

# CRIMINAL JUSTICE ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 12 - Sentencing

##### *Chapter 1: General provisions about sentencing*

##### *Section 142: Purposes of sentencing*

445. For the first time, the purposes of adult sentencing will be set out in statute. *Subsection (1)* sets out what these are: punishment, crime reduction, the reform and rehabilitation of offenders, public protection, and reparation. There are exceptions where these purposes will not be applicable, specified in *subsection (2)*. These exceptions are where an offender is under 18 (there are separate purposes for the aims of the youth justice system which can be found in the Crime and Disorder Act 1998), where the sentence is fixed by law (i.e. a mandatory life sentence imposed for murder), where offences require certain custodial sentences (Sections 225 to 228 of this Act and sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act 2000, and section 51A of the Firearms Act 1968), and where various provisions under the Mental Health Act 1983 apply.

##### *Section 143: Determining the seriousness of an offence*

446. This section sets out certain principles the court must follow when determining the seriousness of an offence. The court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused. Any previous convictions, where they are recent and relevant, should be regarded as an aggravating factor which should increase the severity of the sentence. A previous conviction is defined by subsection (4) to mean a previous conviction by a court in the United Kingdom or a finding of guilt in service disciplinary proceedings. The term "service disciplinary proceedings" is defined in section 305(1). This is a strengthening of the existing principle in section 151(1) of the Powers of Criminal Courts (Sentencing) Act 2000. *Subsection (3)* re-enacts section 151(2) of that Act and provides that the fact that an offence was committed while the offender was on bail should also be regarded as an aggravating factor.

##### *Section 144: Reduction in sentence for guilty pleas*

447. This section re-enacts section 152(1) and (3) of the Powers of Criminal Courts (Sentencing) Act and makes provision for the reduction of sentences for early guilty pleas, in order to encourage those defendants who are guilty not to take up valuable court time and trouble victims and witnesses unnecessarily. *Subsection (1)* requires the court to take into account exactly when in the course of proceedings the guilty plea was made and the circumstances in which it was given. For those sentences falling to be imposed under sections 110(2) or 111(2) of Powers of Criminal Courts (Sentencing) Act the court can reduce the sentence by up to 20 per cent.

***Section 145: Increase in sentence for racial or religious aggravation***

448. This section re-enacts section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 and provides that, except in the case of offences under sections 29 to 32 of the Crime and Disorder Act 1998, the court must treat the fact that the offence was religiously or racially aggravated as increasing the seriousness of the offence, and must state in open court it was so aggravated. The definition of “racially or religiously aggravated” can be found in section 28 of the 1998 Act.

***Section 146: Increase in sentences for aggravation related to disability or sexual orientation***

449. This is a new provision, which is based upon the preceding section, and provides that the seriousness of an offence (and thus the severity of the resulting sentence) should be increased if the offender demonstrates hostility based on the victim's sexual orientation or disability or if the offence was motivated by hostility by reason of a person's sexual orientation or disability. The court must state in open court if the offence is aggravated for these reasons.

***Section 147: Meaning of “community sentence” etc.***

450. This section defines “community sentence” for the purposes of Part 12 of the Act and also defines “youth community order” for the purposes of Chapter 1 of that Part.

***Section 148: Restrictions on imposing a community sentence***

451. *Subsection (1)* re-enacts section 35(1) of the Powers of Criminal Courts (Sentencing) Act. *Subsection (2)* re-enacts with a few minor changes section 35(3) of that Act. *Subsection (3)* sets out the same principles for youth community orders which remain in the Powers of Criminal Courts (Sentencing) Act. The section makes provision as to when it is appropriate to impose a community sentence. If an offence is not serious enough for a community sentence, a fine, conditional discharge or absolute discharge would be appropriate. For a community sentence to be passed, an offence should be serious enough to warrant one. Further, the requirements which will form part of the (new) community sentence should be the most suitable ones for the offender and the restrictions on the liberty of the offender (such as a curfew requirement) must be in line with the seriousness of the offence. There is an exception, where an offence itself does not warrant a community sentence but where the offender has committed several similar offences in the past. This case is dealt with in section 151.

