



# Criminal Justice Act 1972

## 1972 CHAPTER 71

### PART III

#### MISCELLANEOUS PROVISIONS

#### **28 Punishment for firearms offences**

- (1) The fourth column in Part I of Schedule 6 to the Firearms Act 1968 (which prescribes the maximum punishment by way of fine or imprisonment for offences under that Act) shall be amended as follows.
- (2) In the entries prescribing the punishment for offences under section 16 (possession of firearm with intent to endanger life) and section 17(1) (use of firearms to resist arrest) for the words " 14 years " there shall be substituted the words " life imprisonment ".
- (3) In the entries prescribing the punishment for offences under section 17(2) (possessing firearm while committing certain offences) and section 18(1) (carrying firearms or imitation firearm with intent to commit indictable offence etc.) for the words " 7 years " and " 10 years " there shall be substituted the words " 14 years ".
- (4) In the entry prescribing the punishment for an offence under section 3(5) (falsifying certificate etc. with view to acquisition of firearm), where the offender has been convicted on indictment, for the words " a fine of £200 " there shall be substituted the words " a fine ".
- (5) In the entries prescribing the punishment for offences under the Act where the offender has been convicted summarily—
  - (a) for " £20 " there shall be substituted " £50 ";
  - (b) for " £50 " there shall be substituted " £100 ";
  - (c) for " £100 " there shall be substituted " £200 ";
  - (d) for " £200 " there shall be substituted " £400 ".
- (6) In relation to offences under sections 16, 17(1), 17(2) and 18(1) of the said Act of 1968 a court in Scotland shall have the like power as a court in England or Wales to impose both a sentence of imprisonment and a fine.

## **29 Possession of firearms by persons convicted of crime in Northern Ireland**

In section 21 of the Firearms Act 1968 (possession of firearms and ammunition by persons previously convicted of crime) the following subsection shall be inserted after subsection (3)—

“(3A) Where by section 19 of the Firearms Act (Northern Ireland) 1969, or by any other enactment for the time being in force in Northern Ireland and corresponding to this section, a person is prohibited in Northern Ireland from having a firearm or ammunition in his possession, he shall also be so prohibited in Great Britain at any time when to have it in his possession in Northern Ireland would be a contravention of the said section 19 or corresponding enactment”; and in subsection (6) of that section (application to court for removal of prohibition) for the words " or (3) " there shall be substituted the words " (3) or "; (3A) ".

## **30 Punishment for unlawful eviction or harassment of tenants**

In subsection (3) of section 30 of the Rent Act 1965 (which prescribes the maximum punishment for an offence under that section) for the words from " shall be liable on summary conviction " onwards there shall be substituted the words " shall be liable—

- (a) on summary conviction, to a fine not exceeding £400 or to imprisonment for a term not exceeding six months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both ".

## **31 Punishment for certain offences of Sunday trading**

In sections 59(1), 64 and 67(5) of the Shops Act 1950 (which impose penalties for certain offences of trading or carrying on business on Sunday) for the words " five pounds " and " two pounds " (wherever occurring) there shall be substituted the words " £50 " ; and for the words " twenty pounds " (wherever occurring) there shall be substituted the words " £200 ".

## **32 Punishment for use of premises in breach of closing order**

In section 27(1) of the Housing Act 1957 (which prescribes the maximum punishment for the use of premises in breach of a closing order) for the words " twenty pounds " there shall be substituted the words " £100 " ; and for the words " five pounds " there shall in relation to any day after the coming into force of this section be substituted the words " £20 ".

## **33 Extension of definition of " public place " in Public Order Act 1936**

For the definition of " Public place " in section 9(1) of the Public Order Act 1936 there shall be substituted—

“" 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”.

### **34 Power of constable to take drunken offender to treatment centre**

- (1) In any case in which a constable has power to arrest a person under any of the provisions mentioned in subsection (3) of this section the constable may, if he thinks fit, take him to any place approved for the purposes of this section by the Secretary of State as a medical treatment centre for alcoholics, and while a person is being so taken he shall be deemed to be in lawful custody.
- (2) A person shall not by virtue of this section be liable to be detained in any such centre as aforesaid to which he has been taken, but the exercise in his case of the power conferred by this section shall not preclude his being charged with any offence.
- (3) The provisions referred to in subsection (1) of this section are—
  - (a) so much of section 12 of the Licensing Act 1872 as relates to persons guilty, while drunk, of riotous or disorderly behaviour;
  - (b) section 1 of the Licensing Act 1902 (persons who are drunk and incapable);
  - (c) section 91(1) of the Criminal Justice Act 1967 (persons guilty, while drunk, of disorderly behaviour in public place).

