SUMMARY AND BACKGROUND

Part 12 – Sentencing

53. Chapter 1 sets out general sentencing provisions. Many of these re-enact existing provisions, which are currently contained in the Powers of Criminal Courts (Sentencing) Act 2000.

54. Sections 142 to 146 make provision for matters to be taken into account in sentencing. These include the purposes of adult sentencing, principles for determining the seriousness of an offence, reduction in sentences for early guilty pleas and aggravating factors where the offence was motivated by the offender’s race, religion, disability or sexual orientation. The purposes of sentencing are set out in statute for the first time. They are: punishment, crime reduction, reform and rehabilitation, public protection and reparation.

55. Sections 147 to 151 specify when community sentences can be used and set out general restrictions on imposing community sentences. Sections 152 and 153 perform a similar function in relation to custodial sentences. Sections 154 to 155 amend the existing limits on magistrates’ court’s powers to impose custodial sentences. Sections 156 to 160 set out the procedural requirements for imposing community and custodial sentences. They deal, in particular, with pre-sentence reports and other requirements in the case of mentally disordered offenders. For adult offenders pre-sentence reports are written by the probation service on the basis of their analysis of the offender’s behaviour, criminal history and needs. They suggest to the court the kind of punishment and rehabilitation that would be appropriate in each particular case and make recommendations as to the particular sentence that should be passed. In the case of mentally disordered offenders the court has to obtain a medical report before imposing a custodial sanction. Section 161 provides for pre-sentence drug testing when the court is considering imposing a community sentence or a suspended sentence. The test is intended to help the court to decide whether drug treatment and testing is necessary. Sections 162 to 165 deal with the court’s powers to impose and remit fines. Section 166 re-enacts existing provisions about mitigation and about dealing with mentally disordered offenders.

56. Sections 167 to 173 set up the Sentencing Guidelines Council, a new body which will produce sentencing guidelines for all criminal courts and guidelines on the allocation of cases between courts. Sentencing guidelines enable courts to approach sentence in any case from a common starting point. They are also intended to enable practitioners and the public generally to know what that starting point will be. The Act creates a new Council to promulgate those guidelines and provides for the existing Sentencing Advisory Panel to tender its advice to that Council. The Council will create guidelines across a wide range of issues that are relevant to sentencing and Courts will be obliged to take the guidelines into account when deciding a sentence. The Council will be chaired by the Lord Chief Justice and will consist of 7 further judicial members and 4 non-judicial members. In addition, the Home Secretary will appoint an observer who will bring to the Council experience of sentencing policy and the administration of sentences.
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57. **Section 174** replaces the existing duties on courts to provide reasons for sentence, with a new overarching duty to provide reasons and explain the sentence. The court is required to give reasons if it departs from a recommended guideline. **Section 175** expands the existing duty on the Home Secretary in section 95 of the Criminal Justice Act 1991 to publish information on the effectiveness of sentencing.

58. **Chapter 2** provides for community orders for offenders aged 16 or over. There are currently a number of different community orders: community rehabilitation orders, community punishment orders, community punishment and rehabilitation orders, curfew orders, drug treatment and testing orders, drug abstinence orders (being piloted), and exclusion orders (not yet commenced). This Act creates a single generic community sentence, which combines requirements currently available under different community sentences.

59. The range of requirements available with a generic community sentence will be:
   - Compulsory (unpaid) work;
   - Participation in any specified activities;
   - Programmes aimed at changing offending behaviour;
   - Prohibition from certain activities;
   - Curfew;
   - Exclusion from certain areas;
   - Residence requirement;
   - Mental health treatment (with consent of the offender);
   - Drug treatment and testing (with consent of the offender);
   - Alcohol treatment (with consent of the offender);
   - Supervision;
   - Attendance centre requirements (for those under 25).

60. **Schedules 8 and 9** make provision for breaches of community sentences and their transfer to Scotland or Northern Ireland.

61. **Chapter 3** contains new provisions in relation to short prison sentences of less than 12 months. Currently an offender serving a prison sentence of less than 12 months is released automatically at the half way point of the sentence, and the second half of the sentence is not subject to any licence conditions. Following the recommendations of the Halliday Report ‘Making Punishments Work’, new sentences of less than 12 months have been developed which are designed to provide a more effective framework within which to address the needs of offenders.

62. **Sections 181 and 182** make provision for the new sentence (described in the Halliday report as “custody plus”), that will replace all short prison sentences of under 12 months (with the exception of intermittent custody). It will be made up of a short period in custody of up to 3 months (to fulfil the punishment purpose of the sentence) followed by a longer period under supervision in the community (to fulfil the reparation and crime reduction purposes of the sentence) of a minimum of 6 months. At the point of sentence the court will specify the lengths of the two parts and attach specific requirements, based upon those available under the generic community sentence, to the supervision part of the sentence so as to address the rehabilitative needs of the offender.

