



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART I

#### POWERS OF COURTS TO DEAL WITH OFFENDERS

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

- C1** Pt. I (ss. 1-31) applied (E.W.) (1.10.1997) by 1997 c. 43, **ss. 28(9)**, 33(3)-(5); S.I. 1997/2200, **art.2** (subject to savings in **art. 5**)
- Pt. I (ss. 1-31) modified (E.W.) (1.1.1998) by 1997 c. 43, **s. 35(4)(b)**; S.I. 1997/2200, **art.3** (subject to savings in **art. 5**)
- Pt. I (ss. 1-31) extended (with modifications) (E.W.) (1.1.1998) by 1997 c. 43, **s. 35(7)(b)**; S.I. 1997/2200, **art.3** (subject to savings in **art. 5**)
- Pt. I (ss. 1-31) extended (with modifications) (E.W.) (30.9.1998) by 1998 c. 37, **s. 61(4)** (with Sch. 9 para. 4); S.I. 1998/2327, **art.2(1)(n)**.
- Pt. I (ss. 1-31) extended (with modifications) (E.W.) (30.9.1998) by 1998 c. 37, **s. 69(11)**; S.I. 1998/2327, **art.2(1)(o)**
- Pt. I (ss. 1-31) applied (E.W.) (30.9.1998) by 1998 c. 37, **s. 18(2)**; S.I. 1998/2327, **art.2(1)(f)**.
- Pt. I (ss. 1-31) extended (E.W.) (1.4.2000) by 1998 c. 37, **ss. 73(4)**; S.I. 1999/3426, **art. 3(a)**
- Pt. I (ss. 1-31) applied (E.W.) (30.9.1998) by 1997 c. 43, **ss. 37(4)(5)** (as substituted (E.W.) (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 51(2)**); S.I. 1998/2327, **art.2(1)(w)**.
- Pt. I (ss. 1-31) extended (E.W.) (30.9.1998) by 1997 c. 43, **ss. 37(4)(5)** (as substituted (E.W.) (30.9.1998) by 1998 c. 37, s. 106, **Sch.7 para. 51(2)**); S.I. 1998/2327, **art.2(1)(w)**.
- Pt. I (ss. 1-31) restricted (E.W.) (26.6.2000) by 1999 c. 23, **s. 4(4)(a)**, (with Sch. 7 paras. 3(3), 5(2)); S.I. 2000/1587, **art. 2(a)**

#### *Custodial sentences*

### **1 Restrictions on imposing custodial sentences.**

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

*Status: Point in time view as at 04/09/1995.*

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- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—
- [<sup>F1</sup>(a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or]
  - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.
- (3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.
- (4) Where a court passes a custodial sentence, it shall be its duty—
- (a) in a case not falling within subsection (3) above, to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
  - (b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

#### Textual Amendments

**F1** S. 1(2)(a) substituted (16.8.1993) by 1993 c. 36, s. 66(1)(9); S.I. 1993/1968, art. 2(1), Sch.1

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

**C2** Ss. 1-4 extended (*prosp.*) by 1994 c. 33, ss. 1(6), 172(2)

S. 1 excluded (*prosp.*) by 1997 c. 43, ss. 17(5), 57(2) (with s. 41, Sch. 1 para. 10(4)).

**C3** S. 1(1)(3) amended (*prosp.*) by 1997 c. 43, s. 55(2), 57(2).

#### Commencement Information

**I1** S. 1 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 2 Length of custodial sentences.

- (1) This section applies where a court passes a custodial sentence other than one fixed by law.
- (2) The custodial sentence shall be—
- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and [<sup>F2</sup>one or more] offences associated with it; or
  - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and [<sup>F2</sup>one or more] offences associated with it, the court shall—
- (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and

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- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.

#### Textual Amendments

**F2** Words in s. 2(2)(a)(3) substituted (16.8.1993) by 1993 c. 36, s. 66(2)(9); S.I. 1993/1968, art. 2(1), Sch.1

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

**C4** Ss. 1-4 extended (*prosp.*) by 1994 c. 33, ss. 1(6), 172(2)  
S. 2 excluded (*prosp.*) by 1997 c. 43 ss. 17(5), 57(2) (with s. 41, Sch. 1 para. (4)).  
S. 2 amended (*prosp.*) 1997 c. 43, ss. 55(2), 57(2).

#### Commencement Information

**I2** S. 2 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

### 3 Procedural requirements for custodial sentences.

- (1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above.
- (2) <sup>F3</sup> . . . subsection (1) above 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.
- [<sup>F4</sup>(2A) In the case of an offender under the age of eighteen years, save where the offence or any other offence associated with it is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (2) above or subsection (4A) below unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.]
- (3) In forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above a court—
  - (a) shall take into account all such information about the circumstances of the offence [<sup>F5</sup>or (as the case may be) of the offence and the offence or offences associated with it,] (including any aggravating or mitigating factors) as is available to it; and
  - (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.
- (4) No custodial sentence <sup>F6</sup> . . . shall be invalidated by the failure of a court to [<sup>F7</sup>obtain and consider a pre-sentence report before forming an opinion referred to in subsection (1) above] but any court on an appeal against such a sentence—
  - (a) shall [<sup>F8</sup>, subject to subsection (4A) below,] obtain a pre-sentence report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.

