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# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 3

#### SENTENCING AND PUNISHMENT OF OFFENDERS

#### CHAPTER 1

#### SENTENCING

#### *General*

#### **63 Duty to consider compensation order**

(1) In section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons), after subsection (2) insert—

“(2A) A court must consider making a compensation order in any case where this section empowers it to do so.”

(2) In section 175 of the Armed Forces Act 2006 (service compensation orders), after subsection (7) insert—

“(7A) The court must consider making a service compensation order in any case where it has power to do so.”

#### **64 Duty to give reasons for and to explain effect of sentence**

(1) The Criminal Justice Act 2003 is amended as follows.

(2) For section 174 substitute—

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#### **“174 Duty to give reasons for and to explain effect of sentence**

- (1) A court passing sentence on an offender has the duties in subsections (2) and (3).
  - (2) The court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence.
  - (3) The court must explain to the offender in ordinary language—
    - (a) the effect of the sentence,
    - (b) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence,
    - (c) any power of the court to vary or review any order that forms part of the sentence, and
    - (d) the effects of failure to pay a fine, if the sentence consists of or includes a fine.
  - (4) Criminal Procedure Rules may—
    - (a) prescribe cases in which either duty does not apply, and
    - (b) make provision about how an explanation under subsection (3) is to be given.
  - (5) Subsections (6) to (8) are particular duties of the court in complying with the duty in subsection (2).
  - (6) The court must identify any definitive sentencing guidelines relevant to the offender's case and—
    - (a) explain how the court discharged any duty imposed on it by section 125 of the Coroners and Justice Act 2009 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);
    - (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.
  - (7) Where, as a result of taking into account any matter referred to in section 144(1) (guilty pleas), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.
  - (8) Where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—
    - (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
    - (b) section 152(2) of this Act (discretionary custodial sentence),
 the court must state why it is of that opinion.
  - (9) In this section “definitive sentencing guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued.”
- (3) In section 270 (duty to give reasons)—

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- (a) for subsection (1) substitute—
    - “(1) Subsection (2) applies where a court makes an order under section 269(2) or (4).”, and
  - (b) in subsection (2) for “In stating its reasons” substitute “In complying with the duty under section 174(2) to state its reasons for deciding on the order made,”.
- (4) In the Armed Forces Act 2006—
- (a) in section 252 (duty to give reasons and explain sentence), omit subsection (2);
  - (b) in section 253 (duties in complying with section 252), omit subsections (1) (a), (c) and (d) and (2)(b) and (d) to (h).
- (5) In consequence of the amendments made by this section omit—
- (a) paragraph 9(6) of Schedule 1 to the Violent Crime Reduction Act 2006;
  - (b) paragraph 80 of Schedule 4 to the Criminal Justice and Immigration Act 2008;
  - (c) paragraph 24 of Schedule 25 to that Act;
  - (d) paragraph 84 of Schedule 21 to the Coroners and Justice Act 2009.

## **65 Sentencing where there is aggravation related to transgender identity**

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) Section 146 (increase in sentence for aggravation related to disability or sexual orientation) is amended as follows.
- (3) In the heading, for “or sexual orientation” substitute “, sexual orientation or transgender identity”.
- (4) In subsection (2)(a)—
  - (a) after sub-paragraph (i) omit “or”;
  - (b) at the end insert—
    - “(iii) the victim being (or being presumed to be) transgender, or”.
- (5) In subsection (2)(b)—
  - (a) after sub-paragraph (i) omit “or”;
  - (b) at the end insert “, or
    - (iii) by hostility towards persons who are transgender.”
- (6) After subsection (5) insert—
  - “(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”
- (7) Schedule 21 (determination of minimum term in relation to mandatory life sentence) is amended as follows.
- (8) For paragraph 3 substitute—
  - “3
    - For the purposes of this Schedule—
      - (a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);

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- (b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);
  - (c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).”
- (9) In paragraph 5(2)(g) (30 year starting point), after “aggravated by sexual orientation” insert “, disability or transgender identity”.
- (10) Section 241 of the Armed Forces Act 2006 (increase in sentence for aggravation related to disability or sexual orientation) is amended as follows.
- (11) In the heading, for “or sexual orientation” substitute “, sexual orientation or transgender identity”.
- (12) In subsection (2)(a)—
- (a) after sub-paragraph (i) omit “or”;
  - (b) at the end insert—
    - “(iii) the victim being (or being presumed to be) transgender, or”.
- (13) In subsection (2)(b)—
- (a) after sub-paragraph (i) omit “or”;
  - (b) at the end insert “, or
    - (iii) by hostility towards persons who are transgender.”
- (14) After subsection (5) insert—
- “(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”

#### Commencement Information

**II** S. 65 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 3)

### Community orders

#### 66 Duration of community order

- (1) In section 177 of the Criminal Justice Act 2003 (general provisions about community orders), in subsection (5) (requirement for order to specify date on which requirements must have been complied with)—
- (a) after the first “date” insert “ (“the end date”)”, and
  - (b) omit the words from “; and” to the end of the subsection.
- (2) After that subsection insert—
- “(5A) If a community order imposes two or more different requirements falling within subsection (1), the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.

