



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART I

#### POWERS OF COURTS TO DEAL WITH OFFENDERS

##### *Custodial sentences*

#### **1 Restrictions on imposing custodial sentences**

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.
- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—
  - (a) that the offence, or the combination of the offence and one other offence associated with it, was so serious that only such a sentence can be justified for the offence; or
  - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.
- (3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.
- (4) Where a court passes a custodial sentence, it shall be its duty—
  - (a) in a case not falling within subsection (3) above, to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
  - (b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

## **2 Length of custodial sentences**

- (1) This section applies where a court passes a custodial sentence other than one fixed by law.
- (2) The custodial sentence shall be—
  - (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it; or
  - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall—
  - (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and
  - (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.

## **3 Procedural requirements for custodial sentences**

- (1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above.
- (2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.
- (3) In forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above a court—
  - (a) shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it; and
  - (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence—
  - (a) shall obtain a pre-sentence report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (5) In this Part “pre-sentence report” means a report in writing which—
  - (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or by a social worker of a local authority social services department; and

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- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

#### **4 Additional requirements in the case of mentally disordered offenders**

- (1) Subject to subsection (2) below, in any case where section 3(1) above applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—
  - (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
  - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
  - (a) shall obtain a medical report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (5) In this section—
  - “duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 (“the 1983 Act”) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;
  - “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is duly approved.
- (6) Nothing in this section shall be taken as prejudicing the generality of section 3 above.

#### **5 Suspended and extended sentences of imprisonment**

- (1) For subsection (2) of section 22 (suspended sentences of imprisonment) of the Powers of Criminal Courts Act 1973 (“the 1973 Act”) there shall be substituted the following subsections—
  - (2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—
    - (a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
    - (b) that the exercise of that power can be justified by the exceptional circumstances of the case.
  - (2A) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”
- (2) The following shall cease to have effect, namely—

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- (a) sections 28 and 29 of the 1973 Act (extended sentences of imprisonment for persistent offenders); and
- (b) section 47 of the Criminal Law Act 1977 (sentence of imprisonment partly served and partly suspended).

### *Community sentences*

## **6 Restrictions on imposing community sentences**

- (1) A court shall not pass on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of the opinion that the offence, or the combination of the offence and one other offence associated with it, was serious enough to warrant such a sentence.
- (2) Subject to subsection (3) below, where a court passes a community sentence—
  - (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
  - (b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it.
- (3) In consequence of the provision made by section 11 below with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.
- (4) In this Part “community order” means any of the following orders, namely—
  - (a) a probation order;
  - (b) a community service order;
  - (c) a combination order;
  - (d) a curfew order;
  - (e) a supervision order; and
  - (f) an attendance centre order.

## **7 Procedural requirements for community sentences**

- (1) In forming any such opinion as is mentioned in subsection (1) or (2)(b) of section 6 above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it.
- (2) In forming any such opinion as is mentioned in subsection (2)(a) of that section, a court may take into account any information about the offender which is before it.
- (3) A court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—
  - (a) a probation order which includes additional requirements authorised by Schedule 1A to the 1973 Act;
  - (b) a community service order;
  - (c) a combination order; and

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- (d) a supervision order which includes requirements imposed under section 12, 12A, 12AA, 12B or 12C of the Children and Young Persons Act 1969 (“the 1969 Act”).
- (4) No community sentence which consists of or includes such an order as is mentioned in subsection (3) above shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
- (a) shall obtain a pre-sentence report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.

### *Probation and community service orders*

## **8 Probation orders**

- (1) For section 2 of the 1973 Act there shall be substituted the following section—

### *“Probation*

#### **2 Probation orders**

- (1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law) is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—
- (a) securing the rehabilitation of the offender; or
  - (b) protecting the public from harm from him or preventing the commission by him of further offences,
- the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than six months nor more than three years.
- For the purposes of this subsection the age of a person shall be deemed to be that which it appears to the court to be after considering any available evidence.
- (2) A probation order shall specify the petty sessions area in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2 to the Criminal Justice Act 1991 (offenders who change their residence), be required to be under the supervision of a probation officer appointed for or assigned to that area.
- (3) Before making a probation order, the court shall explain to the offender in ordinary language—
- (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 3 below);
  - (b) the consequences which may follow under Schedule 2 to the Criminal Justice Act 1991 if he fails to comply with any of the requirements of the order; and
  - (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,

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and the court shall not make the order unless he expresses his willingness to comply with its requirements.

