



Powers of Criminal Courts (Sentencing) Act 2000

2000 CHAPTER 6

PART V

CUSTODIAL SENTENCES ETC.

CHAPTER I

GENERAL PROVISIONS

General restrictions on discretionary custodial sentences

79 General restrictions on imposing discretionary custodial sentences

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one—
 - (a) fixed by law; or
 - (b) falling to be imposed under section 109(2), 110(2) or 111(2) below.
- (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 or more offences 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 fails to express his willingness to comply with—

Status: This is the original version (as it was originally enacted).

- (a) a requirement which is proposed by the court to be included in a probation order or supervision order and which requires an expression of such willingness; or
 - (b) a requirement which is proposed by the court to be included in a drug treatment and testing order or an order under section 52(4) above (order to provide samples).
- (4) Where a court passes a custodial sentence, it shall—
- (a) in a case not falling within subsection (3) above, 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, 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.

80 Length of discretionary custodial sentences: general provision

- (1) This section applies where a court passes a custodial sentence other than one fixed by law or falling to be imposed under section 109(2) below.
- (2) Subject to sections 110(2) and 111(2) below, 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 one or more 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 one or more 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.
- (5) Subsection (3) above shall not apply in any case where the court passes a custodial sentence falling to be imposed under subsection (2) of section 110 or 111 below which is for the minimum term specified in that subsection.