***Section 149: Passing of community sentence on offender remanded in custody***

452. If an offender has been remanded in custody, and then receives a custodial sentence, his time on remand counts towards his sentence. This is covered in section 240. Section 149 enables the court to have regard to any time spent on remand when putting together the requirements of a community sentence, and deciding upon what restrictions on liberty ought to be imposed.

***Section 150: Community sentence not available where sentence fixed by law, etc.***

453. This section re-enacts section 34 of the Powers of Criminal Courts (Sentencing) Act, but now refers to the new sentences for dangerous offenders. A community sentence is not available in respect of offences for which the sentence is fixed by law, or where sentences for dangerous offenders (in *Sections 225 to 228*) or under sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act, or under section 51A of the Firearms Act 1968 apply.

***Section 151: Community order for persistent offender previously fined***

454. This section replaces existing provisions in section 59 of the Powers of Criminal Courts (Sentencing) Act. In addition to the general principle set out in section 143 for dealing with persistent offenders, this section provides the court with an additional discretionary power for dealing with persistent petty offenders. Where an offender aged 16 or over has been sentenced to a fine on at least three previous occasions, the court may impose a community sentence even if the current offence is one which would on its own warrant a fine. *Subsection (3)* directs the court to consider the nature of the previous offences, and how recent and relevant they are to the current offence. *Subsection (6)* provides that, for the purposes of determining whether the criteria are met, it does not matter whether the offender has on previous sentencing occasions received community or custodial sentences. *Subsection (7)* makes it clear that this Section does not interfere with the court's wider power to treat previous convictions as increasing the seriousness of the offence (see section 143).

***Section 152: General restrictions on imposing discretionary custodial sentences***

455. As with community sentences, a court cannot impose a custodial sentence except where the offence, taken in combination with any past offences, merits it. This section, which largely re-enacts section 79 of the Powers of Criminal Courts (Sentencing) Act, sets out this principle. *Subsection (1)* excludes from this consideration those offences which fall to be punished under the scheme for sentencing dangerous offenders (sections 225 to 228) and those which fall to be sentenced under sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act and section 51A of the Firearms Act 1968. *Subsection (2)*, which is based on section 79(2)(a) of the Powers of Criminal Courts (Sentencing) Act, states that a custodial sentence must only be imposed if the offence(s) is so serious that neither a fine nor a community sentence would be adequate punishment for it. *Subsection (3)* re-enacts section 79(3) of the Powers of Criminal Courts (Sentencing) Act. It provides that *subsection (2)* does not prevent a court from passing a custodial sentence on an offender who fails to consent to requirements imposed as part of a community sentence, where such consent is required) or if he refuses to comply with an order under section 161(2) to provide samples for the purposes of drug testing.

***Section 153: Length of discretionary custodial sentences: general provision***

456. This section re-enacts section 80 of the Powers of Criminal Courts (Sentencing) Act but modifies that provision to direct the court to impose the shortest term that is commensurate with the seriousness of the offence(s), subject to mandatory minimum sentences (in sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act and 51A of the Firearms Act 1968) and the provisions of the extended sentence in Sections 227 and 228. *Subsection (1)* provides an exception to the rule for the case where the sentence is fixed by law (i.e. as a mandatory life sentence), and in the case of a discretionary life sentence or a new sentence of imprisonment or detention for public protection (sections 225 and 226).

***Section 154: General limits on magistrates' court's power to impose imprisonment***

457. This section re-enacts section 78 Powers of Criminal Courts (Sentencing) Act but with a significant amendment. This is an increase in magistrates' sentencing powers so as to enable them to impose custodial sentences of up to and including 12 months in respect of any one offence. These powers are, by virtue of *subsection (4)* without prejudice to any term of imprisonment which may be imposed for non-payment of a fine.

***Section 155: Consecutive terms of imprisonment***

458. This section amends the Magistrates Courts Act 1980, adding to the powers in section 154, by giving magistrates the power to impose a custodial term of 65 weeks in respect of two or more offences to be served consecutively.

