



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

General

195 Remit to High Court for sentence

- (1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—
 - (a) endorse upon the record copy of the indictment a certificate of the plea or the verdict, as the case may be;
 - (b) by interlocutor written on the record copy remit the convicted person to the High Court for sentence; and
 - (c) append to the interlocutor a note of his reasons for the remit,and a remit under this section shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the person is sentenced.
- (2) Where under any enactment an offence is punishable on conviction on indictment by imprisonment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to remit the accused to the High Court for sentence under subsection (1) above; and it shall be competent for the High Court to pass any sentence which it could have passed if the person had been convicted before it.
- (3) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent.

- (4) Subject to subsection (3) above, the note of reasons shall be available only to the High Court and the parties.

196 Sentence following guilty plea

In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.

197 Sentencing guidelines

Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under section 118(7) or section 189(7) of this Act.

198 Form of sentence

- (1) In any case the sentence to be pronounced shall be announced by the judge in open court and shall be entered in the record in the form prescribed by Act of Adjournal.
- (2) In recording a sentence of imprisonment, it shall be sufficient to minute the term of imprisonment to which the court sentenced the accused, without specifying the prison in which the sentence is to be carried out; and an entry of sentence, signed by the clerk of court, shall be full warrant and authority for any subsequent execution of the sentence and for the clerk to issue extracts for the purposes of execution or otherwise.
- (3) In extracting a sentence of imprisonment, the extract may be in the form set out in an Act of Adjournal or as nearly as may be in such form.

199 Power to mitigate penalties

- (1) Subject to subsection (3) below, where a person is convicted of the contravention of an enactment and the penalty which may be imposed involves—
 - (a) imprisonment;
 - (b) the imposition of a fine;
 - (c) the finding of caution for good behaviour or otherwise whether or not imposed in addition to imprisonment or a fine,subsection (2) below shall apply.
- (2) Where this subsection applies, the court, in addition to any other power conferred by statute, shall have power—
 - (a) to reduce the period of imprisonment;
 - (b) to substitute for imprisonment a fine (either with or without the finding of caution for good behaviour);
 - (c) to substitute for imprisonment or a fine the finding of caution;
 - (d) to reduce the amount of the fine;
 - (e) to dispense with the finding of caution.
- (3) Subsection (2) above shall not apply—

- (a) in relation to an enactment which carries into effect a treaty, convention, or agreement with a foreign state which stipulates for a fine of a minimum amount; or
 - (b) to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces.
- (4) Where, in summary proceedings, a fine is imposed in substitution for imprisonment, the fine—
- (a) in the case of an offence which is triable either summarily or on indictment, shall not exceed the prescribed sum; and
 - (b) in the case of an offence triable only summarily, shall not exceed level 4 on the standard scale.
- (5) Where the finding of caution is imposed under this section—
- (a) in respect of an offence which is triable only summarily, the amount shall not exceed level 4 on the standard scale and the period shall not exceed that which the court may impose under this Act; and
 - (b) in any other case, the amount shall not exceed the prescribed sum and the period shall not exceed 12 months.

Pre-sentencing procedure

200 Remand for inquiry into physical or mental condition

- (1) Without prejudice to any powers exercisable by a court under section 201 of this Act, where—
- (a) the court finds that an accused has committed an offence punishable with imprisonment; and
 - (b) it appears to the court that before the method of dealing with him is determined an inquiry ought to be made into his physical or mental condition,
- subsection (2) below shall apply.
- (2) Where this subsection applies the court shall—
- (a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;
 - (b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—
 - (i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and
 - (ii) that a hospital is available for his admission and suitable for his detention,make an order committing him to that hospital,

for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made.

(3) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (2) above, the court may—

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

- (a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and
 - (b) in any other case, remand the person in custody or on bail in accordance with subsection (2) above.
- (4) An order under subsection (3)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.
- (5) Where, before the expiry of the period specified in an order for committal to hospital under subsection (2)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (2)(a) above or any other provision of this Part of this Act, as the court considers appropriate.
- (6) Where an accused is remanded on bail under this section, it shall be a condition of the order granting bail that he shall—
 - (a) undergo a medical examination by a duly qualified registered medical practitioner or, where the inquiry is into his mental condition, and the order granting bail so specifies, two such practitioners; and
 - (b) for the purpose of such examination, attend at an institution or place, or on any such practitioner specified in the order granting bail and, where the inquiry is into his mental condition, comply with any directions which may be given to him for the said purpose by any person so specified or by a person of any class so specified,and, if arrangements have been made for his reception, it may be a condition of the order granting bail that the person shall, for the purpose of the examination, reside in an institution or place specified as aforesaid, not being an institution or place to which he could have been remanded in custody, until the expiry of such period as may be so specified or until he is discharged therefrom, whichever first occurs.
- (7) On exercising the powers conferred by this section to remand in custody or on bail the court shall—
 - (a) where the person is remanded in custody, send to the institution or place in which he is detained; and
 - (b) where the person is released on bail, send to the institution or place at which or the person by whom he is to be examined,a statement of the reasons for which it appears to the court that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical or mental condition.
- (8) On making an order of committal to hospital under subsection (2)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.
- (9) A person remanded under this section may appeal against the refusal of bail or against the conditions imposed and a person committed to hospital under this section may appeal against the order of committal within 24 hours of his remand or, as the case may be, committal, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may after hearing parties—

- (a) review the order and grant bail on such conditions as it thinks fit; or
 - (b) confirm the order; or
 - (c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.
- (10) The court may, on cause shown, vary an order for committal to hospital under subsection (2)(b) above by substituting another hospital for the hospital specified in the order.
- (11) Subsection (2)(b) above shall apply to the variation of an order under subsection (10) above as it applies to the making of an order for committal to hospital.

201 Power of court to adjourn case before sentence

- (1) Where an accused has been convicted or the court has found that he committed the offence and before he has been sentenced or otherwise dealt with, subject to subsection (3) below, the court may adjourn the case for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.
- (2) Where the court adjourns a case solely for the purpose mentioned in subsection (1) above, it shall remand the accused in custody or on bail or ordain him to appear at the adjourned diet.
- (3) A court shall not adjourn the hearing of a case as mentioned in subsection (1) above for any single period exceeding—
- (a) where the accused is remanded in custody, three weeks; and
 - (b) where he is remanded on bail or ordained to appear, four weeks or, on cause shown, eight weeks.
- (4) An accused who is remanded under this section may appeal against the refusal of bail or against the conditions imposed within 24 hours of his remand, by note of appeal presented to the High Court, and the High Court, either in court or in chambers, may, after hearing parties—
- (a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet; or
 - (b) confirm the order.

202 Deferred sentence

- (1) It shall be competent for a court to defer sentence after conviction for a period and on such conditions as the court may determine.
- (2) If it appears to the court which deferred sentence on an accused under subsection (1) above that he has been convicted during the period of deferment, by a court in any part of Great Britain of an offence committed during that period and has been dealt with for that offence, the court which deferred sentence may—
- (a) issue a warrant for the arrest of the accused; or
 - (b) instead of issuing such a warrant in the first instance, issue a citation requiring him to appear before it at such time as may be specified in the citation,
- and on his appearance or on his being brought before the court it may deal with him in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment.

- (3) Where a court which has deferred sentence on an accused under subsection (1) above convicts him of another offence during the period of deferment, it may deal with him for the original offence in any manner in which it would be competent for it to deal with him on the expiry of the period of deferment, as well as for the offence committed during the said period.

203 Reports

- (1) Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—
- (a) the circumstances of the offence; and
 - (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.
- (2) In subsection (1) above, “the court” does not include a district court.
- (3) Where, in any case, a report by an officer of a local authority is made to the court with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, a copy of the report shall be given by the clerk of the court to the offender or his solicitor.

Imprisonment, etc.

204 Restrictions on passing sentence of imprisonment or detention

- (1) A court shall not pass a sentence of imprisonment or of detention in respect of any offence, nor impose imprisonment, or detention, under section 214(2) of this Act in respect of failure to pay a fine, on an accused who is not legally represented in that court and has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom, unless the accused either—
- (a) applied for legal aid and the application was refused on the ground that he was not financially eligible; or
 - (b) having been informed of his right to apply for legal aid, and having had the opportunity, failed to do so.
- (2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom unless the court considers that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with such a person is appropriate the court shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.
- (3) Where a court of summary jurisdiction passes a sentence of imprisonment on any such person as is mentioned in subsection (2) above, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and shall have that reason entered in the record of the proceedings.

- (4) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom—
- (a) disregard a previous sentence of imprisonment which, having been suspended, has not taken effect under section 23 of the Powers of Criminal Courts Act 1973 or under section 19 of the Treatment of Offenders Act (Northern Ireland) 1968;
 - (b) construe detention as meaning —
 - (i) in relation to Scotland, detention in a young offenders institution or detention centre;
 - (ii) in relation to England and Wales a sentence of youth custody, borstal training or detention in a young offender institution or detention centre; and
 - (iii) in relation to Northern Ireland, detention in a young offenders centre.
- (5) This section does not affect the power of a court to pass sentence on any person for an offence the sentence for which is fixed by law.
- (6) In this section—
- “legal aid” means legal aid for the purposes of any part of the proceedings before the court;
 - “legally represented” means represented by counsel or a solicitor at some stage after the accused is found guilty and before he is dealt with as referred to in subsection (1) above.