- (4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—
    - (a) to the offender;
    - (b) to the probation officer responsible for the offender’s supervision; and
    - (c) to the person in charge of any institution in which the offender is required by the order to reside.
  - (5) The court by which such an order is made shall also, except where it itself acts for the petty sessions area specified in the order, send to the clerk to the justices for that area—
    - (a) a copy of the order; and
    - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
  - (6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.
  - (7) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the minimum or maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.
  - (8) An order under subsection (7) above may make in paragraph 13(2)(a)(i) of Schedule 2 to the Criminal Justice Act 1991 any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.”
- (2) Section 13 of that Act (effect of probation and discharge) shall cease to have effect so far as relating to offenders placed on probation.
  - (3) For the purpose of rearranging Part I of that Act in consequence of the amendments made by subsections (1) and (2) above, that Part shall have effect subject to the following amendments, namely—
    - (a) after section 1 there shall be inserted as sections 1A to 1C the provisions set out in Part I of Schedule 1 to this Act;
    - (b) sections 7 and 9 (which are re-enacted with minor modifications by sections 1A and 1B) shall cease to have effect;
    - (c) sections 8 and 13 (which, so far as relating to discharged offenders, are re-enacted with minor modifications by sections 1B and 1C) shall cease to have effect so far as so relating; and
    - (d) immediately before section 11 there shall be inserted the following cross heading—

*“Probation and discharge”.*

## **9 Additional requirements which may be included in such orders**

(1) For sections 3 to 4B of the 1973 Act there shall be substituted the following section—

### **“3 Additional requirements which may be included in such orders**

- (1) Subject to subsection (2) below, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of—
    - (a) securing the rehabilitation of the offender; or
    - (b) protecting the public from harm from him or preventing the commission by him of further offences.
  - (2) Without prejudice to the power of the court under section 35 of this Act to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the additional requirements of a probation order.
  - (3) Without prejudice to the generality of subsection (1) above, the additional requirements which may be included in a probation order shall include the requirements which are authorised by Schedule 1A to this Act.”
- (2) After Schedule 1 to that Act there shall be inserted as Schedule 1A the provisions set out in Part II of Schedule 1 to this Act.

## **10 Community service orders**

- (1) In subsection (1) of section 14 of the 1973 Act (community service orders in respect of offenders), the words “instead of dealing with him in any other way” shall cease to have effect.
- (2) In subsection (1A) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) not more than 240.”
- (3) For subsections (2) and (2A) of that section there shall be substituted the following subsections—
  - “(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court, after hearing (if the court thinks it necessary) a probation officer or social worker of a local authority social services department, is satisfied that the offender is a suitable person to perform work under such an order.
  - (2A) Subject to paragraphs 3 and 4 of Schedule 3 to the Criminal Justice Act 1991 (reciprocal enforcement of certain orders) a court shall not make a community service order in respect of an offender unless it is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area in which he resides or will reside.”
- (4) In section 15(1) of that Act (obligations of persons subject to community service orders), for paragraph (a) there shall be substituted the following paragraph—

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“(a) keep in touch with the relevant officer in accordance with such instructions as he may from time to time be given by that officer and notify him of any change of address;”.

## **11 Orders combining probation and community service**

- (1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in subsection (2) below, the court may make a combination order, that is to say, an order requiring him both—
  - (a) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and
  - (b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100.
- (2) The opinion referred to in subsection (1) above is that the making of a combination order is desirable in the interests of—
  - (a) securing the rehabilitation of the offender; or
  - (b) protecting the public from harm from him or preventing the commission by him of further offences.
- (3) Subject to subsection (1) above, Part I of the 1973 Act shall apply in relation to combination orders—
  - (a) in so far as they impose such a requirement as is mentioned in paragraph (a) of that subsection, as if they were probation orders; and
  - (b) in so far as they impose such a requirement as is mentioned in paragraph (b) of that subsection, as if they were community service orders.