***Section 156: Pre-sentence reports and other requirements***

459. This section re-enacts with amendments the existing provisions in sections 36 and 81 of the Powers of Criminal Courts (Sentencing) Act which cover pre-sentence reports for community and custodial sentences. When a court is considering whether to impose a discretionary custodial sentence and how long it should be, or whether to impose a community sentence and what restrictions to put on the offender's liberty as part of that sentence (*Sections 148, 152 and 153*) the court must take into account all the information available to it, including information about the offence and about the offender.
460. Before imposing such a sentence, the Court must obtain a pre-sentence report. Pre-sentence reports are written in the case of adults by the probation service based on an interview and analysis of the offender and his offending history and needs. The pre-sentence report contains advice about what punishment might be appropriate and what rehabilitative work would be likely to prove effective with the offender in order to reduce the risk that he will re-offend.
461. However, *subsection (4)* provides that the court need not obtain a pre-sentence report if it considers it unnecessary to do so in any individual case. *Subsection (5)* provides further protection for juvenile offenders and exempts them from subsection (4). As a result, for offenders under the age of 18, the court must not dispense with the requirement to obtain a pre-sentence report, unless there already is one that relates to the offender and the court has access to it. Under *subsection (6)*, no sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report, even if a pre-sentence report is required under *subsection (3)*.
462. If the offender appeals against sentence, and the lower court did not obtain a pre-sentence report, a pre-sentence report must be obtained and considered unless the appellate court believes the original court was justified in not obtaining a pre-sentence report or the current circumstances are such that a pre-sentence report is not necessary. The situation in relation to appeals for offenders under the age of 18 is slightly different. Unless there is a previous pre-sentence report about the offender and the court has access to it (*subsection (8)*) the court may not decide the original court was justified in not requiring a pre-sentence report or deciding that current circumstances are such that a pre-sentence report is not necessary.

***Section 157: Additional requirements in case of mentally disordered offender***

463. This section re-enacts section 82 of the Powers of Criminal Courts (Sentencing) Act. Special provision is made for mentally disordered offenders: qualified medical practitioners must be consulted before a custodial sentence is imposed (unless the sentence is one that is fixed by law). The court can also decide not to request a medical report if it considers it unnecessary in a particular case. The court must consider any information before it relating to the offender's mental condition and the likely effect of a custodial sentence on the offender and on any treatment which might be available to him. If the court does not obtain a medical report this does not invalidate any sentence passed, but on appeal the court must obtain and consider a medical report. *Subsection (6)* defines a medical report, which is different from a pre-sentence report, and *subsection (7)* says that provisions under this Section do not limit the provisions for pre-sentence reports in section 156.

***Section 158: Meaning of "pre-sentence reports"***

464. This section re-enacts section 162 of the Powers of Criminal Courts (Sentencing) Act and provides a definition for a pre-sentence report described in the preceding Sections. Such a report must be prepared by an "appropriate officer", defined in *subsection (2)* as an officer of the local probation board where the offender is over 18, or where the offender is under 18 a probation officer, social worker or member of a youth offending team.

***Section 159: Disclosure of pre-sentence reports***

465. This section re-enacts section 156 of the Powers of Criminal Courts (Sentencing) Act with changes in respect of the disclosure of pre-sentence reports to juveniles. Where the court does obtain a written pre-sentence report, copies of it must be provided to the persons specified in this section. Normally this should be the offender or his legal representative, the parent or guardian of an offender who is under 18, and the prosecutor. If however, the prosecutor is not of a description prescribed by the Secretary of State, the requirement to give the prosecutor a copy may be dispensed with if the court considers it inappropriate that he should receive one (*subsection (4)*). *Subsection (5)* provides that the prosecutor is only able to use the information in the pre-sentence report either for determining whether to make representations to the court or for making representations to the court about the content of the report. Where the offender is under 18 and it appears to the Court that the disclosure of a report to the offender or his parent or guardian would cause harm to the offender, the court is not obliged to give a copy to the offender or his parent or guardian if present in court (*subsection (3)*).