205 Punishment for murder

- (1) Subject to subsections (2) and (3) below, a person convicted of murder shall be sentenced to imprisonment for life.
- (2) Where a person convicted of murder is under the age of 18 years he shall not be sentenced to imprisonment for life but to be detained without limit of time and shall be liable to be detained in such place, and under such conditions, as the Secretary of State may direct.
- (3) Where a person convicted of murder has attained the age of 18 years but is under the age of 21 years he shall not be sentenced to imprisonment for life but to be detained in a young offenders institution and shall be liable to be detained for life.
- (4) On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section 1(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, the Secretary of State releases that person on licence.
- (5) When making a recommendation under subsection (4) above, the judge shall state his reasons for so recommending.
- (6) Notwithstanding subsection (2) of section 106 of this Act it shall be competent to appeal under paragraph (b) or (f) of subsection (1) of that section against a recommendation made under subsection (4) above; and for the purposes of such appeal (including the High Court’s power of disposal under section 118(4)(b) of this Act) the recommendation shall be deemed part of the sentence passed on conviction.

206 Minimum periods of imprisonment

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as mentioned in subsection (4) below is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.
- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the Prisons (Scotland) Act 1989.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression “police authority” has the same meaning as in the Police (Scotland) Act 1967.

207 Detention of young offenders

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (2) Subject to section 205(2) and (3) of this Act and to subsections (3) and (4) below, a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and a period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.
- (3) The court shall not under subsection (2) above impose detention on an offender unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.
- (4) To enable the court to form an opinion under subsection (3) above, it shall obtain from an officer of a local authority or otherwise such information as it can about the offender’s circumstances; and it shall also take into account any information before it concerning the offender’s character and physical and mental condition.
- (5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.

208 Detention of children convicted on indictment

Subject to section 205 of this Act, where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.

209 Supervised release orders

- (1) Where a person is convicted of an offence and is sentenced to imprisonment for a term of not less than twelve months but less than four years, the court on passing sentence may, if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release, make such order as is mentioned in subsection (3) below.
- (2) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.
- (3) The order referred to in subsection (1) above (to be known as a “supervised release order”) is that the person, during a relevant period—
 - (a) be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area (such local authority or the justices for such area to be designated under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993);
 - (b) comply with;
 - (i) such requirements as may be imposed by the court in the order; and
 - (ii) such requirements as that officer may reasonably specify, for the purpose of securing the good conduct of the person or preventing, or lessening the possibility of, his committing a further offence (whether or not an offence of the kind for which he was sentenced); and
 - (c) comply with the standard requirements imposed by virtue of subsection (4)(a)(i) below.
- (4) A supervised release order—
 - (a) shall—
 - (i) without prejudice to subsection (3)(b) above, contain such requirements (in this section referred to as the “standard requirements”); and
 - (ii) be as nearly as possible in such form, as may be prescribed by Act of Adjournal;
 - (b) for the purposes of any appeal or review constitutes part of the sentence of the person in respect of whom the order is made; and
 - (c) shall have no effect during any period in which the person is subject to a licence under Part I of the said Act of 1993.
- (5) Before making a supervised release order as respects a person the court shall explain to him, in as straightforward a way as is practicable, the effect of the order and the possible consequences for him of any breach of it.

- (6) The clerk of the court by which a supervised release order is made in respect of a person shall—
- (a) forthwith send a copy of the order to the person and to the Secretary of State; and
 - (b) within seven days after the date on which the order is made, send to the Secretary of State such documents and information relating to the case and to the person as are likely to be of assistance to a supervising officer.
- (7) In this section—
- “relevant officer” has the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;
- “relevant period” means such period as may be specified in the supervised release order, being a period—
- (a) not exceeding twelve months after the date of the person’s release; and
 - (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed; and
- “supervising officer” means, where an authority has or justices have been designated as is mentioned in subsection (3)(a) above for the purposes of the order, any relevant officer or, as the case may be, probation officer who is for the time being supervising for those purposes the person released.
- (8) This section applies to a person sentenced under section 207 of this Act as it applies to a person sentenced to a period of imprisonment.

210 Consideration of time spent in custody

- (1) A court, in passing a sentence of imprisonment or detention on a person for an offence, shall—
- (a) in determining the period of imprisonment or detention, have regard to any period of time spent in custody by the person on remand awaiting trial or sentence, or spent in custody awaiting extradition to the United Kingdom;
 - (b) specify the date of commencement of the sentence; and
 - (c) if the person—
 - (i) has spent a period of time in custody on remand awaiting trial or sentence; or
 - (ii) is an extradited prisoner for the purposes of this section, and the date specified under paragraph (b) above is not earlier than the date on which sentence was passed, state its reasons for not specifying an earlier date.
- (2) A prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence of imprisonment was imposed—
 - (i) after having been extradited to the United Kingdom; and
 - (ii) without having first been restored to the state from which he was extradited or having had an opportunity of leaving the United Kingdom; and
 - (b) he was for any period in custody while awaiting such extradition.
- (3) In this section “extradited to the United Kingdom” means returned to the United Kingdom—

- (a) in pursuance of extradition arrangements (as defined in section 3 of the Extradition Act 1989);
- (b) under any law which corresponds to that Act and is a law of a designated Commonwealth country (as defined in section 5(1) of that Act);
- (c) under that Act as extended to a colony or under any corresponding law of a colony;
- (d) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force; or
- (e) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965.

Fines

211 Fines

- (1) Where an accused who is convicted on indictment of any offence (whether triable only on indictment or triable either on indictment or summarily other than by virtue of section 292(6) of this Act) would apart from this subsection be liable to a fine of or not exceeding a specified amount, he shall by virtue of this subsection be liable to a fine of any amount.
- (2) Where any Act confers a power by subordinate instrument to make a person liable on conviction on indictment of any offence mentioned in subsection (1) above to a fine or a maximum fine of a specified amount, or which shall not exceed a specified amount, the fine which may be imposed in the exercise of that power shall by virtue of this subsection be a fine of an unlimited amount.
- (3) Any sentence or decree for any fine or expenses pronounced by a sheriff court or district court may be enforced against the person or effects of any party against whom the sentence or decree was awarded—
 - (a) in the district where the sentence or decree was pronounced; or
 - (b) in any other such district.
- (4) A fine imposed by the High Court shall be remitted for enforcement to, and shall be enforceable as if it had been imposed by—
 - (a) where the person upon whom the fine was imposed resides in Scotland, the sheriff for the district where that person resides; and
 - (b) where that person resides outwith Scotland, the sheriff before whom he was brought for examination in relation to the offence for which the fine was imposed.
- (5) Any fine imposed in the High Court on the accused, and on a juror for non-attendance, and any forfeiture for non-appearance of a party, witness or juror in the High Court shall be payable to and recoverable by the Treasury, except where the High Court orders that the whole or any part of the fine shall be otherwise disposed of.
- (6) All fines and expenses imposed in summary proceedings under this Act shall be paid to the clerk of court to be accounted for by him to the person entitled to such fines and expenses, and it shall not be necessary to specify in any sentence the person entitled to payment of such fines or expenses unless it is necessary to provide for the division of the penalty.

- (7) A court in determining the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as known to the court.

212 Fines in summary proceedings

- (1) Where a court of summary jurisdiction imposes a fine on an offender, the court may order him to be searched, and any money found on him on apprehension or when so searched or when taken to prison or to a young offenders institution in default of payment of the fine, may, unless the court otherwise directs and subject to subsection (2) below, be applied towards payment of the fine, and the surplus if any shall be returned to him.
- (2) Money shall not be applied as mentioned in subsection (1) above if the court is satisfied that it does not belong to the person on whom it was found or that the loss of the money will be more injurious to his family than his imprisonment or detention.
- (3) When a court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, considers that any money found on the offender on apprehension, or after he has been searched by order of the court, should not be applied towards payment of such sum, the court, shall make a direction in writing to that effect which shall be written on the extract of the sentence which imposes the fine before it is issued by the clerk of the court.
- (4) An accused may make an application to such a court either orally or in writing, through the governor of the prison in whose custody he may be at that time, that any sum of money which has been found on his person should not be applied in payment of the fine adjudged to be paid by him.
- (5) A person who alleges that any money found on the person of an offender is not the property of the offender, but belongs to that person, may apply to such court either orally or in writing for a direction that the money should not be applied in payment of the fine adjudged to be paid, and the court after enquiry may so direct.
- (6) A court of summary jurisdiction, which has adjudged that a sum of money shall be paid by an offender, may order the attendance in court of the offender, if he is in prison, for the purpose of ascertaining the ownership of money which has been found on his person.
- (7) A notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form, addressed to the governor of the prison in whose custody an offender may be at the time, signed by the judge of a court of summary jurisdiction shall be a sufficient warrant to the governor of such prison for conveying the offender to the court.

213 Remission of fines

- (1) A fine may at any time be remitted in whole or in part by—
- (a) in a case where a transfer of fine order under section 222 of this Act is effective and the court by which payment is enforceable is, in terms of the order, a court of summary jurisdiction in Scotland, that court; or
 - (b) in any other case, the court which imposed the fine or, where that court was the High Court, by which payment was first enforceable.

- (2) Where the court remits the whole or part of a fine after imprisonment has been imposed under section 214(2) or (4) of this Act, it shall also remit the whole period of imprisonment or, as the case may be, reduce the period by an amount which bears the same proportion to the whole period as the amount remitted bears to the whole fine.
- (3) The power conferred by subsection (1) above shall be exercisable without requiring the attendance of the accused.