### *Curfew orders*

## **12 Curfew orders**

- (1) Where a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law), the court by or before which he is convicted may make a curfew order, that is to say, an order requiring him to remain, for periods specified in the order, at a place so specified.
- (2) A curfew order may specify different places or different periods for different days, but shall not specify—
  - (a) periods which fall outside the period of six months beginning with the day on which it is made; or
  - (b) periods which amount to less than 2 hours or more than 12 hours in any one day.
- (3) The requirements in a curfew order shall, as far as practicable, be such as to avoid—
  - (a) any conflict with the offender’s religious beliefs or with the requirements of any other community order to which he may be subject; and
  - (b) any interference with the times, if any, at which he normally works or attends school or other educational establishment.
- (4) A curfew order shall include provision for making a person responsible for monitoring the offender’s whereabouts during the curfew periods specified in the order; and a



person who is made so responsible shall be of a description specified in an order made by the Secretary of State.

- (5) Before making a curfew order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 13 below);
  - (b) the consequences which may follow under Schedule 2 to this Act if he fails to comply with any of the requirements of the order; and
  - (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,and the court shall not make the order unless he expresses his willingness to comply with its requirements.
- (6) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).
- (7) The Secretary of State may by order direct—
  - (a) that subsection (2) above shall have effect with the substitution, for any period there specified, of such period as may be specified in the order; or
  - (b) that subsection (3) above shall have effect with such additional restrictions as may be so specified.

### **13 Electronic monitoring of curfew orders**

- (1) Subject to subsection (2) below, a curfew order may in addition include requirements for securing the electronic monitoring of the offender's whereabouts during the curfew periods specified in the order.
- (2) A court shall not make a curfew order which includes such requirements unless the court—
  - (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the area in which the place proposed to be specified in the order is situated; and
  - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) Electronic monitoring arrangements made by the Secretary of State under this section may include entering into contracts with other persons for the electronic monitoring by them of offenders' whereabouts.

*Orders: supplemental*

### **14 Enforcement etc. of community orders**

- (1) Schedule 2 to this Act (which makes provision for dealing with failures to comply with the requirements of certain community orders, for amending such orders and for revoking them with or without the substitution of other sentences) shall have effect.
- (2) Sections 5, 6, 16 and 17 of, and Schedule 1 to, the 1973 Act (which are superseded by Schedule 2 to this Act) shall cease to have effect.

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## **15 Regulation of community orders**

- (1) The Secretary of State may make rules for regulating—
- (a) the supervision of persons who are subject to probation orders;
  - (b) the arrangements to be made under Schedule 3 to the 1973 Act for persons who are subject to community service orders to perform work under those orders and the performance by such persons of such work;
  - (c) the monitoring of the whereabouts of persons who are subject to curfew orders (including electronic monitoring in cases where arrangements for such monitoring are available); and
  - (d) without prejudice to the generality of paragraphs (a) to (c) above, the functions of the responsible officers of such persons as are mentioned in those paragraphs.
- (2) Rules under subsection (1)(b) above may in particular—
- (a) limit the number of hours of work to be done by a person on any one day;
  - (b) make provision as to the reckoning of hours worked and the keeping of work records; and
  - (c) make provision for the payment of travelling and other expenses in connection with the performance of work.
- (3) In this Part “responsible officer” means—
- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision;
  - (b) in relation to an offender who is subject to a community service order, the relevant officer within the meaning of section 14(4) of the 1973 Act; and
  - (c) in relation to an offender who is subject to a curfew order, the person responsible for monitoring his whereabouts during the curfew periods specified in the order.
- (4) This section shall apply in relation to combination orders—
- (a) in so far as they impose such a requirement as is mentioned in paragraph (a) of subsection (1) of section 11 above, as if they were probation orders; and
  - (b) in so far as they impose such a requirement as is mentioned in paragraph (b) of that subsection, as if they were community service orders.

## **16 Reciprocal enforcement of certain orders**

Schedule 3 to this Act shall have effect for making provision for and in connection with—

- (a) the making and amendment in England and Wales of community orders relating to persons residing in Scotland or Northern Ireland; and
- (b) the making and amendment in Scotland or Northern Ireland of corresponding orders relating to persons residing in England and Wales.