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- [<sup>F9</sup>(4A) Subsection (4)(a) above does not apply if the court is of the opinion—
- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
  - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.]
- (5) In this Part “pre-sentence report” means a report in writing which—
- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or by a social worker of a local authority social services department; and
  - (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

#### Textual Amendments

- F3** Words in s. 3(2) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 40(2)(a), **Sch.11**; S.I. 1995/127, art. 2(1), **Sch. 1** AppendicesA,C
- F4** S. 3(2A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(2)(b)**; S.I. 1995/127, art. 2(1), **Sch. 1** AppendixA
- F5** Words in s. 3(3)(a) inserted (16.8.1993) by 1993 c. 36, s. 66(3)(9); S.I. 1993/1968, art. 2(1), **Sch. 1**
- F6** Words in s. 3(4) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 40(2)(c)(i), **Sch.11**; S.I. 1995/127, art. 2(1), **Sch. 1** AppendicesA,C
- F7** Words in s. 3(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(2)(c)(ii)**; S.I. 1995/127, art. 2(1), **Sch. 1** AppendixA
- F8** Words in s. 3(4)(a) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(2)(c)(iii)**; S.I. 1995/127, art. 2(1), **Sch. 1** AppendixA
- F9** S 3(4A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(2)(d)**; S.I. 1995/127, art. (1), Sch. 1 AppendixA

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

- C5** Ss. 1-4 extended (1.3.1998) by 1994 c. 33, **ss. 1(6)**; S.I. 1998/277, **art.3(1)** (with art. 4) (by 1998 c. 37, ss. 120(2), 121(2), **Sch.10**, the said s. 1 is repealed (*prosp.*)).  
Ss. 1-4 applied (*prosp.*) by 1998 c. 37, **ss. 73(4)**, 121(2).

#### Commencement Information

- I3** S. 3 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

## 4 Additional requirements in the case of mentally disordered offenders.

- (1) Subject to subsection (2) below, in any case where section 3(1) above applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—
  - (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

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- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
  - (a) shall obtain a medical report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (5) In this section—
  - “duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the <sup>M1</sup>Mental Health Act 1983 (“the 1983 Act”) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;
  - “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is duly approved.
- (6) Nothing in this section shall be taken as prejudicing the generality of section 3 above.

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

**C6** Ss. 1-4 extended (*prosp.*) by 1994 c. 33, ss. 1(6), 172(2)

**Commencement Information**

**I4** S. 4 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**Marginal Citations**

**M1** 1983 c. 20.

**5 Suspended and extended sentences of imprisonment.**

- (1) For subsection (2) of section 22 (suspended sentences of imprisonment) of the <sup>M2</sup>Powers of Criminal Courts Act 1973 (“the 1973 Act”) there shall be substituted the following subsections—
  - “(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—
    - (a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
    - (b) that the exercise of that power can be justified by the exceptional circumstances of the case.
  - (2A) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”
- (2) The following shall cease to have effect, namely—
  - (a) sections 28 and 29 of the 1973 Act (extended sentences of imprisonment for persistent offenders); and
  - (b) section 47 of the <sup>M3</sup>Criminal Law Act 1977 (sentence of imprisonment partly served and partly suspended).

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#### Commencement Information

**I5** S. 5 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

**M2** 1973 c. 62.

**M3** 1977 c. 45.

### Community sentences

#### 6 Restrictions on imposing community sentences.

- (1) A court shall not pass on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of the opinion that the offence, or the combination of the offence and one [<sup>F10</sup>or more offences] associated with it, was serious enough to warrant such a sentence.
- (2) Subject to subsection (3) below, where a court passes a community sentence—
  - (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
  - (b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and [<sup>F11</sup>one or more] offences associated with it.
- (3) In consequence of the provision made by section 11 below with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.
- (4) In this Part “community order” means any of the following orders, namely—
  - (a) a probation order;
  - (b) a community service order;
  - (c) a combination order;
  - (d) a curfew order;
  - (e) a supervision order; and
  - (f) an attendance centre order.

#### Textual Amendments

**F10** Words in s. 6(1) substituted (16.8.1993) by 1993 c. 36, s. 66(4)(a)(9); S.I. 1993/1968, art. 2(1), **Sch.1**

**F11** Words in s. 6(2)(b) substituted (16.8.1993) by 1993 c. 36, s. 66(4)(b)(9); S.I. 1993/1968, art. 2(1), **Sch.1**

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

**C7** S. 6 excluded (*prosp.*) by 1997 c. 43, ss. 17(5), 41, 57(2) (with **Sch. 1 para. 10(4)**)

S. 6 excluded (1.1.1998) by 1997 c. 43, s. 37(3); S.I. 1997/2200, **art.3** (with savings in art. 5)

#### Commencement Information

**I6** S. 6 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

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## 7 Procedural requirements for community sentences.

- (1) In forming any such opinion as is mentioned in subsection (1) or (2)(b) of section 6 above, a court shall take into account all such information about the circumstances of the offence [<sup>F12</sup>or (as the case may be) of the offence and the offence or offences associated with it,] (including any aggravating or mitigating factors) as is available to it.
  - (2) In forming any such opinion as is mentioned in subsection (2)(a) of that section, a court may take into account any information about the offender which is before it.
  - (3) [<sup>F13</sup>Subject to subsection (3A) below,] A court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—
    - (a) a probation order which includes additional requirements authorised by Schedule 1A to the 1973 Act;
    - (b) a community service order;
    - (c) a combination order; and
    - (d) a supervision order which includes requirements imposed under section 12, 12A, 12AA, 12B or 12C of the <sup>M4</sup>Children and Young Persons Act 1969 (“the 1969 Act”).
- [<sup>F14</sup>(3A) Subsection (3) above 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.
- (3B) In the case of an offender under the age of eighteen years, save where the offence or any other offence associated with it is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (3A) above or subsection (5) below unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.]
  - (4) No community sentence which consists of or includes such an order as is mentioned in subsection (3) above shall be invalidated by the failure of a court to [<sup>F15</sup>obtain and consider a pre-sentence report before forming an opinion referred to in] that subsection, but any court on an appeal against such a sentence—
    - (a) shall [<sup>F16</sup>, subject to subsection (5) below,] obtain a pre-sentence report if none was obtained by the court below; and
    - (b) shall consider any such report obtained by it or by that court.
- [<sup>F17</sup>(5) Subsection (4)(a) above does not apply if the court is of the opinion—
  - (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
  - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.]