214 Fines: time for payment and payment by instalments

- (1) Where a court has imposed a fine on an offender or ordered him to find caution the court shall, subject to subsection (2) below, allow him at least seven days to pay the fine or the first instalment thereof or, as the case may be, to find caution; and any reference in this section and section 216 of this Act to a failure to pay a fine or other like expression shall include a reference to a failure to find caution.
- (2) If on the occasion of the imposition of a fine—
 - (a) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or
 - (b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or
 - (c) he fails to satisfy the court that he has a fixed abode; or
 - (d) the court is satisfied for any other special reason that no time should be allowed for payment,the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.
- (3) In all cases where time is not allowed by a court for payment of a fine, the reasons of the court for not so allowing time shall be stated in the extract of the finding and sentence as well as in the finding and sentence itself.
- (4) Where time is allowed for payment of a fine or payment by instalments is ordered, the court shall not, on the occasion of the imposition of a fine, impose imprisonment in the event of a future default in paying the fine or an instalment thereof unless the offender is before it and the court determines that, having regard to the gravity of the offence or to the character of the offender, or to other special reason, it is expedient that he should be imprisoned without further inquiry in default of payment; and where a court so determines, it shall state the special reason for its decision.
- (5) Where a court has imposed imprisonment in accordance with subsection (4) above, then, if at any time the offender asks the court to commit him to prison, the court may do so notwithstanding subsection (1) of this section.
- (6) Nothing in the foregoing provisions of this section shall affect any power of the court to order a fine to be recovered by civil diligence.
- (7) Where time has been allowed for payment of a fine imposed by the court, it may, on an application by or on behalf of the offender, and after giving the prosecutor an opportunity of being heard, allow further time for payment.
- (8) Without prejudice to subsection (2) above, where a court has imposed a fine on an offender, the court may, of its own accord or on the application of the offender, order payment of that fine by instalments of such amounts and at such time as it may think fit.

- (9) Where the court has ordered payment of a fine by instalments it may—
- (a) allow further time for payment of any instalment thereof;
 - (b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed,
- and the powers conferred by this subsection shall be exercisable without requiring the attendance of the accused.

215 Application for further time to pay fine

- (1) An application by an offender for further time in which to pay a fine imposed on him by a court, or of instalments thereof, shall be made, subject to subsection (2) below, to that court.
- (2) Where a transfer of fine order has been made under section 222 of this Act, section 90 of the Magistrates' Courts Act 1980 or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981, an application under subsection (1) above shall be made to the court specified in the transfer order, or to the court specified in the last transfer order where there is more than one transfer.
- (3) A court to which an application is made under this section shall allow further time for payment of the fine or of instalments thereof, unless it is satisfied that the failure of the offender to make payment has been wilful or that the offender has no reasonable prospect of being able to pay if further time is allowed.
- (4) An application made under this section may be made orally or in writing.

216 Fines: restriction on imprisonment for default

- (1) Where a court has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, subject to subsection (2) below, it shall not impose imprisonment on an offender for failing to make payment of the fine or, as the case may be, to find caution, unless on an occasion subsequent to that sentence the court has enquired into in his presence the reason why the fine has not been paid or, as the case may be, caution has not been found.
- (2) Subsection (1) above shall not apply where the offender is in prison.
- (3) A court may, for the purpose of enabling enquiry to be made under this section—
 - (a) issue a citation requiring the offender to appear before the court at a time and place appointed in the citation; or
 - (b) issue a warrant of apprehension.
- (4) On the failure of the offender to appear before the court in response to a citation under this section, the court may issue a warrant of apprehension.
- (5) The citation of an offender to appear before a court in terms of subsection (3)(a) above shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act, and—
 - (a) the citation shall be signed by the clerk of the court before which the offender is required to appear, instead of by the prosecutor; and
 - (b) the forms relating to the citation of an accused shall not apply to such citation.

- (6) The following matters shall be, or as nearly as may be, in such form as is prescribed by Act of Adjournal—
- (a) the citation of an offender under this section;
 - (b) if the citation of the offender is effected by an officer of law, the written execution, if any, of that officer of law;
 - (c) a warrant of apprehension issued by a court under subsection (4) above; and
 - (d) the minute of procedure in relation to an enquiry into the means of an offender under this section.
- (7) Where a child would, if he were an adult, be liable to be imprisoned in default of payment of any fine the court may, if it considers that none of the other methods by which the case may legally be dealt with is suitable, order that the child be detained for such period, not exceeding one month, as may be specified in the order in a place chosen by the local authority in whose area the court is situated.

217 Fines: supervision pending payment

- (1) Where an offender has been allowed time for payment of a fine, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of such person, in this section referred to as the “supervising officer”, as the court may from time to time appoint for the purpose of assisting and advising the offender in regard to payment of the fine.
- (2) An order made in pursuance of subsection (1) above shall remain in force so long as the offender to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under subsection (3) below.
- (3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 222 of this Act in respect of the fine or may be discharged by the court that made it without prejudice, in either case, to the making of a new order.
- (4) Where an offender under 21 years of age has been allowed time for payment of a fine, the court shall not order the form of detention appropriate to him in default of payment of the fine unless—
- (a) he has been placed under supervision in respect of the fine; or
 - (b) the court is satisfied that it is impracticable to place him under supervision.
- (5) Where a court, on being satisfied as mentioned in subsection (4)(b) above, orders the detention of a person under 21 years of age without an order under this section having been made, the court shall state the grounds on which it is so satisfied.
- (6) Where an order under this section is in force in respect of an offender, the court shall not impose imprisonment in default of the payment of the fine unless before doing so it has—
- (a) taken such steps as may be reasonably practicable to obtain from the supervising officer a report, which may be oral, on the offender’s conduct and means, and has considered any such report; and
 - (b) in a case where an enquiry is required by section 216 of this Act, considered such enquiry.
- (7) When a court appoints a different supervising officer under subsection (1) above, a notice shall be sent by the clerk of the court to the offender in such form, as nearly as may be, as is prescribed by Act of Adjournal.

- (8) The supervising officer shall communicate with the offender with a view to assisting and advising him in regard to payment of the fine, and unless the fine or any instalment thereof is paid to the clerk of the court within the time allowed by the court for payment, the supervising officer shall report to the court without delay after the expiry of such time, as to the conduct and means of the offender.

218 Fines: supplementary provisions as to payment

- (1) Where under the provisions of section 214 or 217 of this Act a court is required to state a special reason for its decision or the grounds on which it is satisfied that it is undesirable or impracticable to place an offender under supervision, the reason or, as the case may be, the grounds shall be entered in the record of the proceedings along with the finding and sentence.
- (2) Any reference in the said sections 214 and 217 to imprisonment shall be construed, in the case of an offender on whom by reason of his age imprisonment may not lawfully be imposed, as a reference to the lawful form of detention in default of payment of a fine appropriate to that person, and any reference to prison shall be construed accordingly.
- (3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 211(6) of this Act, pay such fine in full to a constable; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.

219 Fines: periods of imprisonment for non-payment

- (1) Subject to sections 214 to 218 of this Act—
- a court may, when imposing a fine, impose a period of imprisonment in default of payment; or
 - where no order has been made under paragraph (a) above and a person fails to pay a fine, or any part or instalment of a fine, by the time ordered by the court (or, where section 214(2) of this Act applies, immediately) the court may, subject to section 235(1) of this Act, impose a period of imprisonment for such failure either with immediate effect or to take effect in the event of the person failing to pay the fine or any part or instalment of it by such further time as the court may order,

whether or not the fine is imposed under an enactment which makes provision for its enforcement or recovery.

- (2) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

<i>Amount of Fine or Caution</i>	<i>Maximum Period of Imprisonment</i>
Not exceeding £200	7 days
Exceeding £200 but not exceeding £500	14 days
Exceeding £500 but not exceeding £1,000	28 days

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

<i>Amount of Fine or Caution</i>	<i>Maximum Period of Imprisonment</i>
Exceeding £1,000 but not exceeding £2,500	45 days
Exceeding £2,500 but not exceeding £5,000	3 months
Exceeding £5,000 but not exceeding £10,000	6 months
Exceeding £10,000 but not exceeding £20,000	12 months
Exceeding £20,000 but not exceeding £50,000	18 months
Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1 Million	5 years
Exceeding £1 Million	10 years

- (3) Where an offender is fined on the same day before the same court for offences charged in the same indictment or complaint or in separate indictments or complaints, the amount of the fine shall, for the purposes of this section, be taken to be the total of the fines imposed.
- (4) Where a court has imposed a period of imprisonment in default of payment of a fine, and—
- (a) an instalment of the fine is not paid at the time ordered; or
 - (b) part only of the fine has been paid within the time allowed for payment,
- the offender shall be liable to imprisonment for a period which bears to the period so imposed the same proportion, as nearly as may be, as the amount outstanding at the time when warrant is issued for imprisonment of the offender in default bears to the original fine.
- (5) Where no period of imprisonment in default of payment of a fine has been imposed and—
- (a) an instalment of the fine is not paid at the time ordered; or
 - (b) part only of the fine has been paid within the time allowed for payment,
- the offender shall be liable to imprisonment for a maximum period which bears, as nearly as may be, the same proportion to the maximum period of imprisonment which could have been imposed by virtue of the Table in subsection (2) above in default of payment of the original fine as the amount outstanding at the time when he appears before the court bears to the original fine.
- (6) If in any sentence or extract sentence the period of imprisonment inserted in default of payment of a fine or on failure to find caution is in excess of that competent under this Part of this Act, such period of imprisonment shall be reduced to the maximum period under this Part of this Act applicable to such default or failure, and the judge

who pronounced the sentence shall have power to order the sentence or extract to be corrected accordingly.

- (7) The provisions of this section shall be without prejudice to the operation of section 220 of this Act.
- (8) Where in any case—
- (a) the sheriff considers that the imposition of imprisonment for the number of years for the time being specified in section 3(3) of this Act would be inadequate; and
 - (b) the maximum period of imprisonment which may be imposed under subsection (1) above (or under that subsection as read with either or both of sections 252(2) of this Act and section 14(2) of the Proceeds of Crime (Scotland) Act 1995) exceeds that number of years,
- he shall remit the case to the High Court for sentence.