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(5B) Subject to section 200(3) (duration of community order imposing unpaid work requirement), a community order ceases to be in force on the end date.”

(3) In Schedule 8 to that Act (breach, revocation or amendment of community order), in paragraph 9 (powers of magistrates' court in case of breach)—

(a) in sub-paragraph (3), for the words from “but may” to the end of the sub-paragraph substitute “ but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB) ”, and

(b) after that sub-paragraph insert—

“(3ZA) A date substituted under sub-paragraph (3)—

(a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);

(b) subject to that, may fall more than three years after the date of the order.

(3ZB) The power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power in paragraph 10(3) to substitute a date has previously been exercised in relation to that order.

(3ZC) A date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section 177(5).”

(4) In that Schedule, in paragraph 10 (powers of Crown Court in case of breach)—

(a) in sub-paragraph (3), for the words from “but may” to the end of the sub-paragraph substitute “ but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB) ”, and

(b) after that sub-paragraph insert—

“(3ZA) A date substituted under sub-paragraph (3)—

(a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);

(b) subject to that, may fall more than three years after the date of the order.

(3ZB) The power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power under paragraph 9(3) to substitute a date has previously been exercised in relation to that order.

(3ZC) A date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section section 177(5).”

(5) In that Schedule, after paragraph 19 insert—

**“Extension of order**

19A (1) The appropriate court may, on the application of the offender or the responsible officer, amend a community order by substituting a later date for that specified under section 177(5).

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- (2) A date substituted under sub-paragraph (1)—
  - (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
  - (b) subject to that, may fall more than three years after the date of the order.
- (3) The power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.
- (4) A date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under section 177(5).
- (5) In this paragraph “the appropriate court” has the same meaning as in paragraph 16.”

#### Commencement Information

**I2** S. 66 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 5(1))

## 67 Breach of community order

- (1) Schedule 8 to the Criminal Justice Act 2003 (breach, revocation or amendment of community order) is amended as follows.
- (2) In paragraph 9 (powers of magistrates' court in case of breach), in sub-paragraph (1)—
  - <sup>F1</sup>(a) .....
  - (b) after paragraph (a) insert—
    - “(aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;”.
- (3) In that paragraph, after sub-paragraph (3A) insert—
 

“(3B) A fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.”
- (4) In sub-paragraph (6) of that paragraph, for the words from “be required to” to “or (c),” substitute “ have the power to deal with the offender under sub-paragraph (1)(a), (aa), (b) or (c), ”.
- (5) In paragraph 10 (powers of Crown Court in case of breach), in sub-paragraph (1)—
  - <sup>F2</sup>(a) .....
  - (b) after paragraph (a) insert—
    - “(aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;”.
- (6) In that paragraph, after sub-paragraph (3A) insert—
 

“(3B) A fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.”
- (7) After paragraph 11 insert—

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### 11A “Power to amend amounts of fines

- (1) The Secretary of State may by order amend any sum for the time being specified in paragraph 9(1)(aa) or 10(1)(aa).
- (2) The power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- (3) In sub-paragraph (2), “the relevant date” means—
  - (a) if the sum specified in paragraph 9(1)(aa) or 10(1)(aa) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
  - (b) otherwise, the date on which section 67 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.
- (4) An order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any community order made in respect of an offence committed before the fine amendment order comes into force.”

#### Textual Amendments

- F1** S. 67(2)(a) omitted (11.12.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 22\(1\)](#); S.I. 2013/2981, art. 2(d)
- F2** S. 67(5)(a) omitted (11.12.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 22\(1\)](#); S.I. 2013/2981, art. 2(d)

#### Commencement Information

- I3** S. 67 partly in force; s. 67 not in force at Royal Assent, see s. 151(1); s. 67(1)(2)(b)(3)(4)(5)(b)(6)(7) in force at 3.12.2012 by [S.I. 2012/2906](#), [art. 2\(a\)](#) (with [art. 4](#))

### *Suspended sentence orders*

## 68 Changes to powers to make suspended sentence order

- (1) In section 189 of the Criminal Justice Act 2003 (suspended sentences of imprisonment), for subsection (1) substitute—
  - “(1) If a court passes a sentence of imprisonment for a term of least 14 days but not more than 2 years, it may make an order providing that the sentence of imprisonment is not to take effect unless—
    - (a) during a period specified in the order for the purposes of this paragraph (“the operational period”) the offender commits another offence in the United Kingdom (whether or not punishable with imprisonment), and
    - (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- (1A) An order under subsection (1) may also provide that the offender must comply during a period specified in the order for the purposes of this

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subsection (“the supervision period”) with one or more requirements falling within section 190(1) and specified in the order.

