



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 2

CRIMINAL JUSTICE

Assault, harassment etc

10 Common assault to be an arrestable offence

- (1) ^{F1}
- (2) ^{F2}

Annotations:

Amendments (Textual)

- F1** [S. 10\(1\)](#)
repealed (1.1.2006) by
[Serious Organised Crime and Police Act 2005 \(c. 15\)](#)
,
[ss. 174\(2\)](#)
,
[178\(8\)](#)
,
Sch. 17 Pt. 2
;
[S.I. 2005/3495](#)
,
[art. 2\(1\)\(u\)\(lviii\)](#)
- F2** [S. 10\(2\)](#)
repealed (1.3.2007) by

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Part 2 is up to date with all changes known to be in force on or before 04 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288) (N.I. 2)
,
arts. 1(2)
,
41(2)
,
Sch. 2

11 Common assault etc as alternative verdict

In section 6 of the Criminal Law Act 1967 (c. 58) (trial of offences), after subsection (3) (alternative verdicts on trial on indictment) insert—

“(3A) For the purposes of subsection (3) above an offence falls within the jurisdiction of the court of trial if it is an offence to which section 40 of the Criminal Justice Act 1988 applies (power to join in indictment count for common assault etc.), even if a count charging the offence is not included in the indictment.

(3B) A person convicted of an offence by virtue of subsection (3A) may only be dealt with for it in a manner in which a magistrates' court could have dealt with him.”

12 Restraining orders: England and Wales

(1) In section 5 of the Protection from Harassment Act 1997 (c. 40) (power to make restraining order where defendant convicted of offence under section 2 or 4 of that Act), in subsection (1) omit “under section 2 or 4”.

(2) After subsection (3) of that section insert—

“(3A) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.”

(3) After subsection (4) of that section insert—

“(4A) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).”

(4) After subsection (6) of that section insert—

“(7) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.”

(5) After that section insert—

“5A Restraining orders on acquittal

(1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that one.

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- (3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.
- (4) Where—
 - (a) the Crown Court allows an appeal against conviction, or
 - (b) a case is remitted to the Crown Court under subsection (3),the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.
- (5) A person made subject to an order under this section has the same right of appeal against the order as if—
 - (a) he had been convicted of the offence in question before the court which made the order, and
 - (b) the order had been made under section 5.”

13 Restraining orders: Northern Ireland

- (1) In Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) (power to make restraining order where defendant convicted of offence under Article 4 or 6 of that Order), in paragraph (1) omit “under Article 4 or 6”.
- (2) After paragraph (3) of that Article insert—

“(3A) In proceedings under this Article both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under Article 5.”
- (3) After paragraph (4) of that Article insert—

“(4A) Any person mentioned in the order is entitled to be heard on the hearing of an application under paragraph (4).”
- (4) After paragraph (6) of that Article insert—

“(7) A court dealing with a person for an offence under this Article may vary or discharge the order in question by a further order.”
- (5) After that Article insert—

“7A Restraining orders on acquittal

- (1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.
- (2) Paragraphs (3) to (7) of Article 7 apply to an order under this Article as they apply to an order under that one.
- (3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this Article.
- (4) Where—
 - (a) a county court allows an appeal against conviction, or
 - (b) a case is remitted to the Crown Court under paragraph (3),

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the reference in paragraph (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

- (5) A person made subject to an order under this Article has the same right of appeal against the order as if—
- (a) he had been convicted of the offence in question before the court which made the order, and
 - (b) the order had been made under Article 7.”

Surcharges

14 Surcharge payable on conviction

- (1) In Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) (general provisions about sentencing), after section 161 insert—

“Surcharges

161A Court’s duty to order payment of surcharge

- (1) A court when dealing with a person for one or more offences must also (subject to subsections (2) and (3)) order him to pay a surcharge.
- (2) Subsection (1) does not apply in such cases as may be prescribed by an order made by the Secretary of State.
- (3) Where a court dealing with an offender considers—
 - (a) that it would be appropriate to make a compensation order, but
 - (b) that he has insufficient means to pay both the surcharge and appropriate compensation,
 the court must reduce the surcharge accordingly (if necessary to nil).
- (4) For the purposes of this section a court does not “deal with” a person if it—
 - (a) discharges him absolutely, or
 - (b) makes an order under the Mental Health Act 1983 in respect of him.