***Section 160: Other reports of local probation boards and members of youth offending teams***

466. This section re-enacts section 157 of the Powers of Criminal Courts (Sentencing) Act. It applies where a report (other than a pre-sentence report) is made by a probation officer or a member of a youth offending team with a view to assisting the court in deciding how best to deal with a person in respect of an offence (*subsection (1)*). Where the court does obtain a written report other than a pre-sentence report, copies of it must be provided to the persons specified in this section. Normally this should be the offender or his legal representative and the parent or guardian of an offender who is under 18. Where the offender is under 18 and it appears to the court that the disclosure of a report to the offender or his parent or guardian would cause harm to the offender, the court is not obliged to give a copy to the offender or his parent or guardian if present in court (*subsection (3)*).

***Section 161: Pre-sentence drug testing***

467. Pre-sentence drug testing is available to assist the court when it is considering imposing a community sentence. This section re-enacts, with some modifications, section 36A of the Powers of Criminal Courts (Sentencing) Act 2000 (which provides for the pre-sentence drug testing of persons aged 18 and over). It enables the court to make an order, in the case of convicted offenders who are at least 14 years old, to be tested for any specified Class A drug. Where the offender is under the age of 17 years, provision must be made for an appropriate adult (as defined in subsection (8)) to be present when the sample is taken. Failure to provide a sample without a reasonable excuse is punishable by a fine. This power is only exercisable in the areas where the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court. The power is extended under this section additionally to apply where the court is considering imposing a suspended sentence.

***Section 162: Powers to order statement as to offender's financial circumstances***

468. This section re-enacts section 126 of the Powers of Criminal Courts (Sentencing) Act. In some cases the court might wish to know the financial circumstances of the offender. The court can make a "financial circumstances order" in respect of an offender on conviction before sentencing him or if he pleads guilty without appearing before the court. The offender must report his financial circumstances to the court. If the offender fails to comply he commits an offence and is liable to a fine. If the offender falsifies or omits relevant information from a statement of his financial circumstances he also commits an offence and is liable to a fine. *Subsection (6)* enables proceedings for an offence under subsection (5) to be begun within two years from the date of the offence or within 6 months from its discovery.

***Section 163: General power of the Crown Court to fine offender convicted on indictment***

469. This section re-enacts section 127 of the Powers of Criminal Courts (Sentencing) Act. In general, the Crown Court can impose a fine on the offender either instead of, or in addition to, dealing with the offender in any other way. This section does not apply in relation to an offence for which the sentence is fixed by law or which falls to be imposed under sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act or the provisions for dangerous offenders in sections 225 to 228 of the Act.

***Section 164: Fixing of fines***

470. This section re-enacts section 128 of the Powers of Criminal Courts (Sentencing) Act with some modifications. The court must inquire into the financial circumstances of an offender before fixing the amount of a fine on an offender (*subsection (1)*). When determining the amount of a fine, the court must take the financial circumstances of the offender, the seriousness of the offence and the circumstances of the case into account. In certain cases where the information is not available, such as where the offender has not furnished a statement of his financial circumstances, and the court has been unable to assess the offender's financial circumstances, the court may go ahead and fix the amount it thinks appropriate (*subsection (5)*).

***Section 165: Remission of fines***

471. This section re-enacts section 129 of the Powers of Criminal Courts (Sentencing) Act. If an offender's financial circumstances are made clear to the court after it has fixed a fine, it can reduce the fine or withdraw it completely. If the offender is in prison for failing to pay the fine when such a decision is made, his term is to be reduced accordingly.

***Section 166: Savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders.***

472. This section re-enacts and modifies section 158 of the Powers of Criminal Courts (Sentencing) Act and allows the court to take into account any relevant matters in mitigation of the sentence, irrespective of the obligations imposed by section 148 of this Act in respect of community sentences, by sections 152, 153 and 157 of this Act in respect of custodial sentences, by section 156 of this Act in respect of pre-sentence reports and other requirements and by section 163 of this Act in respect of fines. None of the sections mentioned in *subsection (1)* are to prevent the court from passing any sentence it considers appropriate. *Subsection (2)* additionally makes clear that the Court can impose a community sentence, providing there are relevant mitigating factors, even where the offence(s) would normally have justified a custodial sentence. The court can reduce the sentence by considering other penalties given to the offender at the same time and where an offender is convicted of two or more offences by applying the totality principle, which is that the total punitive weight of the sentence must be commensurate with the offences committed (*subsection (3)*).