63. If the court deems it appropriate, and the offender consents, the custodial part of the sentence can be served intermittently. **Sections 183 to 186** outline this sentence. Where an intermittent custody order is made the custodial periods will be served in short blocks
of a few days at a time, while the licence period runs between the blocks (and may continue after the last custodial period). Intermittent custody will enable offenders to maintain jobs, family ties or education, all of which have been shown to play a part in reducing re-offending. This will be a new type of sentence in England and Wales, although there are similar systems in Europe. It will be piloted in two sites before a decision is made on whether to implement it more widely. If an offender fails to comply with the terms of the community part of the sentence he will be returned to custody. As with all recalls, the Parole Board will decide when he is to be re-released.

64. Schedules 10 and 11 set out the provisions for dealing with revocation and amendment of custody plus and intermittent custody orders, and for their transfer to Scotland and Northern Ireland.

65. Sections 189 to 194 deal with suspended sentences. At present a custodial sentence can be suspended for between one and two years provided that the offence warrants custody and the suspension is justified by the “exceptional circumstances” of the case. A suspended sentence can be combined with a fine or compensation order, but not with a community sentence (although a supervision order can be attached). The custodial sentence is activated by the committal of another imprisonable offence. This Act replaces this sentence with an amended version which is designed to be more widely available and more effective in correcting offending behaviour. The key change is that the court may suspend a short custodial sentence (as described in Section 181) for between six months and two years on condition that the offender undertakes activities in the community. These activities are chosen by the court from the list available under the generic community sentence. If the offender breaches the terms of the suspension the suspended sentence will be activated. The commission of a further offence during the period of suspension will also count as a breach, and the offender’s existing suspended sentence will normally be activated when the court sentences him for the new offence. The provisions dealing with breaches of suspended sentences are set out in Schedule 12 and arrangements for their transfer to Scotland or Northern Ireland in Schedule 13.

66. This Act provides the courts with a discretionary power to review an offender’s progress under a suspended sentence. Courts already have the power to review drug treatment and testing orders (see section 54(6) of the Powers of Criminal Courts (Sentencing) Act 2000). The court can amend any requirement or provision of the drug treatment and testing order based on the progress of the offender under the sentence. The court will continue to have this power in relation to a drug treatment and testing requirement of a community sentence. It will also have the power to review the progress of an offender on a suspended sentence, if it chooses, whether or not a drug rehabilitation requirement forms part of the order, and alter the requirements accordingly. This more general power of review is limited to the new suspended sentence in this Act, but may be extended further if it proves successful.

67. Chapter 4 contains the provisions common to community sentences and short prison sentences. Sections 197 and 198 describe the duties of the “responsible officer”. A responsible officer is an employee of the local probation board, an electronic monitoring provider (if electronic monitoring of a curfew or exclusion requirement is the only requirement on the order), and if the offender is under 18 it can be either a probation officer or a Youth Offending Team member. The responsible officer has overall control of an offender on a community sentence or the licence period of a custodial sentence. Sections 199 to 214 describe in detail the requirements available in relation to community orders, custody plus orders, suspended sentence orders and intermittent custody orders. Section 215 provides that electronic monitoring can be attached to any of the requirements. Sections 216 to 220 set out general procedural requirements for community orders and short prison sentences, such as ensuring that people receive relevant information concerning each order. Sections 221 to 223 set out the powers of the Secretary of State in relation to various requirements, including provisions as to whom copies of relevant orders should be provided to which are set out in Schedule 14.
68. Chapter 5 provides measures for dealing with dangerous offenders. The Halliday report criticised the existing disparate set of provisions for sexual and violent offenders and identified a need for a more coherent sentencing structure to deal with this type of offender. The Act introduces a new scheme of sentences for offenders who have been assessed as dangerous and have committed a specified sexual or violent offence. Under the new scheme, dangerous offenders who have been convicted of a trigger sexual or violent offence (listed in Schedule 15) for which the maximum penalty is between two and ten years will be given an extended sentence (Section 227). This sentence will be a determinate sentence served in custody to the half way point. Release during the whole of the second half of the sentence will be on recommendation of the Parole Board. In addition extended supervision periods of up to five years for violent offenders and eight years for sexual offenders must be added to the sentence.

