



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 2

SENTENCING

Custodial sentences

13 Sentences of imprisonment for public protection

(1) In section 225 of the Criminal Justice Act 2003 (life sentence or imprisonment for public protection), for subsection (3) substitute—

“(3) In a case not falling within subsection (2), the court may impose a sentence of imprisonment for public protection if the condition in subsection (3A) or the condition in subsection (3B) is met.

(3A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(3B) The condition in this subsection is that the notional minimum term is at least two years.

(3C) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of imprisonment for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).”

(2) After Schedule 15 to that Act, insert the Schedule set out in Schedule 5 to this Act.

14 Sentences of detention for public protection

In section 226 of the Criminal Justice Act 2003 (c. 44) (detention for life or detention for public protection), for subsection (3) substitute—

“(3) In a case not falling within subsection (2), the court may impose a sentence of detention for public protection if the notional minimum term is at least two years.

(3A) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).”

15 Extended sentences for certain violent or sexual offences: persons 18 or over

(1) Section 227 of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a) the words “, other than a serious offence,” are omitted, and
- (b) after paragraph (b) insert “, but
- (c) the court is not required by section 225(2) to impose a sentence of imprisonment for life.”

(3) In subsection (2) —

- (a) for “The court must” substitute “The court may”, and
- (b) for the words from “that is to say” to the end substitute “if the condition in subsection (2A) or the condition in subsection (2B) is met.”

(4) After subsection (2) insert—

“(2A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(2B) The condition in this subsection 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 4 years.

(2C) 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 offender is to be subject to a licence and which is 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 him of further specified offences.”

(5) In subsection (3) for “subsection (2)” substitute “subsections (2B) and (2C)”.

(6) After subsection (5) insert—

“(6) The Secretary of State may by order amend subsection (2B) so as to substitute a different period for the period for the time being specified in that subsection.”

16 Extended sentences for certain violent or sexual offences: persons under 18

(1) Section 228 of the Criminal Justice Act 2003 (c. 44) (extended sentence for certain violent or sexual offences: persons under 18) is amended as follows.

(2) In subsection (1)(b)(ii) the words from “or by section 226(3)” to the end are omitted.

(3) In subsection (2) —

- (a) for “The court must” substitute “The court may”, and
- (b) for the words from “, that is to say” to the end substitute “if the condition in subsection (2A) is met.”

(4) After subsection (2) insert—

“(2A) The condition in this subsection is that, 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.

(2B) An extended sentence of detention is a sentence of detention 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 offender is to be subject to a licence and which is 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 him of further specified offences.”

(5) In subsection (3)—

- (a) for “subsection (2)” substitute “subsections (2A) and (2B)”, and
- (b) paragraph (a) is omitted.

(6) After subsection (6) insert—

“(7) The Secretary of State may by order amend subsection (2A) so as to substitute a different period for the period for the time being specified in that subsection.”

17 The assessment of dangerousness

(1) Section 229 of the Criminal Justice Act 2003 (the assessment of dangerousness) is amended as follows.

(2) In subsection (2)—

- (a) the words from the beginning to “18” are omitted,
- (b) after paragraph (a) insert—
 - “(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 offender has been convicted by a court anywhere in the world,”, and

(c) in paragraph (b) for “the offence” substitute “any of the offences mentioned in paragraph (a) or (aa)”.

(3) After subsection (2) insert—

“(2A) The reference in subsection (2)(aa) to a conviction by a court includes a reference to—

- (a) a finding of guilt in service disciplinary proceedings, and
- (b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction).”

(4) Subsections (3) and (4) are omitted.

(5) Schedules 16 and 17 to that Act are omitted.

18 Further amendments relating to sentences for public protection

(1) In section 231 of the Criminal Justice Act 2003 (c. 44) (appeals where previous convictions set aside), for subsection (1) substitute—

“(1) This section applies where—

- (a) a sentence has been imposed on any person under section 225(3) or 227(2),
- (b) the condition in section 225(3A) or (as the case may be) 227(2A) was met but the condition in section 225(3B) or (as the case may be) 227(2B) was not, and
- (c) any previous conviction of his without which the condition in section 225(3A) or (as the case may be) 227(2A) would not have been met has been subsequently set aside on appeal.”

