



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 2

#### SENTENCING

##### *General sentencing provisions*

#### **9 Purposes etc. of sentencing: offenders under 18**

(1) After section 142 of the Criminal Justice Act 2003 (c. 44) insert—

##### **“142A Purposes etc. of sentencing: offenders under 18**

- (1) This section applies where a court is dealing with an offender aged under 18 in respect of an offence.
- (2) The court must have regard to—
  - (a) the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37(1) of the Crime and Disorder Act 1998),
  - (b) in accordance with section 44 of the Children and Young Persons Act 1933, the welfare of the offender, and
  - (c) the purposes of sentencing mentioned in subsection (3) (so far as it is not required to do so by paragraph (a)).
- (3) Those purposes of sentencing are—
  - (a) the punishment of offenders,
  - (b) the reform and rehabilitation of offenders,
  - (c) the protection of the public, and

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*Status: This is the original version (as it was originally enacted).*

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- (d) the making of reparation by offenders to persons affected by their offences.
- (4) This section does not apply—
- (a) to an offence the sentence for which is fixed by law,
  - (b) to an offence the sentence for which falls to be imposed under—
    - (i) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences),
    - (ii) section 29(6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon), or
    - (iii) section 226(2) of this Act (detention for life for certain dangerous offenders), or
  - (c) in relation to the making under Part 3 of the Mental Health Act 1983 of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.”
- (2) In section 142 of the Criminal Justice Act 2003 (purposes of sentencing in relation to offenders aged 18 or over at the time of conviction)—
- (a) in the heading, at the end insert “: offenders aged 18 or over”, and
  - (b) in subsection (2)(a) omit “at the time of conviction”.
- (3) In section 44 of the Children and Young Persons Act 1933 (c. 12) (general considerations) after subsection (1) insert—
- “(1A) Subsection (1) is to be read with paragraphs (a) and (c) of section 142A(2) of the Criminal Justice Act 2003 (which require a court dealing with an offender aged under 18 also to have regard to the principal aim of the youth justice system and the specified purposes of sentencing).
- (1B) Accordingly, in determining in the case of an offender whether it should take steps as mentioned in subsection (1), the court shall also have regard to the matters mentioned in those paragraphs.”
- (4) In section 42(1) of the Crime and Disorder Act 1998 (c. 37) (interpretation of Part 3 of Act), after the definition of “local authority” insert—
- ““offending” includes re-offending;”.

## **10 Effect of restriction on imposing community sentences**

In section 148 of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences), after subsection (4) insert—

- “(5) The fact that by virtue of any provision of this section—
- (a) a community sentence may be passed in relation to an offence; or
  - (b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,
- does not require a court to pass such a sentence or to impose those restrictions.”

## 11 Restriction on power to make a community order

- (1) After section 150 of the Criminal Justice Act 2003 (community sentence not available where sentence fixed by law etc.) insert—

### **“150A Community order available only for offences punishable with imprisonment or for persistent offenders previously fined**

- (1) The power to make a community order is only exercisable in respect of an offence if—
- (a) the offence is punishable with imprisonment; or
  - (b) in any other case, section 151(2) confers power to make such an order.
- (2) For the purposes of this section and section 151 an offence triable either way that was tried summarily is to be regarded as punishable with imprisonment only if it is so punishable by the sentencing court (and for this purpose section 148(1) is to be disregarded).”
- (2) Section 151 of that Act (community order for persistent offender previously fined) is amended as follows.
- (3) Before subsection (1) insert—
- “(A1) Subsection (2) provides for the making of a community order by the court in respect of an offence (“the current offence”) committed by a person to whom subsection (1) or (1A) applies.”
- (4) In subsection (1)—
- (a) for “Subsection (2) applies where” substitute “This subsection applies to the offender if—
    - (za) the current offence is punishable with imprisonment;”;  - (b) for paragraph (a) substitute—
    - “(a) the offender was aged 16 or over when he was convicted;”;  - (c) in paragraph (b) for “he” substitute “the offender”.
- (5) After subsection (1) insert—
- “(1A) This subsection applies to the offender if—
- (a) the current offence is not punishable with imprisonment;
  - (b) the offender was aged 16 or over when he was convicted; and
  - (c) on three or more previous occasions the offender has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine.”
- (6) In subsection (3)(a) after “(1)(b)” insert “or (1A)(b) (as the case may be)”.
- (7) In subsections (4), (5) and (6), for “subsection (1)(b)” insert “subsections (1)(b) and (1A)(b)”.
- (8) In section 166 of that Act (savings for powers to mitigate etc.), in subsection (1)(a), after “148” insert “or 151(2)”.

## 12 Pre-sentence reports

In section 158 of the Criminal Justice Act 2003 (c. 44) (meaning of “pre-sentence report”), after subsection (1) insert—

“(1A) Subject to any rules made under subsection (1)(b) and to subsection (1B), the court may accept a pre-sentence report given orally in open court.

(1B) But a pre-sentence report that—

- (a) relates to an offender aged under 18, and
  - (b) is required to be obtained and considered before the court forms an opinion mentioned in section 156(3)(a),
- must be in writing.”