220 Fines: part payment by prisoners

- (1) Where a person committed to prison or otherwise detained for failure to pay a fine imposed by a court pays to the governor of the prison, under conditions prescribed by rules made under the Prisons (Scotland) Act 1989, any sum in part satisfaction of the fine, the term of imprisonment shall be reduced (or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment.
- (2) The day on which any sum is paid as mentioned in subsection (1) above shall not be regarded as a day served by the prisoner as part of the said term of imprisonment.
- (3) All sums paid under this section shall be handed over on receipt by the governor of the prison to the clerk of the court in which the conviction was obtained, and thereafter paid and applied *pro tanto* in the same manner and for the same purposes as sums adjudged to be paid by the conviction and sentence of the court, and paid and recovered in terms thereof, are lawfully paid and applied.
- (4) In this section references to a prison and to the governor thereof shall include respectively references to any other place in which a person may be lawfully detained in default of payment of a fine, and to an officer in charge thereof.

221 Fines: recovery by civil diligence

- (1) Where any fine falls to be recovered by civil diligence in pursuance of this Act or in any case in which a court may think it expedient to order a fine to be recovered by civil diligence, there shall be added to the finding of the court imposing the fine a warrant for civil diligence in a form prescribed by Act of Adjournal which shall have the effect of authorising—
- (a) the charging of the person who has been fined to pay the fine within the period specified in the charge and, in the event of failure to make such payment within that period, the execution of an earnings arrestment and the poinding of articles belonging to him and, if necessary for the purpose of executing the poinding, the opening of shut and lockfast places;
 - (b) an arrestment other than an arrestment of earnings in the hands of his employer,

and such diligence, whatever the amount of the fine imposed, may be executed in the same manner as if the proceedings were on an extract decree of the sheriff in a summary cause.

- (2) Subject to subsection (3) below, proceedings by civil diligence under this section may be taken at any time after the imposition of the fine to which they relate.
- (3) No such proceedings shall be authorised after the offender has been imprisoned in consequence of his having defaulted in payment of the fine.
- (4) Where proceedings by civil diligence for the recovery of a fine or caution are taken, imprisonment for non-payment of the fine or for failure to find such caution shall remain competent and such proceedings may be authorised after the court has imposed imprisonment for, or in the event of, the non-payment or the failure but before imprisonment has followed such imposition.

222 Transfer of fine orders

- (1) Where a court has imposed a fine on a person convicted of an offence and it appears to the court that he is residing—
 - (a) within the jurisdiction of another court in Scotland; or
 - (b) in any petty sessions area in England and Wales; or
 - (c) in any petty sessions district in Northern Ireland,the court may order that payment of the fine shall be enforceable by that other court or in that petty sessions area or petty sessions district as the case may be.
- (2) An order under this section (in this section referred to as a “transfer of fine order”) shall specify the court by which or the petty sessions area or petty sessions district in which payment is to be enforceable and, where the court to be specified in a transfer of fine order is a court of summary jurisdiction, it shall, in any case where the order is made by the sheriff court, be a sheriff court.
- (3) Subject to subsections (4) and (5) below, where a transfer of fine order is made with respect to any fine under this section, any functions under any enactment relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.
- (4) Where—
 - (a) the court specified in a transfer of fine order is satisfied, after inquiry, that the offender is not residing within the jurisdiction of that court; and
 - (b) the clerk of that court, within 14 days of receiving the notice required by section 223(1) of this Act, sends to the clerk of the court which made the order notice to that effect,the order shall cease to have effect.
- (5) Where a transfer of fine order ceases to have effect by virtue of subsection (4) above, the functions referred to in subsection (3) above shall again be exercisable by the court which made the order or, as the case may be, by the clerk of that court.
- (6) Where a transfer of fine order under this section, section 90 of the Magistrates' Courts Act 1980 or Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981 specifies a court of summary jurisdiction in Scotland, that court and the clerk of that court shall have all the like functions under this Part of this Act in respect of the fine or the sum in respect of which that order was made (including the power to make any

further order under this section) as if the fine or the sum were a fine imposed by that court and as if any order made under this section, the said Act of 1980 or the said Order of 1981 in respect of the fine or the sum before the making of the transfer of fine order had been made by that court.

- (7) The functions of the court to which subsection (6) above relates shall be deemed to include the court's power to apply to the Secretary of State under any regulations made by him under section 24(1)(a) of the Criminal Justice Act 1991 (power to deduct fines etc from income support).
- (8) Where a transfer of fine order under section 90 of the Magistrates' Courts Act 1980, Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981, or this section provides for the enforcement by a sheriff court in Scotland of a fine imposed by the Crown Court, the term of imprisonment which may be imposed under this Part of this Act shall be the term fixed in pursuance of section 31 of the Powers of Criminal Courts Act 1973 by the Crown Court or a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, notwithstanding that the term exceeds the period applicable to the case under section 219 of this Act.

223 Transfer of fines: procedure for clerk of court

- (1) Where a court makes a transfer of fine order under section 222 of this Act, the clerk of the court shall send to the clerk of the court specified in the order—
 - (a) a notice in the form prescribed by Act of Adjournal, or as nearly as may be in such form;
 - (b) a statement of the offence of which the offender was convicted; and
 - (c) a statement of the steps, if any, taken to recover the fine,and shall give him such further information, if any, as, in his opinion, is likely to assist the court specified in the order in recovering the fine.
- (2) In the case of a further transfer of fine order, the clerk of the court which made the order shall send to the clerk of the court by which the fine was imposed a copy of the notice sent to the clerk of the court specified in the order.
- (3) The clerk of court specified in a transfer of fine order shall, as soon as may be after he has received the notice mentioned in subsection (1)(a) above, send an intimation to the offender in the form prescribed by Act of Adjournal or as nearly as may be in such form.
- (4) The clerk of court specified in a transfer of fine order shall remit or otherwise account for any payment received in respect of the fine to the clerk of the court by which the fine was imposed, and if the sentence has been enforced otherwise than by payment of the fine, he shall inform the clerk of court how the sentence was enforced.

224 Discharge from imprisonment to be specified

All warrants of imprisonment in default of payment of a fine, or on failure to find caution, shall specify a period at the expiry of which the person sentenced shall be discharged, notwithstanding the fine has not been paid, or caution found.

225 Penalties: standard scale, prescribed sum and uprating

- (1) There shall be a standard scale of fines for offences triable only summarily, which shall be known as “the standard scale”.
- (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
4	£2,500
5	£5,000

- (3) Any reference in any enactment, whenever passed or made, to a specified level on the standard scale shall be construed as referring to the amount which corresponds to that level on the standard scale referred to in subsection (2) above.
- (4) If it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum or sums for the time being specified in the provisions mentioned in subsection (5) below such other sum or sums as appear to him justified by the change.
- (5) The provisions referred to in subsection (4) above are—
 - (a) subsection (2) above;
 - (b) subsection (8) below;
 - (c) section 219(2) of this Act;
 - (d) column 5 or 6 of Schedule 4 to the Misuse of Drugs Act 1971 so far as the column in question relates to the offences under provisions of that Act specified in column 1 of that Schedule in respect of which the maximum fines were increased by Part II of Schedule 8 to the Criminal Justice and Public Order Act 1994.
- (6) In subsection (4) above “the relevant date” means—
 - (a) in relation to the first order made under that subsection, the date the last order was made under section 289D(1) of the Criminal Procedure (Scotland) Act 1975; and
 - (b) in relation to each subsequent order, the date of the previous order.
- (7) An order under subsection (4) above—
 - (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may be revoked by a subsequent order thereunder; and
 - (b) without prejudice to Schedule 14 to the Criminal Law Act 1977, shall not affect the punishment for an offence committed before that order comes into force.
- (8) In this Act “the prescribed sum” means £5,000 or such sum as is for the time being substituted in this definition by an order in force under subsection (4) above.

226 Penalties: exceptionally high maximum fines

- (1) The Secretary of State may by order amend an enactment specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order altering the standard scale which has been made or is proposed to be made.
- (2) Subsection (1) above applies to any sum which—
 - (a) is higher than level 5 on the standard scale; and
 - (b) is specified as the fine or the maximum fine which may be imposed on conviction of an offence which is triable only summarily.
- (3) The Secretary of State may by order amend an enactment specifying a sum to which this subsection applies so as to substitute for that sum such other sum as appears to him—
 - (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or
 - (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.
- (4) Subsection (3) above applies to any sum which—
 - (a) is higher than the statutory maximum; and
 - (b) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either on indictment or summarily.
- (5) An order under this section—
 - (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and
 - (b) shall not affect the punishment for an offence committed before that order comes into force.
- (6) In this section “enactment” includes an enactment contained in an Act or subordinate instrument passed or made after the commencement of this Act.

*Caution***227 Caution**

Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.