161B Amount of surcharge

- (1) The surcharge payable under section 161A is such amount as the Secretary of State may specify by order.
- (2) An order under this section may provide for the amount to depend on—
 - (a) the offence or offences committed,
 - (b) how the offender is otherwise dealt with (including, where the offender is fined, the amount of the fine),
 - (c) the age of the offender.

This is not to be read as limiting section 330(3) (power to make different provision for different purposes etc).”

- (2) In section 164 of that Act (fixing of fines), after subsection (4) insert—

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“(4A) In applying subsection (3), a court must not reduce the amount of a fine on account of any surcharge it orders the offender to pay under section 161A, except to the extent that he has insufficient means to pay both.”

(3) In Part 1 of Schedule 9 to the Administration of Justice Act 1970 (c. 31) (cases where payment enforceable as on summary conviction), after paragraph 12 insert—

“13 Where under section 161A of the Criminal Justice Act 2003 a court orders the payment of a surcharge.”

(4) ^{F3}

(5) The Secretary of State may by order—

- (a) make provision amending Schedule 5 (collection of fines) or Schedule 6 (discharge of fines by unpaid work) to the Courts Act 2003 in its application by virtue of subsection (3) or (4) to surcharges;
- (b) make provision for any part of Schedule 5, or the whole or any part of Schedule 6, not to apply to surcharges;
- (c) make amendments to any enactment that are consequential on provision made under paragraph (a) or (b).

Annotations:

Amendments (Textual)

- F3** [S. 14\(4\)](#)
omitted (3.7.2006) by virtue of
[The Collection of Fines \(Final Scheme\) Order 2006 \(S.I. 2006/1737\)](#)
,
[art. 54](#)

15 Increase in maximum on-the-spot penalty for disorderly behaviour

(1) In Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 (c. 16) (on-the-spot penalties for disorderly behaviour), section 3 is amended as follows.

(2) In subsection (2) (maximum penalty that may be prescribed), at the end insert “ plus a half of the relevant surcharge ”.

(3) After that subsection insert—

“(2A) The “relevant surcharge”, in relation to a person of a given age, is the amount payable by way of surcharge under section 161A of the Criminal Justice Act 2003 by a person of that age who is fined the maximum amount for the offence.”

Annotations:

Commencement Information

- II** [S. 15](#)
in force at 1.10.2012 by
[S.I. 2012/1697](#)
,

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art. 2

PROSPECTIVE

16 Higher fixed penalty for repeated road traffic offences

(1) The Road Traffic Offenders Act 1988 (c. 53) is amended as follows.

(2) ^{F4}.....

(3) At the end of section 84 (regulations) (which becomes subsection (1)) insert—

“(2) The Secretary of State may by regulations provide that where—

- (a) a conditional offer has been issued under section 75 of this Act,
- (b) the amount of the penalty stated in the offer is not the higher amount applicable by virtue of section 53(3) of this Act, and
- (c) it subsequently appears that that higher amount is in fact applicable, the fixed penalty clerk may issue a further notice (a “surcharge notice”) requiring payment of the difference between the two amounts.

(3) Regulations under subsection (2) above may—

- (a) provide for this Part of this Act to have effect, in cases to which the regulations apply, with such modifications as may be specified;
- (b) make provision for the collection and enforcement of amounts due under surcharge notices.”