69. If an offender has been assessed as dangerous and has been convicted of a sexual or violent trigger offence (listed in Schedule 15) whose maximum sentence length is ten years or more, he will receive either a sentence of imprisonment for public protection (Section 225) or a discretionary life sentence. In cases where the offender has been assessed as dangerous and has been convicted of a trigger offence carrying a maximum sentence of life imprisonment the court must consider the seriousness of the offence when deciding upon which of the two possible sentences to impose. For both sentences the court will specify a minimum term which the offender is required to serve in custody. After this point the offender will remain in prison until the Parole Board is satisfied that their risk has sufficiently diminished for them to be released and supervised in the community. Following release, those serving a sentence of imprisonment for public protection would be able to apply to the Parole Board to have their licence rescinded after ten years had elapsed. Offenders serving a discretionary life sentence would be on licence for the rest of their lives. The Act makes similar provisions for juveniles enabling the sentence of detention for public protection (Section 226) and the extended sentence (Section 228) to be passed for offenders aged under 18 who have committed a specified sexual or violent offence (listed in Schedule 15) and have been assessed by the courts as dangerous.

70. Chapter 6 deals with the arrangements for prisoners' release on licence, recall to prison following breach of licence requirements, and further re-release. It also contains provisions for calculating remand time, calculating how sentences should be served and drug testing requirements on licence.

71. Sections 240 to 243 enable the court to deduct any time spent on remand from the custodial part of the sentence that it passes.

72. Sections 244 to 253 provide for the release of offenders from custody. Under the present system only half of a prison sentence of between 12 months and 4 years has to be served in prison. Following release the offender will be subject to licence conditions until the three-quarter point of his sentence. If the sentence is of 4 years or more then the offender may be released between the half and two thirds point of the sentence subject to a recommendation by the Parole Board. At the two-thirds point release is automatic and the prisoner is subject to licence conditions until the three-quarter point and remains on licence until the end of his sentence.

73. Under the new framework, offenders serving sentences of 12 months or more will be released automatically on licence at the half-way point of their sentence (subject to early release on home detention curfew (HDC) which will remain available). Upon release, the second half of their sentence will be subject to standard licence conditions and any combination of the additional prescribed conditions that the Secretary of State may determine by order. New custodial sentences of 12 months or more will therefore be served in full and licence conditions may be imposed right up to the end of the sentence.

74. If an offender fails to comply with a licence condition or commits an offence on licence he is liable to be recalled to prison, as described in Sections 254 and 255. This Act makes recall to custody an executive decision – by the prison and probation services -
rather than by the Parole Board, as at present. The offender will have the right of appeal to the Parole Board, and even if the offender chooses not to exercise this right the Parole Board will nonetheless scrutinise all recall decisions, to ensure they are fairly taken. By allowing the Parole Board to focus on assessing decisions of recall, the Act removes the anomaly by which the Parole Board currently both advise on recalls and act as an appeal body against those same recalls.

75. When determining an appeal against recall, or scrutinising the validity of a recall decision, the Parole Board will consider the issue of re-release, as laid out in Section 256. It will either set a date for re-release or for a review of re-release a further date for considering re-release if setting a date is not feasible.

76. Section 257 provides the Secretary of State with the power to add days to prison sentences, under prison rules, where disciplinary offences are committed whilst in custody.

77. Sections 259 to 262 provide for a new early removal scheme from prison for foreign national prisoners liable to removal from the UK. Eligible prisoners may be removed up to 135 days early provided the custodial part of the sentence is at least 6 weeks and a specified proportion of the sentence has been served. The provisions will apply to all determinate sentence prisoners. The provisions introduce an order-making power to allow the Secretary of State, inter alia, to reduce or increase the reference to 135 days as well as to alter the provisions specifying the minimum custodial part of the sentence and the proportion of the sentence that must have been served. Section 260 provides that, if a foreign national prisoner who has been removed from prison and from the UK in these circumstances re-enters the UK then he is liable to be detained in pursuance of his sentence for the period he would have served if he had not been removed early from prison or his sentence expiry date, whichever is earlier. Section 262 gives effect to a new schedule (Schedule 20) which makes provisions for a similar scheme to apply in advance of the commencement of this Act.

78. Sections 263 and 264 set out the principles for calculating the time offenders must spend in custody and on licence where several sentences are passed on the same or different occasions, and are ordered to be served concurrently (at the same time) or consecutively (one after the other).

79. Section 266 amends section 64 of the Criminal Justice and Court Services Act 2000 (release on licence etc. drug testing requirements) to require a young offender aged 14 and above, to be tested for specified Class A drugs if a responsible officer believes that the offender is likely to misuse any specified class A drug and that such misuse has caused or contributed to any offence for which he was convicted, or may cause him to commit further offences. An appropriate adult is required to be present during the testing procedure for those under the age of 17. The requirement for a trigger offence to have been committed is removed.