Probation

228 Probation orders

- (1) Subject to subsection (2) below, where an accused is convicted of an offence (other than an offence the sentence for which is fixed by law) the court if it is of the opinion that it is expedient to do so—
 - (a) having regard to the circumstances, including the nature of the offence and the character of the offender; and
 - (b) having obtained a report as to the circumstances and character of the offender, may, instead of sentencing him, make an order requiring the offender to be under supervision for a period to be specified in the order of not less than six months nor more than three years; and such an order is, in this Act, referred to as a “probation order”.
- (2) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made—
 - (a) in a case other than that mentioned in paragraph (b) below, by the local authority in whose area he resides or is to reside; or
 - (b) in a case where, by virtue of section 234(1) of this Act, subsections (3) and (4) below would not apply, by the probation committee for the area which contains the petty sessions area which would be named in the order.
- (3) A probation order shall be as nearly as may be in the form prescribed by Act of Adjournal, and shall—
 - (a) name the local authority area in which the offender resides or is to reside; and
 - (b) subject to subsection (4) below, make provision for the offender to be under the supervision of an officer of the local authority of that area.
- (4) Where the offender resides or is to reside in a local authority area in which the court which makes the order has no jurisdiction, the court shall name the appropriate court (being such a court as could have been named in any amendment of the order in accordance with Schedule 6 to this Act) in the area of residence or intended residence, and the appropriate court shall require the local authority for that area to arrange for the offender to be under the supervision of an officer of that authority.
- (5) 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 inserted under section 229 or 230 of this Act; and
 - (b) that if he fails to comply with the order or commits another offence during the probation period he will be liable to be sentenced for the original offence, and the court shall not make the order unless the offender expresses his willingness to comply with the requirements thereof.
- (6) The clerk of the court by which a probation order is made or of the appropriate court, as the case may be, shall—
 - (a) cause copies of the probation order to be given to the officer of the local authority who is to supervise the probationer and to the person in charge of any institution or place in which the probationer is required to reside under the probation order; and

- (b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

229 Probation orders: additional requirements

- (1) Subject to section 230 of this Act, a probation order may 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—
 - (a) conducive to securing the good conduct of the offender or for preventing a repetition by him of the offence or the commission of other offences; or
 - (b) where the probation order is to include such a requirement as is mentioned in subsection (4) or (6) below, conducive to securing or, as the case may be, preventing the matters mentioned in paragraph (a) above.
- (2) Without prejudice to the generality of subsection (1) above, a probation order may, subject to subsection (3) below, include requirements relating to the residence of the offender.
- (3) In relation to a probation order including a requirement such as is mentioned in subsection (2) above—
 - (a) before making the order, the court shall consider the home surroundings of the offender; and
 - (b) if the order requires the offender to reside in any institution or place, the name of the institution or place and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond 12 months from the date of the requirement or beyond the date when the order expires.
- (4) Without prejudice to the generality of subsection (1) above, where an offender has been convicted of an offence punishable by imprisonment and a court which is considering making a probation order—
 - (a) is satisfied that the offender is of or over 16 years of age and that the conditions specified in paragraphs (a) and (c) of section 238(2) of this Act for the making of a community service order have been met;
 - (b) has been notified by the Secretary of State that arrangements exist for persons who reside in the locality where the offender resides, or will be residing when the probation order comes into force, to perform unpaid work as a requirement of a probation order; and
 - (c) is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform unpaid work under the probation order,

it may include in the probation order, in addition to any other requirement, a requirement that the offender shall perform unpaid work for such number of hours (being in total not less than 40 nor more than 240) as may be specified in the probation order.
- (5) Sections 238 (except subsections (1), (2)(b) and (d) and (4)(b)), 239(1) to (3), and 240 of this Act shall apply, subject to any necessary modifications, to a probation order including a requirement such as is mentioned in subsection (4) above as they

apply to a community service order, and in the application of subsection (5) of the said section 238 for the words “subsection (1) above” there shall be substituted the words “subsection (4) of section 229 of this Act”.

- (6) Without prejudice to the generality of subsection (1) above, where a court is considering making a probation order it may include in the probation order, in addition to any other requirement, a requirement that the offender shall pay compensation either in a lump sum or by instalments for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence; and the following provisions of this Act shall apply to such a requirement as if any reference in them to a compensation order included a reference to a requirement to pay compensation under this subsection—
- section 249(3) to (5), (8) to (10);
 - section 250(2);
 - section 251(1) and (2)(b);
 - section 253.
- (7) Where the court imposes a requirement to pay compensation under subsection (6) above—
- (a) it shall be a condition of a probation order containing such a requirement that payment of the compensation shall be completed not more than 18 months after the making of the order or not later than two months before the end of the period of probation, whichever first occurs;
 - (b) the court, on the application of the offender or the officer of the local authority responsible for supervising the offender, may vary the terms of the requirement, including the amount of any instalments, in consequence of any change which may have occurred in the circumstances of the offender; and
 - (c) in any proceedings for breach of a probation order where the breach consists only in the failure to comply with a requirement to pay compensation, a document purporting to be a certificate signed by the clerk of the court for the time being having jurisdiction in relation to the order that the compensation or, where payment by instalments has been allowed, any instalment has not been paid shall be sufficient evidence of such breach.

230 Probation orders: requirement of treatment for mental condition

- (1) Where the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984, that the mental condition of an offender is such as requires and may be susceptible to treatment but is not such as to warrant his detention in pursuance of a hospital order under Part V of that Act, or under this Act, the court may, if it makes a probation order, include a requirement that the offender shall submit, for such period, not extending beyond 12 months from the date of the requirement, as may be specified in the order, to treatment by or under the direction of a registered medical practitioner or chartered psychologist with a view to the improvement of the offender’s mental condition.
- (2) The treatment required by virtue of subsection (1) above shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
- (a) treatment as a resident patient in a hospital within the meaning of the said Act of 1984, not being a State hospital within the meaning of the Act;

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

- (b) treatment as a non-resident patient at such institution or place as may be specified in the order; or
 - (c) treatment by or under the direction of such registered medical practitioner or chartered psychologist as may be specified in the order,but otherwise the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing a requirement under subsection (1) above unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient, for his reception.
- (4) Where the registered medical practitioner or chartered psychologist by whom or under whose direction a probationer is receiving any of the kinds of treatment to which he is required to submit in pursuance of a probation order is of the opinion—
 - (a) that the probationer requires, or that it would be more appropriate for him to receive, a different kind of treatment (whether in whole or in part) from that which he has been receiving, being treatment of a kind which subject to subsection (5) below could have been specified in the probation order; or
 - (b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different institution or place from that where he has been receiving treatment in pursuance of the probation order,he may, subject to subsection (6) below, make arrangements for the probationer to be treated accordingly.
- (5) Arrangements made under subsection (4) above may provide for the probationer to receive his treatment (in whole or in part) as a resident patient in an institution or place notwithstanding that it is not one which could have been specified for that purpose in the probation order.
- (6) Arrangements shall not be made under subsection (4) above unless—
 - (a) the probationer and any officer responsible for his supervision agree;
 - (b) the treatment will be given by or under the direction of a registered medical practitioner or chartered psychologist who has agreed to accept the probationer as his patient; and
 - (c) where such treatment entails the probationer's being a resident patient, he will be received as such.
- (7) Where any such arrangements as are mentioned in subsection (4) above are made for the treatment of a probationer—
 - (a) any officer responsible for the probationer's supervision shall notify the appropriate court of the arrangements; and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.
- (8) Subsections (3) to (5) of section 61 of this Act shall apply for the purposes of this section as if for the reference in subsection (3) to section 58(1)(a) of this Act there were substituted a reference to subsection (1) above.
- (9) Except as provided by this section, a court shall not make a probation order requiring a probationer to submit to treatment for his mental condition.

231 Probation orders: amendment and discharge

- (1) Schedule 6 to this Act shall have effect in relation to the discharge and amendment of probation orders.
- (2) Where, under section 232 of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect.

232 Probation orders: failure to comply with requirement

- (1) If, on information from—
 - (a) the officer supervising the probationer;
 - (b) the chief social work officer of the local authority whose officer is supervising the probationer; or
 - (c) an officer appointed by the chief social work officer to act on his behalf for the purposes of this subsection,it appears to the court which made the probation order or to the appropriate court that the probationer has failed to comply with any requirement of the order, that court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance, issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation.
- (2) If it is proved to the satisfaction of the court before which a probationer appears or is brought in pursuance of subsection (1) above that he has failed to comply with a requirement of the probation order, the court may—
 - (a) except in the case of a failure to comply with a requirement to pay compensation and without prejudice to the continuance in force of the probation order, impose a fine not exceeding level 3 on the standard scale; or
 - (b) sentence the offender for the offence for which the order was made; or
 - (c) vary any of the requirements of the probation order, so however that any extension of the probation period shall terminate not later than three years from the date of the probation order; or
 - (d) without prejudice to the continuance in force of the probation order, in a case where the conditions required by sections 238 to 244 of this Act are satisfied, make a community service order, and those sections shall apply to such an order as if the failure to comply with the requirement of the probation order were the offence in respect of which the order had been made.
- (3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.
- (4) A fine imposed under this section in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.
- (5) A probationer who is required by a probation order to submit to treatment for his mental condition shall not be deemed for the purpose of this section to have failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (6) Without prejudice to section 233 of this Act, a probationer who is convicted of an offence committed during the probation period shall not on that account be liable to

be dealt with under this section for failing to comply with any requirement of the probation order.

- (7) The citation of a probationer to appear before a court of summary jurisdiction in terms of subsection (1) above or section 233(1) of this Act shall be effected in like manner, *mutatis mutandis*, as the citation of an accused to a sitting or diet of the court under section 141 of this Act.

233 Probation orders: commission of further offence

- (1) If it appears to—

- (a) the court which made a probation order; or, as the case may be,
- (b) the appropriate court,

in this section referred to as “the court”, that the probationer to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the probation period and has been dealt with for that offence, the court may issue a warrant for the arrest of the probationer, or may, if it thinks fit, instead of issuing such a warrant in the first instance issue a citation requiring the probationer to appear before the court at such time as may be specified in the citation, and on his appearance or on his being brought before the court, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act.

- (2) Where a probationer is convicted by the court of an offence committed during the probation period, the court may, if it thinks fit, deal with him under section 232(2)(b) of this Act for the offence for which the order was made as well as for the offence committed during the period of probation.

- (3) Where—

- (a) a court has, under section 229(4) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

- (4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and
- (b) in any place where the unpaid work was being or had previously been performed.

- (5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

234 Probation orders: persons residing in England and Wales

- (1) Where the court which made a probation order to which this subsection applies is satisfied that the offender has attained the age of 16 years and resides or will reside in

England and Wales, subsections (3) and (4) of section 228 of this Act shall not apply to the order, but—

- (a) the order shall contain a requirement that he be under the supervision of a probation officer appointed for or assigned to the petty sessions area in which the offender resides or will reside; and
- (b) that area shall be named in the order,

and where the order includes a requirement that the probationer performs unpaid work for a number of hours, the number specified shall not exceed one hundred.

