

2005 No. 643

CRIMINAL LAW, ENGLAND AND WALES

The Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005

<i>Made</i> - - - -	<i>10th March 2005</i>
<i>Laid before Parliament</i>	<i>14th March 2005</i>
<i>Coming into force</i> - -	<i>4th April 2005</i>

The Secretary of State, in exercise of the powers conferred upon him by section 333(1) of the Criminal Justice Act 2003(a) hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 and shall come into force on 4th April 2005.

(2) In this Order “the 2003 Act” means the Criminal Justice Act 2003.

Modifications for suspended sentence and community sentence

2.—(1) In relation to any time before the commencement of the repeal of section 78 of the Powers Criminal Courts (Sentencing) Act 2000(b) (general limit on magistrates’ courts’ powers) by the 2003 Act, the provisions of Part 12 of that Act shall have effect subject to the modifications set out in paragraphs (2) to (4).

(2) In section 189 (suspended sentences of imprisonment)—

- (a) in subsection (1) for the words from “at least 28 weeks” to the words “section 181” substitute the words “at least 14 days but not more than twelve months, or in the case of a magistrates’ court, at least 14 days but not more than six months”;
- (b) in subsection (2) for the words “65 weeks” substitute the words “twelve months, or in the case of a magistrates’ court, six months”.

(3) In Schedule 8 (breach, revocation or amendment of community order), in paragraphs 9(1)(c), 10(1)(c) and 12(b) for the words “51 weeks” substitute the words “6 months”.

(4) In Schedule 12 (breach or amendment of suspended sentence order, and effect of further conviction)—

- (a) in paragraph 8(2)—
 - (i) in sub-paragraph (a) omit the words “and custodial period”; and

(a) 2003 c.44. The powers in section 333(1) are extended by section 333(2) of and paragraph 1 of Schedule 38 to the Act. See also S.I. 2003/3283.
(b) 2000 c.6. Section 78 is prospectively repealed by Part 7 of Schedule 37 to the Criminal Justice Act 2003.

- (ii) in sub-paragraph (b) for the words for the words from “with either or both of” onwards substitute the words “subject to the substitution for the original term of a lesser term”;
- (b) in paragraph 9(1)—
 - (i) omit the words “and custodial period”; and
 - (ii) omit sub-paragraph (a).

Modifications for sentencing of offenders aged 18 but under 21

3.—(1) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution, custody for life etc.), the provisions of Part 12 of the 2003 Act shall have effect subject to the modifications set out in paragraphs (2) to (17).

- (2) In section 189 (suspended sentences of imprisonment)—
 - (a) in subsection (1)—
 - (i) after the words “sentence of imprisonment” where they first appear insert the words “or, in the case of a person aged at least 18 but under 21, detention in a young offender institution”; and
 - (ii) after those words the second time they appear insert the words “or detention in a young offender institution”;
 - (b) in subsection (6), after the words “sentence of imprisonment” insert the words “or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution”.
- (3) In section 224(2) (meaning of “specified offence” etc.)—
 - (a) in paragraph (b)(i), after the words “imprisonment for life” insert the words “or, in the case of a person aged at least 18 but under 21, custody for life”;
 - (b) in paragraph (b)(ii), after the word “imprisonment” insert the words “or, in the case of a person aged at least 18 but under 21, detention in a young offender institution.”
- (4) In section 225 (life sentence of imprisonment for public protection for serious offences)—
 - (a) in subsection (2), at the end, insert the words “or in the case of a person aged at least 18 but under 21, a sentence of custody for life”;
 - (b) in subsection (3), at the end, insert the words “or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for public protection”;
 - (c) in subsection (4)—
 - (i) after the words “imprisonment for public protection” insert the words “or a sentence of detention in a young offender institution for public protection”; and
 - (ii) for the words “imprisonment for an indeterminate period” substitute the words “imprisonment or detention for an indeterminate period”.
- (5) In section 227 (extended sentence for certain violent or sexual offences: persons 18 or over)—
 - (a) in subsection (2)—
 - (i) after the words “extended sentence of imprisonment” insert the words “or, in the case of a person aged at least 18 but under 21, an extended sentence of detention in a young offender institution.”; and
 - (ii) after the words “a sentence of imprisonment” insert the words “or detention in a young offender institution”;
 - (b) in subsection (3) after the words “a term of imprisonment” insert the words “or detention in a young offender institution”;

