

Changes to legislation: Criminal Law Act 1977, SCHEDULE 9 is up to date with all changes known to be in force on or before 24 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

^{X1}SCHEDULE 9

Section 47.

MATTERS ANCILLARY TO SECTION 47

Editorial Information

- X1** The text of ss. 15(3), 37, 44, 53, 58, Schs. 1, 5, 6, 7, 9, 11, 12 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Probation orders

- 1 Where a court makes an order under section 47(1) above with respect to a sentence of imprisonment, it shall not make a probation order in the offender's case in respect of another offence of which he is convicted by or before that court, or for which he is dealt with by that court.

Courts competent to restore sentence held in suspense

- 2 (1) In relation to a sentence of imprisonment part of which is held in suspense, the courts competent under section 47(3) above are—
- (a) the Crown Court; and
 - (b) where the sentence was passed by a magistrates' court, any magistrates' court before which the offender appears or is brought.
- (2) Where an offender is convicted by a magistrates' court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the whole period of a sentence passed by the Crown Court with an order under section 47(1) above—
- (a) it may, if it thinks fit, commit him in custody or on bail to the Crown Court; and
 - (b) if it does not, it shall give written notice of the conviction to the appropriate officer of that court.
- (3) For the purposes of this and the next following paragraph, a sentence of imprisonment passed on an offender with an order under section 47(1) above shall be treated as having been passed (with such an order) by the court which originally sentenced him.

Recall of offender on re-conviction

- 3 (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with sub-paragraph (2) below, or to a justice of the peace having jurisdiction in accordance with that sub-paragraph that an offender has been convicted in Great Britain of an offence punishable with imprisonment committed during the whole period of a sentence passed with an order under section 47(1) above and that he has

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not been dealt with in respect of the part of the sentence held in suspense, that court or justice may, subject to the following provisions of this paragraph, issue a summons requiring the offender to appear at the place and time specified therein, or a warrant for his arrest.

- (2) Jurisdiction for the purposes of sub-paragraph (1) above may be exercised—
 - (a) if the sentence was passed by the Crown Court, by that court;
 - (b) if it was passed by a magistrates' court, by a justice acting for the area for which that court acted.
- (3) Where an offender is convicted by a court in Scotland of an offence punishable with imprisonment and the court is informed that the offence was committed during the whole period of a sentence passed in England and Wales with an order under section 47(1) above, the court shall give written notice of the conviction to the appropriate officer of the court by which the original sentence was passed.
- (4) Unless he is acting in consequence of a notice under sub-paragraph (3) above, a justice of the peace shall not issue a summons under this paragraph except on information and shall not issue a warrant under this paragraph except on information in writing and on oath.
- (5) A summons or warrant issued under this paragraph shall direct the offender to appear or to be brought before the court by which the original sentence of imprisonment was passed. ^{F1}

Textual Amendments

F1 Sch. 9 para. 3A inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 14 para. 40](#)

Consecutive sentences of imprisonment

- 3A (1) This paragraph applies where—
- (a) an offender is serving consecutive sentences of imprisonment; and
 - (b) at least one of the sentences was passed with an order under section 47(1) of this Act.
- (2) Where this paragraph applies the offender shall, so far as the consecutive sentences are concerned, be treated for the purposes—
- (a) of computing the date when he should be released from prison; and
 - (b) of calculating the term of imprisonment liable to be restored under section 47(3) of this Act,
- as if he had been sentenced to a single term of imprisonment with an order under section 47(1) of this Act of which the part which he is immediately required to serve in prison were the aggregate—
- (i) of the part which he is required to serve in prison of any consecutive sentence passed with an order under section 47(1) of this Act; and
 - (ii) of the whole term of any other consecutive sentence,
- and of which the part which is held in suspense were the aggregate of all parts of the sentences which were ordered to be held in suspense under that section.

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- (3) Section 47(6) of this Act shall have effect, in relation to any consecutive sentence passed with an order under section 47(1) of this Act, as if for the words following the word “prison” there were substituted the following words “if—
- (a) none of the sentences to which he is subject had been passed with an order under subsection (1) above; and
 - (b) he had not had, in respect of any sentence passed with such an order, any remission under section 25(1) of the Prison Act 1952 (industry and good conduct in prison).”.
- (4) In this paragraph “a consecutive sentence” means a sentence which is one of two or more sentences of imprisonment the terms of which have been ordered to run consecutively.

Miscellaneous (procedural)

- 4 Where the offender is before the Crown Court with a view to the exercise by that court of its powers under section 47(3) above, any question whether and, if so, when he has been convicted of an offence shall be determined by the court and not by the verdict of a jury.
- 5 Where the offender has been before a court with a view to its exercising those powers, the appropriate officer shall—
- (a) if the court decided not to exercise the powers, record that fact; and
 - (b) whether or not it exercised them, notify the appropriate officer of the court which passed the original sentence as to the manner in which the offender was dealt with.
- 6 For the purposes of any enactment conferring rights of appeal in criminal cases, the restoration by a court under section 47(3) above of a part of a sentence held in suspense shall be treated as a sentence passed on the offender by that court for the original offence, that is to say the offence for which the original sentence was passed with an order under section 47(1) above.

Miscellaneous (consequential)

- 7 [F²Subject to section 60(1C) of the Criminal Justice Act 1967 (release on licence), where] a sentence of imprisonment is passed with an order under section 47(1) above, it is still to be regarded for all purposes as a sentence of imprisonment for the term stated by the court, notwithstanding that part of it is held in suspense by virtue of the order; and, for the avoidance of doubt, a sentence of which part is held in suspense by virtue of such an order is not to be regarded as falling within the expression “suspended sentence” for the purposes of any legislation, instrument or document.

Textual Amendments

F2 Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 14 para. 41](#)

- 8 Where an offender is sentenced to imprisonment with an order under section 47 above and, having served part of the sentence in prison, is discharged under section 25(1) of the ^{M1}Prison Act 1952 (remission for industry and good conduct),

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the remainder of the sentence being held in suspense, the sentence is not to be regarded as expiring under that section.

Marginal Citations

M1 [1952 c. 52.](#)

- 9 In section 21 of the ^{M2}Firearms Act 1968 (prohibition on possession of firearms by persons previously convicted of crime), after subsection (2) there shall be inserted—

“(2A) For the purposes of section (2) above, “the date of his release”, in the case of a person sentenced to imprisonment with an order under section 47(1) of the Criminal Law Act 1977, is the date on which he completes service of so much of the sentence as was by that order required to be served in prison”.

Marginal Citations

M2 [1968 c. 27.](#)

- 10 In section 67 of the ^{M3}Criminal Justice Act 1967 (computation of sentence where offender has been previously in custody), in subsection (1), after “arose, but” there shall be inserted “(a), . . . ^{F3}”.

Textual Amendments

F3 Words repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)

Marginal Citations

M3 [1967 c. 80.](#)

- 11 In section 1 of the ^{M4}Rehabilitation of Offenders Act 1974 (general principle as to rehabilitation when conviction is spent), after subsection (2) there shall be inserted—

“(2A) Where in respect of a conviction a person has been sentenced to imprisonment with an order under under section 47(1) of the Criminal Law Act 1977, he is to be treated for the purposes of subsection (2) above as having served the sentence as soon as he completes service of so much of the sentence as was by thet order required to be served in prison”.

Marginal Citations

M4 [1974 c. 53.](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 38A(5)(ia) by [2000 c. 43 Sch. 7 para. 55](#)
- s. 38B(5)(a) by [2000 c. 43 Sch. 7 para. 56](#)