### **35 Release on licence without recommendation of Parole Board**

- (1) If, in any case falling within such class of cases as the Secretary of State may determine after consultation with the Parole Board, a local review committee recommends the release on licence of a person to whom subsection (1) of section 60 of the Criminal Justice Act 1967 applies, the Secretary of State shall not be obliged to refer the case to the Parole Board before releasing him under that subsection and, unless he nevertheless refers it to the Board, may so release him without any recommendation by the Board.
- (2) In this section " local review committee " means a committee established under section 59(6) of the said Act of 1967; and in the application of this section to Scotland for any reference to the Parole Board there shall be substituted a reference to the Parole Board for Scotland.

### **36 Reference to Court of Appeal of point of law following acquittal on indictment**

- (1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the court, and the court shall, in accordance with this section, consider the point and give their opinion on it.
- (2) For the purpose of their consideration of a point referred to them under this section the Court of Appeal shall hear argument—
  - (a) by, or by counsel on behalf of, the Attorney General; and
  - (b) if the acquitted person desires to present any argument to the court, by counsel on his behalf or, with the leave of the court, by the acquitted person himself.
- (3) Where the Court of Appeal have given their opinion on a point referred to them under this section, the court may, of their own motion or in pursuance of an application in that behalf, refer the point to the House of Lords if it appears to the court that the point ought to be considered by that House.

---

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

---

- (4) If a point is referred to the House of Lords under subsection (3) of this section, the House shall consider the point and give their opinion on it accordingly; and section 35(1) of the Criminal Appeal Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section.
- (5) Where, on a point being referred to the Court of Appeal under this section or further referred to the House of Lords, the acquitted person appears by counsel for the purpose of presenting any argument to the court or the House, he shall be entitled to his costs, that is to say to the payment out of central funds of such sums as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference or further reference; and any amount recoverable under this subsection shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, such officer as may be prescribed by order of the House of Lords.
- (6) Subject to rules of court made under section 1(5) of the Criminal Appeal Act 1966 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the court; and references in this section to the Court of Appeal shall be construed accordingly as references to that division of the court.
- (7) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

### **37 Restrictions on imprisonment etc. of persons not legally represented**

- (1) A magistrates' court on summary conviction or the Crown Court on committal for sentence or on conviction on indictment shall not sentence to imprisonment, to Borstal training or to detention in a detention centre a person who is not legally represented in that court and has not been previously sentenced to that punishment, unless either—
  - (a) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance ; or
  - (b) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.
- (2) For purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced, and in subsection (1)(a) and (b) above " legal aid " means legal aid for the purposes of proceedings in that court, whether the whole proceedings or the proceedings on or in relation to sentence; but in the case of a person committed to the Crown Court for sentence or trial, it is immaterial whether he applied for legal aid in the Crown Court to, or was informed of his right to apply by, that court or the court which committed him.
- (3) In this section " previously sentenced " means previously sentenced by a court in any part of the United Kingdom, but for the purposes of this section a person shall not be treated as having been previously sentenced to imprisonment by reason only of a sentence of imprisonment which has been suspended and which has not taken effect under section 40 of the Criminal Justice Act 1967 or section 19 of the Treatment of Offenders Act (Northern Ireland) 1968; and " detention centre" means in relation to Northern Ireland young offenders centre.

### **38 Legal aid for appeals under Part I of Criminal Appeal Act 1968**

In section 73(5) of the Criminal Justice Act 1967 (under which the criminal division of the Court of Appeal may order legal aid for the purposes of some, but not all, appeals under Part I of the Criminal Appeal Act 1968) for the words from the beginning to " sentence " there shall be substituted the words " Where a person desires to appeal to the Court of Appeal under Part I of the Criminal Appeal Act 1968 ".

### **39 Costs on appeal**

The Criminal Appeal Act 1968 and the Courts Act 1971 shall have effect with the amendments shown in Schedule 3 to this Act (being amendments relating to the powers of the Court of Appeal and the House of Lords to award costs, enabling an award to be made in favour of the prosecutor and facilitating consolidation of the enactments relating to costs in criminal cases).