(1B) Where an order under subsection (1) contains provision under subsection (1A), it must provide that the sentence of imprisonment will also take effect if—

- (a) during the supervision period the offender fails to comply with a requirement imposed under subsection (1A), and
- (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.”

(2) In subsection (2) of that section (application of subsection (1) where consecutive sentences imposed), for the words from “does not exceed” to the end of the subsection substitute “ does not exceed 2 years ”.

(3) In subsection (3) of that section (length of supervision period and operational period), after “supervision period” insert “ (if any) ”.

(4) In subsection (4) of that section (supervision period not to end later than operational period), at the beginning insert “ Where an order under subsection (1) imposes one or more community requirements, ”.

(5) In subsection (7)(c) of that section (meaning of “community requirement”), for “(1)(a)” substitute “ (1A) ”.

(6) Schedule 9 (changes to powers to make suspended sentence orders: consequential and transitory provision) has effect.

(7) The amendments and modifications made by this section and that Schedule apply in relation to offences committed before or after the coming into force of any provision of this section or that Schedule.

## **69 Fine for breach of suspended sentence order**

(1) Schedule 12 to the Criminal Justice Act 2003 (breach or amendment of suspended sentence order, and effect of further conviction) is amended as follows.

(2) In paragraph 8 (powers of court in case of breach or conviction)—

(a) in sub-paragraph (2), after paragraph (b) insert—

“(ba) the court may order the offender to pay a fine of an amount not exceeding £2,500,”

(b) after sub-paragraph (4) insert—

“(4ZA) A fine imposed under sub-paragraph (2)(ba) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.”, and

(c) in sub-paragraph (6), after “(b)” insert “ , (ba) ”.

(3) After paragraph 12 insert—

### **12A “Power to amend amount of fine**

(1) The Secretary of State may by order amend the sum for the time being specified in paragraph 8(2)(ba).



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- (2) The power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- (3) In sub-paragraph (2), “the relevant date” means—
  - (a) if the sum specified in paragraph 8(2)(ba) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
  - (b) otherwise, the date on which section 69 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.
- (4) An order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any suspended sentence order made in respect of an offence committed before the fine amendment order comes into force.”

#### Commencement Information

**I4** S. 69 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 4)

### *Requirements under community orders and suspended sentence orders*

## 70 Programme requirement

- (1) In section 177(2) of the Criminal Justice Act 2003 (community orders: restrictions relating to particular requirements) omit paragraph (c) (which refers to section 202(4) and (5) of that Act).
- (2) In section 190(2) of that Act (suspended sentence orders: restrictions relating to particular requirements) omit paragraph (c) (which refers to section 202(4) and (5) of that Act).
- (3) Section 202 of that Act (orders imposing programme requirements) is amended as follows.
- (4) In subsection (1) (meaning of “programme requirement”)—
  - (a) after “participate” insert “ in accordance with this section ”, and
  - (b) for the words from “specified in the order” to the end of the subsection substitute “ on the number of days specified in the order. ”
- (5) Omit subsections (4) and (5) (requirements to be met before court includes a programme requirement in a relevant order).
- (6) In subsection (6) (effect of programme requirement)—
  - (a) in the opening words, for “requirement to attend an accredited programme” substitute “ programme requirement ”, and
  - (b) in paragraph (a), for “at the place specified in the order” substitute “ that is from time to time specified by the responsible officer at the place that is so specified ”.
- (7) In subsection (7) (requirement for place providing programme requirement to be approved) for “in an order” substitute “ by a responsible officer ”.

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- (8) In consequence of subsection (5), omit paragraph 86 of Schedule 4 to the Criminal Justice and Immigration Act 2008.

## 71 Curfew requirement

- (1) Section 204 of the Criminal Justice Act 2003 (orders imposing curfew requirements) is amended as follows.
- (2) In subsection (2) (order may not specify curfew period of more than twelve hours) for “twelve” substitute “sixteen”.
- (3) In subsection (3) (order may not specify curfew periods outside period of six months from making of order) for “six” substitute “twelve”.

### Commencement Information

**I5** S. 71 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 3)

## 72 Foreign travel prohibition requirement

- (1) In section 177 of the Criminal Justice Act 2003 (community orders), in subsection (1), after paragraph (g) insert—
- “(ga) a foreign travel prohibition requirement (as defined by section 206A),”.
- (2) In subsection (4) of that section (power to impose electronic monitoring requirement), after “a residence requirement,” insert “a foreign travel prohibition requirement,”.
- (3) In section 190 of that Act (imposition of requirements by suspended sentence order), in subsection (1), after paragraph (g) insert—
- “(ga) a foreign travel prohibition requirement (as defined by section 206A),”.
- (4) In subsection (4) of that section (power to impose electronic monitoring requirement), after “a residence requirement,” insert “a foreign travel prohibition requirement,”.
- (5) After section 206 of that Act insert—

### “206A Foreign travel prohibition requirement

- (1) In this Part “foreign travel prohibition requirement”, in relation to a relevant order, means a requirement prohibiting the offender from travelling, on a day or days specified in the order, or for a period so specified—
- to any country or territory outside the British Islands specified or described in the order,
  - to any country or territory outside the British Islands other than a country or territory specified or described in the order, or
  - to any country or territory outside the British Islands.
- (2) A day specified under subsection (1) may not fall outside the period of 12 months beginning with the day on which the relevant order is made.

