



# Criminal Justice Act 1982

## 1982 CHAPTER 48

### PART I

#### TREATMENT OF YOUNG OFFENDERS

##### *Custody and detention of persons under 21*

#### **1 General restriction on custodial sentences.**

- (1) Subject to subsection (2) below, no court shall pass a sentence of imprisonment on a person under 21 years of age or commit such a person to prison for any reason.
- (2) Nothing in subsection (1) above shall prevent the committal to prison of a person under 21 years of age who is remanded in custody or committed in custody for trial or sentence.
- (3) No court shall pass a sentence of Borstal training.

[<sup>F1</sup>(3A) Subject to section 53 of the Children and Young Persons Act 1933 (punishment of certain grave crimes), the only custodial orders that a court may make where a person under 21 years of age is convicted or found guilty of an offence are—

- (a) a sentence of detention in a young offender institution under section 1A below, and
- (b) a sentence of custody for life under section 8 below.]

[<sup>F2</sup>(4) A court may not—

- (a) pass a sentence of detention in a young offender institution; or
- (b) pass a sentence of custody for life under section 8(2) below, unless it is satisfied—
  - (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
  - (ii) that he qualifies for a custodial sentence.

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- (4A) An offender qualifies for a custodial sentence if—
- (a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or
  - (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
  - (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.]
- (5) No court shall commit a person under 21 years of age to be detained under section 9 below unless it is of the opinion that no other method of dealing with him is appropriate.
- (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.

#### Textual Amendments

- F1** S. 1(3A) inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 123(2), [Sch. 8 para. 16](#)
- F2** S. 1(4)(4A) substituted for subsection (4) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 123(3), [Sch. 8 para. 16](#)

#### [<sup>F3</sup>1A Detention in a young offender institution.

- (1) Subject to section 8 below and to section 53 of the Children and Young Persons Act <sup>MI</sup>1933, where—
- (a) a male offender under 21 but not less than 14 years of age or a female offender under 21 but not less than 15 years of age 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 satisfied of the matters referred to in section 1(4) above.
- the sentence that the court is to pass is a sentence of detention in a young offender institution.
- (2) Subject to section 1B(1) and (2) below, 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.
- (3) Subject to subsection (4) below and section 1B(3) below, a court shall not pass a sentence for an offender's detention in a young offender institution for less than 21 days.
- (4) A court may pass a sentence of detention in a young offender institution for less than 21 days for an offence under section 15(11) below.
- (5) Subject to section 1B(4) below, 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.

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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.

(6) Where an offender who—

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

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.]

#### Textual Amendments

**F3** Ss. 1A–1C inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 123(4), Sch. 8 para. 16

#### Marginal Citations

**M1** 1933 c.12(20).

### [<sup>F4</sup>1B Special provision for offenders under 17.

- (1) In the case of a male offender under 15 the maximum term of detention in a young offender institution that a court may impose is whichever is the lesser of—
  - (a) the maximum term of imprisonment the court may impose for the offence; and
  - (b) 4 months.
- (2) In the case of an offender aged 15 or 16 the maximum term of detention in a young offender institution that a court may impose is whichever is the lesser of—
  - (a) the maximum term of imprisonment the court may impose for the offence; and
  - (b) 12 months.
- (3) Where an offender is a female under 17 a court shall not pass a sentence for her detention in a young offender institution whose effect would be that she would be sentenced to a total term of four months or less.
- (4) A court shall not pass a sentence of detention in a young offender institution on an offender whose effect would be that the offender would be sentenced to a total term which exceeds—
  - (a) if the offender is male and under 15, 4 months; and
  - (b) if the offender is aged 15 or 16, 12 months.
- (5) Where the total term of detention in a young offender institution to which an offender is sentenced exceeds—
  - (a) in the case of a male offender under 15, 4 months; and
  - (b) in the case of an offender aged 15 or 16, 12 months,so much of the term as exceeds 4 or 12 months, as the case may be, shall be treated as remitted.
- (6) In this section “total term” means—
  - (a) in the case of an offender sentenced (whether or not on the same occasion) to two or more terms of detention in a young offender institution which are consecutive or wholly or partly concurrent, the aggregate of those terms;

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- (b) in the case of any other offender, the term of the sentence of detention in a young offender institution in question.]

#### Textual Amendments

**F4** Ss. 1A–1C inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 123(4), [Sch. 8 para. 16](#)

### [<sup>F5</sup>1C Accommodation of offenders sentenced to detention in a young offender institution.

- (1) Subject to section 22(2)(b) of the Prison Act <sup>M2</sup>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 this section is in force in relation to him.
- (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, but if he is under 17 at the time of the direction, only for a temporary purpose.]

