of discretionary life sentence is likely to be imposed will be rare, and no inconvenience has yet resulted from applying the description “discretionary” to both forms of sentence. We have reflected whether any advantages might accrue to sentencing courts if we were able to offer alternative descriptions which would identify the distinction between these two forms of discretionary life sentence. In reality, none is needed. (Lord Chief Justice, at [11]-[12])

3.2.2.4.2 Setting the minimum term

Note: See 3.2.2.3.2, ‘Setting the minimum term’ in the Life imprisonment (CJA 2003 s.225) section.

3.2.2.5. Life imprisonment (“two strikes life”)

3.2.2.5.1 General

Definitions

CJA 2003 s.224A³⁵⁹: Life for second listed offence

s.224A(10) For the purposes of subsections (4) to (9):

“*extended sentence*” means:

- (a) a sentence imposed under section 85 of the Sentencing Act or under section 226A, 226B, 227 or 228 of this Act (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or
- (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

“*life sentence*” means:

- (a) a life sentence as defined in section 34 of the Crime (Sentences) Act 1997, or
- (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

³⁵⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

“*relevant pre-sentence period*”, in relation to the previous offence referred to in subsection (4), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

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

Automatic life sentence is not a sentence fixed by law

CJA 2003 s.224A³⁶⁰: Life for second listed offence

s.224A(11) - an offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

3.2.2.5.2 Availability

Applicability

CJA 2003 s.224A³⁶¹: Life for second listed offence

s.224A(1) - this section applies where:

- (a) a person aged 18 or over is convicted of an offence listed in Part 1 of Schedule 15B,
- (b) the offence was committed after this section comes into force, and
- (c) the sentence condition and the previous offence condition are met.

s.224A(12) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(b) and (4)(a) to have been committed on the last of those days.”

The sentence condition

CJA 2003 s.224A³⁶²: Life for second listed offence

s.224A(3) - the sentence condition is that, but for this section, the court would, in compliance with CJA 2003 ss.152(2) and 153(2), impose a sentence of imprisonment for 10 years or more, or, if the person is aged at least 18 but under 21, a sentence of detention in a young offender institution for such a period disregarding any extension period imposed under CJA 2003 s.226A.

³⁶⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

³⁶¹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

³⁶² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

The previous offence condition

CJA 2003 s.224A³⁶³: Life for second listed offence

s.224A(4) - the previous offence condition is that:

- (a) at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B (“the previous offence”), and
- (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.

s.224A(5) - a life sentence is relevant for the purposes of subsection (4)(b) if:

- (a) the offender was not eligible for release during the first 5 years of the sentence, or
- (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.

s.224A(6) - an extended sentence imposed under this Act (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (4)(b) if the appropriate custodial term imposed was 10 years or more.

s.224A(7) - any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

s.224A(8) - any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (4)(b) if it was for a period of 10 years or more.

s.224A(9) - an extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (7) or (8) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.

No requirement that the offender satisfies the dangerous criteria

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[...] for a life sentence to be imposed under s.224A there is no requirement of a finding that the offender is dangerous within the meaning of the CJA 2003, although it is likely that in most such cases he will be. It follows that the fact that an offender is not dangerous is not something that of itself would make it unjust to pass a life sentence under this section. (Lord Thomas CJ, at [8])

No requirement that the “seriousness” threshold is passed

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[...] s.225(2)(b) does not apply to the relevant offence in s.224A . There is no requirement to consider whether the “seriousness” threshold has been passed. (Lord Thomas CJ, at [8])

³⁶³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

Life sentence available where offence does not have life imprisonment as its maximum

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

[Applying section 224A] could lead in cases that may be rare to the imposition of a life sentence in respect of an offence which does not carry life as a maximum. (Lord Thomas CJ, at [8])

3.2.2.5.3 Duty to impose life sentence unless unjust to do so

CJA 2003 s.224A³⁶⁴: Life for second listed offence

s.224A(2) - the court must impose a sentence of imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life under PCC(S)A 2000 s.94 unless the court is of the opinion that there are particular circumstances which:

- (a) relate to the offence, to the previous offence referred to in subsection (4) or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

3.2.2.5.4 Setting the minimum term

What is a life sentence?

Criminal Practice Directions 2015 VII Sentencing

- L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.
- L.2 Thus the life sentence falls into two parts:
- (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and
 - (b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

³⁶⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.122, SI 2012/2906 art.2(e). The coming into force of section 122 is of no effect in relation to a person convicted before 3 December 2012, SI 2012/2906 art.6(a).

Definitions

PCC(S)A 2000 s.82A³⁶⁵: Determination of tariffs

s.82A(7) - definitions for s.82A:

“*court*” includes the Court Martial;

“*life sentence*” means a sentence mentioned in C(S)A 1997 s.34(2) other than a sentence mentioned in s.34(2)(d) or (e)

s.82A(8) - [provision dealing with service courts]

Duty to specify minimum term

PCC(S)A 2000 s.82A³⁶⁶: Determination of tariffs

s.82A(1) - application of section: where a court passes a life sentence in circumstances where the sentence is not fixed by law

s.82A(2) - the court shall, unless it makes an order under PCC(S)A 2000 s.82A(4), order that C(S)A 1997 s.28(5)-(8) (referred to in this section as the “*early release provisions*”) shall apply to the defendant as soon as he has served the part of his sentence which is specified in the order

Criminal Practice Directions 2015 VII Sentencing

L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

Determining the length

PCC(S)A 2000 s.82A³⁶⁷: Determination of tariffs

s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
- (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

³⁶⁵ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁶⁶ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

³⁶⁷ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

- (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition);and
- (c) the early release provisions as compared with CJA 2003 s.244(1) (duty to release prisoners at half-way point of sentence etc.)

Criminal Practice Directions 2015 VII Sentencing

L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

Note: As to the appropriate length of the minimum term, as a proportion of the notional determinate sentence, see R. v Szczerba [2002] EWCA Crim 440; [2002] 2 Cr. App. R. (S.) 86 (p.387)

Power to impose a “whole life” minimum term

PCC(S)A 2000 s.82A³⁶⁸: Determination of tariffs

s.82A(4) - if the defendant was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under PCC(S)A 2000 s.82A(2), the court shall order that, the early release provisions shall not apply

Criminal Practice Directions 2015 VII Sentencing

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

³⁶⁸ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

3.2.2.5.5 Interaction with other sentencing orders

Dangerousness provisions

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225 . If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A . Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.2.5.6 Other sources of guidance

Dangerous Offenders Guide, Sentencing Guidelines Council³⁶⁹

TICs and Totality Guideline, Sentencing Council

3.2.2.6. Life imprisonment (mandatory life)

3.2.2.6.1 Duty to impose life imprisonment or custody for life

Imprisonment for life

M(ADP)A 1965 s.1³⁷⁰: Abolition of death penalty for murder

s.1(1) - no person shall suffer death for murder, and a person convicted of murder shall be sentenced to imprisonment for life.

³⁶⁹ Note that this is not a definitive guideline and that it concerns the old extended sentences under the CJA 2003.

³⁷⁰ Commencement: 9 November 1965, M(ADPA) 1965 s.3(4).

- s.1(3) - for the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if at the commencement of this Act a person is under sentence of death for murder, the sentence shall have effect as a sentence of imprisonment for life.

Custody for life

PCC(S)A 2000 s.93³⁷¹: Duty to impose custody for life in certain cases where offender under 21

- s.93 - where a person aged under 21 is convicted of murder or any other offence the sentence for which is fixed by law as imprisonment for life, the court shall sentence him to custody for life unless he is liable to be detained under section 90 (detention during HM's Pleasure).

PCC(S)A 2000 s.95³⁷²: Custody for life: place of detention

- s.95(1) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to custody for life shall be detained in a young offender institution unless a direction under subsection (2) below is in force in relation to him.
- s.95(2) - the Secretary of State may from time to time direct that an offender sentenced to custody for life shall be detained in a prison or remand centre instead of a young offender institution.

3.2.2.6.2 Setting the minimum term

Application of section

CJA 2003 s.269³⁷³: Determination of minimum term in relation to mandatory life sentence

- s.269(1) - this section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

Duty to set minimum term or impose whole life order

CJA 2003 s.269³⁷⁴: Determination of minimum term in relation to mandatory life sentence

- s.269(2) - the court must, unless it makes an order under subsection (4), order that the provisions of C(S)A 1997 s.28(5) to (8) (referred to in this Chapter as "*the early release provisions*") are to apply to the defendant as soon as he has served the part of his sentence which is specified in the order.
- s.269(4) - if the defendant was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the defendant.

³⁷¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

³⁷³ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁷⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Determining the length

CJA 2003 s.269³⁷⁵: Determination of minimum term in relation to mandatory life sentence

s.269(3) - the part of his sentence is to be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
- (b) the effect of section 240ZA (crediting periods of remand in custody) or of any direction which it would have given under section 240A (crediting periods of remand on certain types of bail) if it had sentenced him to a term of imprisonment.

s.269(3A) - the reference in subsection (3)(b) to section 240ZA includes AFA 2006 s.246 (crediting periods in service custody).

s.269(5) - in considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), the court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

Starting points

CJA 2003 Sch.21 para.4³⁷⁶: Determination of minimum term in relation to mandatory life sentence

para.4(1) - if:

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
 - (b) the offender was aged 21 or over when he committed the offence,
- the appropriate starting point is a whole life order.

para.4(2) cases that would normally fall within sub-paragraph (1)(a) include:

- (a) the murder of two or more persons, where each murder involves any of the following:
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (ba) the murder of a police officer or prison officer in the course of his or her duty,
- (c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

³⁷⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁷⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (d) a murder by a defendant previously convicted of murder.

CJA 2003 Sch.21 para.5³⁷⁷: Determination of minimum term in relation to mandatory life sentence

para.5(1) - if:

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
- (b) the defendant was aged 18 or over when he committed the offence, the appropriate starting point, in determining the minimum term, is 30 years.

para.5(2) - cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include:

- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,
- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity, or
- (h) a murder falling within paragraph 4(2) committed by a defendant who was aged under 21 when he committed the offence.

CJA 2003 Sch.21 para.5A³⁷⁸: Determination of minimum term in relation to mandatory life sentence

para.5A(1) - if:

- (a) the case does not fall within paragraph 4(1) or 5(1),
- (b) the offence falls within sub-paragraph (2), and
- (c) the defendant was aged 18 or over when the offender committed the offence, the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

para.5A(2) - The offence falls within this sub-paragraph if the defendant took a knife or other weapon to the scene intending to:

- (a) commit any offence, or
- (b) have it available to use as a weapon, and used that knife or other weapon in committing the murder.

³⁷⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁷⁸ Commencement: 2 March 2010, as inserted by SI 2010/197 art.2(2). Paragraph 5A does not apply in relation to a life sentence imposed for an offence of murder committed before the commencement day, SI 2010/197 art.3.

CJA 2003 Sch.21 para.6³⁷⁹: Determination of minimum term in relation to mandatory life sentence

para.6 - if the defendant was aged 18 or over when he committed the offence and the case does not fall within paragraph 4(1), 5(1) or 5A(1), the appropriate starting point, in determining the minimum term, is 15 years.

CJA 2003 Sch.21 para.7³⁸⁰: Determination of minimum term in relation to mandatory life sentence

para.7 - if the defendant was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravation and Mitigation

CJA 2003 Sch.21 para.8³⁸¹: Determination of minimum term in relation to mandatory life sentence

para.8 - having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

CJA 2003 Sch.21 para.9³⁸²: Determination of minimum term in relation to mandatory life sentence

para.9 - detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

CJA 2003 Sch.21 para.10³⁸³: Determination of minimum term in relation to mandatory life sentence

para.10 - aggravating factors (additional to those mentioned in paragraph 4(2), 5(2) and 5A(2)) that may be relevant to the offence of murder include:

- (a) a significant degree of planning or premeditation,
- (b) the fact that the victim was particularly vulnerable because of age or disability,
- (c) mental or physical suffering inflicted on the victim before death,
- (d) the abuse of a position of trust,
- (e) the use of duress or threats against another person to facilitate the commission of the offence,
- (f) the fact that the victim was providing a public service or performing a public duty, and
- (g) concealment, destruction or dismemberment of the body.

³⁷⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸² Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸³ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.21 para.11³⁸⁴: Determination of minimum term in relation to mandatory life sentence

para.11 - mitigating factors that may be relevant to the offence of murder include:

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the defendant suffered from any mental disorder or mental disability which (although not falling within Homicide Act 1957 s.2(1)), lowered his degree of culpability,
- (d) the fact that the defendant was provoked (for example, by prolonged stress),
- (e) the fact that the defendant acted to any extent in self-defence or in fear of violence,
- (f) a belief by the defendant that the murder was an act of mercy, and
- (g) the age of the defendant.

CJA 2003 Sch.21 para.12³⁸⁵: Determination of minimum term in relation to mandatory life sentence

para.12 - nothing in Sch.21 restricts the application of:

- (a) section 143(2) (previous convictions),
 - (b) section 143(3) (bail), or
 - (c) section 144 (guilty plea),
- or of Armed Forces Act 2006 s.238(1)(b) or (c) or s.239

3.2.2.6.3 Giving reasons

CJA 2003 s.270³⁸⁶: Duty to give reasons

s.270(1) - subsection (2) applies where a court makes an order under section 269(2) or (4).

s.270(2) - in complying with the duty under section 174(2) to state its reasons for deciding on the order made, the court must, in particular:

- (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
- (b) state its reasons for any departure from that starting point.

Criminal Practice Directions 2015 VII Sentencing

P.1 Having gone through the three or four steps outlined above, the court is then under a duty, under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.

P.2 In order to comply with this duty, the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and

³⁸⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features, it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point, the court should also declare how much, if any, time is being deducted for time spent in custody and/or on bail subject to a qualifying curfew condition. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release, the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.

- P.3 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a ‘whole life order’ is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

3.2.2.6.4 Guidance

Criminal Practice Directions 2015 VII Sentencing

- M.1 The purpose of this section is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 (‘the Act’). This direction also gives guidance as to the transitional arrangements under section 276 and schedule 22 of the Act. It clarifies the correct approach to looking at the practice of the Secretary of State prior to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67.
- M.2 Section 269 came into force on 18 December 2003. Under section 269, all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act), or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a ‘whole life order’).
- M.3 In setting the minimum term, the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence, the court must have regard to the general principles set out in Schedule 21 of the Act as amended and any guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to such guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the starting points given in Schedule 21, the court is under a duty to state its reasons for doing so (section 270(2)(b) of the Act).
- M.4 Schedule 21 states that the first step is to choose one of five starting points: ‘whole life’, 30 years, 25 years, 15 years or 12 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At paragraph 35 of *Sullivan*, the court found it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point, to 15 years.

- M.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a ‘whole life order’. (paragraph 4(1) of Schedule 21). The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4 (2) sets out examples of cases where it would normally be appropriate to take the ‘whole life order’ as the appropriate starting point.
- M.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years. (Paragraph 5(2)(h) of Schedule 21).
- M.7 Where a case is not so serious as to require a ‘whole life order’ but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence, the appropriate starting point is 30 years (paragraph 5(1) of Schedule 21). Paragraph 5 (2) sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a ‘whole life order’).
- M.8 Where the offender was aged 18 or over when he committed the offence, took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used it in committing the murder, the offence is normally to be regarded as sufficiently serious for an appropriate starting point of 25 years (paragraph 5A of Schedule 21).
- M.9 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1), 5 (1) or 5A(1) of Schedule 21, the appropriate starting point is 15 years (see paragraph 6).
- M.10 18 to 20 year olds are only the subject of the 30-year, 25-year and 15-year starting points.
- M.11 The appropriate starting point when setting a sentence of detention during Her Majesty’s pleasure for offenders aged under 18 when they committed the offence is always 12 years (paragraph 7 of Schedule 21).
- M.12 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in paragraphs 4 (2), 5(2) and 5A) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features, the court may add to or subtract from the starting point to arrive at the appropriate punitive period.
- M.13 The third step is that the court should consider the effect of section 143(2) of the Act in relation to previous convictions; section 143(3) of the Act where the offence was committed whilst the offender was on bail; and section 144 of the Act where the offender has pleaded guilty (paragraph 12 of Schedule 21). The court should then take into account what credit the offender would have received for a remand in custody under section 240 or 240ZA of the Act and/or for a remand on bail subject to a qualifying curfew condition under section 240A, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been thus remanded in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should make any appropriate subtraction from the punitive period it would otherwise impose, in order to reach the minimum term.

M.14 Following these calculations, the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21 makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

3.2.2.6.5 Appeals

Appeals against sentence

CJA 2003 s.271³⁸⁷: Appeals

s.271(1) - in CAA 1968 s.9 (appeal against sentence following conviction on indictment), after subsection (1) there is inserted:

“(1A) In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.”.

s.271(2) - [provision dealing with CMAC]

Attorney General’s References

CJA 2003 s.272³⁸⁸: Review of minimum term on a reference by Attorney General

s.272(1) - in CJA 1988 s.36 (reviews of sentencing) after subsection (3) there is inserted:

“(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.”.

s.272(2) - [provision dealing with armed forces]

s.272(3) - [provision dealing with armed forces]

3.2.2.6.6 Life prisoners transferred to England and Wales

CJA 2003 s.273³⁸⁹: Life prisoners transferred to England and Wales

s.273(1) - the SoS must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.

s.273(2) - in subsection (1) “*transferred life prisoner*” means a person:

- (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and

³⁸⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁸⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (b) who has been transferred to England and Wales after the commencement of this section in pursuance of:
 - (i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or
 - (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),there to serve his sentence or sentences or the remainder of his sentence or sentences.

s.273(3) - in subsection (1) “*a relevant order*” means:

- (a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and
- (b) in any other case, an order under PCC(S)A 2000 s.82A(2) or (4)

s.273(4) - in C(S)A 1997 s.34(1)(meaning of “life prisoner” in Chapter 2 of Part 2 of that Act) at the end there is inserted “and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003”.

s.273(5) - the reference in subsection (2)(b) above to a person who has been transferred to England and Wales in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in England and Wales in pursuance of a warrant under section 4A of that Act (warrant transferring responsibility for detention and release of defendant).

CJA 2003 s.274³⁹⁰: Life prisoners transferred to England and Wales

s.274(1) - a reference to the High Court under section 273 is to be determined by a single judge of that court without an oral hearing.

s.274(2) - in relation to a reference under that section, any reference to “the court” in subsections (2) to (5) of section 269, in Schedule 21 or in section 82A(2) to (4) of the Sentencing Act is to be read as a reference to the High Court.

s.274(3) - a person in respect of whom a reference has been made under section 273 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the reference.

s.274(4) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which subsection (3) applies.

s.274(5) - the jurisdiction conferred on the Court of Appeal by subsection (3) is to be exercised by the criminal division of that court.

s.274(6) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this section.

³⁹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

s.274(7) - in relation to appeals to the Court of Appeal or the Supreme Court under this section, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

3.2.2.6.7 Supplementary

Interpretation of Sch.21

CJA 2003 Sch.21 para.1³⁹¹: Determination of minimum term in relation to mandatory life sentence

para.1 - in Sch.21:

“*child*” means a person under 18 years;

“*mandatory life sentence*” means a life sentence passed in circumstances where the sentence is fixed by law;

“*minimum term*”, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under section 269(2);

“*whole life order*” means an order under subsection (4) of section 269.

CJA 2003 Sch.21 para.2³⁹²: Determination of minimum term in relation to mandatory life sentence

para.2 - CDA 1998 s.28 (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of sections 29 to 32 of that Act.

CJA 2003 Sch.21 para.3³⁹³: Determination of minimum term in relation to mandatory life sentence

para.3 - for the purposes of Sch.21:

(a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);

(b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);

(c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).

Lord Chancellor’s power to amend Sch.21

CJA 2003 s.269³⁹⁴: Determination of minimum term in relation to mandatory life sentence

s.269(6) - the Lord Chancellor may by order amend Schedule 21.

s.269(7) - before making an order under subsection (6), the Lord Chancellor must consult the Sentencing Council for England and Wales.

³⁹¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹² Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Interpretation of CJA 2003 Part 12 Chapter 7

CJA 2003 s.277³⁹⁵: Interpretation of Chapter 7

s.277 - in this Chapter:

“*court*” includes the Court Martial;

“*guidelines*” means sentencing guidelines issued by the Sentencing Council for England and Wales as definitive guidelines under Coroners and Justice Act 2009 s.120 as revised by any subsequent guidelines so issued;

“*life sentence*” means:

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention during Her Majesty’s pleasure, or
- (c) a sentence of custody for life passed before the commencement of CJCSA 2000 s.61(1) (which abolishes that sentence).