### **40 Power of Crown Court to allow time for payment, or payment by instalments, of costs and compensation**

Where the Crown Court makes any such order as is mentioned in Part I of Schedule 9 to the Administration of Justice Act 1970 (orders against accused for the payment of costs or compensation), the court may—

- (a) allow time for the payment of the sum due under the order;
- (b) direct payment of that sum by instalments of such amounts and on such dates respectively as the court may specify.

### **41 Power of magistrates' court to re-open cases to rectify mistakes etc.**

- (1) Subject to subsection (4) of this section, a magistrates' court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.
- (2) Where a person is found guilty by a magistrates' court in a case in which he has pleaded not guilty or the court has proceeded in his absence under section 15(1) of the Magistrates' Courts Act 1952, and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different justices, the court may, subject to subsection (4) of this section, so direct.
- (3) Where a court gives a direction under subsection (2) of this section—
  - (a) the finding of guilty and any sentence or other order imposed or made in consequence thereof shall be of no effect; and
  - (b) section 14(4) of the Magistrates' Courts Act 1952 (remand where trial is adjourned) shall apply as if the trial of the person in question had been adjourned.
- (4) The powers conferred by subsections (1) and (2) of this section shall be exercisable only within the period of fourteen days beginning with the day on which the sentence or order was imposed or made or the person was found guilty, as the case may be, and only—
  - (a) by a court constituted in the same manner as the court by which the sentence or order was imposed or made or, as the case may be, by which the person in question was found guilty, or

---

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

---

- (b) where that court comprised three or more justices of the peace, by a court which consists of or comprises a majority of those justices.
- (5) Where a sentence or order is varied under subsection (1) of this section, the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

#### **42 Order for return to borstal institution on re-conviction**

- (1) An offender dealt with for an offence before the Crown Court in a proceeding to which subsection (2) of section 10 of the Criminal Appeal Act 1968 applies (offender convicted otherwise than on indictment and committed or otherwise brought before the Crown Court to be dealt with) may appeal under that section to the Court of Appeal against sentence where the Crown Court makes in respect of him an order under section 12 of the Criminal Justice Act 1961 (return to borstal institution on re-conviction).
- (2) Where under subsection (4) of section 12 of the said Act of 1961 (adjournment to enable report to be made on offender's suitability for return to borstal institution) a magistrates' court remands the offender, it may, instead of remanding him in custody, remand him on bail; and that subsection shall not oblige a court to adjourn the hearing or remand the offender if it proposes to deal with him otherwise than by making an order under that section.

#### **43 Release of young persons arrested without warrant**

Subsection (2) of section 29 of the Children and Young Persons Act 1969 (which provides that a child or young person arrested in pursuance of a warrant is not to be released by a police officer under subsection (1) of that section unless a recognizance is entered into for his attendance at the hearing of the charge) shall apply also to a person arrested without a warrant if the officer concerned has decided that an information should be laid in respect of an offence alleged to have been committed by him.

#### **44 Committal for trial of young persons**

A person under the age of seventeen may, in a case falling within paragraph (a) or (b) of section 6(1) of the Children and Young Persons Act 1969 (cases in which persons under that age need not be tried summarily), be committed for trial in accordance with section 1 of the Criminal Justice Act 1967 (committal on written statements without consideration of evidence) in like manner as a person of or over that age.

#### **45 Power to receive evidence in committal proceedings in absence of accused**

Notwithstanding section 4(3) of the Magistrates' Courts Act 1952 (which requires evidence given before examining justices to be given in the presence of the accused and entitles the defence to put questions to any witnesses), examining justices may allow evidence to be given before them in the absence of the accused if—

- (a) they consider that by reason of his disorderly conduct before them it is not practicable for the evidence to be given in his presence ; or
- (b) he cannot be present for reasons of health but is represented by counsel or a solicitor and has consented to the evidence being given in his absence.

#### **46 Admissibility of written statements made outside England and Wales**

- (1) Sections 2 and 9 of the Criminal Justice Act 1967 (which respectively allow written statements to be used as evidence in committal proceedings and in other criminal proceedings) and section 89 of that Act (which punishes the making of false statements which are tendered in evidence under either of those sections) shall apply to written statements made in Scotland or Northern Ireland as well as to written statements made in England and Wales.
- (2) The said section 2 shall apply also to written statements made outside the United Kingdom, but, in relation to such statements, that section shall have effect with the omission of subsections (2)(b), (3A) and (7).

