



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART IX

#### YOUNG OFFENDERS

#### **123 Custodial sentences for young offenders.**

- (1) Part I of the <sup>M1</sup>Criminal Justice Act 1982 shall be amended as mentioned in subsections (2) to (5) below.
- (2) The following subsection shall be inserted after subsection (3) of section 1—

“(3A) Subject to section 53 of the Children and Young Persons Act 1933 (punishment of certain grave crimes), the only custodial orders that a court may make where a person under 21 years of age is convicted or found guilty of an offence are—

  - (a) a sentence of detention in a young offender institution under section 1A below; and
  - (b) a sentence of custody for life under section 8 below.”.
- (3) The following subsections shall be substituted for subsection (4) of that section—

“(4) A court may not—

  - (a) pass a sentence of detention in a young offender institution; or
  - (b) pass a sentence of custody for life under section 8(2) below, unless it is satisfied—
    - (i) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment; and
    - (ii) that he qualifies for a custodial sentence.

(4A) An offender qualifies for a custodial sentence if—

  - (a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or

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- (b) only a custodial sentence would be adequate to protect the public from serious harm from him; or
- (c) the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified.”.

(4) The following sections shall be inserted after section 1—

**“1A Detention in a young offender institution.**

- (1) Subject to section 8 below and to section 53 of the Children and Young Persons Act 1933, where—
  - (a) a male offender under 21 but not less than 14 years of age or a female offender under 21 but not less than 15 years of age is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over; and
  - (b) the court is satisfied of the matters referred to in section 1(4) above, the sentence that the court is to pass is a sentence of detention in a young offender institution.
- (2) Subject to section 1B(1) and (2) below, the maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence.
- (3) Subject to subsection (4) below and section 1B(3) below, a court shall not pass a sentence for an offender’s detention in a young offender institution for less than 21 days.
- (4) A court may pass a sentence of detention in a young offender institution for less than 21 days for an offence under section 15(11) below.
- (5) Subject to section 1B(4) below, where—
  - (a) an offender is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution; or
  - (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to such a sentence,
 the court shall have the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.
- (6) Where an offender who—
  - (a) is serving a sentence of detention in a young offender institution; and
  - (b) is aged over 21 years,
 is convicted of one or more further offences for which he is liable to imprisonment, the court shall have the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

**1B Special provision for offenders under 17.**

- (1) In the case of a male offender under 15 the maximum term of detention in a young offender institution that a court may impose is whichever is the lesser of—

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- (a) the maximum term of imprisonment the court may impose for the offence; and
  - (b) 4 months.
- (2) In the case of an offender aged 15 or 16 the maximum term of detention in a young offender institution that a court may impose is whichever is the lesser of—
  - (a) the maximum term of imprisonment the court may impose for the offence; and
  - (b) 12 months.
- (3) Where an offender is a female under 17 a court shall not pass a sentence for her detention in a young offender institution whose effect would be that she would be sentenced to a total term of four months or less.
- (4) A court shall not pass a sentence of detention in a young offender institution on an offender whose effect would be that the offender would be sentenced to a total term which exceeds—
  - (a) if the offender is male and under 15, 4 months; and
  - (b) if the offender is aged 15 or 16, 12 months.
- (5) Where the total term of detention in a young offender institution to which an offender is sentenced exceeds—
  - (a) in the case of a male offender under 15, 4 months; and
  - (b) in the case of an offender aged 15 or 16, 12 months,so much of the term as exceeds 4 or 12 months, as the case may be, shall be treated as remitted.
- (6) In this section “total term means—
  - (a) in the case of an offender sentenced (whether or not on the same occasion) to two or more terms of detention in a young offender institution which are consecutive or wholly or partly concurrent, the aggregate of those terms;
  - (b) in the case of any other offender, the term of the sentence of detention in a young offender institution in question.