3.2.2.6.8 Transitional cases

Statute

CJA 2003 s.276³⁹⁶: Mandatory life sentences: Transitional cases

s.276 - Schedule 22 (which relates to the effect in transitional cases of mandatory life sentences) shall have effect.

Interpretation

CJA 2003 Sch.22 para.1³⁹⁷: Mandatory life sentences: Transitional cases

para.1 - in Sch.22:

“*the commencement date*” means the day on which section 269 comes into force;

“*the early release provisions*” means the provisions of C(S)A 1997 s.28(5) to (8);

“*existing prisoner*” means a person serving one or more mandatory life sentences passed before the commencement date (whether or not he is also serving any other sentence);

“*life sentence*” means a sentence of imprisonment for life or custody for life passed in England and Wales or by a court-martial outside England and Wales;

“*mandatory life sentence*” means a life sentence passed in circumstances where the sentence was fixed by law.

³⁹⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

Existing prisoners notified by Secretary of State

CJA 2003 Sch.22 para.2³⁹⁸: Mandatory life sentences: Transitional cases

- para.2 - para.3 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has before the commencement date been notified in writing by the Secretary of State (otherwise than in a notice that is expressed to be provisional) either:
- (a) of a minimum period which in the view of the Secretary of State should be served before the prisoner's release on licence, or
 - (b) that the Secretary of State does not intend that the prisoner should ever be released on licence.

CJA 2003 Sch.22 para.3³⁹⁹: Mandatory life sentences: Transitional cases

- para.3(1) - on the application of the existing prisoner, the High Court must, in relation to the mandatory life sentence, either:
- (a) order that the early release provisions are to apply to him as soon as he has served the part of the sentence which is specified in the order, which in a case falling within paragraph 2(a) must not be greater than the notified minimum term, or
 - (b) in a case falling within paragraph 2(b), order that the early release provisions are not to apply to the offender.
- para.3(2) - in a case falling within paragraph 2(a), no application may be made under this paragraph after the end of the notified minimum term.
- para.3(3) - where no application under this paragraph is made in a case falling within paragraph 2(a), the early release provisions apply to the prisoner in respect of the sentence as soon as he has served the notified minimum term (or, if he has served that term before the commencement date but has not been released, from the commencement date).
- para.3(4) - in this paragraph "*the notified minimum term*" means the minimum period notified as mentioned in paragraph 2(a), or where the prisoner has been so notified on more than one occasion, the period most recently so notified.

CJA 2003 Sch.22 para.4⁴⁰⁰: Mandatory life sentences: Transitional cases

- para.4(1) - in dealing with an application under paragraph 3, the High Court must have regard to:
- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it,
 - (b) where the court is satisfied that, if the prisoner had been sentenced to a term of imprisonment, the length of his sentence would have been treated by section 67 of the Criminal Justice Act 1967 (c. 80) as being reduced by a particular period, the effect which that section would have had if he had been sentenced to a term of imprisonment, and

³⁹⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

³⁹⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (c) the length of the notified minimum term or, where a notification falling within paragraph 2(b) has been given to the prisoner, to the fact that such a notification has been given.

para.4(2) - in considering under sub-paragraph (1) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, the High Court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

para.4(3) - in this paragraph “*the notified minimum term*” has the same meaning as in paragraph 3.

CJA 2003 Sch.22 para.5⁴⁰¹: Mandatory life sentences: Transitional cases

para.5 - para.6 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has not before the commencement date been notified as mentioned in paragraph 2(a) or (b) by the Secretary of State.

CJA 2003 Sch.22 para.6⁴⁰²: Mandatory life sentences: Transitional cases

para.6 - the Secretary of State must refer the prisoner’s case to the High Court for the making by the High Court of an order under s.269(2) or (4) in relation to the mandatory life sentence.

CJA 2003 Sch.22 para.7⁴⁰³: Mandatory life sentences: Transitional cases

para.7(1) - in considering under s.269(3) or (4) the seriousness of an offence (or the combination of an offence and one or more offences associated with it) in a case referred to the High Court under paragraph 6, the High Court must have regard not only to the matters mentioned in subsection (5) of that section but also to any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

CJA 2003 Sch.22 para.8⁴⁰⁴: Mandatory life sentences: Transitional cases

para.8(1) - in dealing with a reference under paragraph 6, the High Court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

⁴⁰¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰² Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Sentences passed on or after commencement date in respect of offences committed before that date

CJA 2003 Sch.22 para.9⁴⁰⁵: Mandatory life sentences: Transitional cases

para.9 - para.10 applies where:

- (a) on or after the commencement date a court passes a life sentence in circumstances where the sentence is fixed by law, and
- (b) the offence to which the sentence relates was committed before the commencement date.

CJA 2003 Sch.22 para.10⁴⁰⁶: Mandatory life sentences: Transitional cases

para.10 - the court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

CJA 2003 Sch.22 para.11⁴⁰⁷: Mandatory life sentences: Transitional cases

para.11(1) - an application under paragraph 3 or a reference under paragraph 6 is to be determined by a single judge of the High Court without an oral hearing.

para.11(2) - in relation to such an application or reference, any reference to “the court” in s.269(2) to (5) and Sch.21 is to be read as a reference to the High Court.

Giving reasons

CJA 2003 Sch.22 para.12⁴⁰⁸: Mandatory life sentences: Transitional cases

para.12(1) - where the High Court makes an order under paragraph 3(1)(a) or (b), it must state in open court, in ordinary language, its reasons for deciding on the order made.

para.12(2) - where the order is an order under paragraph 3(1)(a) specifying a part of the sentence shorter than the notified minimum term the High Court must, in particular, state its reasons for departing from the notified minimum term.

CJA 2003 Sch.22 para.13⁴⁰⁹: Mandatory life sentences: Transitional cases

para.13 - where the High Court makes an order under s.269(2) or (4) on a reference under paragraph 6, s.270(2) does not apply.

⁴⁰⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁰⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

Right of appeal

CJA 2003 Sch.22 para.14⁴¹⁰: Mandatory life sentences: Transitional cases

- para.14(1) - a person who has made an application under paragraph 3 or in respect of whom a reference has been made under paragraph 6 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the application or reference.
- para.14(2) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1)(a) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which sub-paragraph (1) applies.
- para.14(3) - the jurisdiction conferred on the Court of Appeal by this paragraph is to be exercised by the criminal division of that court.
- para.14(4) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this paragraph.
- para.14(5) - in relation to appeals to the Court of Appeal or the Supreme Court under this paragraph, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Review of minimum term on reference by Attorney General

CJA 2003 Sch.22 para.15⁴¹¹: Mandatory life sentences: Transitional cases

- para.15 - CJA 1988 s.36 applies in relation to an order made by the High Court under paragraph 3(1)(a) as it applies in relation to an order made by the Crown Court under section 269(2).

Modification of early release provisions

CJA 2003 Sch.22 para.16⁴¹²: Mandatory life sentences: Transitional cases

- para.16(1) - in relation to an existing prisoner, C(S)A 1997 s.28 has effect subject to the following modifications.
- para.16(2) - Any reference to a life prisoner in respect of whom a minimum term order has been made includes a reference to:
- (a) an existing prisoner in respect of whom an order under paragraph 3(1)(a) has been made, and
 - (b) an existing prisoner serving a sentence in respect of which paragraph 3(3) applies.

⁴¹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴¹¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴¹² Commencement: 18 December 2003, CJA 2003 s.336(2).

para.16(3) - any reference to the relevant part of the sentence is to be read:

- (a) in relation to a sentence in respect of which an order under paragraph 3(1)(a) has been made, as a reference to the part specified in the order, and
- (b) in relation to a sentence in respect of which paragraph 3(3) applies, as a reference to the notified minimum term as defined by paragraph 3(4).

para.16(4) - in subsection (1B) (life prisoner serving two or more sentences), paragraph (a) is to be read as if it referred to each of the sentences being one:

- (a) in respect of which a minimum term order or an order under paragraph 3(1)(a) has been made, or
- (b) in respect of which paragraph 3(3) applies.

CJA 2003 Sch.22 para.17⁴¹³: Mandatory life sentences: Transitional cases

para.17 - in C(S)A 1997 s.34(1) (interpretation of Chapter 2 of that Act), in the definition of “life prisoner”, the reference to a transferred prisoner as defined by section 273 of this Act includes a reference to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of section 33 of that Act.

Transferred life prisoners

CJA 2003 Sch.22 para.18⁴¹⁴: Mandatory life sentences: Transitional cases

para.18 - in relation to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of C(S)A 1997 s.33, this Schedule is to be read as if:

- (a) any certificate under subsection (2) of that section were a notification falling within paragraph 2(a) of this Schedule, and
- (b) references to any recommendation of the trial judge or the Lord Chief Justice were omitted.

Guidance

Criminal Practice Directions 2015 VII Sentencing

- N.1 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and Schedule 22 of the Act.
- N.2 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity, by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term, the court must check whether the proposed term is greater than that which the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.

⁴¹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴¹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

- N.3 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.
- N.4 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out below.
- N.5 The practice of Lord Bingham, as set out in his letter of 10 February 1997, was to take 14 years as the period actually to be served for the ‘average’, ‘normal’ or ‘unexceptional’ murder. Examples of factors he outlined as capable, in appropriate cases, of mitigating the normal penalty were:
- (1) Youth;
 - (2) Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison);
 - (3) [Intellectual disability or mental disorder];
 - (4) Provocation (in a non-technical sense), or an excessive response to a personal threat;
 - (5) The absence of an intention to kill;
 - (6) Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress);
 - (7) Mercy killing;
 - (8) A plea of guilty, or hard evidence of remorse or contrition.
- N.6 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:
- (1) Evidence of planned, professional, revenge or contract killing;
 - (2) The killing of a child or a very old or otherwise vulnerable victim;
 - (3) Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
 - (4) Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.);
 - (5) Multiple killings;
 - (6) The killing of a witness, or potential witness, to defeat the ends of justice;
 - (7) The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc.);
 - (8) Terrorist or politically motivated killings;
 - (9) The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;
 - (10) A substantial record of serious violence;
 - (11) Macabre attempts to dismember or conceal the body.

- N.7 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a couple, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.
- N.8 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives to the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.
- N.9 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paragraphs N.10 to N.20 below.
- N.10 This Statement replaces the previous single normal tariff of 14 years by substituting a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

The normal starting point of 12 years

- N.11 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph N.13. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
- N.12 The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:-
- (a) the case came close to the borderline between murder and manslaughter; or
 - (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or
 - (c) the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or
 - (d) the case involved an over-reaction in self-defence; or
 - (e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

- N.13 The higher starting point will apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:-
- (a) the killing was 'professional' or a contract killing;
 - (b) the killing was politically motivated;
 - (c) the killing was done for gain (in the course of a burglary, robbery etc.);
 - (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);

- (e) the victim was providing a public service;
- (f) the victim was a child or was otherwise vulnerable;
- (g) the killing was racially aggravated;
- (h) the victim was deliberately targeted because of his or her religion or sexual orientation;
- (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
- (j) extensive and/or multiple injuries were inflicted on the victim before death;
- (k) the offender committed multiple murders.

Variation of the starting point

- N.14 Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.
- N.15 Aggravating factors relating to the offence can include:
- (a) the fact that the killing was planned;
 - (b) the use of a firearm;
 - (c) arming with a weapon in advance;
 - (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
 - (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.
- N.16 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.
- N.17 Mitigating factors relating to the offence will include:
- (a) an intention to cause grievous bodily harm, rather than to kill;
 - (b) spontaneity and lack of pre-meditation.
- N.18 Mitigating factors relating to the offender may include:
- (a) the offender's age;
 - (b) clear evidence of remorse or contrition;
 - (c) a timely plea of guilty.

Very serious cases

- N.19 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

- N.20 Among the categories of case referred to in paragraph N.13, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder, or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.
- N.21 In following this guidance, judges should bear in mind the conclusion of the Court in *Sullivan* that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

3.2.2.7. Offenders of particular concern

Availability

CJA 2003 s.236A⁴¹⁵: Special custodial sentence for certain offenders of particular concern

s.236A(1) - subsection (2) applies where—

- (a) a person is convicted of an offence listed in Schedule 18A (whether the offence was committed before or after this section comes into force),
- (b) the person was aged 18 or over when the offence was committed, and
- (c) the court does not impose one of the following for the offence—
 - (i) a sentence of imprisonment for life, or
 - (ii) an extended sentence under section 226A.

Mandatory order

CJA 2003 s.236A⁴¹⁶: Special custodial sentence for certain offenders of particular concern

s.236A(2) - if the court imposes a sentence of imprisonment for the offence, the term of the sentence must be equal to the aggregate of—

- (a) the appropriate custodial term, and
- (b) a further period of 1 year for which the offender is to be subject to a licence.

Determining the length

CJA 2003 s.236A⁴¹⁷: Special custodial sentence for certain offenders of particular concern

s.236A(3) - the “*appropriate custodial term*” is the term that, in the opinion of the court, ensures that the sentence is appropriate.

⁴¹⁵ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

⁴¹⁶ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

⁴¹⁷ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

s.236A(4) - the term of a sentence of imprisonment imposed under this section for an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence.

Associated offences

CJA 2003 s.236A⁴¹⁸: Special custodial sentence for certain offenders of particular concern

s.236A(5) - the references in subsections (1)(c) and (2) to a sentence imposed for the offence include a sentence imposed for the offence and one or more offences associated with it.

Secretary of State's power to amend the Schedule

CJA 2003 s.236A⁴¹⁹: Special custodial sentence for certain offenders of particular concern

s.236A(6) - the Secretary of State may by order amend Schedule 18A by—

- (a) adding offences, or
- (b) varying or omitting offences listed in the Schedule.

s.236A(7) - an order under subsection (6) may, in particular, make provision that applies in relation to the sentencing of a person for an offence committed before the provision comes into force.”

CJA 2003 Sch.18A: Sentence under section 236A⁴²⁰: Offences

1. An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder) that has a terrorist connection.
2. An offence under section 28 of that Act (causing bodily injury by explosives) that has a terrorist connection.
3. An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm) that has a terrorist connection.
4. An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property) that has a terrorist connection.
5. An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) that has a terrorist connection.
6. An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances) that has a terrorist connection.
7. An offence under section 54 of the Terrorism Act 2000 (weapons training).

⁴¹⁸ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

⁴¹⁹ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.2, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within CJA 2015 Sch.1 para.9.

⁴²⁰ Commencement: 13 April 2015, as inserted by CJA 2015 Sch.1 para.4, SI 2015/778 art.3 and Sch.1 para.6. Transitional arrangements are contained within Sch.2.

8. An offence under section 56 of that Act (directing terrorist organisation).
9. An offence under section 57 of that Act (possession of article for terrorist purposes).
10. An offence under section 59 of that Act (inciting terrorism overseas).
11. An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
12. An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
13. An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
14. An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).
15. An offence under section 6 of that Act (training for terrorism).
16. An offence under section 9 of that Act (making or possession of radioactive device or material).
17. An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).
18. An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc).
19. An offence under section 5 of the Sexual Offences Act 2003 (rape of a child under 13).
20. An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 21.—
 - (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Schedule (a “relevant offence”).
 - (2) An attempt to commit a relevant offence.
 - (3) Conspiracy to commit a relevant offence.
 - (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a relevant offence is the offence (or one of the offences) which the person intended or believed would be committed.
22. An offence in the following list that has a terrorist connection—
 - (a) an attempt to commit murder,
 - (b) conspiracy to commit murder, and
 - (c) an offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed.
23. An offence that—
 - (a) was abolished before the coming into force of section 236A, and
 - (b) if committed on the day on which the offender was convicted of the offence, would have constituted an offence specified in the preceding paragraphs of this Schedule.

24. For the purposes of this Schedule, an offence has a terrorist connection if a court has determined under section 30 of the Counter-Terrorism Act 2008 that the offence has such a connection.

3.2.3. Youths (aged 10-18)

3.2.3.1. General principles

Note: CJA 1982 s.11 remains in force, and amended PA 1952 s.43 as to the location in which young offenders are held etc., however s.43 has since been further amended and so s.11 now appears to serve no purpose. See also CJPOA 1994 ss.17 and 18, which remain in force, having amended other enactments.

Age of offender unclear

CJA 1982 s.1⁴²¹: General restriction on custodial sentences

- s.1(6) - for the purposes of any provision of this Act which requires the determination of the age of a person by the court or the Secretary of State his age shall be deemed to be that which it appears to the court or the Secretary of State (as the case may be) to be after considering any available evidence.

Restriction on imposing imprisonment for those under 21

PCC(S)A 2000 s.89⁴²²: Restriction on imposing imprisonment on persons under 21

- s.89(1) - subject to s.189(2), no court shall:
- (a) pass a sentence of imprisonment on a person for an offence if he is aged under 21 when convicted; or
 - (b) commit a person aged under 21 to prison for any reason
- s.89(2) - nothing in s.89(1) prevents the committal to prison of a person aged under 21 who is:
- (a) remanded in custody;
 - (b) committed in custody for sentence; or
 - (c) sent in custody for trial under CDA 1998 s.51 or 51A

⁴²¹ Commencement: 24 May 1983, SI 1983/182 art.1(2)

⁴²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Offender crossed age threshold since offence

The principal cases are *R. v Danga* (1992) 13 Cr. App. R. (S.) 408 and *R. v Ghafoor* [2002] EWCA Crim 1857; [2003] 1 Cr. App. R. (S.) 84 (p.428). The headnote to *Ghafoor* reads, in part:

...the judge was not under any obligation to pass a sentence which did not exceed the sentence which could lawfully have been passed in the youth court. The judge should however have had regard to the age of the appellant at the date of the offence, and the maximum penalty permissible at that time. It was accepted that the sentencing tribunal should have regard to the defendant's age at the time of the commission of the offence as a powerful factor in determining sentence, and that matters such as maximum penalties available at that time should be taken into account. The Court had decided in *Danga* that the form of sentence was dictated by the defendant's age at the date of conviction. A defendant aged 21 at the date of conviction would be sentenced to imprisonment, rather than detention in a young offender institution even if the offence had been committed before he was 21. That approach had been consistently applied in subsequent cases. The present case illustrated the potential significance of the relevant date for determining the defendant's age for the purposes of sentence. Since the appellant had passed his 18th birthday before he pleaded guilty, the sentencing powers available to the court permitted the judge to pass a sentence of up to a maximum of 10 years detention in a young offender institution. If he had pleaded guilty when still only 17, the maximum available custodial sentence would have been a detention and training order for a term of 24 months. It had been stated in *Danga* that the broad conceptual approach to sentencing did not undergo a fundamental change simply because the offender passed his 21st birthday. If all factors were identical, an offender aged 21 years was likely to receive in substance much the same punishment as one who was 20 years and 11 months.

Conversion of detention to imprisonment

PCC(S)A 2000 s.99⁴²³: Conversion of sentence of detention to sentence of imprisonment

- s.99(1) power to convert sentences of detention to imprisonment: subject to the following provisions of PCC(S)A 2000 s.99, where a defendant has been sentenced by a relevant sentence of detention to a term of detention and either:
- (a) he has attained the age of 21, or
 - (b) he has attained the age of 18 and has been reported to the SoS by the independent monitoring board of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates,
- the SoS may direct that he shall be treated as if he had been sentenced to imprisonment for the same term
- s.99(2) - where the SoS gives a direction under PCC(S)A 2000 s.99(1) in relation to a defendant, the portion of the term of detention imposed under the relevant sentence of detention which he has already served shall be deemed to have been a portion of a term of imprisonment
- s.99(3A) - where the SoS gives a direction under PCC(S)A 2000 s.99(1) in relation to a defendant serving an extended sentence of detention imposed under CJA 2003:
- (a) if the sentence was imposed under s.226B, the defendant shall be treated as if he had been sentenced under s.226A ...

⁴²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.3.2. Detention and Training Orders

3.2.3.2.1 General

Explanation of DTO

PCC(S)A 2000 s.100⁴²⁴: Offenders under 18: detention and training orders

s.100(3) - a detention and training order is an order that the offender in respect of whom it is made shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

Interpretation

PCC(S)A 2000 s.107⁴²⁵: Meaning of “youth detention accommodation” and references to terms

s.107(1) - in PCC(S)A 2000 ss.102, 104 and 105 “youth detention accommodation” means:

- (a) a secure training centre;
- (b) a young offender institution;
- (c) accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons;
- (d) accommodation provided for that purpose under CA 1989 s.82(5) (financial support by the Secretary of State); or
- (e) such other accommodation or descriptions of accommodation as the Secretary of State may by order specify.

s.107(2) - in PCC(S)A 2000 ss.102-105 and 106B references to the term of a detention and training order shall be construed in accordance with section 101(13).

s.107(3) - for the purposes of PCC(S)A 2000 ss.103(2A) and 106B(1), where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.