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- (3) A period specified under that subsection may not exceed 12 months beginning with the day on which the relevant order is made.”
- (6) In section 305(1) of that Act (interpretation of Part 12), at the appropriate place insert—
- ““foreign travel prohibition requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 206A;”.

#### Commencement Information

**I6** S. 72 wholly in force at 3.12.2012, see s. 151(1) and [S.I. 2012/2906](#), **art. 2(a)** (with **art. 3**)

### 73 Mental health treatment requirement

- (1) Section 207 of the Criminal Justice Act 2003 (mental health treatment requirement) is amended as follows.
- (2) In subsection (3)(a) (requirement for court to be satisfied as to offender's mental condition on evidence of registered medical practitioner)—
- (a) omit the words from “, on the evidence” to “1983;”, and
- (b) in sub-paragraph (ii), for “that Act” substitute “ the Mental Health Act 1983 ”.
- (3) Omit subsection (5) (application of section 54(2) and (3) of the Mental Health Act 1983 to proof of offender's mental condition).

### 74 Drug rehabilitation requirement

- (1) In section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirements) omit subsection (3) (requirement for treatment and testing period to be at least six months).
- (2) In section 211(2) of that Act (powers of court at review hearing)—
- (a) at the end of paragraph (a) insert “ and ”, and
- (b) omit paragraph (b) and the “and” at the end of that paragraph.
- (3) In section 223(3) of that Act (power to amend specified periods of time), omit paragraph (c).

### 75 Alcohol treatment requirement

- (1) In section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement) omit subsection (4) (requirement for alcohol treatment requirement to have effect for at least six months).
- (2) In section 223(3) of that Act (power to amend specified periods of time), omit paragraph (d).

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## 76 Alcohol abstinence and monitoring requirement

(1) After section 212 of the Criminal Justice Act 2003 insert—

### “212A Alcohol abstinence and monitoring requirement

- (1) In this Part “alcohol abstinence and monitoring requirement”, in relation to a relevant order, means a requirement—
- (a) that, subject to such exceptions (if any) as are specified—
    - (i) the offender must abstain from consuming alcohol throughout a specified period, or
    - (ii) the offender must not consume alcohol so that at any time during a specified period there is more than a specified level of alcohol in the offender's body, and
  - (b) that the offender must, for the purpose of ascertaining whether the offender is complying with provision under paragraph (a), submit during the specified period to monitoring in accordance with specified arrangements.
- (2) A period specified under subsection (1)(a) must not exceed 120 days.
- (3) If the Secretary of State by order prescribes a minimum period for the purposes of subsection (1)(a), a period specified under that provision must be at least as long as the period prescribed.
- (4) The level of alcohol specified under subsection (1)(a)(ii) must be that prescribed by the Secretary of State by order for the purposes of that provision (and a requirement under that provision may not be imposed unless such an order is in force).
- (5) An order under subsection (4) may prescribe a level—
- (a) by reference to the proportion of alcohol in any one or more of an offender's breath, blood, urine or sweat, or
  - (b) by some other means.
- (6) The arrangements for monitoring specified under subsection (1)(b) must be consistent with those prescribed by the Secretary of State by order (and an alcohol abstinence and monitoring requirement may not be imposed unless such an order is in force).
- (7) An order under subsection (6) may in particular prescribe—
- (a) arrangements for monitoring by electronic means;
  - (b) arrangements for monitoring by other means of testing.
- (8) A court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met.
- (9) The first condition is that—
- (a) the consumption of alcohol by the offender is an element of the offence for which the order is to be imposed or an associated offence, or