(2) Subsection (1) above applies to a probation order which is made under the said section 228 but does not include a requirement which would, if made, correspond to a requirement mentioned in paragraph 2 or 3 of Schedule 1A to the 1973 Act, but would, if included in a probation order made under that Act, fail to accord with a restriction as to days of presentation, participation or attendance mentioned in paragraph 2(4)(a) or (6)(a), or as the case may be 3(3)(a), of that Schedule.

(3) Where a probation order has been made under the said section 228 and the court in Scotland which made the order or the appropriate court is satisfied—

- (a) that the probationer has attained the age of 16 years;
- (b) that he proposes to reside, or is residing, in England and Wales; and
- (c) that suitable arrangements for his supervision can be made by the probation committee for the area which contains the petty sessions area in which he resides or will reside,

the power of that court to amend the order under Schedule 6 to this Act shall include power to insert the provisions required by subsection (1) above or to vary any requirement for performance of unpaid work so that such hours as remain to be worked do not exceed one hundred, and the court may so amend the order without summoning the probationer and without his consent.

(4) A probation order made or amended by virtue of this section may, notwithstanding section 230(9) of this Act, include a requirement that the probationer shall submit to treatment for his mental condition, and—

- (a) subsections (1), (3) and (8) of the said section 230 and paragraph 5(3) of Schedule 1A to the 1973 Act (all of which regulate the making of probation orders which include any such requirement) shall apply to the making of an order which includes any such requirement by virtue of this subsection as they apply to the making of an order which includes any such requirement by virtue of the said section 230 and paragraph 5 of the said Schedule 1A respectively; and
- (b) sub-paragraphs (5) to (7) of the said paragraph 5 (functions of supervising officer and registered medical practitioner where such a requirement has been imposed) shall apply in relation to a probationer who is undergoing treatment in England and Wales in pursuance of a requirement imposed by virtue of this subsection as they apply in relation to a probationer undergoing such treatment in pursuance of a requirement imposed by virtue of that section.

(5) Sections 231(1) and 232(1) of this Act shall not apply to any order made or amended under this section; but subject to subsection (6) below, Schedule 2 to the 1991 Act shall apply to the order—

- (a) except in the case mentioned in paragraph (b) below, as if that order were a probation order made under section 2 of the 1973 Act; and

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- (b) in the case of an order which contains a requirement such as is mentioned in section 229(4) of this Act, as if it were a combination order made under section 11 of the 1991 Act.
- (6) Part III of Schedule 2 to the 1991 Act shall not apply as mentioned in subsection (5) above; and sub-paragraphs (3) and (4) of paragraph 3 of that Schedule shall so apply as if for the first reference in the said sub-paragraph (3) to the Crown Court there were substituted a reference to a court in Scotland and for other references in those sub-paragraphs to the Crown Court there were substituted references to the court in Scotland.
- (7) If it appears on information to a justice acting for the petty sessions area named in a probation order made or amended under this section that the person to whom the order relates has been convicted by a court in any part of Great Britain of an offence committed during the period specified in the order he may issue—
- (a) a summons requiring that person to appear, at the place and time specified in the summons, before the court in Scotland which made the probation order; or
- (b) if the information is in writing and on oath, a warrant for his arrest, directing that person to be brought before the last-mentioned court.
- (8) If a warrant for the arrest of a probationer issued under section 233 of this Act by a court is executed in England and Wales and the probationer cannot forthwith be brought before that court, the warrant shall have effect as if it directed him to be brought before a magistrates' court for the place where he is arrested; and the magistrates' court shall commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the court in Scotland.
- (9) The court by which a probation order is made or amended in accordance with the provisions of this section shall send three copies of the order to the clerk to the justices for the petty sessions area named in the order, together with such documents and information relating to the case as it considers likely to be of assistance to the court acting for that petty sessions area.
- (10) Where a probation order which is amended under subsection (3) above is an order to which the provisions of this Act apply by virtue of section 10 of the 1973 Act (which relates to probation orders under that Act relating to persons residing in Scotland) then, notwithstanding anything in that section or this section, the order shall, as from the date of the amendment, have effect in all respects as if it were an order made under section 2 of that Act in the case of a person residing in England and Wales.
- (11) In this section—
- “the 1973 Act” means the Powers of Criminal Courts Act 1973; and
- “the 1991 Act” means the Criminal Justice Act 1991.

Supervised attendance

235 Supervised attendance orders

- (1) A court may make a supervised attendance order in the circumstances specified in subsection (3) below and shall, subject to paragraph 1 of Schedule 7 to this Act, make such an order where subsection (4) below applies.
- (2) A supervised attendance order is an order made by a court in respect of an offender requiring him—

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- (a) to attend a place of supervision for such period, being a period of not less than 10 hours and not more than—
 - (i) where the amount of the fine, part or instalment which the offender has failed to pay does not exceed level 1 on the standard scale, 50 hours; and
 - (ii) in any other case, 100 hours, as is specified in the order; and
 - (b) during that period, to carry out such instructions as may be given to him by the supervising officer.
- (3) The circumstances referred to in subsection (1) above are where—
- (a) the offender is of or over 18 years of age; and
 - (b) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would also have imposed on him a period of imprisonment under subsection (1) of section 219 of this Act; and
 - (c) the court considers a supervised attendance order more appropriate than the serving of or, as the case may be, imposition of such a period of imprisonment.
- (4) This subsection applies where—
- (a) the court is a court prescribed for the purposes of this subsection by order made by the Secretary of State;
 - (b) the offender is of or over 18 years of age and is not serving a sentence of imprisonment;
 - (c) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would have imposed on him a period of imprisonment under section 219(1)(b) of this Act; and
 - (d) the fine, or as the case may be, the part or instalment, is of an amount not exceeding level 2 on the standard scale.
- (5) An order under subsection (4)(a) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The coming into force of a supervised attendance order shall have the effect of discharging the fine referred to in subsection (3)(b) or (4)(c) above or, as the case may be, section 236(3)(a) or 237(1) of this Act.
- (7) Schedule 7 to this Act has effect for the purpose of making further and qualifying provision as to supervised attendance orders.
- (8) In this section—
- “imprisonment” includes detention;
 - “place of supervision” means such place as may be determined for the purposes of a supervised attendance order by the supervising officer; and
 - “supervising officer”, in relation to a supervised attendance order, means a person appointed or assigned under Schedule 7 to this Act by the local authority whose area includes the locality in which the offender resides or will be residing when the order comes into force.

236 Supervised attendance orders in place of fines for 16 and 17 year olds

- (1) This section applies where a person of 16 or 17 years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.
- (2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.
- (3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—
 - (a) impose the fine; and
 - (b) subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in default of payment of the fine within 28 days.
- (4) A supervised attendance order made under subsection (3)(b) above—
 - (a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;
 - (b) shall, for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.
- (5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall, subject to paragraph 1 of Schedule 7 to this Act, make a supervised attendance order in respect of that person.
- (7) Sections 211(3), 213, 214(1) to (7), 215, 216(1) to (6), 217 to 219, 222 and 223 of this Act shall not apply in respect of a person to whom this section applies.
- (8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.
- (9) In this section “supervised attendance order” means an order made in accordance with section 235(2), (7) and (8) of this Act.

237 Supervised attendance orders where court allows further time to pay fine

- (1) Where a court, on an application to it under section 215(1) of this Act, allows a person further time for payment of a fine or instalments thereof it may, in addition, subject to paragraph 1 of Schedule 7 to this Act, impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.
- (2) A supervised attendance order made under subsection (1) above shall—
 - (a) if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and
 - (b) for the purposes of the said Schedule 7, be deemed to be made on the date when it comes into force.

- (3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.
- (4) In this section “supervised attendance order” means an order made in accordance with section 235(2), (7) and (8) of this Act.

Community service by offenders

238 Community service orders

- (1) Subject to the provisions of this Act, where a person of or over 16 years of age is convicted of an offence punishable by imprisonment, other than an offence the sentence for which is fixed by law, the court may, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention, make an order (in this Act referred to as “a community service order”) requiring him to perform unpaid work for such number of hours (being in total not less than 40 nor more than 240) as may be specified in the order.
- (2) A court shall not make a community service order in respect of any offender unless—
 - (a) the offender consents;
 - (b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in which the offender resides, or will be residing when the order comes into force, to perform work under such an order;
 - (c) the court is satisfied, after considering a report by an officer of a local authority about the offender and his circumstances, and, if the court thinks it necessary, hearing that officer, that the offender is a suitable person to perform work under such an order; and
 - (d) the court is satisfied that provision can be made under the arrangements mentioned in paragraph (b) above for the offender to perform work under such an order.
- (3) A copy of the report mentioned in subsection (2)(c) above shall be supplied to the offender or his solicitor.
- (4) Before making a community service order the court shall explain to the offender in ordinary language—
 - (a) the purpose and effect of the order and in particular the obligations on the offender as specified in subsections (1) to (3) of section 239 of this Act;
 - (b) the consequences which may follow under subsections (4) to (6) of that section if he fails to comply with any of those requirements; and
 - (c) that the court has under section 240 of this Act the power to review the order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides.
- (5) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the maximum or minimum number of hours specified in that subsection as originally enacted or as subsequently amended under this subsection, such number of hours as may be specified in the order; and an order under this

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subsection may specify a different maximum or minimum number of hours for different classes of case.