3.2.3.2.2 Duty to impose DTO

PCC(S)A 2000 s.100⁴²⁶: Offenders under 18: detention and training orders

s.100(1) - subject to PCC(S)A 2000 ss.90 and 91, CJA 2003 ss.226 and 226B, and PCC(S)A 2000 s.100(2), where:

- (a) a child or young person (that is to say, any person aged under 18) is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
- (b) the court is of the opinion that CJA 2003 s.152(2) applies or the case falls within subsection (3) of that section,

the sentence that the court is to pass is a detention and training order.

⁴²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

s.100(1A) - subsection (1) applies with the omission of paragraph (b) in the case of an offence the sentence for which falls to be imposed under these provisions:

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (b) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon).

Limitation on imposing DTO for those under 15

PCC(S)A 2000 s.100⁴²⁷: Offenders under 18: detention and training orders

s.100(2) - a court shall not make a detention and training order:

- (a) in the case of an offender under the age of 15 at the time of the conviction, unless it is of the opinion that he is a persistent offender;
- (b) in the case of an offender under the age of 12 at that time, unless:
 - (i) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and
 - (ii) the offence was committed on or after such date as the Secretary of State may by order appoint.

3.2.3.2.3 Determining the length of the order

The permitted periods

PCC(S)A 2000 s.101⁴²⁸: Term of order, consecutive terms and taking account of remands

s.101(1) - subject to subsection (2) below, the term of a detention and training order made in respect of an offence (whether by a magistrates' court or otherwise) shall be 4, 6, 8, 10, 12, 18 or 24 months.

Order cannot exceed maximum sentence for the offence

PCC(S)A 2000 s.101⁴²⁹: Term of order, consecutive terms and taking account of remands

s.101(2) - the term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21 or over) impose for the offence.

Power to impose consecutive DTOs

PCC(S)A 2000 s.101⁴³⁰: Term of order, consecutive terms and taking account of remands

s.101(3) - subject to subsections (4) and (6) below, a court making a detention and training order may order that its term shall commence on the expiry of the term of any other detention and training order made by that or any other court.

⁴²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴³⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- s.101(4) - a court shall not make in respect of an offender a detention and training order the effect of which would be that he would be subject to detention and training orders for a term which exceeds 24 months.
- s.101(5) - where the term of the detention and training orders to which an offender would otherwise be subject exceeds 24 months, the excess shall be treated as remitted.
- s.101(6) - a court making a detention and training order shall not order that its term shall commence on the expiry of the term of a detention and training order under which the period of supervision has already begun (under PCC(S)A 2000 s.103(1)).

Crediting remand time and time spent on qualifying curfew

PCC(S)A 2000 s.101⁴³¹: Term of order, consecutive terms and taking account of remands

- s.101(8) - in determining the term of a detention and training order for an offence, the court shall take account of any period for which the offender has been remanded:
- (a) in custody, or
 - (b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of CJA 2003 s.240A),
- in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.
- s.101(9) - where a court proposes to make detention and training orders in respect of an offender for two or more offences:
- (a) subsection (8) above shall not apply; but
 - (b) in determining the total term of the detention and training orders it proposes to make in respect of the offender, the court shall take account of the total period (if any) for which he has been remanded as mentioned in that subsection in connection with any of those offences, or any other offence the charge for which was founded on the same facts or evidence.
- s.101(10) - once a period of remand has, under subsection (8) or (9) above, been taken account of in relation to a detention and training order made in respect of an offender for any offence or offences, it shall not subsequently be taken account of (under either of those subsections) in relation to such an order made in respect of the offender for any other offence or offences.
- s.101(11) - any reference in subsection (8) or (9) above to an offender's being remanded in custody is a reference to his being:
- (a) held in police detention;
 - (b) remanded in or committed to custody by an order of a court;
 - (c) remanded to youth detention accommodation under LASPOA 2012 s.91(4); or
 - (d) remanded, admitted or removed to hospital under MHA 1983 ss.35, 36, 38 or 48
- s.101(12) - a person is in police detention for the purposes of subsection (11):
- (a) at any time when he is in police detention for the purposes of PACE 1984; and

⁴³¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

(b) at any time when he is detained under TA 2000 s.41

s.101(12A) - CJA 2003 s.243 (persons extradited to the United Kingdom) applies in relation to a person sentenced to a detention and training order as it applies in relation to a fixed-term prisoner, with the reference in CJA 2003 s.243(2A) to section 240ZA being read as a reference to subsection (8) above.

Treating multiple terms as a single term

PCC(S)A 2000 s.101⁴³²: Term of order, consecutive terms and taking account of remands

s.101(13) - for the purpose of any reference in PCC(S)A 2000 ss.102-105 and 106B to the term of a detention and training order, consecutive terms of such orders and terms of such orders which are wholly or partly concurrent shall be treated as a single term if:

- (a) the orders were made on the same occasion; or
- (b) where they were made on different occasions, the offender has not been released (by virtue of subsection (2), (3), (4) or (5) of section 102 below) at any time during the period beginning with the first and ending with the last of those occasions.

3.2.3.2.4 The effect of the order

The custodial period

PCC(S)A 2000 s.102⁴³³: The period of detention and training

s.102(1) - an offender shall serve the period of detention and training under a detention and training order in such youth detention accommodation as may be determined by the Secretary of State.

s.102(2) - subject to subsections (3) to (5) below, the period of detention and training under a detention and training order shall be one-half of the term of the order.

s.102(3) - the Secretary of State may at any time release the offender if he is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds.

s.102(4) - the Secretary of State may release the offender:

- (a) in the case of an order for a term of 8 months or more but less than 18 months, at any time during the period of one month ending with the half-way point of the term of the order; and
- (b) in the case of an order for a term of 18 months or more, at any time during the period of two months ending with that point.

s.102(5) - if a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State shall release the offender:

- (a) in the case of an order for a term of 8 months or more but less than 18 months, one month after the half-way point of the term of the order; and

⁴³² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴³³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) in the case of an order for a term of 18 months or more, one month or two months after that point.

s.102(6) - an offender detained in pursuance of a detention and training order shall be deemed to be in legal custody.

The supervision period

PCC(S)A 2000 s.103⁴³⁴: The period of supervision

s.103(1) - the period of supervision of an offender who is subject to a detention and training order:

- (a) shall begin with the offender's release, whether at the half-way point of the term of the order or otherwise; and
- (b) subject to subsection (2) below, shall end when the term of the order ends.

s.103(2) - subject to subsection (2A), the Secretary of State may by order provide that the period of supervision shall end at such point during the term of a detention and training order as may be specified in the order under this subsection.

s.103(2A) - an order under subsection (2) may not include provision about cases in which:

- (a) the offender is aged 18 or over at the half-way point of the term of the detention and training order, and
- (b) the order was imposed in respect of an offence committed on or after the day on which ORA 2014 s.6(4) came into force.

s.103(3) - during the period of supervision, the offender shall be under the supervision of:

- (a) an officer of a local probation board or an officer of a provider of probation services ; or
- (c) a member of a youth offending team;

and the category of person to supervise the offender shall be determined from time to time by the Secretary of State.

s.103(4) - where the supervision is to be provided by an officer of a local probation board, the officer of a local probation board shall be an officer appointed for or assigned to the local justice area within which the offender resides for the time being.

s.103(4A) - where the supervision is to be provided by an officer of a provider of probation services, the officer of a provider of probation services shall be an officer acting in the local justice area within which the offender resides for the time being.

s.103(5) - where the supervision is to be provided by:

- (b) a member of a youth offending team,
- the member shall be a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.

s.103(6) - the offender shall be given a notice from the Secretary of State specifying:

- (a) the category of person for the time being responsible for his supervision; and

⁴³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

(b) any requirements with which he must for the time being comply.

s.103(7) - A notice under subsection (6) above shall be given to the offender:

- (a) before the commencement of the period of supervision; and
- (b) before any alteration in the matters specified in subsection (6)(a) or (b) above comes into effect.

PCC(S)A 2000 s.106B⁴³⁵: Further supervision after end of term of detention and training order

s.106B(1) - this section applies where a detention and training order is made in respect of an offender if:

- (a) the offender is aged 18 or over at the half-way point of the term of the order,
- (b) the term of the order is less than 24 months, and
- (c) the order was imposed in respect of an offence committed on or after the day on which ORA 2014 s.6(4) came into force.

s.106B(2) - the following provisions of the Criminal Justice Act 2003 (which relate to supervision after end of sentence) apply as they apply in cases described in section 256AA(1) of that Act—

- (a) sections 256AA(2) to (11), 256AB and 256AC,
- (b) sections 256D and 256E, and
- (c) Schedule 19A,

but with the following modifications.

s.106B(3) - "*The supervision period*", in relation to the offender, is the period which:

- (a) begins on the expiry of the term of the detention and training order, and
- (b) ends on the expiry of the period of 12 months beginning immediately after the half-way point of the term of the order.

s.106B(4) - "*The supervisor*", in relation to the offender, must be:

- (a) an officer of a provider of probation services, or
- (b) a member of the youth offending team established by the local authority in whose area the offender resides for the time being.

s.106B(5) - the power under section 256AB(4) includes power to make provision about the supervision requirements that may be imposed under section 256AA as applied by this section and to amend this Act.

s.106B(6) - subsection (7) applies where the term of the detention and training order is determined by section 101(13) (consecutive and concurrent orders).

⁴³⁵ Commencement: 1 February 2015, as inserted by ORA 2014 s.6(4), SI 2015/40 art.2(f). The insertion applies in relation to: (a) any person who falls to be released under Chapter 6 of Part 12 of the Criminal Justice Act 2003 on or after the commencement day, and (b) any person who falls to be released under a detention and training order (including an order under section 211 of the Armed Forces Act 2006) on or after the commencement day, SI 2015/40 Sch.7 para.2

s.106B(7) - the offender is subject to supervision under section 256AA (as applied by this section) if that section (as applied) so requires in respect of one or more of the consecutive or concurrent orders.

3.2.3.2.5 Interaction with other sentencing orders

Detention under s.91

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p. 350)

Detention in Young Offender Institution

PCC(S)A 2000 s.106⁴³⁶: Interaction with sentences of detention in a young offender institution

s.106(1) - where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:

- (a) if the offender has been released by virtue of s.102(2)-(5), at the beginning of the day on which it is passed;
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.

s.106(4) - subject to subsection (5) below, where at any time an offender is subject concurrently:

- (a) to a detention and training order, and
- (b) to a sentence of detention in a young offender institution,

he shall be treated for the purposes of sections 102 to 105 and of section 98 (place of detention), PCC(S)A 2000 Part 5 Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.

s.106(5) - nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

Existing DTOs

PCC(S)A 2000 s.101⁴³⁷: Term of order, consecutive terms and taking account of remands

s.101(7) - where a detention and training order (“the new order”) is made in respect of an offender who is subject to a detention and training order under which the period of

⁴³⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

supervision has begun (“the old order”), the old order shall be disregarded in determining—

- (a) for the purposes of subsection (4) above whether the effect of the new order would be that the offender would be subject to detention and training orders for a term which exceeds 24 months; and
- (b) for the purposes of subsection (5) above whether the term of the detention and training orders to which the offender would (apart from that subsection) be subject exceeds 24 months.

Hospital and Guardianship Orders

MHA 1983 s.37⁴³⁸: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37, the court shall not pass [...] a sentence of imprisonment [...] and for the purposes of this subsection “*sentence of imprisonment*” includes any sentence or order for detention.

3.2.3.2.6 Breach

3.2.3.2.6.1 Breach of supervision

PCC(S)A 2000 s.104⁴³⁹: Breach of supervision requirements

s.104(1) - where a detention and training order is in force in respect of an offender and it appears on information to a justice of the peace that the offender has failed to comply with requirements under PCC(S)A 2000 s.103(6)(b), the justice:

- (a) may issue a summons requiring the offender to appear at the place and time specified in the summons; or
- (b) if the information is in writing and on oath, may issue a warrant for the offender’s arrest.

s.104(2) - any summons or warrant issued under this section shall direct the offender to appear or be brought:

- (a) before a youth court acting in the local justice in which the offender resides; or
- (b) if it is not known where the offender resides, before a youth court acting in the same local justice area as the justice who issued the summons or warrant.

s.104(3) - if it is proved to the satisfaction of the youth court before which an offender appears or is brought under this section that he has failed to comply with requirements under PCC(S)A 2000 s.103(6)(b), that court may:

- (a) order the offender to be detained, in such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding the maximum period found under subsection (3A) below, as the court may specify;
- (aa) order the offender to be subject to such period of supervision, not exceeding the maximum period found under subsection (3A) below, as the court may specify; or
- (b) impose on the offender a fine not exceeding level 3 on the standard scale.

⁴³⁸ Commencement: 30 September 2983, MHA 1983 s.149(2).

⁴³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- s.104(3A) - the maximum period referred to in subsection (3)(a) and (aa) above is the shorter of:
- (a) three months, and
 - (b) the period beginning with the date of the offender's failure and ending with the last day of the term of the detention and training order.
- s.104(3B) - for the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the first of those days.
- s.104(3C) - a court may order a period of detention or supervision, or impose a fine, under subsection (3) above before or after the end of the term of the detention and training order.
- s.104(3D) - a period of detention or supervision ordered under subsection (3) above:
- (a) begins on the date the order is made, and
 - (b) may overlap to any extent with the period of supervision under the detention and training order.
- s.104(4) - an offender detained in pursuance of an order under subsection (3)(a) above shall be deemed to be in legal custody.
- s.104(4A) - where an order under subsection (3)(a) above is made in the case of a person who has attained the age of 18, the order has effect to require the person to be detained in prison for the period specified by the court.
- s.104(5) - a fine imposed under subsection (3)(b) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- s.104(5A) - PCC(S)A 2000 ss.104A and 104B make further provision about the operation of orders under subsection (3) above.
- s.104(6) - an offender may appeal to the Crown Court against any order made under subsection (3)(a), (aa) or (b) above.

PCC(S)A 2000 s.104A⁴⁴⁰: Application of sections 103 to 105 in relation to orders under section 104(3)(aa)

- s.104A(1) - PCC(S)A 2000 s.103(3)-(7) apply in relation to a period of supervision to which an offender is subject by virtue of an order under PCC(S)A 2000 s.104(3)(aa) as they apply to the period of supervision under a detention and training order.
- s.104A(2) - in the application of s.103 by virtue of subsection (1) above, s.103(7)(a) is to be read as requiring a notice to be given to the offender as soon as is reasonably practicable after the order under s.104(3)(aa) is made.
- s.104A(3) - Sections 104 and 105 apply where an offender is subject to a period of supervision under s.104(3)(aa) as they apply where a detention and training order is in force in respect of an offender.
- s.104A(4) - in the application of s.104 by virtue of subsection (3) above:

⁴⁴⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.80(7).

- (a) the references in s.104 to s.103(6)(b) are to be read as references to that provision as applied by subsection (1) above,
- (b) the references in s.104(3A)(b) and s.104(3C) to the term of the detention and training order are to be read as references to the term of the period of supervision under s.104(3)(aa), and
- (c) the reference in s.104(3D)(b) of that section to the period of supervision under the detention and training order is to be read as including a reference to the period of supervision under s.104(3)(aa).

s.104A(5) - in the application of s.105 by virtue of subsection (3) above:

- (a) s.105(1)(a) is to be read as if the words “after his release and” were omitted, and
- (b) the reference in that paragraph to the date on which the term of the detention and training order ends is to be read as a reference to the date on which the period of supervision under s.104(3)(aa) ends.

Note: A fine imposed under s.104 may be subject to a parenting order. See the ‘Parenting/Parental Orders’ section for details.

Interaction with other sentencing orders

PCC(S)A 2000 s.104B⁴⁴¹: Interaction of orders under section 104(3)(a) with other sentences

s.104B(1) - where a court makes a detention and training order in the case of an offender who is subject to a period of detention under section 104(3)(a), the detention and training order takes effect:

- (a) at the beginning of the day on which it is made, or
- (b) if the court so orders, at the time when the period of detention under section 104(3)(a) ends.

s.104B(2) - where a court orders an offender who is subject to a detention and training order to be subject to a period of detention under section 104(3)(a) above for a failure to comply with requirements under a different detention and training order, the period of detention takes effect as follows:

- (a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which the order for the period of detention is made, and
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102 above.

s.104B(3) - subject to subsection (4) below, where at any time an offender is subject concurrently:

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

the offender is to be treated for the purposes of sections 102 to 105 as if the offender were subject only to the detention and training order.

⁴⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- s.104B(4) - nothing in subsection (3) above requires the offender to be released in respect of either the order or the period of detention unless and until the offender is required to be released in respect of each of them.
- s.104B(5) - the Secretary of State may by regulations make provision about the interaction between a period of detention under section 104(3)(a) above and a custodial sentence in a case where:
- (a) an offender who is subject to such a period of detention becomes subject to a custodial sentence, or
 - (b) an offender who is subject to a custodial sentence becomes subject to such a period of detention.
- s.104B(6) - the provision that may be made by regulations under subsection (5) above includes—
- (a) provision as to the time at which the period of detention under section 104(3)(a) above or the custodial sentence is to take effect;
 - (b) provision for the offender to be treated, for the purposes of the enactments specified in the regulations, as subject only to the period of detention or the custodial sentence;
 - (c) provision about the effect of enactments relating to the person's release from detention or imprisonment in a case where that release is not to take effect immediately by virtue of provision in the regulations.
- s.104B(7) - the power of the Secretary of State to make regulations under subsection (5):
- (a) is exercisable by statutory instrument;
 - (b) includes power to make supplementary, incidental, transitional, transitory or saving provision.
- s.104B(8) - a statutory instrument containing regulations under subsection (5) above is subject to annulment in pursuance of a resolution of either House of Parliament.

3.2.3.2.6.2 Breach: Commission of further offence

PCC(S)A 2000 s.105⁴⁴²: Offences during currency of order

- s.105(1) - this section applies to a person subject to a detention and training order if:
- (a) after his release and before the date on which the term of the order ends, he commits an offence punishable with imprisonment in the case of a person aged 21 or over ("the new offence"); and
 - (b) whether before or after that date, he is convicted of the new offence.
- s.105(2) - subject to section 8(6) above (duty of adult magistrates' court to remit young offenders to youth court for sentence), the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be detained in such youth detention accommodation as the Secretary of State may determine for the whole or any part of the period which:
- (a) begins with the date of the court's order; and

⁴⁴² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.
- s.105(3) - the period for which a person to whom this section applies is ordered under subsection (2) above to be detained in [youth detention] accommodation:
- (a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and
 - (b) in either case, shall be disregarded in determining the appropriate length of that sentence.
- s.105(4) - where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- s.105(5) - a person detained in pursuance of an order under subsection (2) above shall be deemed to be in legal custody.

Interaction with other sentencing orders

PCC(S)A 2000 s.106⁴⁴³: Interaction with sentences of detention in a young offender institution

- s.106(1) - where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:
- (a) if the offender has been released by virtue of s.102(2)-(5), at the beginning of the day on which it is passed;
 - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.
- s.106(4) - subject to subsection (5) below, where at any time an offender is subject concurrently:
- (a) to a detention and training order, and
 - (b) to a sentence of detention in a young offender institution,
- he shall be treated for the purposes of sections 102 to 105 and of section 98 (place of detention), PCC(S)A 2000 Part 5 Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.
- s.106(5) - nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.
- s.106(6) - where, by virtue of any enactment giving a court power to deal with a person in a way in which a court on a previous occasion could have dealt with him, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person shall be treated as if he had been sentenced to detention in a young offender institution for the same term.