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- (b) the court is satisfied that the consumption of alcohol by the offender was a factor that contributed to the commission of that offence or an associated offence.
- (10) The second condition is that the court is satisfied that the offender is not dependent on alcohol.
- (11) The third condition is that the court does not include an alcohol treatment requirement in the order.
- (12) The fourth condition is that the court has been notified by the Secretary of State that arrangements for monitoring of the kind to be specified are available in the local justice area to be specified.
- (13) In this section—  
“alcohol” includes anything containing alcohol;  
“specified”, in relation to a relevant order, means specified in the order.”
- (2) In section 177 of that Act (community orders), in subsection (1), after paragraph (j) insert—  
“(ja) an alcohol abstinence and monitoring requirement (as defined by section 212A),”.
- (3) In subsection (2) of that section (limitations on power to impose community order)—  
(a) omit the “and” at the end of paragraph (f), and  
(b) at the end of paragraph (g) insert “, and  
(h) section 212A(8) to (12) (alcohol abstinence and monitoring requirement).”
- (4) In section 190 of that Act (imposition of requirements by suspended sentence order), in subsection (1), after paragraph (j) insert—  
“(ja) an alcohol abstinence and monitoring requirement (as defined by section 212A),”.
- (5) In subsection (2) of that section (limitations on power to impose requirements by suspended sentence order)—  
(a) omit the “and” at the end of paragraph (f), and  
(b) at the end of paragraph (g) insert “, and  
(h) section 212A(8) to (12) (alcohol abstinence and monitoring requirement).”
- (6) In section 215 of that Act (electronic monitoring requirement), after subsection (4) insert—  
“(5) An electronic monitoring requirement may not be included in a relevant order for the purposes of securing the electronic monitoring of the offender’s compliance with an alcohol abstinence and monitoring requirement.  
(6) Subsection (5) does not prevent the inclusion of an electronic monitoring requirement in a relevant order which includes an alcohol abstinence and monitoring requirement where this is for the purpose of securing the electronic monitoring of an offender’s compliance with a requirement other than the alcohol abstinence and monitoring requirement.”

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- (7) In section 223(3) of that Act (provisions to which powers to amend periods of time apply), after paragraph (b) insert—
- “(ba) section 212A(2) (alcohol abstinence and monitoring requirement)”.
- (8) In section 305(1) of that Act (interpretation of Part 12), at the appropriate place insert—
- ““alcohol abstinence and monitoring requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 212A;”.
- (9) In Schedule 9 to that Act (transfer of community orders to Scotland or Northern Ireland)—
- (a) in paragraph 1(5), after “require” insert “ an alcohol abstinence and monitoring requirement or ”, and
- (b) in paragraph 3, after sub-paragraph (4) insert—
- “(4A) The court may not by virtue of sub-paragraph (1) or (3) require an alcohol abstinence and monitoring requirement to be complied with in Northern Ireland.”
- (10) In Schedule 13 to that Act (transfer of suspended sentence orders to Scotland or Northern Ireland)—
- (a) in paragraph 1(5), after “require” insert “ an alcohol abstinence and monitoring requirement or ”, and
- (b) in paragraph 6, after sub-paragraph (4) insert—
- “(4A) The court may not by virtue of sub-paragraph (1) or (3) require an alcohol abstinence and monitoring requirement to be complied with in Northern Ireland.”
- (11) In the Armed Forces Act 2006—
- (a) in section 180 (transfer of service community order to Scotland or Northern Ireland), in subsection (2), after “3(1)” insert “ and (4A) ”, and
- (b) in section 204 (transfer of suspended sentence order to Scotland or Northern Ireland), in subsection (2), for “6(5)” substitute “ 6(4A) and (5) ”.

## 77 **Piloting of alcohol abstinence and monitoring requirements**

- (1) The Secretary of State may by order provide for the coming into force of section 76.
- (2) The Secretary of State may not make an order under subsection (1) with the effect that section 76 is in force for the whole of England and Wales (a “general commencement order”) without having previously made a piloting order.
- (3) Subsection (2) does not prevent an order under subsection (1) from bringing section 76 into force for the purpose only of making orders under section 212A or 223 of the Criminal Justice Act 2003 or rules under section 222 of that Act (and such an order is not a general commencement order for the purposes of this section).
- (4) A “piloting order” is an order under subsection (1) with the effect that section 76 is force only—
- (a) in relation to the area or areas specified in the order, and

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- (b) for the period specified in the order,  
but otherwise for all purposes, or for all purposes other than application by the Armed Forces Act 2006.
- (5) If, having made one or more piloting orders, the Secretary of State decides to make a general commencement order, the Secretary of State may by order—
  - (a) amend section 76 so as to enable the general commencement order to bring it into force with those amendments;
  - (b) amend or repeal any provision of this Act in consequence of provision made under paragraph (a).
- (6) Amendments under subsection (5)(a)—
  - (a) may confer power on the Secretary of State to make an order or rules;
  - (b) may not enable a court to provide for an alcohol abstinence and monitoring requirement to be complied with in Scotland or Northern Ireland.
- (7) If, having made one or more piloting orders, the Secretary of State decides not to make a general commencement order, the Secretary of State may by order—
  - (a) repeal section 76;
  - (b) amend the Criminal Justice Act 2003 so as to reverse the effect of that section on that Act;
  - (c) make other consequential amendments or repeals.
- (8) An order under this section may make transitional, transitory or saving provision (including, in the case of a piloting order, provision relating to section 76 ceasing to be in force at the end of the period specified in the order).
- (9) An order under this section is to be made by statutory instrument.
- (10) A statutory instrument containing—
  - (a) a general commencement order, or
  - (b) an order under subsection (5) or (7),may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### *Overseas community orders and service community orders*

### **78 Overseas community orders and service community orders**

- (1) Section 182 of the Armed Forces Act 2006 (general provisions about overseas community orders) is amended as follows.
- (2) In subsection (1)(a) (requirements that may be imposed by overseas community orders), after “Act” insert “ (but see subsection (1A) below) ”.
- (3) After subsection (1) insert—

“(1A) The order may not include a requirement mentioned in section 177(1)(ga) (a foreign travel prohibition requirement) or (ja) (an alcohol abstinence and monitoring requirement).”
- (4) In subsection (4) (application of section 177(5) and (6) of the Criminal Justice Act 2003 to overseas community orders), after “(5)” insert “ , (5A), (5B) ”.

