



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 1

SENTENCING

General

63 Duty to consider compensation order

- (1) In section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons), after subsection (2) insert—

“(2A) A court must consider making a compensation order in any case where this section empowers it to do so.”

- (2) In section 175 of the Armed Forces Act 2006 (service compensation orders), after subsection (7) insert—

“(7A) The court must consider making a service compensation order in any case where it has power to do so.”

64 Duty to give reasons for and to explain effect of sentence

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) For section 174 substitute—

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“174 Duty to give reasons for and to explain effect of sentence

- (1) A court passing sentence on an offender has the duties in subsections (2) and (3).
 - (2) The court must state in open court, in ordinary language and in general terms, the court’s reasons for deciding on the sentence.
 - (3) The court must explain to the offender in ordinary language—
 - (a) the effect of the sentence,
 - (b) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence,
 - (c) any power of the court to vary or review any order that forms part of the sentence, and
 - (d) the effects of failure to pay a fine, if the sentence consists of or includes a fine.
 - (4) Criminal Procedure Rules may—
 - (a) prescribe cases in which either duty does not apply, and
 - (b) make provision about how an explanation under subsection (3) is to be given.
 - (5) Subsections (6) to (8) are particular duties of the court in complying with the duty in subsection (2).
 - (6) The court must identify any definitive sentencing guidelines relevant to the offender’s case and—
 - (a) explain how the court discharged any duty imposed on it by section 125 of the Coroners and Justice Act 2009 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);
 - (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.
 - (7) Where, as a result of taking into account any matter referred to in section 144(1) (guilty pleas), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.
 - (8) Where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender’s case if the court is of the opinion mentioned in—
 - (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
 - (b) section 152(2) of this Act (discretionary custodial sentence),
 the court must state why it is of that opinion.
 - (9) In this section “definitive sentencing guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued.”
- (3) In section 270 (duty to give reasons)—

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- (a) for subsection (1) substitute—
 - “(1) Subsection (2) applies where a court makes an order under section 269(2) or (4).”, and
 - (b) in subsection (2) for “In stating its reasons” substitute “In complying with the duty under section 174(2) to state its reasons for deciding on the order made,”.
- (4) In the Armed Forces Act 2006—
- (a) in section 252 (duty to give reasons and explain sentence), omit subsection (2);
 - (b) in section 253 (duties in complying with section 252), omit subsections (1) (a), (c) and (d) and (2)(b) and (d) to (h).
- (5) In consequence of the amendments made by this section omit—
- (a) paragraph 9(6) of Schedule 1 to the Violent Crime Reduction Act 2006;
 - (b) paragraph 80 of Schedule 4 to the Criminal Justice and Immigration Act 2008;
 - (c) paragraph 24 of Schedule 25 to that Act;
 - (d) paragraph 84 of Schedule 21 to the Coroners and Justice Act 2009.

65 Sentencing where there is aggravation related to transgender identity

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) Section 146 (increase in sentence for aggravation related to disability or sexual orientation) is amended as follows.
- (3) In the heading, for “or sexual orientation” substitute “, sexual orientation or transgender identity”.
- (4) In subsection (2)(a)—
- (a) after sub-paragraph (i) omit “or”;
 - (b) at the end insert—
 - “(iii) the victim being (or being presumed to be) transgender, or”.
- (5) In subsection (2)(b)—
- (a) after sub-paragraph (i) omit “or”;
 - (b) at the end insert “, or
 - (iii) by hostility towards persons who are transgender.”
- (6) After subsection (5) insert—
- “(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”
- (7) Schedule 21 (determination of minimum term in relation to mandatory life sentence) is amended as follows.
- (8) For paragraph 3 substitute—
- “3 For the purposes of this Schedule—
- (a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);

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- (b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);
 - (c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).”
- (9) In paragraph 5(2)(g) (30 year starting point), after “aggravated by sexual orientation” insert “, disability or transgender identity”.
- (10) Section 241 of the Armed Forces Act 2006 (increase in sentence for aggravation related to disability or sexual orientation) is amended as follows.
- (11) In the heading, for “or sexual orientation” substitute “, sexual orientation or transgender identity”.
- (12) In subsection (2)(a)—
 - (a) after sub-paragraph (i) omit “or”;
 - (b) at the end insert—
 - “(iii) the victim being (or being presumed to be) transgender, or”.
- (13) In subsection (2)(b)—
 - (a) after sub-paragraph (i) omit “or”;
 - (b) at the end insert “, or
 - (iii) by hostility towards persons who are transgender.”
- (14) After subsection (5) insert—
 - “(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”