***Section 167: The Sentencing Guidelines Council***

473. *Subsection (1)* provides for the membership of the Sentencing Guidelines Council, which exists to promulgate guidelines to enable all courts dealing with criminal cases to approach the sentencing of offenders from a common starting point. It stipulates that there will be 7 judicial members and 4 non-judicial members, and provides that the Lord Chief Justice is to be the Chairman of the Council.
474. *Subsection (2)* sets out those persons eligible to be judicial members. *Subsection (3)* is designed to ensure that membership reflects those courts regularly dealing with criminal cases. The Lord Chief Justice is required to appoint a Deputy Chairman from amongst the Council members under *subsection (7)*.

475. Under *subsection (4)* the non-judicial members must have experience in one or more of the following fields: policing, criminal prosecution, criminal defence, and the promotion of the welfare of victims of crime. Under *subsection (9)*, the Secretary of State may appoint as an observer a person with experience of sentencing policy and the administration of sentences. This person may attend and speak at meetings of the Council. *Subsection (6)* ensures that each area of experience is represented on the Council.
476. *Subsection (8)* enables the Lord Chief Justice to nominate another judge to attend in his stead if he is unable to attend a Council meeting.

### ***Section 168: Sentencing Guidelines Council supplementary provisions***

477. This section enables the Lord Chancellor to deal with matters of appointment and removal of members, and Council proceedings by order. It also enables payment of remuneration and expenses to Council members. Lay justices can be remunerated for the time given to membership of the Council. All other judicial members will be salaried, full time members of the judiciary and no further remuneration is necessary. However, provision is made for appropriate expenses to be reimbursed, as determined by the Lord Chancellor under *subsection (4)(b)*. Similarly, by virtue of *subsection (5)* the Home Secretary may determine what payment by way of either remuneration or expenses is appropriate, for the non-judicial members.

### ***Section 169: The Sentencing Advisory Panel***

478. This section provides for the continuation of the Sentencing Advisory Panel, constituted, as at present, by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice. *Subsection (2)* contains the requirement that the Lord Chancellor must appoint a Chairman of the Panel after consultation with the Home Secretary and the Lord Chief Justice. *Subsection (3)* re-enacts provision authorising the Lord Chancellor to remunerate members of the Panel or provide expenses.

### ***Section 170: Guidelines relating to sentencing and allocation***

479. This section sets out the responsibility for issuing guidelines and sets out the matters to be taken into account in the process of creating them.
480. *Subsection (1)* defines “sentencing guidelines” and “allocation guidelines” as meaning guidelines relating to the sentencing of offenders and guidelines as to the allocation of cases between courts.
481. *Subsection (2)* allows the Secretary of State to ask the Council to frame or revise guidelines relating to allocation, a general matter affecting sentencing (for example, relating to the credit to be given for a guilty plea), to a particular category of offender (such as those with previous convictions), or relating to a particular offence. The Council itself can decide to frame guidelines, under *subsection (3)*, and must consider whether to do so where it receives a proposal from the Sentencing Advisory Panel or the Secretary of State (as described above). *Subsection (4)* obliges the Council to keep its guidelines under review (where they have been formally issued) and revise them if appropriate.
482. *Subsection (5)* sets out the factors to be taken into account by the Sentencing Guidelines Council when creating or revising sentencing guidelines. The list (which reproduces the existing list in section 80(3) of the Crime and Disorder Act 1998) is not intended to be exhaustive.
483. *Subsection (6)* sets out certain factors to be taken into account by the Sentencing Guidelines Council when creating or revising allocation guidelines. These are the importance of promoting consistency in decisions under section 19 of the Magistrates’

Courts Act 1980 (which relates to determining mode of trial) and the views of the Sentencing Advisory Panel.