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- (5) In section 322 of that Act (financial penalty enforcement orders), in the definition of “financial penalty” in subsection (4), after “including” insert “ a fine imposed by the Court Martial or the Service Civilian Court under paragraph 10(1)(aa) of Schedule 8 to the 2003 Act by virtue of section 184 and Part 2 of Schedule 5 (breach etc of overseas community order) or ”.
- (6) In Part 1 of Schedule 5 to that Act (breach, revocation and amendment of service community orders), in paragraph 1(2) (provisions of Schedule 8 to the Criminal Justice Act 2003 that do not apply to such orders), after “18(4),” insert “ 19A(5), ”.
- (7) Part 2 of Schedule 5 to that Act (breach, revocation and amendment of overseas community orders) is amended as follows.
- (8) In paragraph 10(2)(b) (provisions of Schedule 8 to the Criminal Justice Act 2003 that do not apply to such orders), after “19,” insert “ 19A(5), ”.
- (9) After paragraph 14 insert—

“14A

- (1) The following provisions apply where the Court Martial or the Service Civilian Court imposes a fine under paragraph 10(1)(aa) of that Schedule as applied by this Part of this Schedule.
  - (2) Section 251 of this Act (power to order payment of fine by instalments) applies in relation to the fine as it applies in relation to a fine imposed by a court for a service offence.
  - (3) Where the offender is aged under 18 when the fine is imposed and has a service parent or service guardian (within the meaning of section 268 of this Act), subsections (2) to (4) of that section (payment of fine by service parent or service guardian) apply in relation to the fine as they apply in relation to a fine imposed in the circumstances mentioned in subsection (1) of that section.
  - (4) In the application of subsection (2) of section 268 by virtue of sub-paragraph (3) of this paragraph, the reference in that subsection to the time of conviction is to be read as a reference to the time the fine is imposed.
  - (5) Section 269(2) of this Act (power of court to make financial statement order before making order under section 268) does not apply in relation to an order under section 268 which is made by virtue of sub-paragraph (3) of this paragraph.”
- (10) In Schedule 6 to that Act (overseas community orders imposed on young offenders), in paragraph 5 (modification of drug rehabilitation requirement in relation to such offenders), omit sub-paragraph (4) (which disapplies section 209(3) of the Criminal Justice Act 2003).

#### Commencement Information

- I7** S. 78 partly in force; s. 78 not in force at Royal Assent, see s. 151(1); s. 78(1)(2)(4)-(10) in force and s. 78(3) in force for specified purposes at 3.12.2012 by S.I. 2012/2906, art. 2(a)



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## *Youth sentences*

### **79 Referral orders for young offenders**

- (1) In section 16(1)(c) of the Powers of Criminal Courts (Sentencing) Act 2000 (duty or power to refer a young offender to a youth offender panel not to apply if court proposes to discharge the offender absolutely) for “absolutely” substitute “, whether absolutely or conditionally,”.
- (2) In section 17 of that Act (the referral conditions)—
  - (a) in subsection (2) at the end of paragraph (a) insert “ and ”,
  - (b) in that subsection omit paragraph (c) and the word “and” immediately before it, and
  - (c) omit subsections (2A) to (2D).
- (3) In consequence of the amendment made by subsection (2)(c) omit paragraph 12(3), (4) and (5) of Schedule 17 to the Coroners and Justice Act 2009.
- (4) The amendments made by this section do not apply in relation to any sentence passed in relation to an offence committed before the coming into force of this section.

### **80 Breach of detention and training order**

- (1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- (2) In section 104 (breach of detention and training order), in subsection (3) (penalties for breach), for paragraph (a) and the “or” at the end of that paragraph substitute—
  - “(a) order the offender to be detained, in such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding the maximum period found under subsection (3A) below, as the court may specify;
  - (aa) order the offender to be subject to such period of supervision, not exceeding the maximum period found under subsection (3A) below, as the court may specify; or”.
- (3) After subsection (3) of that section insert—
  - “(3A) The maximum period referred to in subsection (3)(a) and (aa) above is the shorter of—
    - (a) three months, and
    - (b) the period beginning with the date of the offender's failure and ending with the last day of the term of the detention and training order.
  - (3B) For the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the first of those days.
  - (3C) A court may order a period of detention or supervision, or impose a fine, under subsection (3) above before or after the end of the term of the detention and training order.
  - (3D) A period of detention or supervision ordered under subsection (3) above—
    - (a) begins on the date the order is made, and