### Textual Amendments

- F12** Words in s. 7(1) inserted (16.8.1993) by 1993 c. 36, s. 66(5); S.I. 1993/1968, art. 2(1), Sch. 1
- F13** Words in s. 7(3) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(3)(a); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A
- F14** S. 7(3A)(3B) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(3)(b); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A



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- F15** Words in s. 7(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(c)(i)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A
- F16** Words in s. 7(4)(a) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(c)(ii)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A
- F17** S. 7(5) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(d)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A

#### Commencement Information

- I7** S. 7 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M4** 1969 c. 54.

### *Probation and community service orders*

## 8 Probation orders.

(1) For section 2 of the 1973 Act there shall be substituted the following section—

### *“ Probation*

#### **2 Probation orders.**

- (1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law) is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—
- (a) securing the rehabilitation of the offender; or
  - (b) protecting the public from harm from him or preventing the commission by him of further offences,
- the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than six months nor more than three years.
- For the purposes of this subsection the age of a person shall be deemed to be that which it appears to the court to be after considering any available evidence.
- (2) A probation order shall specify the petty sessions area in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2 to the Criminal Justice Act 1991 (offenders who change their residence), be required to be under the supervision of a probation officer appointed for or assigned to that area.
- (3) Before making a probation order, the court shall explain to the offender in ordinary language—
- (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 3 below);



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- (b) the consequences which may follow under Schedule 2 to the Criminal Justice Act 1991 if he fails to comply with any of the requirements of the order; and
    - (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,and the court shall not make the order unless he expresses his willingness to comply with its requirements.
  - (4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—
    - (a) to the offender;
    - (b) to the probation officer responsible for the offender’s supervision; and
    - (c) to the person in charge of any institution in which the offender is required by the order to reside.
  - (5) The court by which such an order is made shall also, except where it itself acts for the petty sessions area specified in the order, send to the clerk to the justices for that area—
    - (a) a copy of the order; and
    - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
  - (6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.
  - (7) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the minimum or maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.
  - (8) An order under subsection (7) above may make in paragraph 13(2)(a)(i) of Schedule 2 to the Criminal Justice Act 1991 any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.”
- (2) Section 13 of that Act (effect of probation and discharge) shall cease to have effect so far as relating to offenders placed on probation.
  - (3) For the purpose of rearranging Part I of that Act in consequence of the amendments made by subsections (1) and (2) above, that Part shall have effect subject to the following amendments, namely—
    - (a) after section 1 there shall be inserted as sections 1A to 1C the provisions set out in Part I of Schedule 1 to this Act;
    - (b) sections 7 and 9 (which are re-enacted with minor modifications by sections 1A and 1B) shall cease to have effect;
    - (c) sections 8 and 13 (which, so far as relating to discharged offenders, are re-enacted with minor modifications by sections 1B and 1C) shall cease to have effect so far as so relating; and
    - (d) immediately before section 11 there shall be inserted the following cross heading—

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“ Probation and discharge ”.

**Commencement Information**

**I8** S. 8 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**9 Additional requirements which may be included in such orders.**

(1) For sections 3 to 4B of the 1973 Act there shall be substituted the following section—

**“3 Additional requirements which may be included in such orders.**

(1) Subject to subsection (2) below, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.

(2) Without prejudice to the power of the court under section 35 of this Act to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the additional requirements of a probation order.

(3) Without prejudice to the generality of subsection (1) above, the additional requirements which may be included in a probation order shall include the requirements which are authorised by Schedule 1A to this Act.”

(2) After Schedule 1 to that Act there shall be inserted as Schedule 1A the provisions set out in Part II of Schedule 1 to this Act.

**Commencement Information**

**I9** S. 9 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**10 Community service orders.**

(1) In subsection (1) of section 14 of the 1973 Act (community service orders in respect of offenders), the words “instead of dealing with him in any other way” shall cease to have effect.

(2) In subsection (1A) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) not more than 240.”

(3) For subsections (2) and (2A) of that section there shall be substituted the following subsections—

“(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court, after hearing (if the court thinks

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it necessary) a probation officer or social worker of a local authority social services department, is satisfied that the offender is a suitable person to perform work under such an order.

(2A) Subject to paragraphs 3 and 4 of Schedule 3 to the Criminal Justice Act 1991 (reciprocal enforcement of certain orders) a court shall not make a community service order in respect of an offender unless it is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area in which he resides or will reside.”

(4) In section 15(1) of that Act (obligations of persons subject to community service orders), for paragraph (a) there shall be substituted the following paragraph—

“(a) keep in touch with the relevant officer in accordance with such instructions as he may from time to time be given by that officer and notify him of any change of address;”.

#### Commencement Information

**I10** S. 10 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 11 Orders combining probation and community service.

(1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in subsection (2) below, the court may make a combination order, that is to say, an order requiring him both—

- (a) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and
- (b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100.

(2) The opinion referred to in subsection (1) above is that the making of a combination order is desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.

