

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 2003 (SENTENCING)(TRANSITORY
PROVISIONS) ORDER 2005**

2005 No. 643

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The instrument makes transitory modifications to the Criminal Justice Act 2003 (a) to allow new suspended sentence arrangements to be available to the courts until the changes resulting from increased magistrates sentencing powers and new Custody Plus short sentences come into effect; and (b) to allow those sentencing provisions in part 12 of the Act which are coming into force to apply to offenders aged 18-21; and to provide for their sentences to be served in a young offender institution.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 A further order will be made to commence the provisions referred to herein on 4 April 2005.

4.2 The Order provides for transitory modifications to the Criminal Justice Act 2003, pending the introduction of increased sentencing powers for magistrates (sections 154 and 155 of the Act) and the new sentencing structure for sentences of less than 12 months (sections 181 and 182); and pending the implementation of the repeal of detention in a young offender institution (Section 61 and relevant repeals in the Criminal Justice and Court Services Act 2000). Subsection 333(2)(a), and para 1 of Schedule 38 to the Act provide specifically for such modifications.

4.3 Sections 154, 155, 181, 182 of the Act are not to be commenced on 4 April 2005. Section 61 and relevant repeals in the Powers of the Criminal Courts (Sentencing) Act 2000 are likewise not to be commenced immediately. It is expected that none of these provisions will be commenced for at least 18 months.

4.4 S 189 allows a court to suspend a sentence of less than 12 months, made up of of a custodial and supervision period fixed by the court (a "Custody Plus" sentence) pursuant to ss 181 and 182 of the Act. The sentence is suspended on condition that the offender fulfils certain community requirements. The Custody Plus provisions and the extended sentencing powers for magistrates' courts will not be commenced in April; therefore Article 2 of the Order puts in place transitory arrangements to allow the new suspended sentence provisions to function alongside existing sentences of less than 12 months. In the case of a magistrates' court, the suspended sentence must be six months or less as ss 154 and 155 will not have been commenced.

4.5 Detention in a Young Offender Institution (“DYOI”) is the custodial sentence that applies to 18-20 year olds in circumstances where older adults would receive a sentence of imprisonment; custody for life is the term for the DYOI sentence that applies where older adults would receive life imprisonment. Until the abolition of DYOI is commenced, the intention is that young adult offenders will continue to receive DYOI sentences, and the modifications in Article 3 provide for this. Further modifications ensure that the range of sentencing provisions coming into force on 4 April - release provisions, crediting of remand time, and the power for the court to recommend licence conditions - all apply to the DYOI group.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Baroness Scotland has made the following statement regarding human rights:

In my view the provisions of the Suspended Sentence and Community Sentence and the Sentencing of Offenders Aged 18 but Under 21 (Transitory Provisions) Order 2005 are compatible with the convention on human rights

7. Policy background

7.1 The Criminal Justice Act 2003 gained Royal Assent on 20 November 2003. The main sentencing provisions are contained in Part 12 of the Act and the majority not already commenced will be commenced on 4 April 2005. The main new provisions being commenced are: the principles of sentencing; the new community order, the new suspended sentence; indeterminate and extended sentences for public protection; new release arrangements for determinate sentences of 12 months and over. The major exception is Custody Plus (new custodial sentences of under 12 months, consisting of a short custodial period between 2 and 13 weeks, followed by a longer licence period of at least 26 weeks). This is not to be commenced yet because of the need to build up probation service resources to implement effectively.

7.2 **The new suspended sentence (section 189)** allows a court to suspend a Custody Plus sentence. As Custody Plus is not to be commenced immediately, the intention is that new-style suspended sentences should be available to the courts from 4 April but they will be used to suspend current short sentences. The modification order allows sentencers to suspend existing sentences of less than 12 months (for magistrates’ courts, 6 months or less), under the new framework set out in the Act (imposition of community conditions; breach arrangements; review hearings). This will allow courts to make use of the new features of the reformed suspended sentence – the power to impose community requirements, and the power to order review hearings – in the interim. The Order also provides that sentences of less than 14 days should not be suspended, to approach more nearly to the position as it will be under Custody Plus.

7.3 **Sentences of Detention in a Young Offender Institution (DYOI)** were repealed in the Criminal Justice and Court Services Act 2000, but this legislation has yet to be commenced; a project has been set up to consider appropriate provision for young adult offenders in the general prison estate. Until that time the intention is that

young adult offenders will continue to receive DYOI sentences and serve custodial sentences in a Young Offender Institution as they currently do. Accordingly, this order modifies the sentencing provisions coming into force so that the new sentences will be available as a DYOI sentence, and young adult offenders will serve them in Young Offender Institutions (subject to the current exceptions).

7.4 The order makes DYOI available for the new suspended sentence; public protection sentences (including life sentences given under these provisions); and new determinate 12 months plus sentences with automatic halfway release. Intermittent Custody is not to be extended to this age group at this stage.

7.5 The Order also contains modifications to ensure that other release provisions, crediting of remand time, and the power for the court to recommend licence conditions, all apply to 18-20 year olds.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 **Kathryn Lynch** at the Home Office Tel: 020 7273 3486 (from 14th March 020 7035 8379) or e-mail: Kathryn.lynch2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.