(2) In section 232 of that Act (certificates for purposes of section 229)—

- (a) in the heading for “section 229” substitute “sections 225 and 227”,
- (b) in paragraph (a)—
 - (i) for “the commencement of this section” substitute “the commencement of Schedule 15A”, and
 - (ii) for “a relevant offence” substitute “an offence specified in that Schedule”, and
- (c) for “section 229” substitute “sections 225(3A) and 227(2A)”.

(3) Section 234 of that Act (determination of day when offence committed) is omitted.

19 Indeterminate sentences: determination of tariffs

(1) Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (determination of tariffs in cases where the sentence is not fixed by law) is amended as follows.

(2) In subsection (3) (determination of the appropriate part of the sentence) at the end insert—

“In Case A or Case B below, this subsection has effect subject to, and in accordance with, subsection (3C) below.”

(3) After subsection (3) insert—

“(3A) Case A is where the offender was aged 18 or over when he committed the offence and the court is of the opinion that the seriousness of the offence, or of the combination of the offence and one or more other offences associated with it,—

- (a) is exceptional (but not such that the court proposes to make an order under subsection (4) below), and
- (b) would not be adequately reflected by the period which the court would otherwise specify under subsection (2) above.

(3B) Case B is where the court is of the opinion that the period which it would otherwise specify under subsection (2) above would have little or no effect on time spent in custody, taking into account all the circumstances of the particular offender.

(3C) In Case A or Case B above, in deciding the effect which the comparison required by subsection (3)(c) above is to have on reducing the period which the court determines for the purposes of subsection (3)(a) (and before giving effect to subsection (3)(b) above), the court may, instead of reducing that period by one-half,—

- (a) in Case A above, reduce it by such lesser amount (including nil) as the court may consider appropriate according to the seriousness of the offence, or
- (b) in Case B above, reduce it by such lesser amount (but not by less than one-third) as the court may consider appropriate in the circumstances.”

(4) In subsection (4A) (no order to be made under subsection (4) in the case of certain sentences) after “No order under subsection (4) above may be made” insert “, and Case A above does not apply,”.

20 Consecutive terms of imprisonment

(1) Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) is amended as follows.

(2) In section 181 (consecutive terms of imprisonment complying with section 181) after subsection (7) insert—

“(7A) For the purposes of subsection (7)(a) the aggregate length of the terms of imprisonment is not to be regarded as being more than 65 weeks if the aggregate of all the custodial periods and the longest of the licence periods in relation to those terms is not more than 65 weeks.”

(3) In section 264A (consecutive terms: intermittent custody)—

- (a) in subsection (3), omit the words from “and none” to the end;
- (b) in subsection (4)(b), for “the longest of the total” substitute “all the”; and
- (c) in subsection (5), for the definition of “total licence period” substitute—

““licence period” has the same meaning as in section 183(3);”.

(4) In section 265 (restriction on consecutive sentences for released prisoners)—

- (a) in subsection (1), for “early under this Chapter” substitute “—

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

- (a) under this Chapter; or
 - (b) under Part 2 of the Criminal Justice Act 1991.”; and
- (b) after that subsection insert—
 - “(1A) Subsection (1) applies to a court sentencing a person to—
 - (a) a term of imprisonment for an offence committed before 4 April 2005, or
 - (b) a term of imprisonment of less than 12 months for an offence committed on or after that date,as it applies to the imposition of any other term of imprisonment.
 - (1B) Where an intermittent custody order applies to the other sentence, the reference in subsection (1) to release under this Chapter does not include release by virtue of section 183(1)(b)(i) (periods of temporary release on licence before the custodial days specified under section 183(1)(a) have been served).”
- (5) Any saving by virtue of which section 84 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (restrictions on consecutive sentences for released prisoners) continues to apply in certain cases (despite the repeal of that section by the Criminal Justice Act 2003) shall cease to have effect.