(3) Subject to subsection (1) above, Part I of the 1973 Act shall apply in relation to combination orders—

- (a) in so far as they impose such a requirement as is mentioned in paragraph (a) of that subsection, as if they were probation orders; and
- (b) in so far as they impose such a requirement as is mentioned in paragraph (b) of that subsection, as if they were community service orders.

#### Commencement Information

**I11** S. 11 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

*Status: Point in time view as at 04/09/1995.*

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## *Curfew orders*

### **12 Curfew orders.**

- (1) Where a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law), the court by or before which he is convicted may make a curfew order, that is to say, an order requiring him to remain, for periods specified in the order, at a place so specified.
- (2) A curfew order may specify different places or different periods for different days, but shall not specify—
  - (a) periods which fall outside the period of six months beginning with the day on which it is made; or
  - (b) periods which amount to less than 2 hours or more than 12 hours in any one day.
- (3) The requirements in a curfew order shall, as far as practicable, be such as to avoid—
  - (a) any conflict with the offender’s religious beliefs or with the requirements of any other community order to which he may be subject; and
  - (b) any interference with the times, if any, at which he normally works or attends school or other educational establishment.
- (4) A curfew order shall include provision for making a person responsible for monitoring the offender’s whereabouts during the curfew periods specified in the order; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.
- [<sup>F18</sup>(4A) A court shall not make a curfew order unless the court has been notified by the Secretary of State that arrangements for monitoring the offender’s whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn.]
- (5) Before making a curfew order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 13 below);
  - (b) the consequences which may follow under Schedule 2 to this Act if he fails to comply with any of the requirements of the order; and
  - (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,
 and the court shall not make the order unless he expresses his willingness to comply with its requirements.
- (6) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).
- (7) The Secretary of State may by order direct—
  - (a) that subsection (2) above shall have effect with the substitution, for any period there specified, of such period as may be specified in the order; or
  - (b) that subsection (3) above shall have effect with such additional restrictions as may be so specified.

*Status: Point in time view as at 04/09/1995.*

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**Textual Amendments**

**F18** S. 12(4A) inserted (9.1.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para.41**; S.I. 1994/3192, **art. 2**, Sch.

**13 Electronic monitoring of curfew orders.**

- (1) Subject to subsection (2) below, a curfew order may in addition include requirements for securing the electronic monitoring of the offender’s whereabouts during the curfew periods specified in the order.
- (2) A court shall not make a curfew order which includes such requirements unless the court—
  - (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the area in which the place proposed to be specified in the order is situated; and
  - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) Electronic monitoring arrangements made by the Secretary of State under this section may include entering into contracts with other persons for the electronic monitoring by them of offenders’ whereabouts.

*Orders: supplemental*

**14 Enforcement etc. of community orders.**

- (1) Schedule 2 to this Act (which makes provision for dealing with failures to comply with the requirements of certain community orders, for amending such orders and for revoking them with or without the substitution of other sentences) shall have effect.
- (2) Sections 5, 6, 16 and 17 of, and Schedule 1 to, the 1973 Act (which are superseded by Schedule 2 to this Act) shall cease to have effect.

**Commencement Information**

**I12** S. 14 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

**15 Regulation of community orders.**

- (1) The Secretary of State may make rules for regulating—
  - <sup>F19</sup>(a) .....
  - <sup>F19</sup>(b) .....
  - (c) the monitoring of the whereabouts of persons who are subject to curfew orders (including electronic monitoring in cases where arrangements for such monitoring are available); and
  - (d) without prejudice to the generality of [<sup>F20</sup>paragraph (c)] above, the functions of the responsible officers of such persons as are mentioned in [<sup>F20</sup>that paragraph].
- <sup>F19</sup>(2) .....

*Status: Point in time view as at 04/09/1995.*

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- (3) In this Part “responsible officer” means—
- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision;
  - (b) in relation to an offender who is subject to a community service order, the relevant officer within the meaning of section 14(4) of the 1973 Act; and
  - (c) in relation to an offender who is subject to a curfew order, the person responsible for monitoring his whereabouts during the curfew periods specified in the order.

<sup>F19</sup>(4) .....

**Textual Amendments**

**F19** S. 15(1)(a)(b)(2)(4) repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), **Sch.4**

**F20** Words in s. 15(1)(d) substituted (5.2.1994) by 1993 c. 47, ss. 32, 33(2), **Sch. 3 para.10**

**Commencement Information**

**I13** S. 15 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2.**

**16 Reciprocal enforcement of certain orders.**

Schedule 3 to this Act shall have effect for making provision for and in connection with—

- (a) the making and amendment in England and Wales of community orders relating to persons residing in Scotland or Northern Ireland; and
- (b) the making and amendment in Scotland or Northern Ireland of corresponding orders relating to persons residing in England and Wales.

**Commencement Information**

**I14** S. 16 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2.**

*Financial penalties*

**17 Increase of certain maxima.**

- (1) In section 37 (standard scale of fines) of the <sup>M5</sup>Criminal Justice Act 1982 (“the 1982 Act”) and section 289G of the <sup>M6</sup>Criminal Procedure (Scotland) Act 1975 (corresponding Scottish provision), for subsection (2) there shall be substituted the following subsection—

“(2) The standard scale is shown below—

<i>Level on the scale</i>	<i>Amount of fine</i>
1	£200
2	£500
3	£1,000

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4	£2,500
5	£5,000”.