80. Chapter 7 establishes a new scheme under which the court, rather than the Home Secretary, will determine the minimum term to be served in prison by a person convicted of murder. The length of this minimum term is to be determined by reference to a new statutory framework set out in Schedule 21. Once the minimum term has expired, the Parole Board will consider the person’s suitability for release, and if appropriate, direct his release. These provisions respond to two court judgements, the judgement of the European Court of Human Rights in May 2002 in Stafford, and the judgement of the House of Lords in Anderson in November 2002.

81. Chapter 8 contains additional sentencing provisions. One of these relates to deferred sentences. Currently a court can defer passing a sentence pending the good behaviour of the offender, as long as the offender consents and the court believes that deferring the sentence is in the interests of justice. If the offender commits another offence during the deferment period the court will deal with both sentences at once. This Act will require more of the offender on a deferred sentence. The power to defer passing sentence is only
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exercisable if the offender undertakes to comply with any requirements as to his conduct that the court considers it appropriate to impose. He may have to complete undertakings in the community as set by the court. These can be activities such as reparation to the community. The probation service or other responsible body will monitor the offender’s compliance with the requirements and will prepare a report for the court at the point of sentence. Failure to comply with a requirement will result in the offender being brought back to court early for sentence. As now, if the offender commits another offence during the deferment period the court will deal with both sentences at once.

82. *Section 279* introduces Schedule 24 which enables a requirement as to drug treatment and testing to be included in an action plan order or a supervision order.

83. *Sections 280 to 284*, in conjunction with Schedules 25, 26, 27 and 28 make the necessary alterations to the maximum penalties available for certain offences so as to ensure that they are compatible with the new sentencing framework. The Act creates a new sentence of less than 12 months, custody plus, that will replace all short custodial sentences currently available (see *Sections 181 and 182*). The maximum length of a sentence of custody plus, in relation to a single offence, will be 51 weeks. Therefore, in order to ensure that a full sentence of custody plus may be passed for a certain offence, this offence must have a maximum penalty of 51 weeks imprisonment or more. Currently there are a number of offences, triable only in the magistrates’ court, that carry maximum penalties of six months imprisonment or less. These penalties will have no practical application under the new sentencing framework, therefore *Sections 280 and 281* make the necessary alterations to the maximum penalties for such offences by either raising them to 51 weeks or lowering them to non custodial penalties. Similarly, *Section 282* makes the necessary alterations to the penalties for certain triable-either-way offences on summary conviction so that they may be compatible with the new sentencing framework. *Section 283* also amends those powers in other legislation that provide for the creation of new summary or triable either way offences, so as to ensure that any offences created under these enabling powers will have maximum penalties that are compatible with the new sentencing framework. *Section 284* and Schedule 28 increase the penalties for certain drug-related offences.

84. In July 2002, the Government published its Report on the Review of Road Traffic Penalties and proposed to increase the maximum penalties for the offences of causing death by dangerous driving, causing death by careless driving under the influence of drink or drugs and aggravated vehicle taking where the aggravating feature is that, owing to the driving of the vehicle, an accident occurs and death results. Concerns had been expressed in response to the Review about the level of the maximum penalties and some sentences had been passed at, or close to, the maximum. *Section 285* of the Act provides that each of these three offences should have the same maximum penalty of 14 years imprisonment, an increase from 5 years for the aggravated vehicle taking offence and from 10 years for the other two offences. This will provide consistency in approach for driving offences where death results.

85. *Sections 287 to 293* make provision for establishing a mandatory minimum sentence for anyone who is convicted, on indictment, of illegal possession or distribution of prohibited firearms.

86. *Section 299* and Schedule 30 insert two new sections into Part 2 of the Criminal Justice and Court Services Act 2000 which deal with disqualifying unsuitable people from working with children. *New section 29A* extends the court’s powers by adding a discretion to make an order if it is satisfied that it is likely a further offence against a child will be committed, even though the sentence threshold specified in the Act is not met. *New section 29B* provides that where a court was under a duty to consider the issue of a disqualification order, by virtue of convicting the offender of a relevant offence and passing a sentence which met the threshold specified, but appeared not to have done so, the prosecution may subsequently apply to a senior court for a disqualification order to be made.
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87. Sections 300 and 301 provide a power to impose an unpaid work or curfew requirement on a fine defaulter or to disqualify them from driving, rather than sending them to prison. Schedule 31 sets out the equivalent number of hours of unpaid work or days of curfew in relation to amounts of fine defaulted.

88. Chapter 9 sets out the principal repeals and deals with the interpretation of Part 12.