484. *Subsection (7)* requires the Council to include in its guidelines criteria to determine the seriousness of the offence being dealt with. Where appropriate those criteria need to include criteria for determining the significance of any previous convictions of the offender.
485. *Subsection (8)* requires the Council to publish proposed guidelines in draft for consultation with the Secretary of State, any other person the Lord Chancellor after consultation with the Secretary of State directs and any other person the Council considers to be appropriate. It is anticipated that the second of these categories will include the House of Commons Home Affairs Committee. This consultation will follow that undertaken by the Sentencing Advisory Panel (see *Section 171(3)*) and will reflect the need to avoid duplication of effort.
486. *Subsection (9)* provides for the Council, after making such amendments as it considers appropriate, to issue the guidelines as definitive guidelines.

### ***Section 171: Functions of Sentencing Advisory Panel in relation to guidelines***

487. This Section makes provision for the functions of the Sentencing Advisory Panel. The Council is obliged to notify the Sentencing Advisory Panel when it decides to frame new guidelines or to revise existing guidelines. This will enable the Panel to prepare advice to assist the Council. However, under subsection (2) the Panel is also able to propose to the Council that guidelines are framed or revised by the Council.
488. *Subsection (3)* provides that where guidelines are under consideration (either as a result of the Panel's own initiative or that of the Council), the Panel must consult with those that the Council stipulates. The Council will make that decision after consultation with the Secretary of State and Lord Chancellor. The Panel must prepare advice where guidelines are proposed and submit it to the Council. *Subsection (4)* allows the Council to authorise the Panel to dispense with the consultation required under *subsection (3)* if the urgency of a case makes this impractical.

### ***Section 172: Duty of court to have regard to sentencing guidelines***

489. This Section places a duty on courts to have regard to any sentencing guidelines issued by the Council.

### ***Section 173: Annual report by Council***

490. The Council must prepare an annual report on the exercise of its functions, which it must present to Ministers, who in turn must lay a copy of the report before each House of Parliament. The Council must then publish the report. Some leeway is allowed for the publication of the first report which can be published at the end of the financial year following the one in which section 167 comes into force (*subsection (2)*).

### ***Section 174: Duty to give reasons for, and explain effect of, sentence***

491. This section imposes a general statutory duty on courts to give reasons for, and explain the effect of, the sentence passed. In doing so, it seeks to bring together in a single provision many of the obligations on a Court to give reasons when passing sentence which are currently scattered across sentencing legislation.
492. *Subsection (1)* requires a Court to explain its reasons for deciding on the sentence to be passed but to do so in non-technical terms. The aim is to enable the offender and other interested parties to understand why this particular sentence was chosen. The Court will also be under an obligation to explain to the offender how the sentence is structured, what the sentence requires him to do, what will happen if it is not done and any power that exists to vary or review the sentence.



493. *Subsection (2)* extends the obligation to give reasons stated in subsection (1) by setting out certain matters that have to be dealt with. Where the Sentencing Guidelines Council has issued definitive guidelines relevant to the sentence, and the Court departs from them it must give reasons for doing so. In the case of a custodial sentence or a community sentence, the court must explain why it regards the offence as being sufficiently serious to warrant such a sentence. Where the Court reduces a sentence on account of a guilty plea, that fact must be included in the reasons, as must any other aggravating or mitigating factors relevant to the sentencing decision which the Court regarded as being of particular importance.
494. *Subsection (3)* excludes from the obligation to give reasons those cases where the sentence is fixed by law (a separate duty to give reasons in relation to such sentences being made by section 270) or falls to be imposed under the provisions of sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act, and section 51A of the Firearms Act.
495. *Subsection (4)* provides the Secretary of State with an order-making power to confer exemptions from the duty to give reasons for and explain the effect of the sentence passed. He may also prescribe cases in which the reasons or explanation may be given in the absence of the offender. *Subsection (5)* requires a magistrates' court which passes a custodial sentence to ensure that the reason required under *subsection (1)* should be recorded on the warrant authorising the commitment of the offender and also entered in the court register.

***Section 175: Duty to publish information about sentencing***

496. This section amends section 95 of the Criminal Justice Act 1991, so as to require the Secretary of State publish information each year on the effectiveness of sentencing in preventing re-offending and in promoting confidence in the criminal justice system. He is already required to publish information on race, gender and costs in the criminal justice system.

***Section 176: Interpretation of Chapter 1***

497. This section defines various terms used in the Chapter.