### *Financial penalties*

## **17 Increase of certain maxima**

- (1) In section 37 (standard scale of fines) of the Criminal Justice Act 1982 (“the 1982 Act”) and section 289G of the Criminal Procedure (Scotland) Act 1975 (corresponding

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Scottish provision), for subsection (2) there shall be substituted the following subsection—

“(2) The standard scale is shown below—

| <i>Level on the scale</i> | <i>Amount of fine</i> |
|---------------------------|-----------------------|
| 1                         | £200                  |
| 2                         | £500                  |
| 3                         | £1,000                |
| 4                         | £2,500                |
| 5                         | £5,000”.              |

(2) Part I of the Magistrates' Courts Act 1980 (“the 1980 Act”) shall be amended as follows—

- (a) in section 24(3) and (4) (maximum fine on summary conviction of young person for indictable offence) and section 36(1) and (2) (maximum fine on conviction of young person by magistrates' court), for “£400” there shall be substituted “£1,000”;
- (b) in section 24(4) (maximum fine on summary conviction of child for indictable offence) and section 36(2) (maximum fine on conviction of child by magistrates' court), for “£100” there shall be substituted “£250”; and
- (c) in section 32(9) (maximum fine on summary conviction of offence triable either way), for “£2,000” there shall be substituted “£5,000”;

and in section 289B(6) of the Criminal Procedure (Scotland) Act 1975 (interpretation), in the definition of “prescribed sum”, for “£2,000” there shall be substituted “£5,000”.

(3) Schedule 4 to this Act shall have effect as follows—

- (a) in each of the provisions mentioned in column 1 of Part I (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the amount specified in column 4;
- (b) in each of the provisions mentioned in column 1 of Part II (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the level on the standard scale specified in column 4;
- (c) in each of the provisions mentioned in column 1 of Part III (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted a reference to the statutory maximum;
- (d) the provisions set out in Part IV shall be substituted for Schedule 6A to the 1980 Act (fines that may be altered under section 143); and
- (e) the provisions mentioned in Part V shall have effect subject to the amendments specified in that Part, being amendments for treating certain failures as if they were summary offences punishable by fines not exceeding levels on the standard scale.

## 18 Fixing of certain fines by reference to units

(1) This section applies where a magistrates' court imposes a fine on an individual—

- (a) for a summary offence which is punishable by a fine not exceeding a level on the standard scale; or

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- (b) for a statutory maximum offence, that is to say, an offence which is triable either way and which, on summary conviction, is punishable by a fine not exceeding the statutory maximum.
- (2) Subject to the following provisions of this section, the amount of the fine shall be the product of—
- (a) the number of units which is determined by the court to be commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it; and
  - (b) the value to be given to each of those units, that is to say, the amount which, at the same or any later time, is determined by the court in accordance with rules made by the Lord Chancellor to be the offender’s disposable weekly income.
- (3) In making any such determination as is mentioned in subsection (2)(a) above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it.
- (4) The number of units determined under subsection (2)(a) above shall not exceed—
- (a) 2 units in the case of a level 1 offence;
  - (b) 5 units in the case of a level 2 offence;
  - (c) 10 units in the case of a level 3 offence;
  - (d) 25 units in the case of a level 4 offence; and
  - (e) 50 units in the case of a level 5 offence or a statutory maximum offence;
- and in this subsection “level 1 offence” means a summary offence which is punishable by a fine not exceeding level 1 on the standard scale, and corresponding expressions shall be construed accordingly.
- (5) Subject to subsection (6) below, the amount determined under subsection (2)(b) above in the case of any offender shall not be—
- (a) less than 1/50th of level 1 on the standard scale (£4 at the commencement of section 17 above); or
  - (b) more than 1/50th of level 5 on that scale (£100 at that commencement).
- (6) Where the fine is payable by a person who is under the age of 18 years, subsection (5) above shall have effect as if for any reference to a fraction or amount there were substituted—
- (a) a reference to 1/20th of that fraction or amount in the case of a fine payable by a person who is under the age of 14 years; and
  - (b) a reference to 1/5th of that fraction or amount in the case of a fine payable by a person who has attained that age.
- (7) Nothing in subsection (2) above shall prevent any of the following, namely—
- (a) in the case of an offence in relation to which a compensation order is made, the reduction of the amount of the fine in pursuance of section 35(4A) of the 1973 Act;
  - (b) in the case of a fixed penalty offence (within the meaning of Part III of the Road Traffic Offenders Act 1988), the increase of the amount of the fine to the level of the fixed penalty; and
  - (c) in the case of an offence of installing or using any apparatus for wireless telegraphy except under a licence granted under section 1 of the Wireless Telegraphy Act 1949, the increase of the amount of the fine by an amount

not exceeding the sum which would have been payable on the issue of such a licence.