### **1C Accommodation of offenders sentenced to detention in a young offender institution.**

- (1) Subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc.), an offender sentenced to detention in a young offender institution shall be detained in such an institution unless a direction under this section is in force in relation to him.
- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution shall be detained in a prison or remand centre instead of a young offender institution, but if he is under 17 at the time of the direction, only for a temporary purpose.”
- (5) The following subsection shall be substituted for section 2(4)—
  - “(4) Where—

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- (a) the Crown Court passes a sentence of detention in a young offender institution or a sentence of custody for life under section 8(2) below, or
  - (b) a magistrates' court passes a sentence of detention in a young offender institution,
- it shall be its duty—
- (i) to state in open court that it is satisfied that he qualifies for a custodial sentence under one or more of the paragraphs of section 1(4A) above, the paragraph or paragraphs in question and why it is so satisfied; and
  - (ii) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.”.
- (6) The amendments and transitional provisions in Schedule 8 to this Act shall have effect.

#### Marginal Citations

M1 1982 c. 48.

## 124 Detention of young offenders in Scotland.

- (1) In each of sections 207 and 415 of the <sup>M2</sup>Criminal Procedure (Scotland) Act 1975 for subsections (5) to (10) there shall be substituted the following subsection—
- “(5) A sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution.”.
- (2) Subject to subsection (3) below, in any enactment—
- (a) for a reference to a detention centre there shall be substituted a reference to a young offenders institution; and
  - (b) for a reference (however expressed) to a detention centre order there shall be substituted a reference to a sentence of detention in a young offenders institution.
- (3) Nothing in subsection (2) above applies—
- (a) to section 21 of the <sup>M3</sup>Firearms Act 1968;
  - (b) to Part I of Schedule I to the <sup>M4</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1980;
  - (c) to section 41(2) of the <sup>M5</sup>Criminal Justice (Scotland) Act 1980.
- (4) The amendments and transitional provisions in Schedule 9 to this Act shall have effect.

#### Marginal Citations

M2 1975 c. 21.

M3 1968 c. 27.

M4 1980 c. 55.

M5 1980 c. 62.

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**125 Abolition of power of court to commit juvenile to remand centre instead of local authority care. 1969 c. 54.**

Section 22(5) of the Children and Young Persons Act 1969 shall cease to have effect.

**126 Amendment of section 53(2) of Children and Young Persons Act 1933.**

The following words shall be substituted for the words in section 53(2) of the <sup>M6</sup>Children and Young Persons Act 1933 (punishment of certain grave offences) from the beginning of the subsection to “law—

“(2) Where—

- (a) a young person is convicted on indictment of any offence punishable in the case of an adult with imprisonment for fourteen years or more, not being an offence the sentence for which is fixed by law; or
- (b) a child is convicted of manslaughter,”

**Marginal Citations**

**M6** 1933 c. 12.

**127 Payment of fine by parent or guardian.**

The following subsection shall be inserted after subsection (1) of section 55 of the Children and Young Persons Act 1933 (power to order parent or guardian to pay fine etc.)—

“(1A) Where but for this subsection—

- (a) a court would order a child or young person to pay a fine under section 15(2A) of the Children and Young Persons Act 1969 (failure to comply with requirement included in supervision order); or
- (b) a court would impose a fine on a young person under section 16(3) of the Powers of Criminal Courts Act 1973 (breach of requirements of community service order),

it shall be the duty of the court to order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.”.

**128 Supervision.**

- (1) The sections set out in Part I of Schedule 10 to this Act shall be substituted for section 12 of the Children and Young Persons Act 1969.
- (2) The Act shall in consequence have effect with the amendments specified in Part II of that Schedule.
- (3) Section 15 shall also have effect with the amendments specified in Part III.
- (4) The section set out in Part IV shall be inserted after section 16.

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**129 Signature of orders relating to detention of young offenders.**

The words “or, in the case of a direction under section 53(1) or (2) above, of any authorised officer shall be added at the end of section 106(1) of the Children and Young Persons Act 1933 (orders to be under hand of the Secretary of State or of an Under-Secretary or Assistant Under-Secretary of State).

**130 Computation of sentence—time passed in care of local authority in accommodation provided for restricting liberty. 1967 c. 80.**

- (1) At the end of section 67(1A) of the Criminal Justice Act 1967 there shall be added the words “or—
  - (c) any period during which, in connection with the offence for which the sentence was passed, he was in the care of a local authority by virtue of an order under section 23 of the Children and Young Persons Act 1969 and in accommodation provided for the purpose of restricting liberty.”.
- (2) This section shall not have effect in relation to any sentence imposed before it comes into force.

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