#### Textual Amendments

**F5** Ss. 1A–1C inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 123(4), [Sch. 8 para. 16](#)

#### Marginal Citations

**M2** [1952 c.52\(39:1\)](#).

## 2 Social inquiry reports etc.

- (1) For the purpose of determining whether there is any appropriate method of dealing with a person under 21 years of age other than a method whose use in the case of such a person is restricted by section 1(4) or (5) above the court shall obtain and consider information about the circumstances and shall take into account any information before the court which is relevant to his character and his physical and mental condition.
- (2) Subject to subsection (3) below, the court shall in every case obtain a social inquiry report for the purpose of determining whether there is any appropriate method of dealing with a person other than a method whose use is restricted by section 1(4) above.
- (3) Subsection (2) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a social inquiry report.

[<sup>F6</sup>(4) Where—

- (a) The Crown Court passes a sentence of detention in a young offender institution or a sentence of custody for life under section 8(2) below, or
- (b) a magistrates' court passes a sentence of detention in a young offender institution.

it shall be its duty—

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- (i) to state in open court that it is satisfied that he qualifies for a custodial sentence under one or more of the paragraphs of section 1(4A) above, the paragraph or paragraphs in question and why it is so satisfied, and
  - (ii) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.]
- (5) Where a magistrates' court deals with a person under 21 years of age by a method whose use in the case of such a person is restricted by section 1(5) above, it shall state in open court the reason for its opinion that no other method of dealing with him is appropriate.
- (6) Where a magistrates' court deals with a person under 21 years of age by a method whose use in the case of such a person is restricted by section 1(4) above without obtaining a social inquiry report, it shall state in open court the reason for its opinion that it was unnecessary to obtain such a report.
- (7) A magistrates' court shall cause a reason stated under subsection (4), (5) or (6) above to be specified in the warrant of commitment and to be entered in the register.
- (8) No sentence or order shall be invalidated by the failure of a court to comply with subsection (2) above, but any other court on appeal from that court shall obtain a social inquiry report if none was obtained by the court below, unless it is of the opinion that in the circumstances of the case it is unnecessary to do so.
- (9) In determining whether it should deal with the appellant by a method different from that by which the court below dealt with him the court hearing the appeal shall consider any social inquiry report obtained by it or by the court below.
- (10) In this section "social inquiry report" means a report about a person and his circumstances made by a probation officer or by a social worker of a local authority social services department.

#### Textual Amendments

F6 S. 2(4) substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 123(5), [Sch. 8 para. 16](#)

### 3 Restriction on imposing custodial sentences on persons under 21 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—
    - (a) make a detention centre order under section 4 below;
    - (b) pass a youth custody sentence under section 6 below;
    - (c) pass a sentence of custody for life under section 8(2) below; or
    - (d) make an order for detention under section 53(2) of the <sup>M3</sup>Children and Young Persons Act 1933.
- in respect of or on a person who is not legally represented in that court, unless either—
- (i) 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
  - (ii) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.

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- (2) For the purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced, and in subsection (1)(i) and (ii) 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.

**Marginal Citations**

M3 1933 c. 12.

4—7. .... F7

**Textual Amendments**

F7 Ss. 4–7 repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, Sch. 16

**8 Custody for life.**

- (1) Where a person under the age of 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 53(1) of the <sup>M4</sup>Children and Young Persons Act 1933 (detention of persons under 18 convicted of murder).
- (2) Where a person aged 17 years or over but under the age of 21 is convicted of any other offence for which a person aged 21 years or over would be liable to imprisonment for life, the court shall, if it considers that a custodial sentence for life would be appropriate, sentence him to custody for life.

**Marginal Citations**

M4 1933 c. 12.

**9 Detention of persons aged 17 to 20 for default or contempt.**

- (1) In any case where, but for section 1(1) above, a court would have power—
  - (a) to commit a person under 21 but not less than 17 years of age 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 section 1(5) above, to commit him to be detained under this section or, as the case may be, to make an order fixing a term of detention

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under this section in the event of default, for a term not exceeding the term of imprisonment.

- (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 <sup>M5</sup>Attachment of Earnings Act 1971 shall be taken to be a power to commit him to prison.

**Modifications etc. (not altering text)**

**C1** S. 9 restricted by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1). s. 6(2)(b)(6)

**C2** S. 9 modified by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 75(3), **Sch. 8 para. 16**

**Marginal Citations**

**M5** 1971 c. 32.

**10 Computation of custodial sentences for young offenders.**

The following subsections shall be added at the end of section 67 of the <sup>M6</sup>Criminal Justice Act 1967 (reduction of custodial sentence by period already spent in custody)

“(5) This section applies—

- (a) to orders made under section 4 of the Criminal Justice Act 1982 (detention centre orders); and
- (b) to sentences passed by virtue of section 6 of the Criminal Justice Act 1982 (youth custody sentences),

as it applies to sentences of imprisonment.

- (6) The reference in subsection (1) above to an offender being committed to custody by an order of a court includes a reference to his being committed to a remand centre or to prison under section 23 of the Children and Young Persons Act 1969 or section 37 of the Magistrates’ Courts Act 1980 but does not include a reference to his being committed to the care of a local authority under the said section 23.”.

**Marginal Citations**

**M6** 1967 c. 80.

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