(2) Part I of the <sup>M7</sup>Magistrates’ Courts Act 1980 (“the 1980 Act”) shall be amended as follows—

- (a) in section 24(3) and (4) (maximum fine on summary conviction of young person for indictable offence) and section 36(1) and (2) (maximum fine on conviction of young person by magistrates’ court), for “£400” there shall be substituted “£1,000”;
- (b) in section 24(4) (maximum fine on summary conviction of child for indictable offence) and section 36(2) (maximum fine on conviction of child by magistrates’ court), for “£100” there shall be substituted “£250”; and
- (c) in section 32(9) (maximum fine on summary conviction of offence triable either way), for “c£2,000” there shall be substituted “£5,000”;

and in section 289B(6) of the Criminal Procedure (Scotland) Act 1975 (interpretation), in the definition of “prescribed sum”, for “£2,000” there shall be substituted “£5,000”.

(3) Schedule 4 to this Act shall have effect as follows—

- (a) in each of the provisions mentioned in column 1 of Part I (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the amount specified in column 4;
- (b) in each of the provisions mentioned in column 1 of Part II (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the level on the standard scale specified in column 4;
- (c) in each of the provisions mentioned in column 1 of Part III (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted a reference to the statutory maximum;
- (d) the provisions set out in Part IV shall be substituted for Schedule 6A to the 1980 Act (fines that may be altered under section 143); and
- (e) <sup>F21</sup> .....

**Extent Information**

**E1** S. 17 extends to England and Wales; s. 17(1)(2) also extend to Scotland see s. 102(4)(5)

**Textual Amendments**

**F21** S. 17(3)(e) repealed (20.9.1993) by 1993 c. 36, ss. 65(3), 79(14), Sch. 3 para. 1(1), **Sch. 6 Pt.I**; S.I. 1993/1968, art. 2(2), **Sch.2**, Appendix.

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

**C8** S. 17(1)(2) restricted (S.) (1.9.1992) by S.I. 1992/333, **art. 4A** (as inserted by S.I. 1992/2118, **art. 4**)

**Commencement Information**

**I15** S. 17 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**

**Marginal Citations**

- M5** 1982 c. 48.
- M6** 1975 c. 21.
- M7** 1980 c. 43.



*Status: Point in time view as at 04/09/1995.*

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**[<sup>F22</sup>18 Fixing of fines.**

[ Before fixing the amount of any fine to be imposed on an offender who is an individual,  
<sup>F23</sup>(1) a court shall inquire into his financial circumstances.]

(2) The amount of any fine fixed by a court shall be such as, in the opinion of the court, reflects the seriousness of the offence.

(3) In fixing the amount of any fine [<sup>F24</sup>to be imposed on an offender (whether an individual or other person)], a court shall take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Where—

- (a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates’ Courts Act 1980 (non-appearance of accused),
- (b) an offender—
  - (i) has failed to comply with an order under section 20(1) below; or
  - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances, or
- (c) the parent or guardian of an offender who is a child or young person—
  - (i) has failed to comply with an order under section 20(1B) below; or
  - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

(5) Subsection (3) above applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.]

**Textual Amendments**

**F22** S. 18 substituted (20.9.1993) by 1993 c. 36, s. 65(1)(4); S.I. 1993/1968, art. 2(2), Sch. 2

**F23** S. 18(1) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 42(2)(a); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A

**F24** Words in s. 18(3) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 42(2)(b); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A

**<sup>F25</sup>19 .....**

**Textual Amendments**

**F25** S. 19 repealed (20.9.1993) by 1993 c. 36, ss. 65(2)(4), 79(14), Sch. 6 Pt.1; S.I. 1993/1968, art. 2(2), Sch.2, Appendix.

**20 Statements as to offenders’ means.**

[<sup>F26</sup>(1) Where [<sup>F27</sup>an individual] has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.

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- (1A) Where a magistrates' court has been notified in accordance with [F28 section 12(4)] of the M8 Magistrates' Courts Act 1980 that [F27 an individual] desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.
- (1B) Before exercising its powers under section 55 of the M9 Children and Young Persons Act 1933 against the parent or guardian of [F27 any individual] who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.
- (1C) In this section “a financial circumstances order” means, in relation to [F27 any individual], an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.]
- (2) [F27 an individual] who without reasonable excuse fails to comply with [F29 a financial circumstances order] shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If [F27 an individual] in furnishing any statement in pursuance of [F29 a financial circumstances order]—
- (a) makes a statement which he knows to be false in a material particular;
  - (b) recklessly furnishes a statement which is false in a material particular; or
  - (c) knowingly fails to disclose any material fact,
- he shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.
- (4) Proceedings in respect of an offence under subsection (3) above may, notwithstanding anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.
- F30 (5) .....

#### Textual Amendments

- F26** S. 20(1)(1A)(1B)(1C) substituted (20.9.1993) for s. 20(1) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 2(1)**; S.I. 1993/1968, art. 2(2), **Sch. 2**
- F27** Words in s. 20(1)(1A)(1B)(1C)(2) and (3) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 42(3)(5)**; S.I. 1995/127, art. 2(1), Sch. Appendix A
- F28** Words in s. 20(1A) substituted (4.9.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para.65**; S.I. 1995/1957, **art.4**
- F29** Words in s. 20(2)(3) substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 2(2)**; S.I. 1993/1968, art. 2(2), **Sch. 2**
- F30** S. 20(5) repealed (20.9.1993) by 1993 c 36, ss. 65(3)(4), 79(14), Sch. 3 para. 2(3), Sch. 6 Pt. I; S.I. 1993/1968, art. 2(2), **Sch. 2**, Appendix.

#### Commencement Information

- I16** S. 20 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M8** 1980 c. 43.

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**M9** 1933 c. 12.

