



Criminal Justice Act 1961

1961 CHAPTER 39 9 and 10 Eliz 2

PART IV

SUPPLEMENTAL

38 Construction of references to sentence of imprisonment, etc.

- (1) Except as provided by subsection (3) of this section, the expression “sentence” in this Act does not include a committal for default or the fixing of a term to be served in the event of default, or a committal or attachment for contempt of court.
- (2) For the purposes of any provisions of this Act referring to a person who is serving or has served a sentence of any description, the expression “sentence” includes—
 - (a) in any case, a sentence of that description passed by a court in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man; and
 - (b) in the case of imprisonment,^{F1}... a sentence which is treated by virtue of the^{M1}Colonial Prisoners Removal Act 1884 as a sentence passed by a court in England and Wales.
- (3)^{F2}For the purposes . . . of sections twenty-two and thirty-four of this Act—
 - [^{F3}(a) the expression “imprisonment or detention” means imprisonment, custody for life, detention in a [^{F4}young offender] institution or in a secure training centre [^{F5}or secure college] or detention under an equivalent sentence passed by a court in the Channel Islands or the Isle of Man;]
 - (b) the expression “sentence” includes^{F6}... any order made by any court imposing imprisonment or detention, and “sentenced” shall be construed accordingly.
 - [^{F7}(c) any reference to a person serving a sentence of, or sentenced to, imprisonment or detention shall be construed as including a reference to a person who, under any enactment relating to children and young persons in force in any part of the United Kingdom or any of the Channel Islands or the Isle of Man, has been sentenced by a court to be detained for an offence and is liable to be detained in accordance with [^{F8}a determination of the Secretary of State or of a person authorised by him, in accordance with arrangements made by the Secretary of State or in accordance with] directions given by the Secretary of State, . . .^{F9}

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice Act 1961, Section 38. (See end of Document for details)

or by the Governor of the Isle of Man with the concurrence of the Secretary of State, and any other reference to a sentence of imprisonment or detention shall be construed accordingly.]

(4) For the purposes of any reference in this Act to a term of imprisonment or of detention in a detention centre or to a term of imprisonment or detention, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

[^{F10}(5) For the purposes of this Act (and of any enactment referred to in Part III of this Act)—

(a) a sentence [^{F11}of detention in a young offenders institution passed in Scotland, and a sentence] of penal servitude passed in any of the Channel Islands or the Isle of Man shall be treated as a sentence of imprisonment for the like term;

[^{F12}(aa) An order for detention in a young offenders centre passed in Northern Ireland shall be treated as a sentence of imprisonment for the like term.]

(b) a sentence of detention in a borstal institution passed as aforesaid shall be treated as a sentence of borstal training;

(c) a sentence of death passed by any court (including a court-martial) on a person subsequently pardoned by Her Majesty on condition of his serving a term of imprisonment or penal servitude shall be treated as a sentence of imprisonment or penal servitude passed by that court for that term; and

(d) without prejudice to paragraph (c) of this subsection, any reference to a person on whom a sentence of any description has been passed includes a reference to a person who under the law of any part of the United Kingdom, any of the Channel Islands or the Isle of Man is treated as a person on whom a sentence of that description has been passed;

and “sentenced” shall be construed accordingly.]

[^{F13}(6) The Secretary of State may by order designate as equivalent sentences for the purposes of this Act ^{F2}. . . a description of sentence which a court with jurisdiction in one part of the United Kingdom or in the Channel Islands or the Isle of Man may pass and a description of sentence which a court elsewhere in the United Kingdom or in those Islands may pass;]

Textual Amendments

- F1** Words in s. 38(2)(b) repealed (28.3.2009 for specified purposes) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- F2** Words in s. 38(3)(6) repealed (1.10.1997) by [1997 c. 43](#), s. 56(2), [Sch. 6](#); S.I. 1997/2200, art. 2(1)(o)
- F3** S. 38(3)(a) substituted (1.3.1998) by 1994 by virtue of c. 33, s. 168(2), Sch. 10 para. 12(5); S.I. 1998/277, art. 3(2)
- F4** Words in s. 38(3)(a) substituted (20.3.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 9 para. 7\(a\)](#); S.I. 2015/778, art. 2(1)(c)
- F5** Words in s. 38(3)(a) inserted (20.3.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 9 para. 7\(b\)](#); S.I. 2015/778, art. 2(1)(c)
- F6** Words in s. 38(3)(b) repealed (28.3.2009 for specified purposes) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- F7** S. 38(3)(c) added by [Criminal Justice Act 1967 \(c. 80\)](#), s. 69(1)
- F8** Words in s. 38(3)(c) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 4](#); S.I. 2008/1586, art. 2(1), Sch. 1 para. 48(c)
- F9** Words repealed by S.I. 1973/2163, [Sch. 6](#)
- F10** S. 38(5) repealed (*prosp.*) except that the repeal is in force (E.W.N.I.) so far as regards subsection (a) and (b) and is in force (S.) except as regards subparas. (c) and (d) by [Criminal Justice Act 1982 \(c. 48\)](#), SIF 39:1, s. 80(2), [Sch. 16](#)

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- F11** Words inserted by [Criminal Justice \(Scotland\) Act 1963 \(c. 39\)](#), **Sch. 5**
F12 S. 38(5)(aa) inserted by [Treatment of Offenders Act \(Northern Ireland\) 1968 \(c. 29\)](#), **Sch. 3 Pt. III**
F13 S. 38(6) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 14 para. 15(b)**

Modifications etc. (not altering text)

- C1** S. 38(2)–(5) extended by [Criminal Justice Act 1967 \(c. 80\)](#), **s. 14(4)**

Marginal Citations

- M1** [1884 c. 31.](#)

Changes to legislation:

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