⁴⁴³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

PCC(S)A 2000 s.106A⁴⁴⁴: Interaction with sentences of detention

s.106A(1) - in this section:

“the 2003 Act” means the Criminal Justice Act 2003;

“sentence of detention” means:

- (a) a sentence of detention under section 91 or section 209 of the Armed Forces Act 2006, or
- (b) a sentence of detention under CJA 2003 ss.226B or 228 (extended sentence for certain violent or sexual offences: persons under 18);

and references in this section to a sentence of detention under CJA 2003 ss.226B or 228 include such a sentence passed as a result of Armed Forces Act 2006 ss.221A or 222

s.106A(2) - where a court passes a sentence of detention in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:

- (a) if the offender has at any time been released by virtue of s.102(2)-(5), at the beginning of the day on which the sentence is passed, and
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.

s.106A(3) - where a court makes a detention and training order in the case of an offender who is subject to a sentence of detention, the order shall take effect as follows—

- (a) if the offender has at any time been released under CJA 2003 Part 12 Chapter 6 (release on licence of fixed-term prisoners), at the beginning of the day on which the order is made, and
- (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released under that Chapter.

s.106A(4) - where an order under section 102(5) above is made in the case of a person in respect of whom a sentence of detention is to take effect as mentioned in subsection (2)(b) above, the order is to be expressed as an order that the period of detention attributable to the detention and training order is to end at the time determined under section 102(5)(a) or (b) above.

s.106A(5) - in determining for the purposes of subsection (3)(b) the time when an offender would otherwise be released under CJA 2003 Part 12 Chapter 6, CJA 2003 s.246 (power of Secretary of State to release prisoners on licence before he is required to do so) is to be disregarded.

s.106A(6) - where by virtue of subsection (3)(b) above a detention and training order made in the case of a person who is subject to a sentence of detention under CJA 2003 ss.226B or 228 is to take effect at the time when he would otherwise be released under CJA 2003 Part 12 Chapter 6, any direction by the Parole Board under CJA 2003 s.246A(5)(b) or (as the case may be) s.247(2)(b) in respect of him is to be expressed as a direction that the Board would, but for the detention and training order, have directed his release under that section.

⁴⁴⁴ Commencement: 4 April 2005, as inserted by CJA 2003 Sch.32 para.113, SI 2005/950 art.2 and Sch.1 para.42(34)

s.106A(7) - subject to subsection (9) below, where at any time an offender is subject concurrently:

- (a) to a detention and training order, and
- (b) to a sentence of detention,

he shall be treated for the purposes of the provisions specified in subsection (8) below as if he were subject only to the sentence of detention.

s.106A(8) - those provisions are:

- (a) sections 102 to 105,
- (b) PCC(S)A 2000 s.92, CJA 2003 s.235 and AFA 2006 s.210 (place of detention etc),
- (c) CJA 2003 Part 12 Chapter 6 and
- (d) AFA 2006 s.214 (offences committed during a detention and training order under that Act).

s.106A(9) - nothing in subsection (7) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

3.2.3.3. Determinate custodial sentences

3.2.3.3.1 Detention under s.91

3.2.3.3.1.1 Availability and power to order

Availability

PCC(S)A 2000 s.91⁴⁴⁵: Offenders under 18 convicted of certain serious offences: power to detain for specified period

s.91(1) - PCC(S)A 2000 s.91(3) applies where a person aged under 18 is convicted on indictment of:

- (a) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; or
- (b) an offence under SOA 2003 s.3 (sexual assault); or
- (c) an offence under SOA 2003 s.13 (child sex offences committed by children or young persons); or
- (d) an offence under SOA 2003 s.25 (sexual activity with a child family member); or
- (e) an offence under SOA 2003 s.26 (inciting a child family member to engage in sexual activity).

s.91(1A) - PCC(S)A 2000 s.91(3) also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence:
 - (i) under FA 1968 s.5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) (prohibited weapons), or

⁴⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (ii) under FA 1968 s.5(1A)(a),
- (b) the offence was committed after the commencement of FA 1968 s.51A and for the purposes of subsection (3) of that section at a time when he was aged 16 or over, and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2) (exceptional circumstances which justify its not imposing required custodial sentence).

s.91(1B) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence under the Firearms Act 1968 that is listed in section 51A(1A)(b), (e) or (f) of that Act and was committed in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of that Act;
- (b) the offence was committed after the commencement of Violent Crime Reduction Act 2006 s.30 and for the purposes of section 51A(3) of the Firearms Act 1968 at a time when he was aged 16 or over; and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2).

s.91(1C) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted of an offence under VCRA 2006 s.28 (using someone to mind a weapon);
- (b) VCRA 2006 s.29(3) applies (minimum sentences in certain cases); and
- (c) the court is of the opinion mentioned in VCRA 2006 s.29(6) (exceptional circumstances which justify not imposing the minimum sentence).

Discretionary power to impose detention under s.91

PCC(S)A 2000 s.91⁴⁴⁶: Offenders under 18 convicted of certain serious offences: power to detain for specified period

s.91(3) - if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

s.91(4) - subsection (3) above is subject to (in particular) CJA 2003 ss.152 and 153

s.91(5) - where:

- (a) FA 1968 s.51A(2), or
- (b) VCRA 2006 s.29(6),

requires the imposition of a sentence of detention under this section for a term of at least the term provided for in that section, the court shall sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.

⁴⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.3.3.1.2 Interaction with other sentencing orders

DTO/Detention in YOI

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p. 350)

Hospital and Guardianship Orders

MHA 1983 s.37⁴⁴⁷: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37, the court shall not pass [...] a sentence of imprisonment [...] and for the purposes of this subsection “*sentence of imprisonment*” includes any sentence or order for detention.

Place of detention etc.

PCC(S)A 2000 s.92⁴⁴⁸: Detention under sections 90 and 91: place of detention etc.

s.92(1) - a person sentenced to be detained under section 90 or 91 above shall be liable to be detained in such place and under such conditions—

- (a) as the Secretary of State may direct; or
- (b) as the Secretary of State may arrange with any person.

s.92(2) - a person detained pursuant to the directions or arrangements made by the Secretary of State under this section shall be deemed to be in legal custody.

CYPA 1933 s.58⁴⁴⁹: Power of Secretary of State to send certain juvenile offenders to approved schools

s.58 - the Secretary of State may by order direct that—

- (a) a person who is under the age of eighteen years and is undergoing detention in a Borstal institution; or
- (b) a child or young person [sentenced to be detained under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 with respect to whom he is authorised to give directions under section 92 of that Act; or
- (c) a young person who has been ordered to be imprisoned and has been pardoned by His Majesty on condition of his agreeing to undergo training in a school,

shall be transferred or sent to and detained in an approved school specified in the order; and any such order shall be an authority for his detention in that approved school or in such other approved school as the Secretary of State may from time to time determine until such date as may be specified in the order:

⁴⁴⁷ Commencement: 30 September 2983, MHA 1983 s.149(2).

⁴⁴⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁴⁹ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1.

Provided that the date to be so specified shall be not later than that on which he will in the opinion of the Secretary of State attain the age of nineteen years nor later—

- (a) in the case of a person who was sentenced to detention under the said section 91, than the date on which his detention would have expired;
- (b) in the case of a young person who has been sentenced to imprisonment and pardoned as aforesaid, than three years from the date as from which his sentence began to run;
- (c) in the case of a person who was undergoing detention in a Borstal institution, than the end of the period for which he would have been liable to be detained therein.

3.2.3.3.2 Detention in a Young Offender Institution

3.2.3.3.2.1 Availability and power to order

Availability

PCC(S)A 2000 s.96⁴⁵⁰: Detention in a young offender institution for other cases where offender at least 18 but under 21

s.96 - subject to sections 90, 93 and 94, where:

- (a) a person aged at least 18 but under 21 is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
- (b) the court is of the opinion that either or both of paragraphs (a) and (b) of section 79(2) above apply or the case falls within section 79(3),

the sentence that the court is to pass is a sentence of detention in a young offender institution.

Maximum length of order

PCC(S)A 2000 s.97⁴⁵¹: Term of detention in a young offender institution, and consecutive sentences

s.97(1) - the maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence.

Minimum length of order

PCC(S)A 2000 s.97⁴⁵²: Term of detention in a young offender institution, and consecutive sentences

s.97(2) - a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days.

Note: Section 97 was amended by CJA 2015 s. 15 on 13 April 2015 to omit subsection (3).

⁴⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Consecutive sentences

PCC(S)A 2000 s.97⁴⁵³: Term of detention in a young offender institution, and consecutive sentences

s.97(4) - where:

- (a) an offender is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution, or
- (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,

the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

Place of detention

PCC(S)A 2000 s.98⁴⁵⁴: Detention in a young offender institution: place of detention

s.98(1) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.

s.98(2) - the Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution.

3.2.2.3.2 Interaction with other sentencing orders

Offender serving detention in YOI turns 21 and convicted of subsequent offence

PCC(S)A 2000 s.97⁴⁵⁵: Term of detention in a young offender institution, and consecutive sentences

s.97(5) - subject to section 84 above (restriction on consecutive sentences for released prisoners), where an offender who:

- (a) is serving a sentence of detention in a young offender institution, and
- (b) is aged 21 or over,

is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

⁴⁵³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

DTO

PCC(S)A 2000 s.106⁴⁵⁶: Interaction with sentences of detention in a young offender institution

- s.106(1) - where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows:
- (a) if the offender has been released by virtue of s.102(2)-(5), at the beginning of the day on which it is passed;
 - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102.
- s.106(4) - subject to subsection (5) below, where at any time an offender is subject concurrently:
- (a) to a detention and training order, and
 - (b) to a sentence of detention in a young offender institution,
- he shall be treated for the purposes of sections 102 to 105 and of section 98 (place of detention), PCC(S)A 2000 Part 5 Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.
- s.106(5) - nothing in subsection (4) above shall require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them.

Detention under s.91

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p.350)

3.2.3.4. Extended sentences (EDS)

3.2.3.4.1 General

What is an extended sentence?

CJA 2003 s.226B⁴⁵⁷: Extended sentence for certain violent or sexual offences: under 18

- s.226B(3) - an extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of:

⁴⁵⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁴⁵⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

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

Place of detention

CJA 2003 s.235⁴⁵⁸: Detention under sections 226, 226B and 228

s.235 - a person sentenced to be detained under section 226, 226B or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

3.2.3.4.2 Availability and power to order

Availability and power to order

R. v Robson [2006] EWCA Crim 1414; [2007] 1 Cr. App. R. (S.) 54 (p.301)

As a matter of statutory construction, we conclude that the age of the offender for the purpose of determining which of the statutory regimes under Chapter 5 of Part 12 of the 2003 Act applies to him is the offender’s age at the date of conviction... (Keith J, at [13])

CJA 2003 s.226B⁴⁵⁹: Extended sentence for certain violent or sexual offences: under 18

s.226B(1) - this section applies where:

- (a) a person aged under 18 is convicted of a specified offence (whether the offence was committed before or after this section comes into force),
- (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences,
- (c) the court is not required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act, and
- (d) if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.

s.226B(2) - the court may impose an extended sentence of detention on the offender.

Note: As to the requirement that the custodial term be at least four years, see R. v Pinnell [2010] EWCA Crim 2848; [2011] 2 Cr. App. R. (S.) 30 (p.168): the headnote to which reads, in part:

... although by section 227(2B) of the 2003 Act, as inserted, the appropriate custodial term in relation to each extended sentence had to be at least four years and separate consecutive sentences, each shorter than four years, could not be extended even if their total was more than four years, by section 153 of the Act the court in fixing the custodial term of an extended sentence under section 227 could aggregate with a specified offence non-specified associated offences, to consider the totality of offending, and so pass an extended sentence for the specified offence with a custodial term longer than that offence alone would justify, provided that the custodial and the extension term did not in aggregate exceed the maximum term permitted for that offence

⁴⁵⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18.

⁴⁵⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

See also the TICs and Totality Guideline (Sentencing Council) p.10.

CJA 2003 s.224⁴⁶⁰: Meaning of “specified offence”

s.224(1) - an offence is a “specified offence” for the purposes of CJA 2003 Part 12 Chapter 5 if it is a specified violent offence or a specified sexual offence

s.224(3) in CJA 2003 Part 12 Chapter 5:

“serious harm” means death or serious personal injury, whether physical or psychological;

“specified violent offence” means an offence specified in Part 1 of Schedule 15;

“specified sexual offence” means an offence specified in Part 2 of Schedule 15

CJA 2003 Sch.15⁴⁶¹: Specified offences for the purposes of CJA 2003 Part 5 Chapter 12

Note: The schedule lists the offences for the purposes of the dangerous offender provisions. There are pending amendments to the schedule and some paragraphs are not yet in force. The individual paragraphs are not listed here. The Schedule was amended by SI 2015/778 art.3 and Sch.1 on 13 April 2015.

The assessment of dangerousness

CJA 2003 s.229⁴⁶²: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

⁴⁶⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 224 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.15

⁴⁶¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.37.

⁴⁶² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

Pre-sentence report

CJA 2003 s.156⁴⁶³: Pre-sentence reports and other requirements

- s.156(3) - subject to CJA s.156(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 CJA 2003 ss.152(2), 153(2) [...] or 226A(1)(b) [...]
- s.156(4) - CJA 2003 s.156(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

3.2.3.4.3 Making the order

Determining the length of the custodial portion of the sentence

CJA 2003 s.226B⁴⁶⁴: Extended sentence for certain violent or sexual offences: under 18

- s.226B(4) - the appropriate custodial term is the term of detention that would (apart from this section) be imposed in compliance with section 153(2).

Determining the length of the extended licence

CJA 2003 s.226B⁴⁶⁵: Extended sentence for certain violent or sexual offences: under 18

- s.226B(5) - the extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences, subject to subsections (5A) to (7).
- s.226B(5A) - the extension period must be at least 1 year.
- (6) The extension period must not exceed:
 - (a) 5 years in the case of a specified violent offence, and
 - (b) 8 years in the case of a specified sexual offence.

Length of total sentence may not exceed the maximum permitted for the offence

CJA 2003 s.226B⁴⁶⁶: Extended sentence for certain violent or sexual offences: under 18

- s.226B(7) - the term of an extended sentence of detention imposed under this section in respect of an offence may not exceed the term that, at the time the offence was committed, was the maximum term of imprisonment permitted for the offence in the case of a person aged 21 or over.

⁴⁶³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁴⁶⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

⁴⁶⁵ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

⁴⁶⁶ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

Consecutive sentences

Note: It is permissible to impose consecutive extended sentences but it is desirable to not do so, see e.g. R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13)

Judge should give reasons for imposing an extended sentence

R. v Lang [2005] EWCA Crim 2864; [2006] 2 Cr. App. R. (S.) 3 (p.13)

In accordance with CJA 2003 s.174, sentencers should usually give reasons for all their conclusions, in particular a finding of dangerousness. Such an explanation should briefly identify the information which has been taken into account.

CJA 2003 s.174⁴⁶⁷: Duty to give reasons for and to explain effect of sentence

s.174(1) - a court passing sentence on an offender has the duties in subsections (2) [...]

s.174(2) - the court must state in open court, in ordinary language and in general terms, the court’s reasons for deciding on the sentence

3.2.3.4.4 Offences committed before 5 April 2005 etc.

Offences which have been abolished/were committed prior to 5 April 2005

CJA 2003 s.226B⁴⁶⁸: Extended sentence for certain violent or sexual offences: under 18

s.226B(8) - in subsections (1)(a) and (6), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that:

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

s.226B(9) - where the offence mentioned in subsection (1)(a) was committed before 4 April 2005:

- (a) subsection (1) has effect as if paragraph (c) were omitted, and
- (b) subsection (4) has effect as if the words “in compliance with section 153(2)” were omitted.

⁴⁶⁷ Commencement: Section 174(4) in force 5 April 2005, SI 2004/829 art.2(2)(e). Section 174(1)-(3)(b) and (5)-(6) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁴⁶⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.124 and amended on 3 December 2012 by LASPOA 2012 Sch.21 para.36.

3.2.3.4.5 Appeals

Fresh evidence

CJA 2003 s.229⁴⁶⁹: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

CAA 1968 s.23: Evidence

s.23(1) - the Court of Appeal may, if they think it necessary or expedient in the interests of justice:

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
- (c) receive any evidence which was not adduced in the proceedings from which the appeal lies

s.23(1A) - [supplementary to s.23(1)(a)]

s.23(2) - the Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to:

- (a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

⁴⁶⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

- (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings

R. v Beesley [2011] EWCA Crim 1021; [2012] 1 Cr. App. R. (S.) 15 (p.71)

As the provisions in relation to dangerousness require the court to take into account all information and in the light of the practice set out in *R. v Roberts* [2006] EWCA Crim 2915; [2007] 1 W.L.R. 1109, s.23 [CAA 1968] does not constrain the Court of Appeal from receiving further information about the offender where it is right to do so. (Thomas LJ, at [35])

3.2.3.4.6 Certificates of conviction

CJA 2003 s.232A⁴⁷⁰: Certificates of conviction for Sch.15B offence

s.232A - where:

- (a) after the commencement of CJA 2003 Sch.15B a person is convicted in England and Wales of an offence listed in that Schedule, and
 - (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that date, and
 - (c) that court subsequently certifies that fact,
- that certificate is evidence, for the purposes of CJA 2003 s.224A, that the person was convicted of such an offence on that date

3.2.3.4.7 Interaction with other sentencing orders

Dangerousness provisions

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;
- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and

⁴⁷⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.19 para.21

- v) if s.224A does not apply the judge should then consider the provisions of s.226A . Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

3.2.3.5. Detention for life (discretionary under CJA 2003)

3.2.3.5.1 General

Interpretation

CJA 2003 s.226⁴⁷¹: Detention for life for serious offences committed by those under 18

s.226(5) - an offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Note: The title to section 226 states it applies to offenders who committed offences when they were aged 18, however the section reveals that it is the age at date of conviction which determines whether or not the section applies. Therefore, an offence committed by a 17-year-old who was convicted of the offence aged 18, section 225 would apply, not 226.

Place of detention

CJA 2003 s.235⁴⁷²: Detention under sections 226, 226B and 228

s.235 - a person sentenced to be detained under section 226, 226B or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

3.2.3.5.2 Availability and test to apply

Availability

CJA 2003 s.226⁴⁷³: Detention for life for serious offences committed by those under 18

s.226(1) - this section applies where:

- (a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and
- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

⁴⁷¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.226 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

⁴⁷² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18.

⁴⁷³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.226 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

Assessment of dangerousness

CJA 2003 s.229⁴⁷⁴: The assessment of dangerousness

s.229(1) - application of section: where:

- (a) a person has been convicted of a specified offence, and
- (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences

s.229(2) - duty/discretion when assessing significant risk: the court:

- (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
- (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the defendant has been convicted by a court anywhere in the world,
- (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
- (c) may take into account any information about the defendant which is before it.

s.229(2A) - [provision dealing with service offences etc.]

s.229(2B) - [provision dealing with service disciplinary proceedings etc.]

3.2.3.5.3 Duty to impose life sentence

Duty to impose detention for life under s.91

CJA 2003 s.226⁴⁷⁵: Detention for life for serious offences committed by those under 18

s.226(2) - if:

- (a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under PCC(S)A 2000 s.91, and
- (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,

the court must impose a sentence of detention for life under that section.

⁴⁷⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. Section 229 was moved to a new part of the Act on 3 December 2012, LASPOA 2012 Sch.19 para.18

⁴⁷⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.18. CJA 2003 ss.226 was moved underneath a new heading on 3 December 2012 by LASPOA 2012 Sch.19 para.17, SI 2012/2906 art.2(q).

PCC(S)A 2000 s.91⁴⁷⁶: Offenders under 18 convicted of certain serious offences: power to detain for specified period

- s.91(1) - PCC(S)A 2000 s.91(3) applies where a person aged under 18 is convicted on indictment of:
- (a) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; or
 - (b) an offence under SOA 2003 s.3 (sexual assault); or
 - (c) an offence under SOA 2003 s.13 (child sex offences committed by children or young persons); or
 - (d) an offence under SOA 2003 s.25 (sexual activity with a child family member); or
 - (e) an offence under SOA 2003 s.26 (inciting a child family member to engage in sexual activity).
- s.91(1A) - PCC(S)A 2000 s.91(3) also applies where:
- (a) a person aged under 18 is convicted on indictment of an offence:
 - (i) under FA 1968 s.5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) (prohibited weapons), or
 - (ii) under FA 1968 s.5(1A)(a),
 - (b) the offence was committed after the commencement of FA 1968 s.51A and for the purposes of subsection (3) of that section at a time when he was aged 16 or over, and
 - (c) the court is of the opinion mentioned in FA 1968 s.51A(2) (exceptional circumstances which justify its not imposing required custodial sentence).
- s.91(1B) - subsection (3) below also applies where:
- (a) a person aged under 18 is convicted on indictment of an offence under the Firearms Act 1968 that is listed in section 51A(1A)(b), (e) or (f) of that Act and was committed in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of that Act;
 - (b) the offence was committed after the commencement of Violent Crime Reduction Act 2006 s.30 and for the purposes of section 51A(3) of the Firearms Act 1968 at a time when he was aged 16 or over; and
 - (c) the court is of the opinion mentioned in FA 1968 s.51A(2).
- s.91(1C) - subsection (3) below also applies where:
- (a) a person aged under 18 is convicted of an offence under VCRA 2006 s.28 (using someone to mind a weapon);
 - (b) VCRA 2006 s.29(3) applies (minimum sentences in certain cases); and
 - (c) the court is of the opinion mentioned in VCRA 2006 s.29(6) (exceptional circumstances which justify not imposing the minimum sentence).
- s.91(3) - if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable, the court may sentence the offender to be detained for such
-

⁴⁷⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

s.91(4) - subsection (3) above is subject to (in particular) CJA 2003 ss.152 and 153

s.91(5) - where:

(a) FA 1968 s.51A(2), or

(b) VCRA 2006 s.29(6),

requires the imposition of a sentence of detention under this section for a term of at least the term provided for in that section, the court shall sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.