- (6) An order under subsection (5) above shall be made by statutory instrument, but no such order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament; and any such order may be varied or revoked by a subsequent order under that subsection.
- (7) Nothing in subsection (1) above shall be construed as preventing a court which makes a community service in respect of any offence from—
- (a) imposing any disqualification on the offender;
 - (b) making an order for forfeiture in respect of the offence;
 - (c) ordering the offender to find caution for good behaviour.
- (8) A community service order shall—
- (a) specify the locality in which the offender resides or will be residing when the order comes into force;
 - (b) require the local authority in whose area the locality specified under paragraph (a) above is situated to appoint or assign an officer (referred to in this section and sections 239 to 245 of this Act as “the local authority officer”) who will discharge the functions assigned to him by those sections; and
 - (c) state the number of hours of work which the offender is required to perform.
- (9) Where, whether on the same occasion or on separate occasions, an offender is made subject to more than one community service order, or to both a community service order and a probation order which includes a requirement that that offender shall perform any unpaid work, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that at no time shall the offender have an outstanding number of hours of work to perform in excess of the maximum provided for in subsection (1) above.
- (10) Upon making a community service order the court shall—
- (a) give, or send by registered post or the recorded delivery service, a copy of the order to the offender;
 - (b) send a copy of the order to the chief social work officer of the local authority in whose area the offender resides or will be residing when the order comes into force; and
 - (c) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.
- (11) Where a copy of a community service order has, under subsection (10)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.

239 Community service orders: requirements

- (1) An offender in respect of whom a community service order is in force shall—
- (a) report to the local authority officer and notify him without delay of any change of address or in the times, if any, at which he usually works; and

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- (b) perform for the number of hours specified in the order such work at such times as the local authority officer may instruct.
- (2) Subject to section 240(1) of this Act, the work required to be performed under a community service order shall be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.
- (3) The instructions given by the local authority officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.
- (4) If at any time while a community service order is in force in respect of any offender it appears to the appropriate court, on information from the local authority officer, that that offender has failed to comply with any of the requirements of subsections (1) to (3) above (including any failure satisfactorily to perform the work which he has been instructed to do), that court may issue a warrant for the arrest of that offender, or may, if it thinks fit, instead of issuing a warrant in the first instance issue a citation requiring that offender to appear before that court at such time as may be specified in the citation.
- (5) If it is proved to the satisfaction of the court before which an offender appears or is brought in pursuance of subsection (4) above that he has failed without reasonable excuse to comply with any of the requirements of the said subsections (1) to (3), that court may—
 - (a) without prejudice to the continuance in force of the order, impose on him a fine not exceeding level 3 on the standard scale;
 - (b) revoke the order and deal with that offender in any manner in which he could have been dealt with for the original offence by the court which made the order if the order had not been made; or
 - (c) subject to section 238(1) of this Act, vary the number of hours specified in the order.
- (6) The evidence of one witness shall, for the purposes of subsection (5) above, be sufficient evidence.

240 Community service orders: amendment and revocation etc

- (1) Where a community service order is in force in respect of any offender and, on the application of that offender or of the local authority officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, that court may—
 - (a) extend, in relation to the order, the period of 12 months specified in section 239(2) of this Act;
 - (b) subject to section 238(1) of this Act, vary the number of hours specified in the order;
 - (c) revoke the order; or
 - (d) revoke the order and deal with the offender for the original offence in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

- (2) If the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the locality for the time being specified under section 238(8)(a) of this Act to another locality and—
- (a) that court has been notified by the Secretary of State that arrangements exist for persons who reside in that other locality to perform work under community service orders; and
 - (b) it appears to that court that provision can be made under those arrangements for him to perform work under the order,
- that court may, and on the application of the local authority officer shall, amend the order by substituting that other locality for the locality for the time being specified in the order; and sections 238 to 245 of this Act shall apply to the order as amended.
- (3) Where the court proposes to exercise its powers under subsection (1)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring him to appear before the court and, if he fails to appear, may issue a warrant for his arrest.

241 Community service order: commission of offence while order in force

- (1) Where—
- (a) a court has made a community service order in respect of an offender; and
 - (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,
- the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.
- (2) The circumstances referred to in subsection (1) above are that the offence was committed—
- (a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and
 - (b) in any place where unpaid work under the order was being or had previously been performed.
- (3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

242 Community service orders: persons residing in England and Wales

- (1) Where a court is considering the making of a community service order and it is satisfied that the offender has attained the age of 16 years and resides, or will be residing when the order comes into force, in England or Wales, then—
- (a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—
 - (i) paragraph (b) shall be omitted;
 - (ii) in paragraph (c) for the words “such an order” there shall be substituted the words “a community service order”; and
 - (iii) for paragraph (d) there shall be substituted the following paragraph—

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- “(d) it appears to that court that provision can be made for the offender to perform work under the order made under subsection (1) above under the arrangements which exist in the petty sessions area in which he resides or will be residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973;”;
 - (b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in section 238(2)(d) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made and—
 - (a) the appropriate court is satisfied that the offender has attained the age of 16 years and proposes to reside or is residing in England or Wales; and
 - (b) it appears to that court that provision can be made for the offender to perform work under the order made under the arrangements which exist in the petty sessions area in which he proposes to reside or is residing for persons to perform work under community service orders made under section 14 of the Powers of Criminal Courts Act 1973,
it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the arrangements mentioned in paragraph (b) of this subsection.
- (3) A community service order made under section 238(1) as amended by or in accordance with this section shall—
 - (a) specify the petty sessions area in England or Wales in which the offender resides or will be residing when the order or the amendment comes into force; and
 - (b) require the probation committee for that area to appoint or assign a probation officer who will discharge in respect of the order the functions in respect of community service orders conferred on relevant officers by the Powers of Criminal Courts Act 1973.

243 Community service orders: persons residing in Northern Ireland

- (1) Where a court is considering the making of a community service order and it is satisfied that the offender resides, or will be residing when the order comes into force, in Northern Ireland, then—
 - (a) section 238 of this Act shall have effect as if subsection (2) were amended as follows—
 - (i) paragraph (b) shall be omitted;
 - (ii) for paragraph (d) there shall be substituted the following paragraph—
 - “(d) it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under such an order;”;
 - (b) the order shall specify that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in section 238(2)(d) of this Act as substituted by paragraph (a) above.
- (2) Where a community service order has been made and—

- (a) the appropriate court is satisfied that the offender proposes to reside or is residing in Northern Ireland; and
 - (b) it appears to that court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order,
- it may amend the order by specifying that the unpaid work required to be performed by the order shall be performed under the provision made by the Probation Board for Northern Ireland and referred to in paragraph (b) of this subsection.
- (3) A community service order made under section 238(1) of this Act as amended by or in accordance with this section shall—
- (a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or the amendment comes into force; and
 - (b) require the Probation Board for Northern Ireland to select an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the relevant officer by the Treatment of Offenders (Northern Ireland) Order 1976.

244 Community service orders: general provisions relating to persons living in England and Wales or Northern Ireland

- (1) Where a community service order is made or amended in the circumstances specified in section 242 or 243 of this Act, the court which makes or amends the order shall send three copies of it as made or amended to the home court, together with such documents and information relating to the case as it considers likely to be of assistance to that court.
- (2) In this section—
- “home court” means—
- (a) if the offender resides in England or Wales, or will be residing in England or Wales at the relevant time, the magistrates' court acting for the petty sessions area in which he resides or proposes to reside; and
 - (b) if he resides in Northern Ireland, or will be residing in Northern Ireland, at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside; and
- “the relevant time” means the time when the order or the amendment to it comes into force.
- (3) A community service order made or amended in the circumstances specified in section 242 or 243 of this Act shall be treated, subject to the following provisions of this section, as if it were a community service order made in the part of the United Kingdom in which the offender resides, or will be residing at the relevant time; and the legislation relating to community service orders which has effect in that part of the United Kingdom shall apply accordingly.
- (4) Before making or amending a community service order in those circumstances the court shall explain to the offender in ordinary language—
- (a) the requirements of the legislation relating to community service orders which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time;
 - (b) the powers of the home court under that legislation, as modified by this section; and

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- (c) its own powers under this section,
and an explanation given in accordance with this section shall be sufficient without the addition of an explanation under section 238(4) of this Act.
- (5) The home court may exercise in relation to the community service order any power which it could exercise in relation to a community service order made by a court in the part of the United Kingdom in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part of the United Kingdom, except—
- (a) a power to vary the order by substituting for the number of hours' work specified in it any greater number than the court which made the order could have specified;
 - (b) a power to revoke the order; and
 - (c) a power to revoke the order and deal with the offender for the offence in respect of which it was made in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- (6) If at any time while legislation relating to community service orders which has effect in one part of the United Kingdom applies by virtue of subsection (3) above to a community service order made in another part—
- (a) it appears to the home court—
 - (i) if that court is in England or Wales, on information to a justice of the peace acting for the petty sessions area for the time being specified in the order; or
 - (ii) if it is in Northern Ireland, upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order,that the offender has failed to comply with any of the requirements of the legislation applicable to the order; or
 - (b) it appears to the home court on the application of—
 - (i) the offender; or
 - (ii) if that court is in England and Wales, the relevant officer under the Powers of Criminal Courts Act 1973; or
 - (iii) if that court is in Northern Ireland, the relevant officer under the Treatment of Offenders (Northern Ireland) Order 1976,that it would be in the interests of justice to exercise a power mentioned in subsection (5)(b) or (c) above,
- the home court may require the offender to appear before the court by which the order was made.
- (7) Where an offender is required by virtue of subsection (6) above to appear before the court which made a community service order, that court—
- (a) may issue a warrant for his arrest; and
 - (b) may exercise any power which it could exercise in respect of the community service order if the offender resided in the part of the United Kingdom where the court has jurisdiction,
- and any enactment relating to the exercise of such powers shall have effect accordingly.