- (8) Where the offender—
- (a) has been convicted in his absence in pursuance of section 11 or 12 of the 1980 Act (non-appearance of accused); or
  - (b) has failed to comply with an order under section 20(1) below,
- and (in either case) the court has insufficient information to make a proper determination under subsection (2)(b) above, it may, within the limits set by subsection (5) above, make such determination as it thinks fit.
- (9) In section 41 of the Criminal Justice Act 1988 (“the 1988 Act”), subsection (7) (Crown Court sentencing powers in relation to summary offence dealt with together with either way offence) shall have effect as if this section had not been enacted.

## **19 Fixing of fines in other cases**

- (1) In fixing the amount of a fine (other than one the amount of which falls to be fixed under section 18 above), a court shall take into account among other things the means of the offender so far as they appear or are known to the court.
- (2) Subsection (1) above applies whether taking into account the means of the offender has the effect of increasing or reducing the amount of the fine.

## **20 Statements as to offenders' means**

- (1) Where a person has been convicted of an offence by a magistrates' court, the court may, before sentencing him, order him to furnish to the court within a period specified in the order such a statement of his means as the court may require.
- (2) A person who without reasonable excuse fails to comply with an order under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If a person in furnishing any statement in pursuance of an order under subsection (1) above—
- (a) makes a statement which he knows to be false in a material particular;
  - (b) recklessly furnishes a statement which is false in a material particular; or
  - (c) knowingly fails to disclose any material fact,
- he shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.
- (4) Proceedings in respect of an offence under subsection (3) above may, notwithstanding anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.
- (5) Without prejudice to the generality of subsection (1) of—
- (a) section 84 of the Supreme Court Act 1981; and
  - (b) section 144 of the 1980 Act,
- the power to make rules under each of those sections shall include power to prescribe the form in which statements are to be furnished in pursuance of orders under

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subsection (1) above; and rules made by virtue of this subsection may make different provision for different cases or classes of case.

*Financial penalties: supplemental*

**21 Remission of fines fixed under section 18**

- (1) This section applies where, in the case of a fine the amount of which has been fixed by a magistrates' court under section 18 above, the determination of the offender's disposable weekly income—
  - (a) would have been of a lesser amount but for subsection (5)(a) of that section; or
  - (b) was made by virtue of subsection (8) of that section.
- (2) In a case falling within subsection (1)(a) above, the court may, on inquiring into the offender's means or at a hearing under section 82(5) of the 1980 Act (issue of warrant of commitment for default), remit the whole or any part of the fine if the court considers that its payment by the offender within twelve months of the imposition of the fine would cause the offender undue hardship.
- (3) In a case falling within subsection (1)(b) above, the court may, on inquiring into the offender's disposable weekly income or at such a hearing as is mentioned in subsection (2) above, remit the whole or any part of the fine if the court thinks it just to do so having regard—
  - (a) to the amount of that income as determined by the court under this subsection in accordance with rules made by the Lord Chancellor; and
  - (b) if applicable, to the provisions of subsection (2) above.
- (4) Where the court remits the whole or part of a fine under subsection (2) or (3) above after a term of imprisonment has been fixed under the said section 82(5), it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole fine or, as the case may be, shall remit the whole term.
- (5) In calculating the reduction in a term of imprisonment required by subsection (4) above, any fraction of a day shall be left out of account.

**22 Default in paying fines fixed under that section**

- (1) Where default is made in paying a fine the amount of which has been fixed under section 18 above without applying paragraph (b) or (c) of subsection (7) of that section, this section shall have effect, in place of Schedule 4 to the 1980 Act, in relation to any committal of the defaulter to prison.
- (2) Subject to subsection (3) below, the maximum period of imprisonment applicable in the case of a fine fixed on the basis of a number of units specified in the first column of the following Table shall be the period set out opposite to it in the second column of that Table.