3.2.3.5.4 Guidance

Attorney General's Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359) at [22] and [23]

[...] [T]aking into account the law prior to the coming into force of the CJA 2003 and the whole of the new statutory provisions, the question in s.225(2)(b) as to whether the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify a life sentence requires consideration of:

- i) The seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of CJA 2003 s.143(1). This is always a matter for the judgment of the court.
- ii) The defendant's previous convictions (in accordance with CJA 2003 s.143(2)).
- iii) The level of danger to the public posed by the defendant and whether there is a reliable estimate of the length of time he will remain a danger.
- iv) The available alternative sentences.

It is inevitable that the application of s.225 in its current form will lead to the imposition of life sentences in circumstances where previously the sentence would have been one of IPP. It is what Parliament intended and also ensures (as Parliament also intended), so far as is possible, the effective protection of the public.

(Lord Thomas CJ at [22]-[23])

Note: It is important to remember that the comments above were in the context of the adult form of life sentence and different considerations may apply.

3.2.3.5.5 Setting the minimum term

What is a life sentence?

Criminal Practice Directions 2015 VII Sentencing

- L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.

- L.2 Thus the life sentence falls into two parts:
- (a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and
 - (b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

Definitions

PCC(S)A 2000 s.82A⁴⁷⁷: Determination of tariffs

s.82A(7) - definitions for s.82A:

“*court*” includes the Court Martial;

“*life sentence*” means a sentence mentioned in C(S)A 1997 s.34(2) other than a sentence mentioned in s.34(2)(d) or (e)

s.82A(8) - [provision dealing with service courts]

C(S)A 1997 s.34⁴⁷⁸: Interpretation of Chapter II

s.34(1) - in this Chapter “*life prisoner*” means a person serving one or more life sentences and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003.

s.34(2) - in this section “*life sentence*” means any of the following imposed for an offence, whether committed before or after the commencement of this Chapter, namely—

- (a) a sentence of imprisonment for life;
- (b) a sentence of detention during Her Majesty's pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000; and
- (c) a sentence of custody for life under section 93 or 94 of that Act.
- (d) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006),
- (e) a sentence of detention for public protection under section 226 of that Act (including one passed as a result of section 221 of the Armed Forces Act 2006);
- (f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;
- (g) a sentence under section 218 of that Act (detention at Her Majesty's pleasure).

⁴⁷⁷ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

⁴⁷⁸ Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

Duty to specify minimum term

PCC(S)A 2000 s.82A⁴⁷⁹: Determination of tariffs

- s.82A(1) - application of section: where a court passes a life sentence in circumstances where the sentence is not fixed by law
- s.82A(2) - the court shall, unless it makes an order under PCC(S)A 2000 s.82A(4), order that C(S)A 1997 s.28(5)-(8) (referred to in this section as the “*early release provisions*”) shall apply to the defendant as soon as he has served the part of his sentence which is specified in the order

Criminal Practice Directions 2015 VII Sentencing

- L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

Determining the length

PCC(S)A 2000 s.82A⁴⁸⁰: Determination of tariffs

- s.82A(3) - the part of his sentence shall be such as the court considers appropriate taking into account:
- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it;
 - (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—
 - (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition); and
 - (c) the early release provisions as compared with CJA 2003 s.244(1) (duty to release prisoners at half-way point of sentence etc.)

Criminal Practice Directions 2015 VII Sentencing

- L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

⁴⁷⁹ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

⁴⁸⁰ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

Note: As to the appropriate length of the minimum term, as a proportion of the notional determinate sentence, see R. v Szczerba [2002] EWCA Crim 440; [2002] 2 Cr. App. R. (S.) 86 (p.387). The headnote to which reads:

half the notional determinate sentence should be taken, less time spent in custody on a remand, as the period specified to be served. If a judge specified a higher proportion than one half, he should always state his reasons for so doing.

No power to impose a “whole life” minimum term

PCC(S)A 2000 s.82A⁴⁸¹: Determination of tariffs

s.82A(4) - if the defendant was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under PCC(S)A 2000 s.82A(2), the court shall order that, the early release provisions shall not apply

Criminal Practice Directions 2015 VII Sentencing

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

Reduction for guilty plea

Reduction in Sentence for a Guilty Plea Guideline, Sentencing Guidelines Council para.5.1

Where a sentence for a “dangerous offender” is imposed under the provisions in the Criminal Justice Act 2003, whether the sentence requires the calculation of a minimum term or is an extended sentence, the approach will be the same as for any other determinate sentence (see also section G below).

3.2.3.5.6 Interaction with other sentencing orders

Dangerousness provisions

Attorney General’s Reference (No. 27 of 2013) [2014] EWCA Crim 334; [2014] 2 Cr. App. R. (S.) 45 (p.359)

The first question to be considered in all cases where these provisions apply is whether the offender is dangerous. Where s.224A may be relevant there will be a temptation to move straight to a consideration of that provision. That temptation should be resisted. It may lead to the omission of the crucial first question of whether the offender is dangerous.

The order in which a judge should approach sentencing in a case of this type is this:

- i) consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to s.2(a) and (b)), a life sentence must be imposed;

⁴⁸¹ Commencement: 30 November 2000, as inserted by CJCSA 2000 s.60(1), CJCSA 2000 s.80. The section was amended on 18 December 2003 by CJA 2003 Sch.32 para.109 to bring it in line with the regime for life sentences under s.225 and 226, CJA 2003 s.336(2).

- ii) if the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as set out at [22];
- iii) if a life sentence is justified then the judge must pass a life sentence in accordance with s.225 . If s.224A also applies, the judge should record that fact in open court;
- iv) if a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed; and
- v) if s.224A does not apply the judge should then consider the provisions of s.226A. Before passing an extended sentence the judge should consider a determinate sentence.

(Lord Thomas CJ, at [42]-[43])

Note: It is important to remember that the comments of the court were in the context of adult offenders.

DTO/Detention in YOI

R. v Fairhurst (1986) 8 Cr. App. R. (S.) 346

It is undesirable that sentences of [detention under s.91] and youth custody should be passed to run either consecutively or concurrently with each other. It is not, however, always possible to avoid this. The only way out of the problem in general may be to impose no separate penalty for the offences or which [detention under s.91] is not available. Although that solution is not altogether satisfactory, it provides fewer difficulties than any other possible method. (Lord Lane CJ, at p. 350)

Hospital and Guardianship Orders

MHA 1983 s.37⁴⁸²: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37, the court shall not pass [...] a sentence of imprisonment [...] and for the purposes of this subsection “*sentence of imprisonment*” includes any sentence or order for detention.

Sexual Offences Prevention Orders

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468)

The court did not say that no SOPO will ever be appropriate in the case of an indefinite sentence, but the court had not on the material before it been able to envisage an instance when it would. The usual rule ought to be that an indeterminate sentence needs no SOPO, at least unless there was some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later.⁴⁸³

R. v MI [2012] EWCA Crim 1792

As a result of *Smith* it will be rare for a SOPO to be made simultaneously with an indeterminate custodial sentence. Rare, of course, does not mean never. In general, however, SOPOs should

⁴⁸² Commencement: 30 September 2008, MHA 1983 s.149(2).

⁴⁸³ It seems likely that this decision would apply with equal force to the new SHPOs, dealt with in part 3(4).

not be ordered when a defendant is sentenced to imprisonment for public protection. (Lord Judge CJ, at [2])

3.2.3.6. Detention for life (discretionary under common law)

3.2.3.6.1 The existence of the power

R. v Saunders [2013] EWCA Crim 1027; [2014] 1 Cr. App. R. (S.) 45 (p.258)

[...] [N]either the 2003 Act, nor LASPOA 2012, imposed any limit on the power of the court to impose a sentence of life imprisonment in cases where a sentence of life imprisonment may be imposed but the case does not fall within either the statutory life sentence (CJA 2003 s.224A) or the discretionary life sentence (CJA 2003 s.225). Some of these offences may involve a significant risk of serious harm to the public, but are not included within the list of “specified” offences in the dangerousness provisions in the 2003 Act. One obvious example is the offender who commits repeated offences of very serious drug supplying which justifies the imposition of the life sentence. In circumstances like these the court is not obliged to impose the sentence in accordance with s.225(2), but its discretion to do so is unaffected.

In reality, the occasions when this second form of discretionary life sentence is likely to be imposed will be rare, and no inconvenience has yet resulted from applying the description “discretionary” to both forms of sentence. (Lord Chief Justice, at [11] – [12])

3.2.3.6.2 Setting the minimum term

Note: See 3.2.2.3.2, ‘Setting the minimum term’ in the Life imprisonment (CJA 2003 s.225) section.

3.2.3.7. Life (mandatory life)

3.2.3.7.1 Power

M(ADP)A 1965 s.1⁴⁸⁴: Abolition of death penalty for murder

- s.1(1) - no person shall suffer death for murder, and a person convicted of murder shall be sentenced to imprisonment for life.
- s.1(3) - for the purpose of any proceedings on or subsequent to a person’s trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if at the commencement of this Act a person is under sentence of death for murder, the sentence shall have effect as a sentence of imprisonment for life.

PCC(S)A 2000 s.90⁴⁸⁵: Offenders who commit murder etc. when under 18: duty to detain at Her Majesty’s pleasure

- s.90 - where a person convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment appears to the court to have been aged under 18 at the time the offence was committed, the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty’s pleasure.

Note: The title of the section and the section contents use two different terms: detained at/during HM’s pleasure.

⁴⁸⁴ Commencement: 9 November 1965, M(ADPA) 1965 s.3(4).

⁴⁸⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.3.7.2 Setting the minimum term

Application of section

CJA 2003 s.269⁴⁸⁶: Determination of minimum term in relation to mandatory life sentence

s.269(1) - this section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

Duty to set minimum term or impose whole life order

CJA 2003 s.269⁴⁸⁷: Determination of minimum term in relation to mandatory life sentence

s.269(2) - the court must, unless it makes an order under subsection (4), order that the provisions of C(S)A 1997 s.28(5) to (8) (referred to in this Chapter as “*the early release provisions*”) are to apply to the defendant as soon as he has served the part of his sentence which is specified in the order.

s.269(4) - if the defendant was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the defendant.

Determining the length

CJA 2003 s.269⁴⁸⁸: Determination of minimum term in relation to mandatory life sentence

s.269(3) - the part of his sentence is to be such as the court considers appropriate taking into account:

- (a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
- (b) the effect of section 240ZA (crediting periods of remand in custody) or of any direction which it would have given under section 240A (crediting periods of remand on certain types of bail) if it had sentenced him to a term of imprisonment.

s.269(3A) - the reference in subsection (3)(b) to section 240ZA includes AFA 2006 s.246 (crediting periods in service custody).

s.269(5) - in considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), the court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

⁴⁸⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁸⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁸⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

Starting points

CJA 2003 Sch.21 para.4⁴⁸⁹: Determination of minimum term in relation to mandatory life sentence

para.4(1) - if:

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
 - (b) the offender was aged 21 or over when he committed the offence,
- the appropriate starting point is a whole life order.

para.4(2) cases that would normally fall within sub-paragraph (1)(a) include:

- (a) the murder of two or more persons, where each murder involves any of the following:
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (ba) the murder of a police officer or prison officer in the course of his or her duty,
- (c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or
- (d) a murder by a defendant previously convicted of murder.

CJA 2003 Sch.21 para.5⁴⁹⁰: Determination of minimum term in relation to mandatory life sentence

para.5(1) - if:

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
 - (b) the defendant was aged 18 or over when he committed the offence,
- the appropriate starting point, in determining the minimum term, is 30 years.

para.5(2) - cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include:

- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,

⁴⁸⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity, or
- (h) a murder falling within paragraph 4(2) committed by a defendant who was aged under 21 when he committed the offence.

CJA 2003 Sch.21 para.5A⁴⁹¹: Determination of minimum term in relation to mandatory life sentence

para.5A(1) - if:

- (a) the case does not fall within paragraph 4(1) or 5(1),
 - (b) the offence falls within sub-paragraph (2), and
 - (c) the defendant was aged 18 or over when the offender committed the offence,
- the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

para5A(2) -the offence falls within this sub-paragraph if the defendant took a knife or other weapon to the scene intending to:

- (a) commit any offence, or
 - (b) have it available to use as a weapon,
- and used that knife or other weapon in committing the murder.

CJA 2003 Sch.21 para.6⁴⁹²: Determination of minimum term in relation to mandatory life sentence

para.6 - if the defendant was aged 18 or over when he committed the offence and the case does not fall within paragraph 4(1), 5(1) or 5A(1), the appropriate starting point, in determining the minimum term, is 15 years.

CJA 2003 Sch.21 para.7⁴⁹³: Determination of minimum term in relation to mandatory life sentence

para.7 - if the defendant was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravation and Mitigation

CJA 2003 Sch.21 para.8⁴⁹⁴: Determination of minimum term in relation to mandatory life sentence

para.8 - having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

⁴⁹¹ Commencement: 2 March 2010, as inserted by SI 2010/197 art.2(2). Paragraph 5A does not apply in relation to a life sentence imposed for an offence of murder committed before the commencement day, SI 2010/197 art.3.

⁴⁹² Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.21 para.9⁴⁹⁵: Determination of minimum term in relation to mandatory life sentence

para.9 - detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

CJA 2003 Sch.21 para.10⁴⁹⁶: Determination of minimum term in relation to mandatory life sentence

para.10 - aggravating factors (additional to those mentioned in paragraph 4(2), 5(2) and 5A(2)) that may be relevant to the offence of murder include:

- (a) a significant degree of planning or premeditation,
- (b) the fact that the victim was particularly vulnerable because of age or disability,
- (c) mental or physical suffering inflicted on the victim before death,
- (d) the abuse of a position of trust,
- (e) the use of duress or threats against another person to facilitate the commission of the offence,
- (f) the fact that the victim was providing a public service or performing a public duty, and
- (g) concealment, destruction or dismemberment of the body.

CJA 2003 Sch.21 para.11⁴⁹⁷: Determination of minimum term in relation to mandatory life sentence

para.11 - mitigating factors that may be relevant to the offence of murder include:

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the defendant suffered from any mental disorder or mental disability which (although not falling within Homicide Act 1957 s.2(1)), lowered his degree of culpability,
- (d) the fact that the defendant was provoked (for example, by prolonged stress),
- (e) the fact that the defendant acted to any extent in self-defence or in fear of violence,
- (f) a belief by the defendant that the murder was an act of mercy, and
- (g) the age of the defendant.

CJA 2003 Sch.21 para.12⁴⁹⁸: Determination of minimum term in relation to mandatory life sentence

para.12 - nothing in Sch.21 restricts the application of:

- (a) section 143(2) (previous convictions),

⁴⁹⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁴⁹⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

- (b) section 143(3) (bail), or
 - (c) section 144 (guilty plea),
- or of Armed Forces Act 2006 s.238(1)(b) or (c) or s.239

3.2.3.7.3 Giving reasons

CJA 2003 s.270⁴⁹⁹: Duty to give reasons

s.270(1) - subsection (2) applies where a court makes an order under section 269(2) or (4).

s.270(2) - in complying with the duty under section 174(2) to state its reasons for deciding on the order made, the court must, in particular:

- (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
- (b) state its reasons for any departure from that starting point.

Criminal Practice Directions 2015 VII Sentencing

P.1 Having gone through the three or four steps outlined above, the court is then under a duty, under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.

P.2 In order to comply with this duty, the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features, it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point, the court should also declare how much, if any, time is being deducted for time spent in custody and/or on bail subject to a qualifying curfew condition. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release, the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.

P.3 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a 'whole life order' is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

3.2.3.7.4 Guidance

Criminal Practice Directions 2015 VII Sentencing

M.1 The purpose of this section is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 ('the Act'). This direction also gives guidance as to the transitional arrangements under section 276 and schedule 22 of the Act. It clarifies the correct approach to looking at the practice of the Secretary of State prior to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan*,

⁴⁹⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

Gibbs, Elener and Elener [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67.

- M.2 Section 269 came into force on 18 December 2003. Under section 269, all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act), or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a ‘whole life order’).
- M.3 In setting the minimum term, the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence, the court must have regard to the general principles set out in Schedule 21 of the Act as amended and any guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to such guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the starting points given in Schedule 21, the court is under a duty to state its reasons for doing so (section 270(2)(b) of the Act).
- M.4 Schedule 21 states that the first step is to choose one of five starting points: “whole life”, 30 years, 25 years, 15 years or 12 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At paragraph 35 of *Sullivan*, the court found it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point, to 15 years.
- M.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a ‘whole life order’. (paragraph 4(1) of Schedule 21). The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4 (2) sets out examples of cases where it would normally be appropriate to take the ‘whole life order’ as the appropriate starting point.
- M.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years. (Paragraph 5(2)(h) of Schedule 21).
- M.7 Where a case is not so serious as to require a ‘whole life order’ but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence, the appropriate starting point is 30 years (paragraph 5(1) of Schedule 21). Paragraph 5 (2) sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a ‘whole life order’).
- M.8 Where the offender was aged 18 or over when he committed the offence, took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used it in committing the murder, the offence is normally to be regarded as sufficiently serious for an appropriate starting point of 25 years (paragraph 5A of Schedule 21).
- M.9 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1), 5 (1) or 5A(1) of Schedule 21, the appropriate starting point is 15 years (see paragraph 6).

- M.10 18 to 20 year olds are only the subject of the 30-year, 25-year and 15-year starting points.
- M.11 The appropriate starting point when setting a sentence of detention during Her Majesty's pleasure for offenders aged under 18 when they committed the offence is always 12 years (paragraph 7 of Schedule 21).
- M.12 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in paragraphs 4 (2), 5(2) and 5A) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features, the court may add to or subtract from the starting point to arrive at the appropriate punitive period.
- M.13 The third step is that the court should consider the effect of section 143(2) of the Act in relation to previous convictions; section 143(3) of the Act where the offence was committed whilst the offender was on bail; and section 144 of the Act where the offender has pleaded guilty (paragraph 12 of Schedule 21). The court should then take into account what credit the offender would have received for a remand in custody under section 240 or 240ZA of the Act and/or for a remand on bail subject to a qualifying curfew condition under section 240A, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been thus remanded in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should make any appropriate subtraction from the punitive period it would otherwise impose, in order to reach the minimum term.
- M.14 Following these calculations, the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21 makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

3.2.3.7.5 Appeals

Tariff reviews

R. (Smith) v Secretary of State for the Home Department [2005] UKHL 51; [2006] 1 AC 159

The tariff for a person sentenced to detention during Her Majesty's Pleasure may be reduced on reconsideration if there is clear evidence of exceptional and unforeseen progress.

Appeals against sentence

CJA 2003 s.271⁵⁰⁰: Appeals

s.271(1) - in CAA 1968 s.9 (appeal against sentence following conviction on indictment), after subsection (1) there is inserted:

“(1A) In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of

⁵⁰⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.”.

s.271(2) - [provision dealing with CMAC]

Attorney General’s References

CJA 2003 s.272⁵⁰¹: Review of minimum term on a reference by Attorney General

s.272(1) - in CJA 1988 s.36 (reviews of sentencing) after subsection (3) there is inserted:

“(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.”.

s.272(2) - [provision dealing with armed forces]

s.272(3) - [provision dealing with armed forces]

3.2.3.7.6 Life prisoners transferred to England and Wales

CJA 2003 s.273⁵⁰²: Life prisoners transferred to England and Wales

s.273(1) - the SoS must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.

s.273(2) - in subsection (1) “*transferred life prisoner*” means a person:

- (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and
- (b) who has been transferred to England and Wales after the commencement of this section in pursuance of:
 - (i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or
 - (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),

there to serve his sentence or sentences or the remainder of his sentence or sentences.

s.273(3) - in subsection (1) “*a relevant order*” means:

- (a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and
- (b) in any other case, an order under PCC(S)A 2000 s.82A(2) or (4)

⁵⁰¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰² Commencement: 18 December 2003, CJA 2003 s.336(2).