245 Community service orders: rules, annual report and interpretation

- (1) The Secretary of State may make rules for regulating the performance of work under community service orders or probation orders which include a requirement that the offender shall perform unpaid work.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—
 - (a) limit the number of hours' work to be done by a person under such an order on any one day;
 - (b) make provision as to the reckoning of time worked under such orders;
 - (c) make provision for the payment of travelling and other expenses in connection with the performance of work under such orders;
 - (d) provide for records to be kept of the work done by any person under such an order.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State shall lay before Parliament each year, or incorporate in annual reports he already makes, a report of the working of community service orders.
- (5) In sections 238 to 243 of this Act, “the appropriate court” means—
 - (a) where the relevant community service order has been made by the High Court, the High Court;
 - (b) in any other case, the court having jurisdiction in the locality for the time being specified in the order under section 238(8)(a) of this Act, being a sheriff or district court according to whether the order has been made by a sheriff or a district court, but in a case where the order has been made by a district court and there is no district court in that locality, the sheriff court.

*Admonition and absolute discharge***246 Admonition and absolute discharge**

- (1) A court may, if it appears to meet the justice of the case, dismiss with an admonition any person convicted by the court of any offence.
- (2) Where a person is convicted on indictment of an offence (other than an offence the sentence for which is fixed by law), if it appears to the court, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate it may instead of sentencing him make an order discharging him absolutely.
- (3) Where a person is charged before a court of summary jurisdiction with an offence (other than an offence the sentence for which is fixed by law) and the court is satisfied that he committed the offence, the court, if it is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate may without proceeding to conviction make an order discharging him absolutely.

247 Effect of probation and absolute discharge

- (1) Subject to the following provisions of this section, a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of laying it before a court as a previous conviction in subsequent proceedings for another offence.
- (2) Without prejudice to subsection (1) above, the conviction of an offender who is placed on probation or discharged absolutely as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.
- (3) Subsections (1) and (2) above shall not affect any right to appeal.
- (4) Where a person charged with an offence has at any time previously been discharged absolutely in respect of the commission by him of an offence it shall be competent, in the proceedings for that offence, to lay before the court the order of absolute discharge in like manner as if the order were a conviction.
- (5) Where an offender is discharged absolutely by a court of summary jurisdiction, he shall have the like right of appeal against the finding that he committed the offence as if that finding were a conviction.
- (6) Where an offender, being not less than 16 years of age at the time of his conviction of an offence for which he is placed on probation as mentioned in subsection (1) above, is subsequently sentenced under this Act for that offence, the provisions of that subsection shall cease to apply to the conviction.

Disqualification

248 Disqualification where vehicle used to commit offence

- (1) Where a person is convicted of an offence (other than one triable only summarily) and the court which passes sentence is satisfied that a motor vehicle was used for the purposes of committing or facilitating the commission of that offence, the court may order him to be disqualified for such a period as the court thinks fit from holding or obtaining a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.
- (2) A court which makes an order under this section disqualifying a person from holding or obtaining a licence shall require him to produce any such licence held by him and its counterpart.
- (3) Any reference in this section to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.
- (4) In relation to licences which came into force before 1st June 1990, the reference in subsection (2) above to the counterpart of a licence shall be disregarded.

Compensation

249 Compensation order against convicted person

- (1) Subject to subsections (2) and (4) below, where a person is convicted of an offence the court, instead of or in addition to dealing with him in any other way, may make an order (in this Part of this Act referred to as “a compensation order”) requiring him to pay compensation for any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence.
- (2) It shall not be competent for a court to make a compensation order—
 - (a) where, under section 246(2) of this Act, it makes an order discharging him absolutely;
 - (b) where, under section 228 of this Act, it makes a probation order; or
 - (c) at the same time as, under section 202 of this Act, it defers sentence.
- (3) Where, in the case of an offence involving dishonest appropriation, or the unlawful taking and using of property or a contravention of section 178(1) of the Road Traffic Act 1988 (taking motor vehicle without authority etc.) the property is recovered, but has been damaged while out of the owner’s possession, that damage, however and by whomsoever it was in fact caused, shall be treated for the purposes of subsection (1) above as having been caused by the acts which constituted the offence.
- (4) No compensation order shall be made in respect of—
 - (a) loss suffered in consequence of the death of any person; or
 - (b) injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated, by virtue of subsection (3) above, as having been caused by the convicted person’s acts.
- (5) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such order, the court shall take into consideration his means so far as known to the court.
- (6) For the purposes of subsection (5) above, in assessing the means of a person who is serving, or is to serve, a period of imprisonment or detention, no account shall be taken of earnings contingent upon his obtaining employment after release.
- (7) In solemn proceedings there shall be no limit on the amount which may be awarded under a compensation order.
- (8) In summary proceedings—
 - (a) a sheriff, or a stipendiary magistrate appointed under section 5 of the District Courts (Scotland) Act 1975, shall have power to make a compensation order awarding in respect of each offence an amount not exceeding the prescribed sum;
 - (b) a judge of a district court (other than such stipendiary magistrate) shall have power to make a compensation order awarding in respect of each offence an amount not exceeding level 4 on the standard scale.
- (9) Payment of any amount under a compensation order shall be made to the clerk of the court who shall account for the amount to the person entitled thereto.
- (10) Only the court shall have power to enforce a compensation order.

250 Compensation orders: supplementary provisions

- (1) Where a court considers that in respect of an offence it would be appropriate to impose a fine and to make a compensation order but the convicted person has insufficient means to pay both an appropriate fine and an appropriate amount in compensation the court should prefer a compensation order.
- (2) Where a convicted person has both been fined and had a compensation order made against him in respect of the same offence or different offences in the same proceedings, a payment by the convicted person shall first be applied in satisfaction of the compensation order.
- (3) For the purposes of any appeal or review, a compensation order is a sentence.
- (4) Where a compensation order has been made against a person, a payment made to the court in respect of the order shall be retained until the determination of any appeal in relation to the order.

251 Review of compensation order

- (1) Without prejudice to the power contained in section 213 of this Act, (as applied by section 252 of this Act), at any time before a compensation order has been complied with or fully complied with, the court, on the application of the person against whom the compensation order was made, may discharge the compensation order or reduce the amount that remains to be paid if it appears to the court that—
 - (a) the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the compensation order; or
 - (b) that property the loss of which is reflected in the compensation order has been recovered.
- (2) In subsection (1) above “the court” means—
 - (a) in a case where, as respects the compensation order, a transfer of fine order under section 222 of this Act (as applied by the said section 252) is effective and the court by which the compensation order is enforceable is in terms of the transfer of fine order a court of summary jurisdiction in Scotland, that court; or
 - (b) in any other case, the court which made the compensation order or, where that court was the High Court, by which the order was first enforceable.

252 Enforcement of compensation orders: application of provisions relating to fines

- (1) The provisions of this Act specified in subsection (2) below shall, subject to any necessary modifications and to the qualifications mentioned in that subsection, apply in relation to compensation orders as they apply in relation to fines; and section 91 of the Magistrates' Courts Act 1980 and article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 shall be construed accordingly.
- (2) The provisions mentioned in subsection (1) above are—
 - section 211(3), (4) and (7) to (9) (enforcement of fines);
 - section 212 (fines in summary proceedings);
 - section 213 (power to remit fines), with the omission of the words “or (4)” in subsection (2) of that section;
 - section 214 (time for payment) with the omission of—

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- (a) the words from “unless” to “its decision” in subsection (4); and
 - (b) subsection (5);
- section 215 (further time for payment);
 section 216 (reasons for default);
 section 217 (supervision pending payment of fine);
 section 218 (supplementary provisions), except that subsection (1) of that section shall not apply in relation to compensation orders made in solemn proceedings; subject to subsection (3) below, section 219(1)(b), (2), (3), (5), (6) and (8) (maximum period of imprisonment for non-payment of fine);
 section 220 (payment of fine in part by prisoner);
 section 221 (recovery by civil diligence);
 section 222 (transfer of fine orders);
 section 223 (action of clerk of court on transfer of fine order); and
 section 224 (discharge from imprisonment to be specified).
- (3) In the application of the provisions of section 219 of this Act mentioned in subsection (2) above for the purposes of subsection (1) above—
- (a) a court may impose imprisonment in respect of a fine and decline to impose imprisonment in respect of a compensation order but not vice versa; and
 - (b) where a court imposes imprisonment both in respect of a fine and of a compensation order the amounts in respect of which imprisonment is imposed shall, for the purposes of subsection (2) of the said section 219, be aggregated.

253 Effect of compensation order on subsequent award of damages in civil proceedings

- (1) This section shall have effect where a compensation order or a service compensation order or award has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect thereof subsequently falls to be determined.
- (2) The damages in the civil proceedings shall be assessed without regard to the order or award; but where the whole or part of the amount awarded by the order or award has been paid, the damages awarded in the civil proceedings shall be restricted to the amount (if any) by which, as so assessed, they exceed the amount paid under the order or award.
- (3) Where the whole or part of the amount awarded by the order or award remains unpaid and damages are awarded in a judgment in the civil proceedings, then, unless the person against whom the order or award was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or of his imprisonment for default or otherwise), the court shall direct that the judgment—
- (a) if it is for an amount not exceeding the amount unpaid under the order or award, shall not be enforced; or
 - (b) if it is for an amount exceeding the amount unpaid under the order or award, shall not be enforced except to the extent that it exceeds the amount unpaid, without the leave of the court.
- (4) In this section a “service compensation order or award” means—
- (a) an order requiring the payment of compensation under paragraph 11 of—
 - (i) Schedule 5A to the Army Act 1955;

- (ii) Schedule 5A to the Air Force Act 1955; or
- (iii) Schedule 4A to the Naval Discipline Act 1957; or
- (b) an award of stoppages payable by way of compensation under any of those Acts.

Forfeiture

254 Search warrant for forfeited articles

Where a court has made an order for the forfeiture of an article, the court or any justice may, if satisfied on information on oath—

- (a) that there is reasonable cause to believe that the article is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.