Annotations:

Amendments (Textual)

- F4** S. 16(2)
repealed (5.1.2009) by
Road Safety Act 2006 (c. 49)
- ,
ss. 59
- ,
61
- ,
Sch. 7(1)
- ;
S.I. 2008/3164
- ,
art. 2(d)

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Trial by jury of sample counts only

17 Application by prosecution for certain counts to be tried without a jury

- (1) The prosecution may apply to a judge of the Crown Court for a trial on indictment to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury.
- (2) If such an application is made and the judge is satisfied that the following three conditions are fulfilled, he may make an order for the trial to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury.
- (3) The first condition is that the number of counts included in the indictment is likely to mean that a trial by jury involving all of those counts would be impracticable.
- (4) The second condition is that, if an order under subsection (2) were made, each count or group of counts which would accordingly be tried with a jury can be regarded as a sample of counts which could accordingly be tried without a jury.
- (5) The third condition is that it is in the interests of justice for an order under subsection (2) to be made.
- (6) In deciding whether or not to make an order under subsection (2), the judge must have regard to any steps which might reasonably be taken to facilitate a trial by jury.
- (7) But a step is not to be regarded as reasonable if it could lead to the possibility of a defendant in the trial receiving a lesser sentence than would be the case if that step were not taken.
- (8) An order under subsection (2) must specify the counts which may be tried without a jury.
- (9) For the purposes of this section and sections 18 to 20, a count may not be regarded as a sample of other counts unless the defendant in respect of each count is the same person.

Annotations:

Commencement Information

I2 [S. 17](#)
wholly in force at 8.1.2007, see
[s. 60](#)
and
[S.I. 2006/3423](#)
,
[art. 2](#)
(subject to
[art. 3](#)
)

18 Procedure for applications under section 17

- (1) An application under section 17 must be determined at a preparatory hearing.

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- (2) Section 7(1) of the 1987 Act and section 29(2) of the 1996 Act are to have effect as if the purposes there mentioned included the purpose of determining an application under section 17.
- (3) Section 29(1) of the 1996 Act is to have effect as if the grounds on which a judge of the Crown Court may make an order under that provision included the ground that an application under section 17 has been made.
- (4) The parties to a preparatory hearing at which an application under section 17 is to be determined must be given an opportunity to make representations with respect to the application.
- (5) Section 9(11) of the 1987 Act and section 35(1) of the 1996 Act are to have effect as if they also provided for an appeal to the Court of Appeal to lie from the determination by a judge of an application under section 17.
- (6) In this section—
 - “preparatory hearing” means a preparatory hearing within the meaning of the 1987 Act or Part 3 of the 1996 Act;
 - “the 1987 Act” means the Criminal Justice Act 1987 (c. 38);
 - “the 1996 Act” means the Criminal Procedure and Investigations Act 1996 (c. 25).

Annotations:

Commencement Information

I3 [S. 18](#)
 wholly in force at 8.1.2007, see
[s. 60](#)
 and
[S.I. 2006/3423](#)
 ,
[art. 2](#)
 (subject to
[art. 3](#)
)

19 Effect of order under section 17(2)

- (1) The effect of an order under section 17(2) is that where, in the course of the proceedings to which the order relates, a defendant is found guilty by a jury on a count which can be regarded as a sample of other counts to be tried in those proceedings, those other counts may be tried without a jury in those proceedings.
- (2) Where the trial of a count is conducted without a jury because of an order under section 17(2), the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial of that count had been conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).
- (3) Except where the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to the trial of a

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count conducted without a jury because of an order under section 17(2), as a reference to the court, the verdict of the court or the finding of the court.

- (4) Where the trial of a count is conducted without a jury because of an order under section 17(2) and the court convicts the defendant of that count—
 - (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction, and
 - (b) the reference in section 18(2) of the Criminal Appeal Act 1968 (c. 19) (notice of appeal or of application for leave to appeal to be given within 28 days from date of conviction etc) to the date of the conviction is to be read as a reference to the date of the judgment mentioned in paragraph (a).
- (5) Where, in the case of proceedings in respect of which an order under section 17(2) has been made, a jury convicts a defendant of a count, time does not begin to run under section 18(2) of the Criminal Appeal Act 1968 in relation to an appeal against that conviction until the date on which the proceedings end.
- (6) In determining for the purposes of subsection (5) the date on which proceedings end, any part of those proceedings which takes place after the time when matters relating to sentencing begin to be dealt with is to be disregarded.
- (7) Nothing in this section or section 17, 18 or 20 affects the requirement under section 4A of the Criminal Procedure (Insanity) Act 1964 (c. 84) that any question, finding or verdict mentioned in that section be determined, made or returned by a jury.