TABLE

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|                       |        |
|-----------------------|--------|
| Not more than 2 units | 7 days |
|-----------------------|--------|

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|   |          |
|---|----------|
| More than 2 units but not more than 5 units   | 14 days  |
| More than 5 units but not more than 10 units  | 28 days  |
| More than 10 units but not more than 25 units | 45 days  |
| More than 25 units                            | 3 months |

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- (3) Where the amount of a fine due at the time the imprisonment is imposed is so much of the fine as remains due after part payment, then, subject to subsection (4) below, the maximum period given by subsection (2) above shall be reduced by such number of days as bears to the total number of days in it the same proportion as the part of the fine paid bears to the whole fine.
- (4) In calculating the reduction required under subsection (3) above, any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than 7 days.
- (5) In this section “prison” includes a young offender institution and “imprisonment” includes detention in such an institution.

### 23 Default in other cases

- (1) In the Tables in section 31(3A) of the 1973 Act and paragraph 1 of Schedule 4 to the 1980 Act (maximum periods of imprisonment for default in paying fines etc.), for the entries relating to amounts not exceeding £5,000 there shall be substituted the following entries—

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|   |            |
|---|------------|
| “An amount not exceeding £200                       | 7 days     |
| An amount exceeding £200 but not exceeding £500     | 14 days    |
| An amount exceeding £500 but not exceeding £1,000   | 28 days    |
| An amount exceeding £1,000 but not exceeding £2,500 | 45 days    |
| An amount exceeding £2,500 but not exceeding £5,000 | 3 months”. |

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- (2) For the Table in section 407(1A) of the Criminal Procedure (Scotland) Act 1975 (maximum period of imprisonment for failure to pay fine or find caution) there shall be substituted the following Table—

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| <i>“Amount of fine or caution</i>               | <i>Maximum period of imprisonment</i> |
|---|---------------------------------------|
| An amount not exceeding £200                    | 7 days                                |
| An amount exceeding £200 but not exceeding £500 | 14 days                               |

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| <i>“Amount of fine or caution</i>                         | <i>Maximum period of imprisonment</i> |
|---|---------------------------------------|
| An amount exceeding £500 but not exceeding £1,000         | 28 days                               |
| An amount exceeding £1,000 but not exceeding £2,500       | 45 days                               |
| An amount exceeding £2,500 but not exceeding £5,000       | 3 months                              |
| An amount exceeding £5,000 but not exceeding £10,000      | 6 months                              |
| An amount exceeding £10,000 but not exceeding £20,000     | 12 months                             |
| An amount exceeding £20,000 but not exceeding £50,000     | 18 months                             |
| An amount exceeding £50,000 but not exceeding £100,000    | 2 years                               |
| An amount exceeding £100,000 but not exceeding £250,000   | 3 years                               |
| An amount exceeding £250,000 but not exceeding £1 million | 5 years                               |
| An amount exceeding £1 million                            | 10 years.”                            |

- (3) In Schedule 16 (repeals) to the 1988 Act, the entry relating to subsection (8) of section 41 of the Administration of Justice Act 1970 shall cease to have effect; and that subsection (discretion of Crown Court to specify extended period of imprisonment in default of payment of compensation) shall have effect as if that entry had not been enacted.

## **24 Recovery of fines etc. by deductions from income support**

- (1) The Secretary of State may by regulations provide that where a fine has been imposed on an offender by a magistrates' court, or a sum is required to be paid by a compensation order which has been made against an offender by such a court, and (in either case) the offender is entitled to income support—
- (a) the court may apply to the Secretary of State asking him to deduct sums from any amounts payable to the offender by way of income support, in order to secure the payment of any sum which is or forms part of the fine or compensation; and
  - (b) the Secretary of State may deduct sums from any such amounts and pay them to the court towards satisfaction of any such sum.
- (2) The regulations may include—
- (a) provision that, before making an application, the court shall make an enquiry as to the offender's means;
  - (b) provision allowing or requiring adjudication as regards an application, and provision as to appeals and reviews;
  - (c) provision as to the circumstances and manner in which and the times at which sums are to be deducted and paid;