**[<sup>F31</sup>20A False statements as to financial circumstances.**

- (1) A person who is charged with an offence who, in furnishing a statement of his financial circumstances in response to an official request—
  - (a) makes a statement which he knows to be false in a material particular;
  - (b) recklessly furnishes a statement which is false in a material particular; or
  - (c) knowingly fails to disclose any material fact,
 shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.
- (2) For the purposes of this section an official request is a request which—
  - (a) is made by the clerk of the magistrates' court or the appropriate officer of the Crown Court, as the case may be; and
  - (b) is expressed to be made for informing the court, in the event of his being convicted, of his financial circumstances for the purpose of determining the amount of any fine the court may impose.
- (3) Proceedings in respect of an offence under this section may, notwithstanding anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.]

**Textual Amendments**

**F31** S. 20A inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para.43**; S.I. 1995/127, art. 2(1), **Sch. 1**Appendix A

*Financial penalties: supplemental*

**[<sup>F32</sup>21 Remission of fines.**

- (1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 18(4) above.
- (2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—
  - (a) have fixed a smaller amount; or
  - (b) not have fined him,
 it may remit the whole or any part of the fine.
- (3) Where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 82(5) of the <sup>M10</sup>Magistrates' Courts Act 1980 (issue of warrant of commitment for default) or section 31 of the <sup>M11</sup>Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines), it shall reduce the term by the corresponding proportion.
- (4) In calculating any reduction required by subsection (3) above, any fraction of a day shall be ignored.]

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**Textual Amendments**

**F32** S. 21 substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para.3**; S.I. 1993/1968, art. 2(2), **Sch.2**

**Marginal Citations**

**M10** 1980 c. 43.

**M11** 1973 c. 62.

<sup>F33</sup>**22** .....

**Textual Amendments**

**F33** S. 22 repealed (20.9.1993) by 1993 c. 36, ss. 65(3)(4), 79(14), Sch. 3 para. 4, **Sch. 6 Pt.I**; S.I. 1993/1968, art. 2(2), **Sch.2**, Appendix.

**23 Default in other cases.**

(1) In the Tables in section 31(3A) of the 1973 Act and paragraph 1 of Schedule 4 to the 1980 Act (maximum periods of imprisonment for default in paying fines etc.), for the entries relating to amounts not exceeding £5,000 there shall be substituted the following entries—

“An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months”.

(2) For the Table in section 407(1A) of the <sup>M12</sup>Criminal Procedure (Scotland) Act 1975 (maximum period of imprisonment for failure to pay fine or find caution) there shall be substituted the following Table—

<i>“Amount of fine or caution</i>	<i>Maximum period of imprisonment</i>
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days

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An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years.”

- (3) In Schedule 16 (repeals) to the 1988 Act, the entry relating to subsection (8) of section 41 of the <sup>M13</sup>Administration of Justice Act 1970 shall cease to have effect; and that subsection (discretion of Crown Court to specify extended period of imprisonment in default of payment of compensation) shall have effect as if that entry had not been enacted.

#### Extent Information

**E2** S. 23 extends to England and Wales only except as mentioned in s. 102(4) - (6).

#### Commencement Information

**I17** S. 23 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### Marginal Citations

**M12** 1975 c. 21.

**M13** 1970 c. 31.

## 24 Recovery of fines etc. by deductions from income support.

- (1) The Secretary of State may by regulations provide that where a fine has been imposed on an offender by a magistrates' court, or a sum is required to be paid by a compensation order which has been made against an offender by such a court, and (in either case) the offender is entitled to income support—
- (a) the court may apply to the Secretary of State asking him to deduct sums from any amounts payable to the offender by way of income support, in order to secure the payment of any sum which is or forms part of the fine or compensation; and
  - (b) the Secretary of State may deduct sums from any such amounts and pay them to the court towards satisfaction of any such sum.
- (2) The regulations may include—

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- (a) provision that, before making an application, the court shall make an enquiry as to the offender's means;
  - (b) provision allowing or requiring adjudication as regards an application, and provision as to appeals and reviews;
  - (c) provision as to the circumstances and manner in which and the times at which sums are to be deducted and paid;
  - (d) provision as to the calculation of such sums (which may include provision to secure that amounts payable to the offender by way of income support do not fall below prescribed figures);
  - (e) provision as to the circumstances in which the Secretary of State is to cease making deductions;
  - (f) provision requiring the Secretary of State to notify the offender, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification; and
  - (g) provision that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Secretary of State.
- (3) In subsection (1) above—
- (a) the reference to a fine having been imposed by a magistrates' court includes a reference to a fine being treated, by virtue of section 32 of the 1973 Act, as having been so imposed; and
  - (b) the reference to a sum being required to be paid by a compensation order which has been made by a magistrates' court includes a reference to a sum which is required to be paid by such an order being treated, by virtue of section 41 of the <sup>M14</sup>Administration of Justice Act 1970, as having been adjudged to be paid on conviction by such a court.
  - <sup>F34</sup>(c) the reference in paragraph (a) to "the court" includes a reference to a court to which the function in that paragraph has been transferred by virtue of a transfer of fine order under section 89(1) or (3) or 90(1)(a) of the 1980 Act (power of magistrates' court to make transfer of fine order) or under section 403(1)(a) or (b) of the <sup>M15</sup>Criminal Procedure (Scotland) Act 1975 (analogous provision as respects Scotland) and a reference to a court to which that function has been remitted by virtue of section 196(2) of the said Act of 1975 (enforcement of fine imposed by High Court of Justiciary).]
- (4) In this section—
- “fine” includes—
- (a) a penalty imposed under [<sup>F35</sup>section 29 or 37 of the Vehicle Excise and Registration Act 1994] or section 102(3)(aa) of the <sup>M16</sup>Customs and Excise Management Act 1979 (penalties imposed for certain offences in relation to vehicle excise licences);
  - (b) an amount ordered to be paid, in addition to any penalty so imposed, under [<sup>F35</sup>section 30, 36 or 38 of the Vehicle Excise and Registration Act 1994] (liability to additional duty);
  - (c) an amount ordered to be paid by way of costs which is, by virtue of section 41 of the <sup>M17</sup>Administration of Justice Act 1970, treated as having been adjudged to be paid on a conviction by a magistrates' court;
- “income support” means income support within the meaning of the <sup>M18</sup>Social Security Act 1986, either alone or together with any unemployment, [<sup>F36</sup>or incapacity] benefit, retirement pension or severe disablement allowance which is paid by means of the same instrument of payment;

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“prescribed” means prescribed by regulations made by the Secretary of State.