- s.273(4) - in C(S)A 1997 s.34(1)(meaning of “life prisoner” in Chapter 2 of Part 2 of that Act) at the end there is inserted “and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003”.
- s.273(5) - the reference in subsection (2)(b) above to a person who has been transferred to England and Wales in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in England and Wales in pursuance of a warrant under section 4A of that Act (warrant transferring responsibility for detention and release of defendant).

CJA 2003 s.274⁵⁰³: Life prisoners transferred to England and Wales

- s.274(1) - a reference to the High Court under section 273 is to be determined by a single judge of that court without an oral hearing.
- s.274(2) - in relation to a reference under that section, any reference to “the court” in subsections (2) to (5) of section 269, in Schedule 21 or in section 82A(2) to (4) of the Sentencing Act is to be read as a reference to the High Court.
- s.274(3) - a person in respect of whom a reference has been made under section 273 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the reference.
- s.274(4) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which subsection (3) applies.
- s.274(5) - the jurisdiction conferred on the Court of Appeal by subsection (3) is to be exercised by the criminal division of that court.
- s.274(6) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- s.274(7) - in relation to appeals to the Court of Appeal or the Supreme Court under this section, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

3.2.3.7.7 Supplementary

Place of detention etc.

PCC(S)A 2000 s.92⁵⁰⁴: Detention under sections 90 and 91: place of detention etc.

- s.92(1) - a person sentenced to be detained under section 90 or 91 above shall be liable to be detained in such place and under such conditions—
- (a) as the Secretary of State may direct; or
 - (b) as the Secretary of State may arrange with any person.
- s.92(2) - a person detained pursuant to the directions or arrangements made by the Secretary of State under this section shall be deemed to be in legal custody.

⁵⁰³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Interpretation of Sch.21

CJA 2003 Sch.21 para.1⁵⁰⁵: Determination of minimum term in relation to mandatory life sentence

para.1 - in Sch.21:

“*child*” means a person under 18 years;

“*mandatory life sentence*” means a life sentence passed in circumstances where the sentence is fixed by law;

“*minimum term*”, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under section 269(2);

“*whole life order*” means an order under subsection (4) of section 269.

CJA 2003 Sch.21 para.2⁵⁰⁶: Determination of minimum term in relation to mandatory life sentence

para.2 - CDA 1998 s.28 (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of sections 29 to 32 of that Act.

CJA 2003 Sch.21 para.3⁵⁰⁷: Determination of minimum term in relation to mandatory life sentence

para.3 - for the purposes of Sch.21:

(a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);

(b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);

(c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).

Lord Chancellor’s power to amend Sch.21

CJA 2003 s.269⁵⁰⁸: Determination of minimum term in relation to mandatory life sentence

s.269(6) - the Lord Chancellor may by order amend Schedule 21.

s.269(7) - before making an order under subsection (6), the Lord Chancellor must consult the Sentencing Council for England and Wales.

Interpretation of CJA 2003 Part 12 Chapter 7

CJA 2003 s.277⁵⁰⁹: Interpretation of Chapter 7

s.277 - in this Chapter:

⁵⁰⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵⁰⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

“*court*” includes the Court Martial;

“*guidelines*” means sentencing guidelines issued by the Sentencing Council for England and Wales as definitive guidelines under Coroners and Justice Act 2009 s.120 as revised by any subsequent guidelines so issued;

“*life sentence*” means:

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention during Her Majesty’s pleasure, or
- (c) a sentence of custody for life passed before the commencement of CJCSA 2000 s.61(1) (which abolishes that sentence).

3.2.3.7.8 Transitional cases

Statute

CJA 2003 s.276⁵¹⁰: Mandatory life sentences: Transitional cases

s.276 - Schedule 22 (which relates to the effect in transitional cases of mandatory life sentences) shall have effect.

Interpretation

CJA 2003 Sch.22 para.1⁵¹¹: Mandatory life sentences: Transitional cases

para.1 - in Sch.22:

“*the commencement date*” means the day on which section 269 comes into force;

“*the early release provisions*” means the provisions of C(S)A 1997 s.28(5) to (8);

“*existing prisoner*” means a person serving one or more mandatory life sentences passed before the commencement date (whether or not he is also serving any other sentence);

“*life sentence*” means a sentence of imprisonment for life or custody for life passed in England and Wales or by a court-martial outside England and Wales;

“*mandatory life sentence*” means a life sentence passed in circumstances where the sentence was fixed by law.

Existing prisoners notified by Secretary of State

CJA 2003 Sch.22 para.2⁵¹²: Mandatory life sentences: Transitional cases

para.2 - para.3 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has before the commencement date been notified in writing by the Secretary of State (otherwise than in a notice that is expressed to be provisional) either:

- (a) of a minimum period which in the view of the Secretary of State should be served before the prisoner’s release on licence, or
- (b) that the Secretary of State does not intend that the prisoner should ever be released on licence.

⁵¹⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹² Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.3⁵¹³: Mandatory life sentences: Transitional cases

para.3(1) - on the application of the existing prisoner, the High Court must, in relation to the mandatory life sentence, either:

- (a) order that the early release provisions are to apply to him as soon as he has served the part of the sentence which is specified in the order, which in a case falling within paragraph 2(a) must not be greater than the notified minimum term, or
- (b) in a case falling within paragraph 2(b), order that the early release provisions are not to apply to the offender.

para.3(2) - in a case falling within paragraph 2(a), no application may be made under this paragraph after the end of the notified minimum term.

para.3(3) - where no application under this paragraph is made in a case falling within paragraph 2(a), the early release provisions apply to the prisoner in respect of the sentence as soon as he has served the notified minimum term (or, if he has served that term before the commencement date but has not been released, from the commencement date).

para.3(4) - in this paragraph “*the notified minimum term*” means the minimum period notified as mentioned in paragraph 2(a), or where the prisoner has been so notified on more than one occasion, the period most recently so notified.

CJA 2003 Sch.22 para.4⁵¹⁴: Mandatory life sentences: Transitional cases

para.4(1) - in dealing with an application under paragraph 3, the High Court must have regard to:

- (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it,
- (b) where the court is satisfied that, if the prisoner had been sentenced to a term of imprisonment, the length of his sentence would have been treated by section 67 of the Criminal Justice Act 1967 (c. 80) as being reduced by a particular period, the effect which that section would have had if he had been sentenced to a term of imprisonment, and
- (c) the length of the notified minimum term or, where a notification falling within paragraph 2(b) has been given to the prisoner, to the fact that such a notification has been given.

para.4(2) - in considering under sub-paragraph (1) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, the High Court must have regard to:

- (a) the general principles set out in Schedule 21, and
- (b) any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

para.4(3) - in this paragraph “*the notified minimum term*” has the same meaning as in paragraph 3.

⁵¹³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.5⁵¹⁵: Mandatory life sentences: Transitional cases

para.5 - para.6 applies in relation to any existing prisoner who, in respect of any mandatory life sentence, has not before the commencement date been notified as mentioned in paragraph 2(a) or (b) by the Secretary of State.

CJA 2003 Sch.22 para.6⁵¹⁶: Mandatory life sentences: Transitional cases

para.6 - the Secretary of State must refer the prisoner's case to the High Court for the making by the High Court of an order under s.269(2) or (4) in relation to the mandatory life sentence.

CJA 2003 Sch.22 para.7⁵¹⁷: Mandatory life sentences: Transitional cases

para.7(1) - in considering under s.269(3) or (4) the seriousness of an offence (or the combination of an offence and one or more offences associated with it) in a case referred to the High Court under paragraph 6, the High Court must have regard not only to the matters mentioned in subsection (5) of that section but also to any recommendation made to the Secretary of State by the trial judge or the Lord Chief Justice as to the minimum term to be served by the offender before release on licence.

CJA 2003 Sch.22 para.8⁵¹⁸: Mandatory life sentences: Transitional cases

para.8(1) - in dealing with a reference under paragraph 6, the High Court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

Sentences passed on or after commencement date in respect of offences committed before that date

CJA 2003 Sch.22 para.9⁵¹⁹: Mandatory life sentences: Transitional cases

para.9 - para.10 applies where:

- (a) on or after the commencement date a court passes a life sentence in circumstances where the sentence is fixed by law, and
- (b) the offence to which the sentence relates was committed before the commencement date.

⁵¹⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵¹⁹ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.10⁵²⁰: Mandatory life sentences: Transitional cases

para.10 - the court:

- (a) may not make an order under s.269(2) specifying a part of the sentence which in the opinion of the court is greater than that which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify as mentioned in paragraph 2(a), and
- (b) may not make an order under s.269(4) unless the court is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to give the prisoner a notification falling within paragraph 2(b).

CJA 2003 Sch.22 para.11⁵²¹: Mandatory life sentences: Transitional cases

para.11(1) - an application under paragraph 3 or a reference under paragraph 6 is to be determined by a single judge of the High Court without an oral hearing.

para.11(2) - in relation to such an application or reference, any reference to “the court” in s.269(2) to (5) and Sch.21 is to be read as a reference to the High Court.

Giving reasons

CJA 2003 Sch.22 para.12⁵²²: Mandatory life sentences: Transitional cases

para.12(1) - where the High Court makes an order under paragraph 3(1)(a) or (b), it must state in open court, in ordinary language, its reasons for deciding on the order made.

para.12(2) - where the order is an order under paragraph 3(1)(a) specifying a part of the sentence shorter than the notified minimum term the High Court must, in particular, state its reasons for departing from the notified minimum term.

CJA 2003 Sch.22 para.13⁵²³: Mandatory life sentences: Transitional cases

para.13 - where the High Court makes an order under s.269(2) or (4) on a reference under paragraph 6, s.270(2) does not apply.

Right of appeal

CJA 2003 Sch.22 para.14⁵²⁴: Mandatory life sentences: Transitional cases

para.14(1) - a person who has made an application under paragraph 3 or in respect of whom a reference has been made under paragraph 6 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the application or reference.

para.14(2) - AJA 1960 s.1(1) (appeal to Supreme Court from decision of High Court in a criminal cause or matter) and SCA 1981 s.18(1)(a) (exclusion of appeal from High Court to

⁵²⁰ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²¹ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²² Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²³ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²⁴ Commencement: 18 December 2003, CJA 2003 s.336(2).

Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which sub-paragraph (1) applies.

para.14(3) - the jurisdiction conferred on the Court of Appeal by this paragraph is to be exercised by the criminal division of that court.

para.14(4) - CAA 1968 s.33(3) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the Supreme Court under this paragraph.

para.14(5) - in relation to appeals to the Court of Appeal or the Supreme Court under this paragraph, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Review of minimum term on reference by Attorney General

CJA 2003 Sch.22 para.15⁵²⁵: Mandatory life sentences: Transitional cases

para.15 - CJA 1988 s.36 applies in relation to an order made by the High Court under paragraph 3(1)(a) as it applies in relation to an order made by the Crown Court under section 269(2).

Modification of early release provisions

CJA 2003 Sch.22 para.16⁵²⁶: Mandatory life sentences: Transitional cases

para.16(1) - in relation to an existing prisoner, C(S)A 1997 s.28 has effect subject to the following modifications.

para.16(2) - Any reference to a life prisoner in respect of whom a minimum term order has been made includes a reference to:

- (a) an existing prisoner in respect of whom an order under paragraph 3(1)(a) has been made, and
- (b) an existing prisoner serving a sentence in respect of which paragraph 3(3) applies.

para.16(3) - any reference to the relevant part of the sentence is to be read:

- (a) in relation to a sentence in respect of which an order under paragraph 3(1)(a) has been made, as a reference to the part specified in the order, and
- (b) in relation to a sentence in respect of which paragraph 3(3) applies, as a reference to the notified minimum term as defined by paragraph 3(4).

para.16(4) - in subsection (1B) (life prisoner serving two or more sentences), paragraph (a) is to be read as if it referred to each of the sentences being one:

- (a) in respect of which a minimum term order or an order under paragraph 3(1)(a) has been made, or
- (b) in respect of which paragraph 3(3) applies.

⁵²⁵ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²⁶ Commencement: 18 December 2003, CJA 2003 s.336(2).

CJA 2003 Sch.22 para.17⁵²⁷: Mandatory life sentences: Transitional cases

para.17 - in C(S)A 1997 s.34(1) (interpretation of Chapter 2 of that Act), in the definition of “life prisoner”, the reference to a transferred prisoner as defined by section 273 of this Act includes a reference to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of section 33 of that Act.

Transferred life prisoners

CJA 2003 Sch.22 para.18⁵²⁸: Mandatory life sentences: Transitional cases

para.18 - in relation to an existing prisoner who immediately before the commencement date is a transferred life prisoner for the purposes of C(S)A 1997 s.33, this Schedule is to be read as if:

- (a) any certificate under subsection (2) of that section were a notification falling within paragraph 2(a) of this Schedule, and
- (b) references to any recommendation of the trial judge or the Lord Chief Justice were omitted.

Guidance

Criminal Practice Directions 2015 VII Sentencing

- N.1 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and Schedule 22 of the Act.
- N.2 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity, by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term, the court must check whether the proposed term is greater than that which the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.
- N.3 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.
- N.4 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out below.
- N.5 The practice of Lord Bingham, as set out in his letter of 10 February 1997, was to take 14 years as the period actually to be served for the ‘average’, ‘normal’ or

⁵²⁷ Commencement: 18 December 2003, CJA 2003 s.336(2).

⁵²⁸ Commencement: 18 December 2003, CJA 2003 s.336(2).

'unexceptional' murder. Examples of factors he outlined as capable, in appropriate cases, of mitigating the normal penalty were:

- (1) Youth;
- (2) Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison);
- (3) [Intellectual disability or mental disorder];
- (4) Provocation (in a non-technical sense), or an excessive response to a personal threat;
- (5) The absence of an intention to kill;
- (6) Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress);
- (7) Mercy killing;
- (8) A plea of guilty, or hard evidence of remorse or contrition.

N.6 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:

- (1) Evidence of planned, professional, revenge or contract killing;
- (2) The killing of a child or a very old or otherwise vulnerable victim;
- (3) Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
- (4) Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.);
- (5) Multiple killings;
- (6) The killing of a witness, or potential witness, to defeat the ends of justice;
- (7) The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc.);
- (8) Terrorist or politically motivated killings;
- (9) The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;
- (10) A substantial record of serious violence;
- (11) Macabre attempts to dismember or conceal the body.

N.7 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a couple, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.

N.8 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives to the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.

- N.9 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paragraphs N.10 to N.20 below.
- N.10 This Statement replaces the previous single normal tariff of 14 years by substituting a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

The normal starting point of 12 years

- N.11 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph N.13. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
- N.12 The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:-
- (a) the case came close to the borderline between murder and manslaughter; or
 - (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or
 - (c) the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or
 - (d) the case involved an over-reaction in self-defence; or
 - (e) the offence was a mercy killing.
- These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

- N.13 The higher starting point will apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:
- (a) the killing was 'professional' or a contract killing;
 - (b) the killing was politically motivated;
 - (c) the killing was done for gain (in the course of a burglary, robbery etc.);
 - (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);
 - (e) the victim was providing a public service;
 - (f) the victim was a child or was otherwise vulnerable;
 - (g) the killing was racially aggravated;
 - (h) the victim was deliberately targeted because of his or her religion or sexual orientation;
 - (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
 - (j) extensive and/or multiple injuries were inflicted on the victim before death;
 - (k) the offender committed multiple murders.

Variation of the starting point

- N.14 Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.
- N.15 Aggravating factors relating to the offence can include:
- (a) the fact that the killing was planned;
 - (b) the use of a firearm;
 - (c) arming with a weapon in advance;
 - (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
 - (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.
- N.16 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.
- N.17 Mitigating factors relating to the offence will include:
- (a) an intention to cause grievous bodily harm, rather than to kill;
 - (b) spontaneity and lack of pre-meditation.
- N.18 Mitigating factors relating to the offender may include:
- (a) the offender's age;
 - (b) clear evidence of remorse or contrition;
 - (c) a timely plea of guilty.

Very serious cases

- N.19 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.
- N.20 Among the categories of case referred to in paragraph N.13, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder, or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.
- N.21 In following this guidance, judges should bear in mind the conclusion of the Court in *Sullivan* that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

3.2.4. Mandatory or required custodial sentences

3.2.4.1. Drug trafficking offences

3.2.4.1.1 Applicability

PCC(S)A 2000 s.110⁵²⁹: Minimum of seven years for third class A drug trafficking offence

s.110(1) - this section applies where:

- (a) a person is convicted of a class A drug trafficking offence committed after 30th September 1997;
- (b) at the time when that offence was committed, he was 18 or over and had 2 relevant drug convictions; and
- (c) one of those other offences was committed after he had been convicted of the other.

3.2.4.1.2 Duty to impose seven-year custodial sentence

PCC(S)A 2000 s.110⁵³⁰: Minimum of seven years for third class A drug trafficking offence

s.110(2) - the court shall impose an appropriate custodial sentence for a term of at least seven years except where the court is of the opinion that there are particular circumstances which:

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

3.2.4.1.3 Guilty plea

CJA 2003 s.144⁵³¹: Reduction in sentence for guilty plea

s.144(2) - in the case of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (3), nothing in [that provision prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that provision.

s.144(3) - the provisions referred to in subsection (2) are:

- section 1A(6)(a) of the Prevention of Crime Act 1953;
- section 110(2) of the Sentencing Act;
- section 111(2) of the Sentencing Act;
- section 139AA(8)(a) of the Criminal Justice Act 1988.

⁵²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

Mode of trial for third offence

PCC(S)A 2000 s.110⁵³²: Minimum of seven years for third class A drug trafficking offence

s.110(4) - where:

- (a) a person is charged with a class A drug trafficking offence (which, apart from this subsection, would be triable either way), and
 - (b) the circumstances are such that, if he were convicted of the offence, he could be sentenced for it under subsection (2) above,
- the offence shall be triable only on indictment.

3.2.4.1.4 Interpretation

PCC(S)A 2000 s.110⁵³³: Minimum of seven years for third class A drug trafficking offence

s.110(2A) - for the purposes of subsection (1):

- (a) a “*relevant drug conviction*” means:
 - (i) a conviction in any part of the United Kingdom of a class A drug trafficking offence, or
 - (ii) a conviction in another member State of an offence which was committed after the relevant date and would, if done in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence; and
- (b) “*the relevant date*” means the date on which this subsection comes into force.

s.110(5) - in this section “*class A drug trafficking offence*” means a drug trafficking offence committed in respect of a class A drug; and for this purpose:

“*class A drug*” has the same meaning as in the Misuse of Drugs Act 1971;

“*drug trafficking offence*” means an offence which is specified in:

- (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
- (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

(6) In this section “*an appropriate custodial sentence*” means:

- (a) in relation to a person who is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment;
- (b) in relation to a person who is under 21 at that time, a sentence of detention in a young offender institution.

3.2.4.1.5 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵³⁴: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:

⁵³² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁴ Commencement: 30 September 1983, MHA 1983 s.149(2)

[...] (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000 , [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.1.6 Appeals

PCC(S)A 2000 s.112⁵³⁵: Appeals where previous convictions set aside

s.112(1) This section applies where:

- (a) a sentence has been imposed on any person under PCC(S)A 2000 ss.110(2) or 111(2); and
- (b) any previous conviction of his without which that section would not have applied has been subsequently set aside on appeal.

- (2) Notwithstanding anything in CAA 1968 s.18, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.

3.2.4.1.7 Certificates of conviction

PCC(S)A 2000 s.113⁵³⁶: Certificates of convictions for purposes of Chapter III

s.113(1) - where:

- (a) on any date after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence, or on any date after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that he was convicted of such an offence on that date.

s.113(1A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the person has been convicted of such an offence on that date, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, the fact that the person has been convicted of such an offence on that date,

⁵³⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the person was convicted of such an offence on that date.

s.113(2) - where:

- (a) after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence or after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(2A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, that the offence was committed on a particular day or over, or at some time during, a particular period,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(3) - in this section:

“proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record;

“class A drug trafficking offence” and *“domestic burglary”* have the same meanings as in sections 110 and 111 respectively ;

“corresponding drug trafficking offence” means an offence within section 110(2A)(a)(ii); *“corresponding domestic burglary offence”* means an offence within section 111(2A)(a)(ii); and

“the relevant section of this Chapter”, in relation to any such offence, shall be construed accordingly.

3.2.4.1.8 Offences committed over two or more days

PCC(S)A 2000 s.115⁵³⁷: Determination of day when offence committed

s.115 - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of sections 110 and 111 to have been committed on the last of those days.