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- (d) provision as to the calculation of such sums (which may include provision to secure that amounts payable to the offender by way of income support do not fall below prescribed figures);
  - (e) provision as to the circumstances in which the Secretary of State is to cease making deductions;
  - (f) provision requiring the Secretary of State to notify the offender, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification; and
  - (g) provision that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Secretary of State.
- (3) In subsection (1) above—
- (a) the reference to a fine having been imposed by a magistrates' court includes a reference to a fine being treated, by virtue of section 32 of the 1973 Act, as having been so imposed; and
  - (b) the reference to a sum being required to be paid by a compensation order which has been made by a magistrates' court includes a reference to a sum which is required to be paid by such an order being treated, by virtue of section 41 of the Administration of Justice Act 1970, as having been adjudged to be paid on conviction by such a court.
- (4) In this section—
- “fine” includes—
- (a) a penalty imposed under section 8(1) or 18(4) of the Vehicles (Excise) Act 1971 or section 102(3)(aa) of the Customs and Excise Management Act 1979 (penalties imposed for certain offences in relation to vehicle excise licences);
  - (b) an amount ordered to be paid, in addition to any penalty so imposed, under section 9, 18A or 26A of the said Act of 1971 (liability to additional duty);
  - (c) an amount ordered to be paid by way of costs which is, by virtue of section 41 of the Administration of Justice Act 1970, treated as having been adjudged to be paid on a conviction by a magistrates' court;
- “income support” means income support within the meaning of the Social Security Act 1986, either alone or together with any unemployment, sickness or invalidity benefit, retirement pension or severe disablement allowance which is paid by means of the same instrument of payment;
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (5) In the application of this section to Scotland—
- (a) references in subsections (1) and (2) above to a magistrates' court shall be construed as references to a court; and
  - (b) in subsection (3) above, for paragraphs (a) and (b) there shall be substituted the following paragraphs—
    - “(a) the reference to a fine having been imposed by a court includes a reference to a fine being treated, by virtue of section 196(2) of the Criminal Procedure (Scotland) Act 1975, as having been so imposed; and
    - (b) the reference to a compensation order having been made by a court includes a reference to such an order being treated,

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by virtue of section 66 of the Criminal Justice (Scotland) Act 1980, as having been so made.”

*Miscellaneous*

**25 Committals for sentence**

(1) For section 38 of the 1980 Act there shall be substituted the following section—

**“38 Committal for sentence on summary trial of offence triable either way**

- (1) This section applies where on the summary trial of an offence triable either way (not being an offence as regards which this section is excluded by section 33 above) a person who is not less than 18 years old is convicted of the offence.
  - (2) If the court is of opinion—
    - (a) that the offence or the combination of the offence and other offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose; or
    - (b) in the case of a violent or sexual offence committed by a person who is not less than 21 years old, that a sentence of imprisonment for a term longer than the court has power to impose is necessary to protect the public from serious harm from him,

the court may, in accordance with section 56 of the Criminal Justice Act 1967, commit the offender in custody or on bail to the Crown Court for sentence in accordance with the provisions of section 42 of the Powers of Criminal Courts Act 1973.
  - (3) Paragraphs (a) and (b) of subsection (2) above shall be construed as if they were contained in Part I of the Criminal Justice Act 1991.
  - (4) The preceding provisions of this section shall apply in relation to a corporation as if—
    - (a) the corporation were an individual who is not less than 18 years old; and
    - (b) in subsection (2) above, paragraph (b) and the words “in custody or on bail” were omitted.”
- (2) In Schedule 3 to the 1980 Act, paragraph 5 (provisions relating to committal to Crown Court for sentence not to apply to a corporation) shall cease to have effect.

**26 Alteration of certain penalties**

- (1) In section 7 of the Theft Act 1968 (theft), for the words “ten years” there shall be substituted the words “seven years”.
- (2) For subsections (3) and (4) of section 9 of that Act (burglary) there shall be substituted the following subsections—
  - “(3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding—

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- (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
  - (b) in any other case, ten years.
- (4) References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.”
- (3) In section 10(2) of the Badgers Act 1973 (enforcement, penalties etc.), for the words preceding the proviso there shall be substituted the following—
  - “(2) Any person guilty of an offence under this Act shall be liable on summary conviction—
    - (a) in the case of an offence under section 1 or 2, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both;
    - (b) in the case of an offence under section 3 or 4, to a fine not exceeding that level; and
    - (c) in the case of an offence under section 5, to a fine not exceeding level 3 on that scale;”and in the proviso for the words “paragraph (b)” there shall be substituted the words “paragraph (a) or (b)”.
- (4) In section 51(4) of the Criminal Law Act 1977 (penalties for bomb hoaxes)—
  - (a) in paragraph (a), for the words “three months” there shall be substituted the words “six months”; and
  - (b) in paragraph (b), for the words “five years” there shall be substituted the words “seven years”.
- (5) The power saved by subsection (1) of section 70 of the 1982 Act (vagrancy offences) shall not include, in the case of an offence mentioned in paragraph (b)(i) of that subsection (sleeping rough), power to impose a fine which exceeds level 1 on the standard scale.