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- (b) may overlap to any extent with the period of supervision under the detention and training order.”
- (4) After subsection (4) of that section insert—
- “(4A) Where an order under subsection (3)(a) above is made in the case of a person who has attained the age of 18, the order has effect to require the person to be detained in prison for the period specified by the court.”
- (5) After subsection (5) of that section insert—
- “(5A) Sections 104A and 104B below make further provision about the operation of orders under subsection (3) above.”
- (6) In subsection (6) of that section, after “(a)” insert “ , (aa) ”.
- (7) After that section insert—

**“104A Application of sections 103 to 105 in relation to orders under section 104(3)(aa)**

- (1) Subsections (3) to (7) of section 103 above apply in relation to a period of supervision to which an offender is subject by virtue of an order under section 104(3)(aa) above as they apply to the period of supervision under a detention and training order.
- (2) In the application of section 103 above by virtue of subsection (1) above, subsection (7)(a) of that section is to be read as requiring a notice to be given to the offender as soon as is reasonably practicable after the order under section 104(3)(aa) above is made.
- (3) Section 104 above and section 105 below apply where an offender is subject to a period of supervision under section 104(3)(aa) above as they apply where a detention and training order is in force in respect of an offender.
- (4) In the application of section 104 above by virtue of subsection (3) above—
- (a) the references in that section to section 103(6)(b) above are to be read as references to that provision as applied by subsection (1) above,
  - (b) the references in subsections (3A)(b) and (3C) of that section to the term of the detention and training order are to be read as references to the term of the period of supervision under section 104(3)(aa) above, and
  - (c) the reference in subsection (3D)(b) of that section to the period of supervision under the detention and training order is to be read as including a reference to the period of supervision under section 104(3)(aa) above.
- (5) In the application of section 105 below by virtue of subsection (3) above—
- (a) paragraph (a) of subsection (1) of that section is to be read as if the words “after his release and” were omitted, and
  - (b) the reference in that paragraph to the date on which the term of the detention and training order ends is to be read as a reference to the date on which the period of supervision under section 104(3)(aa) ends.

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### **104B Interaction of orders under section 104(3)(a) with other sentences**

- (1) Where a court makes a detention and training order in the case of an offender who is subject to a period of detention under section 104(3)(a) above, the detention and training order takes effect—
  - (a) at the beginning of the day on which it is made, or
  - (b) if the court so orders, at the time when the period of detention under section 104(3)(a) above ends.
- (2) Where a court orders an offender who is subject to a detention and training order to be subject to a period of detention under section 104(3)(a) above for a failure to comply with requirements under a different detention and training order, the period of detention takes effect as follows—
  - (a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which the order for the period of detention is made, and
  - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102 above.
- (3) Subject to subsection (4) below, where at any time an offender is subject concurrently—
  - (a) to a detention and training order, and
  - (b) to a period of detention under section 104(3)(a) above,the offender is to be treated for the purposes of sections 102 to 105 of this Act as if the offender were subject only to the detention and training order.
- (4) Nothing in subsection (3) above requires the offender to be released in respect of either the order or the period of detention unless and until the offender is required to be released in respect of each of them.
- (5) The Secretary of State may by regulations make provision about the interaction between a period of detention under section 104(3)(a) above and a custodial sentence in a case where—
  - (a) an offender who is subject to such a period of detention becomes subject to a custodial sentence, or
  - (b) an offender who is subject to a custodial sentence becomes subject to such a period of detention.
- (6) The provision that may be made by regulations under subsection (5) above includes—
  - (a) provision as to the time at which the period of detention under section 104(3)(a) above or the custodial sentence is to take effect;
  - (b) provision for the offender to be treated, for the purposes of the enactments specified in the regulations, as subject only to the period of detention or the custodial sentence;
  - (c) provision about the effect of enactments relating to the person's release from detention or imprisonment in a case where that release is not to take effect immediately by virtue of provision in the regulations.

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- (7) The power of the Secretary of State to make regulations under subsection (5) above—
- (a) is exercisable by statutory instrument;
  - (b) includes power to make supplementary, incidental, transitional, transitory or saving provision.
- (8) A statutory instrument containing regulations under subsection (5) above is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (8) Before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentence of detention in a young offender institution) section 104(4A) of the Powers of Criminal Courts (Sentencing) Act 2000 has effect as if it referred to a person who has attained the age of 21.
- (9) In section 213 of the Armed Forces Act 2006 (application of provisions relating to civilian detention and training orders to orders under section 211 of that Act)—
- (a) in subsection (2), after “(13)” insert “ , 104B(1) ”, and
  - (b) after subsection (3) insert—
    - “(4) Subsection (5) applies where an order under section 104(3) (further period of detention or supervision) of the Sentencing Act is made against an offender for breach of supervision requirements—
      - (a) during a period of supervision under an order under section 211 of this Act,
      - (b) during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or
      - (c) during one of a series of further periods of supervision—
        - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
        - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).
- (5) In the application of sections 104A and 104B of the Sentencing Act in relation to the offender, references to section 105 of that Act include section 214 of this Act.
- (6) In subsection (4)—
- “further period of supervision” means a period of supervision imposed under section 104(3)(aa) of the Sentencing Act;
- “supervision requirements” means requirements under section 103(6)(b) of that Act.
- (7) In section 104B of the Sentencing Act, references to a custodial sentence within the meaning of that Act include a custodial sentence within the meaning of this Act.”
- (10) The amendments made by this section apply in relation to a failure to comply with requirements under section 103(6)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 that occurs after this section comes into force.