- (5) In the application of this section to Scotland—
- (a) references in subsections (1) and (2) above to a magistrates’ court shall be construed as references to a court; and
  - (b) in subsection (3) above, for paragraphs (a) and (b) there shall be substituted the following paragraphs—
    - “(a) the reference to a fine having been imposed by a court includes a reference to a fine being treated, by virtue of section 196(2) of the Criminal Procedure (Scotland) Act 1975, as having been so imposed; and
    - (b) the reference to a compensation order having been made by a court includes a reference to such an order being treated, by virtue of section 66 of the Criminal Justice (Scotland) Act 1980, as having been so made.”

#### Textual Amendments

- F34** S. 24(3)(c) inserted (3.2.1995) by 1994 c. 33, s. 47(3); S.I. 1995/127, art. 2(1), **Sch. 1**
- F35** Words in s. 24(4) substituted (1.9.1994) by 1994 c. 22, ss. 63, 66(1), **Sch. 3 para. 30** (with s. 57(4))
- F36** Words in definition in s. 24(4) substituted (13.4.1995) by 1994 c. 18, s. 11(1), **Sch. 1 Pt. II para.55**; S.I. 1994/2926, art. 2, **Sch. Pt.IV**

#### Commencement Information

- I18** S. 24 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M14** 1970 c. 31.
- M15** 1975 c. 21.
- M16** 1979 c. 2.
- M17** 1970 c. 31.
- M18** 1986 c. 50.

### Miscellaneous

## 25 Committals for sentence.

- (1) For section 38 of the 1980 Act there shall be substituted the following section—

**“38 Committal for sentence on summary trial of offence triable either way.**

- (1) This section applies where on the summary trial of an offence triable either way (not being an offence as regards which this section is excluded by section 33 above) a person who is not less than 18 years old is convicted of the offence.
- (2) If the court is of opinion—



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- (a) that the offence or the combination of the offence and other offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose; or
- (b) in the case of a violent or sexual offence committed by a person who is not less than 21 years old, that a sentence of imprisonment for a term longer than the court has power to impose is necessary to protect the public from serious harm from him,

the court may, in accordance with section 56 of the Criminal Justice Act 1967, commit the offender in custody or on bail to the Crown Court for sentence in accordance with the provisions of section 42 of the Powers of Criminal Courts Act 1973.

- (3) Paragraphs (a) and (b) of subsection (2) above shall be construed as if they were contained in Part I of the Criminal Justice Act 1991.
- (4) The preceding provisions of this section shall apply in relation to a corporation as if—
  - (a) the corporation were an individual who is not less than 18 years old; and
  - (b) in subsection (2) above, paragraph (b) and the words “in custody or on bail” were omitted.”

(2) In Schedule 3 to the 1980 Act, paragraph 5 (provisions relating to committal to Crown Court for sentence not to apply to a corporation) shall cease to have effect.

**Commencement Information**

**I19** S. 25 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**26 Alteration of certain penalties.**

(1) In section 7 of the <sup>M19</sup>Theft Act 1968 (theft), for the words “ten years” there shall be substituted the words “seven years”.

(2) For subsections (3) and (4) of section 9 of that Act (burglary) there shall be substituted the following subsections—

“(3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding—

- (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
- (b) in any other case, ten years.

(4) References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.”

<sup>F37</sup>(3) .....

(4) In section 51(4) of the <sup>M20</sup>Criminal Law Act 1977 (penalties for bomb hoaxes)—

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- (a) in paragraph (a), for the words “three months” there shall be substituted the words “six months”; and
  - (b) in paragraph (b), for the words “five years” there shall be substituted the words “seven years”.
- (5) The power saved by subsection (1) of section 70 of the 1982 Act (vagrancy offences) shall not include, in the case of an offence mentioned in paragraph (b)(i) of that subsection (sleeping rough), power to impose a fine which exceeds level 1 on the standard scale.

#### Extent Information

**E3** S. 26 extends to England and Wales; s. 26(3)(4) also extend to Scotland see s. 102(4)(5)

#### Textual Amendments

**F37** S. 26(3) repealed (16.10.1992) by [Protection of Badgers Act 1992 \(c. 51\)](#), s. 15(2)(3), Sch.

#### Commencement Information

**I20** S. 26 wholly in force; s. 26(3) in force (E.W.) at 25.10.1991, s. 26(4)(5) in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(2)(3)(4), Schs. 2, 3; s. 26(3) in force (S.) at 9.12.1991 see s. 102(2)(3) and S.I. 1991/2706, art. 2(1)(2); s. 26 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2

#### Marginal Citations

**M19** 1968 c. 60.

**M20** 1977 c. 45.

## 27 Treatment of offenders under 1983 Act.

(1) After section 39 of the 1983 Act there shall be inserted the following section—

### “39A Information to facilitate guardianship orders.

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

- (a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and
- (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.”