## 27 Treatment of offenders under 1983 Act

- (1) After section 39 of the 1983 Act there shall be inserted the following section—

### “39A Information to facilitate guardianship orders

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

- (a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and
- (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.”

- (2) After section 54 of that Act there shall be inserted the following section—

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#### **“54A Reduction of period for making hospital orders**

- (1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.
- (2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.”
- (3) In section 143(2) of that Act (general provisions as to regulations, orders and rules), after the words “this Act” there shall be inserted the words “or any order made under section 54A above”.

#### *Supplemental*

### **28 Savings for mitigation and mentally disordered offenders**

- (1) Nothing in this Part shall prevent a court from mitigating an offender’s sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.
- (2) Without prejudice to the generality of subsection (1) above, nothing in this Part shall prevent a court—
  - (a) from mitigating any penalty included in an offender’s sentence by taking into account any other penalty included in that sentence; or
  - (b) in a case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.
- (3) Any mitigation of a fine the amount of which falls to be fixed under section 18 above shall be effected by determining under subsection (2)(a) of that section a smaller number of units than would otherwise have been determined.
- (4) Nothing in this Part shall be taken—
  - (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
  - (b) as restricting any power (whether under the 1983 Act or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

### **29 Effect of previous convictions etc**

- (1) An offence shall not be regarded as more serious for the purposes of any provision of this Part by reason of any previous convictions of the offender or any failure of his to respond to previous sentences.
- (2) Where any aggravating factors of an offence are disclosed by the circumstances of other offences committed by the offender, nothing in this Part shall prevent the court from taking those factors into account for the purpose of forming an opinion as to the seriousness of the offence.

### **30 Rules, regulations and orders**

- (1) Any power of the Secretary of State or the Lord Chancellor to make rules, regulations or orders under this Part—
  - (a) shall be exercisable by statutory instrument; and
  - (b) shall include power to make different provision for different cases or classes of case.
- (2) A statutory instrument containing any rules, regulations or order under this Part (other than an order under section 12(4) above) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **31 Interpretation of Part I**

- (1) In this Part—
  - “attendance centre order” means an order under section 17 of the 1982 Act;
  - “combination order” means an order under section 11 above;
  - “community order” has the meaning given by section 6(4) above;
  - “community sentence” has the meaning given by section 6(1) above;
  - “curfew order” means an order under section 12 above;
  - “custodial sentence” means—
    - (a) in relation to an offender of or over the age of twenty-one years, a sentence of imprisonment; and
    - (b) in relation to an offender under that age, a sentence of detention in a young offender institution or under section 53 of the Children and Young Persons Act 1933 (“the 1933 Act”), or a sentence of custody for life under section 8(2) of the 1982 Act;
  - “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the 1983 Act;
  - “pre-sentence report” has the meaning given by section 3(5) above;
  - “responsible officer” has the meaning given by section 15(3) above;
  - “sentence of imprisonment” does not include a committal or attachment for contempt of court;
  - “sexual offence” means an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, section 54 of the Criminal Law Act 1977 or the Protection of Children Act 1978, other than—
    - (a) an offence under section 12 or 13 of the Sexual Offences Act 1956 which would not be an offence but for section 2 of the Sexual Offences Act 1967;
    - (b) an offence under section 30, 31 or 33 to 36 of the said Act of 1956; and
    - (c) an offence under section 4 or 5 of the said Act of 1967;
  - “supervision order” means a supervision order under the 1969 Act;
  - “violent offence” means an offence which leads, or is intended or likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).
- (2) For the purposes of this Part, an offence is associated with another if—

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- (a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or
  - (b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.
- (3) In this Part any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.