Annotations:

Commencement Information

I4 [S. 19](#)
wholly in force at 8.1.2007, see
[s. 60](#)
and
[S.I. 2006/3423](#)
,
[art. 2](#)
(subject to
[art. 3](#)
)

20 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 17 to 19.
- (2) Without limiting subsection (1), rules of court may in particular make provision for time limits within which applications under section 17 must be made or within which other things in connection with that section or section 18 or 19 must be done.
- (3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court.

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Annotations:

Commencement Information

- I5** [S. 20](#)
wholly in force at 8.1.2007, see
[s. 60](#)
and
[S.I. 2006/3423](#)
,
[art. 2](#)
(subject to
[art. 3](#)
)

21 Application of sections 17 to 20 to Northern Ireland

- (1) In their application to Northern Ireland, sections 17 to 20 have effect subject to the modifications in Schedule 1.
- [^{F5}(2) Sections 17 to 20 do not apply in relation to a trial to which section 5 of the Justice and Security (Northern Ireland) Act 2007 (trials on indictment without a jury) applies.]

Annotations:

Amendments (Textual)

- F5** [S. 21\(2\)](#)
substituted (1.8.2007) by
[Justice and Security \(Northern Ireland\) Act 2007 \(c. 6\)](#)
,
[ss. 8\(2\)](#)
,
[53\(4\)](#)
,
[Sch. 1 para. 5](#)
(with
[s. 8\(3\)](#)
and with savings in
[S.I. 2007/2259](#)
,
[art. 2](#)
);
[S.I. 2007/2045](#)
,
[art. 2\(2\)\(3\)\(q\)](#)

Unfitness to plead and insanity

22 Procedure for determining fitness to plead: England and Wales

- (1) The Criminal Procedure (Insanity) Act 1964 is amended as follows.

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- (2) In section 4 (finding of unfitness to plead), in subsection (5) (question of fitness to be determined by a jury), for the words from “by a jury” to the end substitute “ by the court without a jury ”.
- (3) In subsection (6) of that section, for “A jury” substitute “ The court ”.
- (4) In subsection (1) of section 4A (finding that the accused did the act or omission charged against him), for “jury” substitute “ court ”.
- (5) For subsection (5) of that section substitute—
 - “(5) Where the question of disability was determined after arraignment of the accused, the determination under subsection (2) is to be made by the jury by whom he was being tried.”

23 Procedure for determining fitness to be tried: Northern Ireland

- (1) The Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) is amended as follows.
- (2) In Article 49 (finding of unfitness to be tried), in paragraph (4) (question of fitness to be determined by a jury), for the words from “by a jury” to the end substitute “ by the court without a jury ”.
- (3) In paragraph (4A) of that Article, for “A jury” substitute “ The court ”.
- (4) In paragraph (1) of Article 49A (finding that the accused did the act or omission charged against him), for “jury” substitute “ court ”.
- (5) For paragraph (5) of that Article substitute—
 - “(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under paragraph (2) is to be made by the jury by whom he was being tried.”

24 Powers of court on finding of insanity or unfitness to plead etc

- (1) For section 5 of the Criminal Procedure (Insanity) Act 1964 (c. 84) substitute—

“5 Powers to deal with persons not guilty by reason of insanity or unfit to plead etc.

- (1) This section applies where—
 - (a) a special verdict is returned that the accused is not guilty by reason of insanity; or
 - (b) findings have been made that the accused is under a disability and that he did the act or made the omission charged against him.
- (2) The court shall make in respect of the accused—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—

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(a) the offence to which the special verdict or the findings relate is an offence the sentence for which is fixed by law, and

(b) the court have power to make a hospital order,

the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).

(4) In this section—

“hospital order” has the meaning given in section 37 of the Mental Health Act 1983;

“restriction order” has the meaning given to it by section 41 of that Act;

“supervision order” has the meaning given in Part 1 of Schedule 1A to this Act.