#### **47 Summary trial of certain offences of arson**

In Schedule 1 to the Magistrates' Courts Act 1952 (indictable offences triable summarily with the consent of the accused when adult), for paragraph 2 there shall be substituted the following paragraph, in lieu of that substituted by section 7(1) of the Criminal Damage Act 1971:—

“2 Offences under section 1(1) or section 1(1) and (3) of the Criminal Damage Act 1971 or under section 2 or 3 of that Act.”

#### **48 Proceedings under Indecency with Children Act 1960**

Section 8 of the Sexual Offences Act 1967 (which provides that no proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions against any man for gross indecency or certain other offences where any person involved is under twenty-one) shall not apply to proceedings under the Indecency with Children Act 1960.

#### **49 Community service order in lieu of warrant of commitment for failure to pay fine etc.**

- (1) In any case in which a magistrates' court has power under Part III of the Magistrates' Courts Act 1952 to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction of a magistrates' court, the court may, subject to subsection (2) of this section, make a community service order in respect of the person in default instead of issuing a warrant of commitment.
- (2) Sections 15(2) of this Act and, so far as applicable, the other provisions of this Act relating to community service orders shall have effect in relation to an order under this section as they have effect in relation to an order in respect of an offender except that—
  - (a) so much of subsection (3) of section 17 as enables a court to impose a fine not exceeding £50 for a failure to comply with any such requirement as is there mentioned shall not apply ; and
  - (b) the power conferred by paragraph (a) of that subsection and by section 18(1)(b) of this Act to deal with an offender for the offence in respect of which the order was made shall be construed as a power to deal with the person in respect of whom the order was made for his default in paying the sum in question.
- (3) Where a community service order has been made under this section for default in paying any sum—

---

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

---

- (a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect;
  - (b) on payment of a part of the said sum as aforesaid, the total number of hours for which the person in respect of whom the order was made is required to work under the order shall be reduced proportionately, that is to say by such number of complete hours as bears to the said total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the said sum.
- (4) Section 47(3) of the Criminal Justice Act 1967 (under which a fine imposed by the Crown Court is treated for the purpose of enforcement as having been imposed on conviction by a magistrates' court) shall not apply for the purposes of this section.

## **50 Transfer of fine orders**

In section 72(1) of the Magistrates' Courts Act 1952 (which provides that, where a magistrates' court has, or is treated as having, adjudged a person by a conviction to pay a sum and it appears to the court that the person is residing in a different petty sessions area, the court may by order make payment of the sum enforceable in the petty sessions area in which he is residing) for the words " in which he is residing " there shall be substituted the words " in which it appears to the court that he is residing ".

## **51 Execution of process between England and Wales and Scotland**

- (1) Where in any proceedings brought, or proposed to be brought, in respect of any person in pursuance of section 1 of the Children and Young Persons Act 1969 (care proceedings in juvenile court) it is, or is to be, alleged that the condition set out in subsection (2)(f) of that section is satisfied (guilty of an offence), any warrant issued under section 2(4) of that Act for the purpose of securing the attendance of that person before the court in which the proceedings are brought or proposed to be brought may, if it is endorsed with a statement that such an allegation as aforesaid is, or is to be, made in the proceedings, be executed in Scotland by any constable appointed for a police area in like manner as a warrant issued in Scotland for the arrest of a person charged with an offence.
- (2) Where a warrant is issued for the apprehension of a child in pursuance of Part III of the Social Work (Scotland) Act 1968, that warrant may be executed in England and Wales in like manner as a warrant issued in Scotland for the apprehension of a person charged with an offence, and section 39(1) of the Criminal Justice (Scotland) Act 1963 shall apply accordingly.
- (3) Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English courts in Scotland) shall apply to process issued under section 13, 17, 18(7) or 22 of this Act as it applies to process issued under the Magistrates' Courts Act 1952 by a magistrates' court.
- (4) Section 4 of the said Act of 1881 shall have effect in relation to the service and execution in Scotland of process issued in England and Wales by a justices' clerk by virtue of section 5(1) of the Justices of the Peace Act 1968, as it has effect in relation to process issued in England and Wales by a court of summary jurisdiction as defined in the said Act of 1881.