(2) After section 54 of that Act there shall be inserted the following section—

### “54A Reduction of period for making hospital orders.

- (1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.

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- (2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.”
- (3) In section 143(2) of that Act (general provisions as to regulations, orders and rules), after the words “this Act” there shall be inserted the words “or any order made under section 54A above”.

**Commencement Information**

**I21** S. 27 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

*Supplemental*

**28 Savings for mitigation and mentally disordered offenders.**

- (1) Nothing in this Part shall prevent a court from mitigating an offender’s sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.
- (2) Without prejudice to the generality of subsection (1) above, nothing in this Part shall prevent a court—
- (a) from mitigating any penalty included in an offender’s sentence by taking into account any other penalty included in that sentence; or
  - (b) in a case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- <sup>F38</sup>(3) . . . . .
- (4) Nothing in this Part shall be taken—
- (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
  - (b) as restricting any power (whether under the 1983 Act or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

**Textual Amendments**

**F38** S.28(3) repealed (20.9.1993) by 1993 c. 36, s. 79(14), Sch. 6 Pt.I; S.I. 1993/1968, art. 2(2), Sch.2, Appendix.

**Commencement Information**

**I22** S. 28 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**[<sup>F39</sup>29 Effect of previous convictions and of offending while on bail.**

- (1) In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences.

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- (2) In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.
- (3) A probation order or conditional discharge order made before 1st October 1992 (which, by virtue of section 2 or 7 of the <sup>M21</sup>Powers of Criminal Courts Act 1973, would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (4) A conviction in respect of which a probation order or [<sup>F40</sup>an order discharging the offender absolutely or conditionally] was made before that date (which, by virtue of section 13 of that Act, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.]
- [<sup>F41</sup>(5) A conditional discharge order made after 30th September 1992 (which, by virtue of section 1A of the Powers of Criminal Courts Act 1973, would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (6) A conviction in respect of which an order discharging the offender absolutely or conditionally was made after 30th September 1992 (which, by virtue of section 1C of the Powers of Criminal Courts Act 1973, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.]

#### Textual Amendments

- F39** S. 29 substituted (16.8.1993) by 1993 c. 36, s. 66(6); S.I. 1993/1968, art. 2(1), Sch. 1
- F40** Words in s. 29(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 44(2)(4); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A
- F41** S 29(5)(6) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 44(3)(4); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A

#### Marginal Citations

- M21** 1973 c. 62.

### 30 Rules, regulations and orders.

- (1) Any power of the Secretary of State <sup>F42</sup>. . . to make rules, regulations or orders under this Part—
- shall be exercisable by statutory instrument; and
  - shall include power to make different provision for different cases or classes of case.
- (2) A statutory instrument containing any rules, regulations or order under this Part (other than an order under section 12(4) above) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F42** Words in s. 30(1) repealed (20.9.1993) by 1993 c. 36, s. 79(14), Sch. 6 Pt.I; S.I. 1993/1968, art. 2(2), Sch.2, Appendix.

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### Commencement Information

**I23** S. 30 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 31 Interpretation of Part I.

(1) In this Part—

“attendance centre order” means an order under section 17 of the 1982 Act;

“combination order” means an order under section 11 above;

“community order” has the meaning given by section 6(4) above;

“community sentence” has the meaning given by section 6(1) above;

“curfew order” means an order under section 12 above;

“custodial sentence” means—

(a) in relation to an offender of or over the age of twenty-one years, a sentence of imprisonment; and

(b) in relation to an offender under that age, a sentence of detention in a young offender institution or under section 53 of the <sup>M22</sup>Children and Young Persons Act 1933 (“the 1933 Act”), or a sentence of custody for life under section 8(2) of the 1982 Act;

“mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the 1983 Act;

“pre-sentence report” has the meaning given by section 3(5) above;

“responsible officer” has the meaning given by section 15(3) above;

“sentence of imprisonment” does not include a committal or attachment for contempt of court;

[<sup>F43</sup>“sexual offence” means any of the following—

(a) an offence under the <sup>M23</sup>Sexual Offences Act 1956, other than an offence under section 30, 31 or 33 to 36 of that Act;

(b) an offence under section 128 of the <sup>M24</sup>Mental Health Act 1959;

(c) an offence under the <sup>M25</sup>Indecency with Children Act 1960;

(d) an offence under section 9 of the <sup>M26</sup>Theft Act 1968 of burglary with intent to commit rape;

(e) an offence under section 54 of the <sup>M27</sup>Criminal Law Act 1977;

(f) an offence under the <sup>M28</sup>Protection of Children Act 1978;

(g) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to (f) above;

(h) an offence under section 1 of the <sup>M29</sup>Criminal Attempts Act 1981 of attempting to commit any of those offences;

(i) an offence of inciting another to commit any of those offences;]

“supervision order” means a supervision order under the 1969 Act;

“violent offence” means an offence which leads, or is intended or likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).

(2) For the purposes of this Part, an offence is associated with another if—

(a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or

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- (b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.
- (3) In this Part any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.

#### Textual Amendments

- F43** Definition of "sexual offence" substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 45(1)(2)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A

#### Commencement Information

- I24** S. 31 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 2**.

#### Marginal Citations

- M22** 1933 c. 12.  
**M23** 1956 c. 69.  
**M24** 1959 c. 72.  
**M25** 1960 c. 33.  
**M26** 1968 c. 60.  
**M27** 1977 c. 45.  
**M28** 1978 c. 37.  
**M29** 1981 c. 47.

**Status:**

Point in time view as at 04/09/1995.

**Changes to legislation:**

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