5A Orders made under or by virtue of section 5

(1) In relation to the making of an order by virtue of subsection (2)(a) of section 5 above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if—

(a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies;

(b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and

(c) for subsections (4) and (5) there were substituted—

“(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”

(2) In relation to a case where section 5 above applies but the court have not yet made one of the disposals mentioned in subsection (2) of that section—

(a) section 35 of the 1983 Act (remand to hospital for report on accused’s mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);

(b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words “(other than an offence the sentence for which is fixed by law)” in subsection (2);

(c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and

(d) section 38 of that Act (interim hospital orders) shall have effect as if—

(i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies; and

(ii) the words “(other than an offence the sentence for which is fixed by law)” in that subsection were omitted.

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- (3) In relation to the making of any order under the 1983 Act by virtue of this Act, references in the 1983 Act to an offender shall be construed as including references to a person in whose case section 5 above applies, and references to an offence shall be construed accordingly.
- (4) Where—
- (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 5(1)(b) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,
- the Secretary of State, if satisfied after consultation with the responsible medical officer that the person can properly be tried, may remit the person for trial, either to the court of trial or to a prison.
- On the person's arrival at the court or prison, the hospital order and the restriction order shall cease to have effect.
- (5) Schedule 1A to this Act (supervision orders) has effect with respect to the making of supervision orders under subsection (2)(b) of section 5 above, and with respect to the revocation and amendment of such orders.
- (6) In relation to the making of an order under subsection (2)(c) of section 5 above, section 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute and conditional discharge) shall have effect as if—
- (a) the reference to a person being convicted by or before a court of such an offence as is there mentioned included a reference to the case where section 5 above applies; and
 - (b) the reference to the court being of opinion that it is inexpedient to inflict punishment included a reference to it thinking that an order for absolute discharge would be most suitable in all the circumstances of the case.”
- (2) Before Schedule 2 to the Criminal Procedure (Insanity) Act 1964 (c. 84) insert the Schedule set out in Schedule 2 to this Act.
- (3) In section 6 of the Criminal Appeal Act 1968 (c. 19) (substitution of finding of insanity or findings of unfitness to plead etc) and in section 14 of that Act (substitution of findings of unfitness to plead etc), for subsections (2) and (3) substitute—
- “(2) The Court of Appeal shall make in respect of the accused—
- (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
- (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
 - (b) the court have power to make a hospital order,
- the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) Section 5A of the Criminal Procedure (Insanity) Act 1964 (“the 1964 Act”) applies in relation to this section as it applies in relation to section 5 of that Act.

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- (5) Where the Court of Appeal make an interim hospital order by virtue of this section—
- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
 - (b) the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.
- (6) Where the Court of Appeal make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable as if the order had been made by the court below.
- (7) In this section—
- “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
- “interim hospital order” has the meaning given in section 38 of that Act;
- “restriction order” has the meaning given to it by section 41 of that Act;
- “supervision order” has the meaning given in Part 1 of Schedule 1A to the 1964 Act.”
- (4) Section 14A of the Criminal Appeal Act 1968 (c. 19) (power to order admission to hospital where, on appeal against verdict of not guilty by reason of insanity, Court of Appeal substitutes verdict of acquittal) is repealed.
- (5) Section 5 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) and Schedules 1 and 2 to that Act are repealed.

25 Appeal against order made on finding of insanity or unfitness to plead etc

After section 16 of the Criminal Appeal Act 1968 insert—

“Appeal against order made in cases of insanity or unfitness to plead

16A Right of appeal against hospital order etc.

- (1) A person in whose case the Crown Court—
- (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
 - (b) makes a supervision order under section 5 of that Act,
- may appeal to the Court of Appeal against the order.
- (2) An appeal under this section lies only—
- (a) with the leave of the Court of Appeal; or
 - (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Part 2 is up to date with all changes known to be in force on or before 04 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

16B Disposal of appeal under s. 16A

- (1) If on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
 - (a) they may quash any order which is the subject of the appeal; and
 - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- (2) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- (3) Where the Court of Appeal make an interim hospital order by virtue of this section—
 - (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
 - (b) the court below shall be treated for the purposes of section 38(7) of the said Act of 1983 (absconding offenders) as the court that made the order.
- (4) The fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.
- (5) Where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.”