3.2.4.2. Burglary

3.2.4.2.1 Applicability

PCC(S)A 2000 s.111⁵³⁸: Minimum of three years for third domestic burglary

s.111(1) - this section applies where:

- (a) a person is convicted of a domestic burglary committed after 30th November 1999;
- (b) at the time when that burglary was committed, he was 18 or over and had 2 relevant domestic burglary convictions; and
- (c) one of those other burglaries was committed after he had been convicted of the other, and both of them were committed after the relevant date.

Note: people whose homes were narrow boats or caravans should attract the same protection that Parliament had clearly intended to confer on all members of the public by s.111 see R. v Coleman [2013] EWCA Crim 544; [2013] 2 Cr. App. R. (S.) 79 (p.514). Attempted burglary is not a qualifying offence for the purposes of Powers of Criminal Courts (Sentencing) Act 2000 s.111 see R. v McGuire [2002] EWCA Crim 2689; [2003] 2 Cr. App. R. (S.) 10 (p.240)

3.2.4.2.2 Duty to impose three-year custodial sentence

PCC(S)A 2000 s.111⁵³⁹: Minimum of three years for third domestic burglary

s.111(2) - the court shall impose an appropriate custodial sentence for a term of at least three years except where the court is of the opinion that there are particular circumstances which:

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

3.2.4.2.3 Guilty plea

CJA 2003 s.144⁵⁴⁰: Reduction in sentence for guilty plea

s.144(2) - in the case of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (3), nothing in [that provision prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that provision.

⁵³⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

- s.144(3) - the provisions referred to in subsection (2) are:
section 1A(6)(a) of the Prevention of Crime Act 1953;
section 110(2) of the Sentencing Act;
section 111(2) of the Sentencing Act;
section 139AA(8)(a) of the Criminal Justice Act 1988.

3.2.4.2.4 Mode of trial for third burglary offence

PCC(S)A 2000 s.111⁵⁴¹: Minimum of three years for third domestic burglary

s.111(4) - where:

- (a) a person is charged with a domestic burglary which, apart from this subsection, would be triable either way, and
 - (b) the circumstances are such that, if he were convicted of the burglary, he could be sentenced for it under subsection (2) above,
- the burglary shall be triable only on indictment.

3.2.4.2.5 Interpretation

PCC(S)A 2000 s.111⁵⁴²: Minimum of three years for third domestic burglary

s.111(2A) - for the purposes of subsection (1):

- (a) a “*relevant domestic burglary conviction*” means:
 - (i) a conviction in England and Wales of a domestic burglary, or
 - (ii) a conviction in any other part of the United Kingdom or any other member State of an offence which would, if done in England and Wales at the time of the conviction, have constituted domestic burglary;
- (b) “*the relevant date*”, in relation to a relevant domestic burglary conviction, means:
 - (i) in respect of a conviction in England and Wales, 30 November 1999, and
 - (ii) in any other case, the day on which this subsection comes into force.

s.111(5) - in this section “*domestic burglary*” means a burglary committed in respect of a building or part of a building which is a dwelling.

s.111(6) - in this section “*an appropriate custodial sentence*” means:

- (a) in relation to a person who is 21 or over when convicted of the offence mentioned in subsection (1)(a) above, a sentence of imprisonment;
- (b) in relation to a person who is under 21 at that time, a sentence of detention in a young offender institution.

⁵⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.2.4.2.6 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁴³: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:
[...] (b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000 , [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.2.7 Appeals

PCC(S)A 2000 s.112⁵⁴⁴: Appeals where previous convictions set aside

s.112(1) This section applies where:

- (a) a sentence has been imposed on any person under PCC(S)A 2000 ss.110(2) or 111(2); and
- (b) any previous conviction of his without which that section would not have applied has been subsequently set aside on appeal.

(2) Notwithstanding anything in CAA 1968 s.18, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.

3.2.4.2.8 Certificates of conviction

PCC(S)A 2000 s.113⁵⁴⁵: Certificates of convictions for purposes of Chapter III

s.113(1) - where:

- (a) on any date after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence, or on any date after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that he was convicted of such an offence on that date.

s.113(1A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or

⁵⁴³ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁴⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the person has been convicted of such an offence on that date, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, the fact that the person has been convicted of such an offence on that date,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the person was convicted of such an offence on that date.

s.113(2) - where:

- (a) after 30th September 1997 a person is convicted in England and Wales of a class A drug trafficking offence or after 30th November 1999 a person is convicted in England and Wales of a domestic burglary, and
- (b) the court by or before which he is so convicted states in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(2A) - where:

- (a) a person is convicted:
 - (i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,
- (b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and
- (c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, that the offence was committed on a particular day or over, or at some time during, a particular period,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.

s.113(3) - in this section:

“proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record;

“class A drug trafficking offence” and *“domestic burglary”* have the same meanings as in sections 110 and 111 respectively ;

“corresponding drug trafficking offence” means an offence within section 110(2A)(a)(ii); *“corresponding domestic burglary offence”* means an offence within section 111(2A)(a)(ii); and

“the relevant section of this Chapter”, in relation to any such offence, shall be construed accordingly.

3.2.4.2.9 Offences committed over two or more days

PCC(S)A 2000 s.115⁵⁴⁶: Determination of day when offence committed

s.115 - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of sections 110 and 111 to have been committed on the last of those days.

3.2.4.3. Firearms

3.2.4.3.1 Availability

FA 1968 s.51A⁵⁴⁷: Minimum sentence for certain offences under s. 5

s.51A(1) - this section applies where:

- (a) an individual is convicted of:
 - (i) an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) of this Act,
 - (ii) an offence under section 5(1A)(a) of this Act, or
 - (iii) an offence under any of the provisions of this Act listed in subsection (1A) in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of this Act, and
- (b) the offence was committed after the commencement of this section and at a time when he was aged 16 or over.

s.51A(1A) -the provisions are:

- (za) section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);
- (a) section 16 (possession of firearm with intent to injure);
- (b) section 16A (possession of firearm with intent to cause fear of violence);
- (c) section 17 (use of firearm to resist arrest);
- (d) section 18 (carrying firearm with criminal intent);
- (e) section 19 (carrying a firearm in a public place);
- (f) section 20(1) (trespassing in a building with firearm).

3.2.4.3.2 Duty to impose appropriate custodial sentence of at least the required minimum term

FA 1968 s.51A⁵⁴⁸: Minimum sentence for certain offences under s. 5

s.51A(2) - the court shall impose an appropriate custodial sentence (or order for detention) for a term of at least the required minimum term (with or without a fine) unless the court is of

⁵⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

⁵⁴⁷ Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

⁵⁴⁸ Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

s.51A(5) - in this section “*the required minimum term*” means:

- (a) in relation to England and Wales
 - (i) in the case of an offender who was aged 18 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was under 18 at that time, three years, and
- (b) in relation to Scotland:
 - (i) in the case of an offender who was aged 21 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was aged under 21 at that time, three years.

Note: As to the “exceptional circumstances” justifying the imposition of a sentence beneath the required minimum, see R. v Rehman and Wood [2005] EWCA Crim 2056; [2006] 1 Cr. App. R. (S.) 77 (p.404)

3.2.4.3.3 Offenders aged under 18

PCC(S)A 2000 s.91⁵⁴⁹: Offenders under 18 convicted of certain serious offences: power to detain for specified period

s.91(1A) - PCC(S)A 2000 s.91(3) also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence:
 - (i) under FA 1968 s.5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) (prohibited weapons), or
 - (ii) under FA 1968 s.5(1A)(a),
- (b) the offence was committed after the commencement of FA 1968 s.51A and for the purposes of subsection (3) of that section at a time when he was aged 16 or over, and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2) (exceptional circumstances which justify its not imposing required custodial sentence).

s.91(1B) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted on indictment of an offence under the Firearms Act 1968 that is listed in section 51A(1A)(b), (e) or (f) of that Act and was committed in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) of that Act;
- (b) the offence was committed after the commencement of Violent Crime Reduction Act 2006 s.30 and for the purposes of section 51A(3) of the Firearms Act 1968 at a time when he was aged 16 or over; and
- (c) the court is of the opinion mentioned in FA 1968 s.51A(2).

s.91(1C) - subsection (3) below also applies where:

- (a) a person aged under 18 is convicted of an offence under VCRA 2006 s.28 (using someone to mind a weapon);

⁵⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) VCRA 2006 s.29(3) applies (minimum sentences in certain cases); and
- (c) the court is of the opinion mentioned in VCRA 2006 s.29(6) (exceptional circumstances which justify not imposing the minimum sentence).

s.91(3) - if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, as may be specified in the sentence.

s.91(4) - subsection (3) above is subject to (in particular) CJA 2003 ss.152 and 153

s.91(5) - where:

- (a) FA 1968 s.51A(2), or
- (b) VCRA 2006 s.29(6),

requires the imposition of a sentence of detention under this section for a term of at least the term provided for in that section, the court shall sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.

3.2.4.3.4 Consecutive sentences

Note: There are a number of cases concerning the propriety of imposing consecutive sentences, of note is Attorney General's Reference (No.57 of 2009) (R. v Ralphs) [2009] EWCA Crim 2555; [2010] 2 Cr. App. R. (S.) 30 (p.190): Where a court is considering the imposition of consecutive sentences, the aggregate of the sentences must be appropriate to the offender's criminality and the context of the available mitigation, and consecutive terms should not normally be imposed for offences which arise out of the same incident or transaction.

3.2.4.3.5 Offence committed over two or more days

FA 1968 s.51A⁵⁵⁰: Minimum sentence for certain offences under s. 5

s.51A(3) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

3.2.4.3.6 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁵¹: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed—
[...] (a) under section 51A(2) of the Firearms Act 1968, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

⁵⁵⁰ Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

⁵⁵¹ Commencement: 30 September 1983, MHA 1983 s.149(2)

3.2.4.3.7 Interpretation

FA 1968 s.51A⁵⁵²: Minimum sentence for certain offences under s. 5

s.51A(4) - in this section “*appropriate custodial sentence (or order for detention)*” means:

- (a) in relation to England and Wales:
 - (i) in the case of an offender who is aged 18 or over when convicted, a sentence of imprisonment, and
 - (ii) in the case of an offender who is aged under 18 at that time, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) in relation to Scotland:
 - (i) in the case of an offender who is aged 21 or over when convicted, a sentence of imprisonment,
 - (ii) in the case of an offender who is aged under 21 at that time (not being an offender mentioned in sub-paragraph (iii)), a sentence of detention under section 207 of the Criminal Procedure (Scotland) Act 1995, and
 - (iii) in the case of an offender who is aged under 18 at that time and is subject to a supervision requirement, an order for detention under section 44, or sentence of detention under section 208, of that Act.

s.51A(5) - in this section “*the required minimum term*” means:

- (a) in relation to England and Wales
 - (i) in the case of an offender who was aged 18 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was under 18 at that time, three years, and
- (b) in relation to Scotland:
 - (i) in the case of an offender who was aged 21 or over when he committed the offence, five years, and
 - (ii) in the case of an offender who was aged under 21 at that time, three years.

3.2.4.4. Threatening with offensive weapon in public

3.2.4.4.1 Offence

PCA 1953 s.1A⁵⁵³: Offence of threatening with offensive weapon in public

s.1A(1) - a person is guilty of an offence if that person:

- (a) has an offensive weapon with him or her in a public place,
- (b) unlawfully and intentionally threatens another person with the weapon, and
- (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

⁵⁵² Commencement: 22 January 2004, as inserted by CJA 2003 s.287, SI 2004/81 art.3(2)(b).

⁵⁵³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

- s.1A(2) - for the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
- s.1A(3) - in this section “*public place*” and “*offensive weapon*” have the same meaning as in section 1.

3.2.4.4.2 Maximum sentence

PCA 1953 s.1A⁵⁵⁴: Offence of threatening with offensive weapon in public

- s.1A(4) - a person guilty of an offence under this section is liable:
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- s.1A(8) - in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.
- s.1A(9) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

3.2.4.4.3 Required minimum sentence

PCA 1953 s.1A⁵⁵⁵: Offence of threatening with offensive weapon in public

- s.1A(5) - where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which:
 - (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- s.1A(6) - in this section “*appropriate custodial sentence*” means:
 - (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- s.1A(7) - in considering whether it is of the opinion mentioned in subsection (5) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

⁵⁵⁴ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

⁵⁵⁵ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

3.2.4.4.4 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁵⁶: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:
[...] (za) under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.4.5 Alternative offence

PCA 1953 s.1A⁵⁵⁷: Offence of threatening with offensive weapon in public

s.1A(10) - if on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 1, the person may be convicted of the offence under that section.

3.2.4.5. Threatening with bladed article etc. or offensive weapon in school or public place

3.2.4.5.1 Offence

CJA 1988 s.139AA⁵⁵⁸: Offence of threatening with article with blade or point or offensive weapon

s.139AA(1) - a person is guilty of an offence if that person:

- (a) has an article to which this section applies with him or her in a public place or on school premises,
- (b) unlawfully and intentionally threatens another person with the article, and
- (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.

s.139AA(2) - in relation to a public place this section applies to an article to which section 139 applies.

s.139AA(3) - in relation to school premises this section applies to each of these:

- (a) an article to which section 139 applies;
- (b) an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.

s.139AA(4) - for the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

s.139AA(5) - in this section:

“*public place*” has the same meaning as in section 139;

“*school premises*” has the same meaning as in section 139A.

⁵⁵⁶ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁵⁷ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(1), SI 2012/2770 art.2(a).

⁵⁵⁸ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

3.2.4.5.2 Maximum sentence

CJA 1988 s.139AA⁵⁵⁹: Offence of threatening with article with blade or point or offensive weapon

s.139AA(6) - a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.

s.139AA(10) - in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.

s.139AA(11) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (8)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

3.2.4.5.3 Required minimum sentence

CJA 1988 s.139AA⁵⁶⁰: Offence of threatening with article with blade or point or offensive weapon

s.139AA(7) - where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which:

- (a) relate to the offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

s.139AA(8) - in this section “*appropriate custodial sentence*” means:

- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

s.139AA(9) - in considering whether it is of the opinion mentioned in subsection (7) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.

⁵⁵⁹ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

⁵⁶⁰ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

3.2.4.5.4 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁶¹: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed:
[...] (aa) under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.5.5 Alternative offence

CJA 1988 s.139AA⁵⁶²: Offence of threatening with article with blade or point or offensive weapon

s.139AA(12) - if on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 139 or 139A, the person may be convicted of the offence under that section.

3.2.4.6. Using someone to mind a weapon

3.2.4.6.1 Applicability

VCRA 2006 s.29⁵⁶³: Penalties etc. for offence under s. 28

s.29(1) - this section applies where a person ("the offender") is guilty of an offence under section 28.

3.2.4.6.2 Maximum sentence

VCRA 2006 s.29⁵⁶⁴: Penalties etc. for offence under s. 28

s.29(2) - where the dangerous weapon in respect of which the offence was committed is a weapon to which section 141 or 141A of the Criminal Justice Act 1988 (specified offensive weapons, knives and bladed weapons) applies, the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.

s.29(3) - where:

- (a) at the time of the offence, the offender was aged 16 or over, and
- (b) the dangerous weapon in respect of which the offence was committed was a firearm mentioned in section 5(1)(a) to (af) or (c) or section 5(1A)(a) of the 1968 Act (firearms possession of which attracts a minimum sentence),

the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.

⁵⁶¹ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁶² Commencement: 3 December 2012, as inserted by LASPOA 2012 s.142(2), SI 2012/2770 art.2(a).

⁵⁶³ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁶⁴ Commencement: 6 April 2007, SI 2007/858 art.2(c).

s.29(10) - in any case not mentioned in subsection (2) or (3), the offender shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

3.2.4.6.3 Required minimum sentence

VCRA 2006 s.29⁵⁶⁵: Penalties etc. for offence under s. 28

s.29(4) - on a conviction in England and Wales, where:

- (a) subsection (3) applies, and
- (b) the offender is aged 18 or over at the time of conviction,

the court must impose (with or without a fine) a term of imprisonment of not less than 5 years, unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

s.29(6) - on a conviction in England and Wales, where:

- (a) subsection (3) applies, and
- (b) the offender is aged under 18 at the time of conviction,

the court must impose (with or without a fine) a term of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) of not less than 3 years, unless it is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

3.2.4.6.4 Aggravating factor: Minder of weapon was under 18

VCRA 2006 s.29⁵⁶⁶: Penalties etc. for offence under s. 28

s.29(11) - where:

- (a) a court is considering for the purposes of sentencing the seriousness of an offence under section 28, and
- (b) at the time of the offence the offender was aged 18 or over and the person used to look after, hide or transport the weapon was not,

the court must treat the fact that that person was under the age of 18 at that time as an aggravating factor (that is to say, a factor increasing the seriousness of the offence).

s.29(12) - where a court treats a person's age as an aggravating factor in accordance with subsection (11), it must state in open court that the offence was aggravated as mentioned in that subsection.

3.2.4.6.5 Offences committed over two or more days

VCRA 2006 s.29⁵⁶⁷: Penalties etc. for offence under s. 28

s.29(13) - where:

- (a) an offence under section 28 of using another person for a particular purpose is found to have involved that other person's having possession of a weapon, or

⁵⁶⁵ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁶⁶ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁶⁷ Commencement: 6 April 2007, SI 2007/858 art.2(c).

being able to make it available, over a period of two or more days, or at some time during a period of two or more days, and

(b) on any day in that period, an age requirement was satisfied,

the question whether subsection (3) applies or (as the case may be) the question whether the offence was aggravated under this section is to be determined as if the offence had been committed on that day.

s.29(14) - in subsection (13) the reference to an age requirement is a reference to either of the following:

(a) the requirement of subsection (3) that the offender was aged 16 or over at the time of the offence;

(b) the requirement of subsection (11) that the offender was aged 18 or over at that time and that the other person was not.

3.2.4.6.6 Interaction with other sentencing orders

Mental Health Act 1983 s.37⁵⁶⁸: Powers of courts to order hospital admission or guardianship

s.37(1A) In the case of an offence the sentence for which would otherwise fall to be imposed: [...] (d) under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon), [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.6.7 Modification pertaining to youth custodial sentences

VCRA 2006 s.29⁵⁶⁹: Penalties etc. for offence under s. 28

s.29(5) - in relation to times before the commencement of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), the reference in subsection (4) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

3.2.4.7. Minimum sentence for repeat offenders involving offensive weapons etc.

3.2.4.7.1 Offences under PCA 1953 s.1

PCA 1953 s.1⁵⁷⁰: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

s.1(1) - any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the prescribed sum or both;

⁵⁶⁸ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁶⁹ Commencement: 6 April 2007, SI 2007/858 art.2(c).

⁵⁷⁰ Commencement: 6 June 1953, PCA 1953 s.2(2). As amended by, inter alia, SI 2015/1463 art.2(a).

- (b) on conviction on indictment, to imprisonment for a term not exceeding four years or a fine, or both.
- s.1(2) - where any person is convicted of an offence under subsection (1) of this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.
- s.1(2A) - subsection (2B) applies where—
 - (a) a person is convicted of an offence under subsection (1) committed after this subsection is commenced, and
 - (b) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 1ZA).
- s.1(2B) - where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- s.1(2C) - in this section “*appropriate custodial sentence*” means—
 - (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- s.1(2D) - in considering whether it is of the opinion mentioned in subsection (2B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).
- s.1(2E) - where—
 - (a) an appropriate custodial sentence has been imposed on a person under subsection (2B), and
 - (b) a relevant conviction without which subsection (2B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).
- s.1(2F) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- s.1(2G) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (2C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- s.1(4) - in this section “*public place*” includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and “*offensive weapon*” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

PCA 1953 s.1ZA⁵⁷¹: Offence under section 1: previous relevant convictions

s.1ZA(1) - for the purposes of section 1, “*relevant conviction*” means—

- (a) a conviction for an offence under—
 - (i) section 1 or 1A of this Act, or
 - (ii) section 139, 139A or 139AA of the Criminal Justice Act 1988, (a “*relevant offence*”), whenever committed,
- (b) a conviction in Scotland, Northern Ireland or a member State other than the United Kingdom for a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of that conviction,
- (c) a conviction for an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
- (d) a conviction for an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, and
- (e) a conviction for a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.

s.1ZA(2) - in this section—

“*civilian offence*” means an offence other than—

- (a) an offence under an enactment mentioned in subsection (1)(c) or (d), or
- (b) a member State service offence;

“*conviction*” includes—

- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction and
- (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

“*member State service offence*” means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

s.1ZA(3) - for the purposes of subsection (1)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

⁵⁷¹ Commencement: 17 July 2015, as inserted by SI 2015/1463 art.2(a).