- (c) in subsection (5) after the words “sentence of imprisonment” insert the words “or detention in a young offender institution”.
- (6) In section 236 (conversion of sentences of detention into sentences of imprisonment), in section 99(5) of the Powers of Criminal Courts (Sentencing) Act 2000^(a) (“the Sentencing Act”) (as substituted by section 236)—
- (a) in paragraph (a) for the words “section 90 or 91”, substitute “section 90, 91 or 96”;
 - (b) in paragraph (b) after the words “section 226” insert the words “or, in the case of a person aged at least 18 but under 21, a sentence of custody for life or detention in a young offender institution under section 225”;
 - (c) in paragraph (c) after the words “section 228” insert the words “or, in the case of a person aged at least 18 but under 21, an extended sentence of detention in a young offender institution under section 227”.
- (7) In section 237 (meaning of “fixed-term prisoner”) in subsection (1)(b) at the end insert the words “or a determinate sentence of detention in a young offender institution under section 96 of the Sentencing Act or section 227 of this Act”.
- (8) In section 238 (power of court to recommend licence conditions for certain prisoners) in subsection (1) after the words “a term of imprisonment” insert the words “or detention in a young offender institution”.
- (9) In section 240 (crediting periods of remand in custody: terms of imprisonment and detention), in subsection (10), after the words “of this Act” insert the words “or a sentence of detention in a young offender institution under section 96 of the Sentencing Act or section 227 of this Act”.
- (10) In section 244(3) (duty to release prisoners), in paragraph (a) after the words “section 91” insert the words “or 96”.
- (11) In section 250(4) (licence conditions), after the words “sentence of imprisonment” insert the words “or detention in a young offender institution”.
- (12) In section 258(3) (early release of fine defaulters and contemnors), after the words “sentences of imprisonment” insert the words “or detention in a young offender institution”.
- (13) In section 263(4) (concurrent terms) at the end insert the words “or a sentence of detention in a young offender institution under section 96 of the Sentencing Act or section 227 of this Act”.
- (14) In section 264(7) (consecutive terms) after the words “of this Act” insert the words “or a sentence of detention in a young offender institution under section 96 of the Sentencing Act or section 227 of this Act”.
- (15) In section 265(2) (restriction on consecutive sentences for released prisoners) after the words “of this Act” insert the words “or a sentence of detention in a young offender institution under section 96 of the Sentencing Act or under section 227 of this Act”.
- (16) In Schedule 8 (breach, revocation or amendment of community order)—
- (a) in paragraph 9(1)(c) after the words “sentence of imprisonment” insert the words “or, in the case of a person aged at least 18 but under 21, detention in a young offender institution,”;
 - (b) in paragraph 10(1)(c) after the words “sentence of imprisonment” insert the words “or, in the case of a person aged at least 18 but under 21, detention in a young offender institution,”.
- (17) In Schedule 18 (release of prisoners serving sentences of imprisonment or detention for public protection)—
- (a) in paragraph 2, in section 31A(5) of the Crime (Sentences) Act 1997^(b) (as inserted by that paragraph), in the definition of “preventive sentence”, after the words “a sentence of imprisonment” insert the words “or detention in a young offender institution”;

(a) 2000 c.6.
(b) 1997 c.43.

- (b) in paragraph 3, in section 34(2)(d) of the Crime (Sentences) Act 1997 (as inserted by that paragraph), after the words “a sentence of imprisonment” insert the words “or detention in a young offender institution”;
- (c) in paragraph 4, in section 82A(4A) of the Sentencing Act(a) (as inserted by that paragraph), after the words “a sentence of imprisonment” insert the words “or detention in a young offender institution”.

Home Office
10th March 2005

Scotland of Asthal, Q.C.
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitory modifications to Part 12 of the Criminal Justice Act 2003 (c.44) (“the 2003 Act”).

Article 2 modifies section 189 of and Schedule 12 to that Act, both of which make provision for suspended sentences. Under section 189 the term of imprisonment which the court may impose and suspend is a period of at least 28 weeks but not more than 51 weeks. Until other provisions in the 2003 Act have been commenced, (namely the alteration of magistrates’ courts sentencing powers), the maximum sentence available in a magistrates’ court is six months. The modifications made reflect this fact. The article makes a similar modification to Schedule 8 of the 2003 Act, which deals with the breach, revocation or amendment of community orders.

Article 3 makes further modifications to Part 12 of the 2003 Act to ensure the Part can apply to offenders serving a sentence of either custody for life or detention in a young offender institution, until the coming into force of the repeal of those sentences by section 61 of the Criminal Justice and Court Services Act 2000 (c.43).

(a) Section 82A was inserted by section 60 of the Criminal Justice and Court Services Act c.43.

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