26 Courts-martial etc

Schedule 3 (unfitness to stand trial and insanity: courts-martial etc) has effect.

Miscellaneous

27 Powers of authorised officers executing warrants

- (1) After section 125B of the Magistrates' Courts Act 1980 (c. 43) insert—

“125BA Powers of persons authorised under section 125A or 125B

Schedule 4A to this Act, which confers powers on persons authorised under section 125A or 125B for the purpose of executing warrants for the enforcement of fines and other orders, shall have effect.”

- (2) After Schedule 4 to that Act insert the Schedule set out in Schedule 4 to this Act.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Part 2 is up to date with all changes known to be in force on or before 04 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

28 Disclosure orders for purpose of executing warrants

After section 125C of the Magistrates' Courts Act 1980 insert—

“125CA Power to make disclosure order

- (1) A magistrates' court may make a disclosure order if satisfied that it is necessary to do so for the purpose of executing a warrant to which this section applies.
- (2) This section applies to a warrant of arrest, commitment, detention or distress issued by a justice of the peace in connection with the enforcement of a fine or other order imposed or made on conviction.
- (3) A disclosure order is an order requiring the person to whom it is directed to supply the designated officer for the court with any of the following information about the person to whom the warrant relates—
 - (a) his name, date of birth or national insurance number;
 - (b) his address (or any of his addresses).
- (4) A disclosure order may be made only on the application of a person entitled to execute the warrant.
- (5) This section applies to the Crown as it applies to other persons.

125CB Use of information supplied under disclosure order

- (1) Information supplied to a person under a disclosure order, or under this subsection, may be supplied by him to—
 - (a) the applicant for the order or any other person entitled to execute the warrant concerned;
 - (b) any employee of a body or person who, for the purposes of section 125B above, is an approved enforcement agency in relation to the warrant;
 - (c) any justices' clerk or other person appointed under section 2(1) of the Courts Act 2003.
- (2) A person who intentionally or recklessly—
 - (a) discloses information supplied under a disclosure order otherwise than as permitted by subsection (1) above, or
 - (b) uses information so supplied otherwise than for the purpose of facilitating the execution of the warrant concerned,
 commits an offence.
- (3) But it is not an offence under subsection (2) above—
 - (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or
 - (b) to disclose any information which has previously been lawfully disclosed to the public.
- (4) A person guilty of an offence under subsection (2) above is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Domestic Violence, Crime and Victims Act 2004, Part 2 is up to date with all changes known to be in force on or before 04 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) In this section “disclosure order” has the meaning given by section 125CA(3) above.”

29 Procedure on breach of community penalty etc

Schedule 5 (procedure on breach of community penalty etc) has effect.

30 Prosecution appeals

(1) In section 58(13) of the Criminal Justice Act 2003 (c. 44) (which defines “applicable time”), for “start of the judge's” substitute “time when the judge starts his”.

(2) After section 58(13) of that Act insert—

“(14) The reference in subsection (13) to the time when the judge starts his summing-up to the jury includes the time when the judge would start his summing-up to the jury but for the making of an order under Part 7.”

F⁶31 Intermittent custody

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Annotations:

Amendments (Textual)

- F6** S. 31
- omitted (3.12.2012) by virtue of
- [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#)
- ,
- [s. 151\(1\)](#)
- ,
- Sch. 10 para. 40(2)**
- ;
- [S.I. 2012/2906](#)
- ,
- [art. 2\(h\)](#)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

Domestic Violence, Crime and Victims Act 2004, Part 2 is up to date with all changes known to be in force on or before 04 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 9 para. 26A inserted by
[2015 c. 2](#)
[Sch. 3](#)
[para. 12](#)