3.2.4.7.2 Offences under CJA 1988 s.139 or 139A

CJA 1988 s.139⁵⁷²: Offence of having article with blade or point in public place

- s.139(1) - subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.
- s.139(2) - subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.
- s.139(3) - this section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.
- s.139(4) - it shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.
- s.139(5) - without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—
- (a) for use at work;
 - (b) for religious reasons; or
 - (c) as part of any national costume.
- s.139(6) - a person guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.
- s.139(6A) - subsection (6B) applies where—
- (a) a person is convicted of an offence under subsection (1) by a court in England and Wales,
 - (b) the offence was committed after this subsection is commenced, and
 - (c) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 139AZA).
- s.139(6B) - where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- s.139(6C) - in this section “*appropriate custodial sentence*” means—
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;

⁵⁷² Commencement: 29 September 1988, CJA 1988 s.171(6).

(b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

s.139(6D) - in considering whether it is of the opinion mentioned in subsection (6B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).

s.139(6E) - where—

(a) an appropriate custodial sentence has been imposed on a person under subsection (6B), and

(b) a relevant conviction without which subsection (6B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).

s.139(6F) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

s.139(6G) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.

s.139(7) - in this section “*public place*” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.

s.139(8) - this section shall not have effect in relation to anything done before it comes into force.

CJA 1988 s.139A⁵⁷³: Offence of having article with blade or point (or offensive weapon) on school premises

s.139A(1) - any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

s.139A(2) - any person who has an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

s.139A(3) - it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

s.139A(4) - without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—

(a) for use at work,

(b) for educational purposes,

⁵⁷³ Commencement: 1 September 1996, as inserted by OWA 1996 s.4(1), SI 1996/2071 art.2, as amended by, inter alia, SI 2015/1463 art.2(a).

- (c) for religious reasons, or
- (d) as part of any national costume.

s.139A(5) - a person guilty of an offence—

- (a) under subsection (1) above shall be liable—
 - (i) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both;
- (b) under subsection (2) above shall be liable—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.

s.139A(5A) - subsection (5B) applies where—

- (a) a person is convicted of an offence under subsection (1) or (2) by a court in England and Wales,
- (b) the offence was committed after this subsection is commenced, and
- (c) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 139AZA).

s.139A(5B) - where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—

- (a) relate to the offence, to the previous offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

s.139A(5C) - in this section “*appropriate custodial sentence*” means—

- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

s.139A(5D) - in considering whether it is of the opinion mentioned in subsection (5B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).

s.139A(5E) - where—

- (a) an appropriate custodial sentence has been imposed on a person under subsection (5B), and
- (b) a relevant conviction without which subsection (5B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).

- s.139A(5F) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- s.139A(5G) - in relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (5C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- s.139A(6) - in this section and section 139B, “*school premises*” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and “*school*” has the meaning given by section 4 of the Education Act 1996.
- s.139A(7) - in the application of this section to Northern Ireland—
- (a) the reference in subsection (2) above to section 1 of the Prevention of Crime Act 1953 is to be construed as a reference to Article 22 of the Public Order (Northern Ireland) Order 1987; and
 - (b) the reference in subsection (6) above to section 4 of the Education Act 1996 is to be construed as a reference to Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

CJA 1988 s.139AZA⁵⁷⁴: Offences under sections 139 and 139A: previous relevant convictions

- s.139AZA(1) - for the purposes of sections 139 and 139A, “*relevant conviction*” means—
- (a) a conviction for an offence under—
 - (i) section 1 or 1A of the Prevention of Crime Act 1953, or
 - (ii) section 139, 139A or 139AA of this Act,(a “*relevant offence*”), whenever committed,
 - (b) a conviction in Scotland, Northern Ireland or a member State other than the United Kingdom for a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of that conviction,
 - (c) a conviction for an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
 - (d) a conviction for an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, and
 - (e) a conviction for a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.
- s.139AZA(2) - in this section—

⁵⁷⁴ Commencement: 17 July 2015, as inserted by SI 2015/1463 art.2(a).

“*civilian offence*” means an offence other than—

- (a) an offence under an enactment mentioned in subsection (1)(c) or (d), or
- (b) a member State service offence;

“*conviction*” includes—

- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction, and
- (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

“*member State service offence*” means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

s.139AZA(3) - for the purposes of subsection (1)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

3.2.4.7.3 Interaction with other sentencing orders

Hospital orders etc.

Mental Health Act 1983 s.37⁵⁷⁵: Powers of courts to order hospital admission or guardianship

s.37(1A) - in the case of an offence the sentence for which would otherwise fall to be imposed:

[...] (za) under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

(aa) under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988, [...] nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

3.2.4.8 Powers of the Secretary of State

CJA 2003 s.291⁵⁷⁶: Power by order to exclude application of minimum sentence to those under 18

s.291(1) - the Secretary of State may by order—

- (a) amend section 51A(1)(b) of the Firearms Act 1968 (c. 27) by substituting for the word “16” the word “18”,
- (aa) amend section 29(3)(a) of the Violent Crime Reduction Act 2006 by substituting for the word “16” the word “18”,
- (b) repeal section 91(1A)(c) and (5) of the Sentencing Act,
- (c) amend subsection (3) of section 49 of the Criminal Procedure (Scotland) Act 1995 by repealing the exception to that subsection,

⁵⁷⁵ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁵⁷⁶ Commencement: 22 January 2004, SI 2004/81 art.3(2)(b).

- (d) repeal section 208(2) of that Act, and
- (e) make such other provision as he considers necessary or expedient in consequence of, or in connection with, the provision made by virtue of paragraphs (a) to (d).

s.291(2) - the provision that may be made by virtue of subsection (1)(e) includes, in particular, provision amending or repealing any provision of an Act (whenever passed), including any provision of this Act.

3.2.5. Committal for contempt

3.2.5.1. General

Procedure

Attorney General v Dallas [2012] EWHC 156 (Admin); [2012] 1 WLR 991

Trials for contempt of court on indictment are obsolete and neither the Attorney General nor an alleged contemnor had any right to seek trial by jury on indictment.

Jurisdiction: Court of Appeal

SCA 1981 s.15⁵⁷⁷: General jurisdiction of Court of Appeal

- s.15(1) - the Court of Appeal shall be a superior court of record.
- s.15(2) - subject to the provisions of this Act, there shall be exercisable by the Court of Appeal:
- (a) all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and
 - (b) all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act.
- s.15(3) - for all purposes of or incidental to:
- (a) the hearing and determination of any appeal to the civil division of the Court of Appeal; and
 - (b) the amendment, execution and enforcement of any judgment or order made on such an appeal,
- the Court of Appeal shall have all the authority and jurisdiction of the court or tribunal from which the appeal was brought.
- s.15(4) - it is hereby declared that any provision in this or any other Act which authorises or requires the taking of any steps for the execution or enforcement of a judgment or order of the High Court applies in relation to a judgment or order of the civil division of the Court of Appeal as it applies in relation to a judgment or order of the High Court.

⁵⁷⁷ Commencement: 1 January 1982, SCA 1981 s.153(2).

Jurisdiction: Crown Court

SCA 1981 s.45⁵⁷⁸: General jurisdiction of Crown Court

s.45(4) - subject to section 8 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (substitution in criminal cases of procedure in that Act for procedure by way of subpoena) and to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority as the High Court.

Jurisdiction: Magistrates' Courts

CCA 1981 s.12⁵⁷⁹: Offences of contempt of magistrates' courts

s.12(1) - a magistrates' court has jurisdiction under this section to deal with any person who:

- (a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

3.2.5.2. Obstruction/Disruption

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.48.5(1) This rule applies where the court observes, or someone reports to the court—

- (a) in the Court of Appeal or the Crown Court, obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings;
- (b) in the Crown Court, a contravention of—
 - (i) section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (disobeying a witness summons);
 - (ii) section 20 of the Juries Act 1974 (disobeying a jury summons);
 - (iii) section 8 of the Contempt of Court Act 1981 (obtaining details of a jury's deliberations, etc.);
- (c) in a magistrates' court, a contravention of—
 - (i) section 97(4) of the Magistrates' Courts Act 1980 (refusing to give evidence), or
 - (ii) section 12 of the Contempt of Court Act 1981 (insulting or interrupting the court, etc.);
- (d) a contravention of section 9 of the Contempt of Court Act 1981 (without the court's permission, recording the proceedings, etc.);
- (e) any other conduct with which the court can deal as, or as if it were, a criminal contempt of court, except failure to surrender to bail under section 6 of the Bail Act 1976.

⁵⁷⁸ Commencement: 1 January 1982, SCA 1981 s.153(2).

⁵⁷⁹ Commencement: 27 August 1981, CCA 1981 s.21(3).

rule.48.5(2) Unless the respondent's behaviour makes it impracticable to do so, the court must—

- (a) explain, in terms the respondent can understand (with help, if necessary)—
 - (i) the conduct that is in question,
 - (ii) that the court can impose imprisonment, or a fine, or both, for such conduct,
 - (iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,
 - (iv) that the respondent may explain the conduct,
 - (v) that the respondent may apologise, if he or she so wishes, and that this may persuade the court to take no further action, and
 - (vi) that the respondent may take legal advice; and
- (b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.

rule.48.5(3) The court may then—

- (a) take no further action in respect of that conduct;
- (b) enquire into the conduct there and then; or
- (c) postpone that enquiry (if a magistrates' court, only until later the same day).

*Note.*⁵⁸⁰ *The conduct to which this rule applies is sometimes described as 'criminal' contempt of court.*

By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for contempt of court for the conduct listed in paragraph (1)(a), (b), (d) or (e). See also section 14 of the Contempt of Court Act 1981.

Under section 97(4) of the Magistrates' Courts Act 1980, and under sections 12 and 14 of the Contempt of Court Act 1981, a magistrates' court can imprison (for a maximum of 1 month), or fine (to a maximum of £2,500), or both, a respondent who contravenes a provision listed in paragraph (1)(c) or (d). Section 12(1) of the 1981 Act allows the court to deal with any person who—

- (a) *wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or*
- (b) *wilfully interrupts the proceedings of the court or otherwise misbehaves in court.*

Under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000, no respondent who is under 21 may be imprisoned for contempt of court. Under section 108 of that Act, a respondent who is at least 18 but under 21 may be detained if the court is of the opinion that no other method of dealing with him or her is appropriate. Under section 14(2A) of the Contempt of Court Act 1981, a respondent who is under 17 may not be ordered to attend an attendance centre.

Under section 258 of the Criminal Justice Act 2003, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.

⁵⁸⁰ The note is contained within the procedure rules.

Under sections 14, 15 and 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the respondent may receive advice and representation in “proceedings for contempt committed, or alleged to have been committed, by an individual in the face of the court”.

By reason of sections 15 and 45 of the Senior Courts Act 1981, the Court of Appeal and the Crown Court each has an inherent power temporarily to detain a respondent, for example to restore order, when dealing with obstructive, disruptive, insulting or intimidating conduct. Under section 12(2) of the Contempt of Court Act 1981, a magistrates’ court can temporarily detain a respondent until later the same day on a contravention of that section.

Part 14 contains rules about bail.

3.2.5.3. Failure to comply with court order etc.

Criminal Procedure Rules 2015 (SI 2015/1490)

rule.48.9(1) This rule applies where—

- (a) a party, or other person directly affected, alleges—
 - (i) in the Crown Court, a failure to comply with an order to which applies rule 33.70 (compliance order, restraint order or ancillary order), rule 47.13 (certain investigation orders under the Terrorism Act 2000(1)) or rule 47.22 (certain investigation orders under the Proceeds of Crime Act 2002(2)),
 - (ii) in the Court of Appeal or the Crown Court, any other conduct with which that court can deal as a civil contempt of court, or
 - (iii) in the Crown Court or a magistrates’ court, unauthorised use of disclosed prosecution material under section 17 of the Criminal Procedure and Investigations Act 1996(3);
- (b) the court deals on its own initiative with conduct to which paragraph (1)(a) applies.

rule.48.9(2) Such a party or person must—

- (a) apply in writing and serve the application on the court officer; and
- (b) serve on the respondent—
 - (i) the application, and
 - (ii) notice of where and when the court will consider the allegation (not less than 14 days after service).

rule.48.9(3) The application must—

- (a) identify the respondent;
- (b) explain that it is an application for the respondent to be dealt with for contempt of court;
- (c) contain such particulars of the conduct in question as to make clear what is alleged against the respondent; and
- (d) include a notice warning the respondent that the court—
 - (i) can impose imprisonment, or a fine, or both, for contempt of court, and
 - (ii) may deal with the application in the respondent’s absence, if the respondent does not attend the hearing.

rule.48.9(4) A court which acts on its own initiative under paragraph (1)(b) must—

- (a) arrange for the preparation of a written statement containing the same information as an application; and
- (b) arrange for the service on the respondent of—
 - (i) that written statement, and
 - (ii) notice of where and when the court will consider the allegation (not less than 14 days after service).

*Note.*⁵⁸¹ *The conduct to which this rule applies is sometimes described as ‘civil’ contempt of court.*

By reason of section 45 of the Senior Courts Act 1981(4), the Crown Court has an inherent power to imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both, a respondent for conduct in contempt of court by failing to comply with a court order or an undertaking given to the court.

Under section 18 of the Criminal Procedure and Investigations Act 1996(5)—

- (a) *the Crown Court can imprison (for a maximum of 2 years), or fine (to an unlimited amount), or both;*
- (b) *a magistrates’ court can imprison (for a maximum of 6 months), or fine (to a maximum of £5,000), or both,*

a person who uses disclosed prosecution material in contravention of section 17 of that Act. See also rule 15.8.

Under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000, no respondent who is under 21 may be imprisoned for contempt of court. Under section 108 of that Act, a respondent who is at least 18 but under 21 may be detained if the court is of the opinion that no other method of dealing with him or her is appropriate. Under section 14(2A) of the Contempt of Court Act 1981, a respondent who is under 17 may not be ordered to attend an attendance centre.

Under section 258 of the Criminal Justice Act 2003, a respondent who is imprisoned for contempt of court must be released unconditionally after serving half the term.

The Practice Direction sets out a form of application for use in connection with this rule.

The rules in Part 4 require that an application under this rule must be served by handing it to the person accused of contempt of court unless the court otherwise directs.

3.2.5.4. Statutory provisions

Superior courts etc.

CCA 1981 s.14⁵⁸²: Proceedings in England and Wales

- s.14(1) - in any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.

⁵⁸¹ The note is contained within the procedure rules.

⁵⁸² Commencement: 27 August 1981, CCA 1981 s.21(3).

- s.14(2) - in any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine shall not on any occasion exceed £2,500.
- s.14(2A) - in the exercise of jurisdiction to commit for contempt of court or any kindred offence the court shall not deal with the offender by making an order under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000 (an attendance centre order) if it appears to the court, after considering any available evidence, that he is under 17 years of age.
- s.14(2A)⁵⁸³ - a fine imposed under subsection (2) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- s.14(4) - each of the superior courts shall have the like power to make a hospital order or guardianship order under section 37 of the Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental disorder within the meaning of that Act who could otherwise be committed to prison for contempt of court as the Crown Court has under that section in the case of a person convicted of an offence.
- s.14(4A) - each of the superior courts shall have the like power to make an order under section 35 of the said Act of 1983 (remand for report on accused's mental condition) where there is reason to suspect that a person who could be committed to prison for contempt of court is suffering from mental disorder within the meaning of that Act as the Crown Court has under that section in the case of an accused person within the meaning of that section.
- s.14(4A)⁵⁸⁴ - for the purposes of the preceding provisions of this section the county court shall be treated as a superior court and not as an inferior court.
- s.14(4B) - the preceding provisions of this section do not apply to the family court, but:
- (a) this is without prejudice to the operation of section 31E(1)(a) of the Matrimonial and Family Proceedings Act 1984 (family court has High Court's powers) in relation to the powers of the High Court that are limited or conferred by those provisions of this section, and
 - (b) section 31E(1)(b) of that Act (family court has county court's powers) does not apply in relation to the powers of the county court that are limited or conferred by those provisions of this section.

Magistrates' Courts

CCA 1981 s.12⁵⁸⁵: Offences of contempt of magistrates' courts

- s.12(1) - a magistrates' court has jurisdiction under this section to deal with any person who:
- (a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or
 - (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

⁵⁸³ It appears that there are two subsection listed as (2A).

⁵⁸⁴ It appears that there are two subsection listed as (4A).

⁵⁸⁵ Commencement: 27 August 1981, CCA 1981 s.21(3).

- s.12(2) - in any such case the court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding £2,500, or both.
- s.12(2A) - a fine imposed under subsection (2) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- s.12(4) - a magistrates' court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.
- s.12(5) - PCC(S)A 2000 s.135 (limit on fines in respect of young persons) and the following provisions of the Magistrates' Courts Act 1980 apply in relation to an order under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence; and those provisions of the Magistrates' Courts Act 1980 are section 36 (restriction on fines in respect of young persons); sections 75 to 91 (enforcement); section 108 (appeal to Crown Court); section 136 (overnight detention in default of payment); and section 142(1) (power to rectify mistakes).

MCA 1980 s.97⁵⁸⁶: Summons to witness and warrant for his arrest

- s.97(4) - if any person attending or brought before a magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit him to custody until the expiration of such period not exceeding one month as may be specified in the warrant or until he sooner gives evidence or produces the document or thing or impose on him a fine not exceeding £2,500 or both.
- s.97(5) - a fine imposed under subsection (4) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

Those aged 18-20

PCC(S)A 2000 s.108⁵⁸⁷: Detention of persons aged at least 18 but under 21 for default or contempt

- s.108(1) - in any case where, but for section 89(1) above, a court would have power:
 - (a) to commit a person aged at least 18 but under 21 to prison for default in payment of a fine or any other sum of money, or
 - (b) to make an order fixing a term of imprisonment in the event of such a default by such a person, or
 - (c) to commit such a person to prison for contempt of court or any kindred offence, the court shall have power, subject to subsection (3) below, to commit him to be detained under this section or, as the case may be, to make an order fixing a term of detention under this section in the event of default, for a term not exceeding the term of imprisonment.
- s.108(2) - for the purposes of subsection (1) above, the power of a court to order a person to be imprisoned under section 23 of the Attachment of Earnings Act 1971 shall be taken to be a power to commit him to prison.

⁵⁸⁶ Commencement: 6 July 1981, SI 1981/457 art.2

⁵⁸⁷ Commencement: 25 August 2000, PCC(S)A 200 s.168(1).

- s.108(3) - no court shall commit a person to be detained under this section unless it is of the opinion that no other method of dealing with him is appropriate; and in forming any such opinion, the court:
- (a) shall take into account all such information about the circumstances of the default or contempt (including any aggravating or mitigating factors) as is available to it; and
 - (b) may take into account any information about that person which is before it.
- s.108(4) - where a magistrates' court commits a person to be detained under this section, it shall:
- (a) state in open court the reason for its opinion that on other method of dealing with him is appropriate; and
 - (b) cause that reason to be specified in the warrant of commitment and to be entered in the register.
- s.108(5) - subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), a person in respect of whom an order has been made under this section is to be detained:
- (a) in a remand centre,
 - (b) in a young offender institution, or
 - (c) in any place in which a person aged 21 or over could be imprisoned or detained for default in payment of a fine or any other sum of money,
- as the Secretary of State may from time to time direct.

R. v Byas (1995) 16 Cr. App. R. (S.) 869

There is no power to impose a custodial sentence on an offender under the age of 18 adjudged guilty of contempt of court.

3.2.5.5. Guidance

Criminal Practice Directions 2015 XI Other Proceedings

Contempt in the face of the Magistrates' Court

General

- 48A.1 The procedure to be followed in cases of contempt of court is given in [CrimPR Part 48](#). The magistrates' courts' power to deal with contempt in the face of the court is contained within section 12 of the Contempt of Court Act 1981. Magistrates' courts also have the power to punish a witness who refuses to be sworn or give evidence under section 97(4) of the Magistrates' Courts Act 1980.

Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings

- 48A.2 In the majority of cases, an apology and a promise as to future conduct should be sufficient for the court to order a person's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the court to consider using its powers, under section 12(2) of the Contempt of Court Act 1981, either to fine or to order the person's committal to custody.

Imposing a penalty for contempt

- 48A.3 The court should allow the person a further opportunity to apologise for his or her contempt, and should follow the procedure at CrimPR 48.8(4). The court should consider whether it is appropriate to release the person or whether it must exercise its powers to fine the person or to commit the person to custody under section 12 (2) of the 1981 Act. In deciding how to deal with the person, the court should have regard to the period for which he or she has been detained, whether the conduct was admitted and the seriousness of the contempt. Any period of committal to custody should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.