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- (11) Where a failure is found to have occurred over two or more days, it is to be taken for the purposes of subsection (10) to have occurred on the first of those days.

## **81 Youth rehabilitation order: curfew requirement**

- (1) Paragraph 14 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order: curfew requirement) is amended as follows.
- (2) In sub-paragraph (2) (order may not specify curfew period of more than 12 hours) for “12” substitute “ 16 ”.
- (3) In sub-paragraph (3) (order may not specify curfew periods outside period of 6 months from making of order) for “6” substitute “ 12 ”.

### **Commencement Information**

**I8** S. 81 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 3)

## **82 Youth rehabilitation order: mental health treatment requirement**

- (1) Paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order: mental health treatment requirement) is amended as follows.
- (2) In sub-paragraph (3)(a) (requirement for court to be satisfied as to offender's mental condition on evidence of registered medical practitioner)—
- (a) omit the words from “, on the evidence” to “1983 (c. 20),” and
- (b) in sub-paragraph (ii), for “that Act” substitute “ the Mental Health Act 1983 ”.
- (3) Omit sub-paragraph (5) (application of section 54(2) and (3) of the Mental Health Act 1983 to proof of offender's mental condition).

## **83 Youth rehabilitation order: duration**

- (1) In Schedule 1 to the Criminal Justice and Immigration Act 2008 (further provisions about youth rehabilitation orders), in paragraph 32 (requirement for order to specify date by which requirements must have been complied with)—
- (a) in sub-paragraph (1), after the first “date” insert “ (“the end date”) ”,
- (b) for sub-paragraph (2) substitute—
- “(2) If a youth rehabilitation order imposes two or more different requirements falling within Part 2 of this Schedule, the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.” and
- (c) after sub-paragraph (3) insert—
- “(4) Subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order ceases to be in force on the end date.”
- (2) In Schedule 2 to that Act (breach, revocation or amendment of youth rehabilitation order), in paragraph 6 (powers of magistrates' court in case of breach of order)—

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- (a) in sub-paragraph (6), at the beginning insert “ Subject to sub-paragraph (6A), ”, and
  - (b) after that sub-paragraph insert—
    - “(6A) When imposing a requirement under sub-paragraph (2)(b), the court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.
    - (6B) A date substituted under sub-paragraph (6A)—
      - (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
      - (b) subject to that, may fall more than three years after the date on which the order took effect.
    - (6C) The power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 8(6A) has previously been exercised in relation to that order.
    - (6D) A date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.”
- (3) In that Schedule, in paragraph 8 (powers of Crown Court in case of breach of order)—
- (a) in sub-paragraph (6), at the beginning insert “ Subject to sub-paragraph (6A), ”, and
  - (b) after that sub-paragraph insert—
    - “(6A) When imposing a requirement under sub-paragraph (2)(b), the Crown Court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.
    - (6B) A date substituted under sub-paragraph (6A)—
      - (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
      - (b) subject to that, may fall more than three years after the date on which the order took effect.
    - (6C) The power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 6(6A) has previously been exercised in relation to that order.
    - (6D) A date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.”
- (4) In that Schedule, in paragraph 16(1) (exercise of powers to amend order: further provision), at the beginning insert “ Subject to paragraph 16A, ”.
- (5) After that paragraph insert—

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## 16A “Extension of order

- (1) The appropriate court may, on the application of the offender or the responsible officer, amend a youth rehabilitation order by substituting a later date for that specified under paragraph 32(1) of Schedule 1.
- (2) A date substituted under sub-paragraph (1)—
  - (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
  - (b) subject to that, may fall more than three years after the date on which the order took effect.
- (3) The power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.
- (4) A date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.
- (5) In this paragraph “the appropriate court” means—
  - (a) if the order was made by a youth court or other magistrates' court, or was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, the court determined under sub-paragraph (6), and
  - (b) if the order was made by the Crown Court and does not contain a direction under paragraph 36 of Schedule 1, the Crown Court.
- (6) The court referred to in sub-paragraph (5)(a) is—
  - (a) if the offender is aged under 18 when the application is made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
  - (b) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area.”

### Commencement Information

**19** S. 83 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 5(2))

## 84 Youth rehabilitation order: fine for breach

- (1) Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach of requirement of youth rehabilitation order) is amended as follows.
- (2) In paragraph 6 (powers of magistrates' court in case of breach), in sub-paragraph (2) (a), for sub-paragraphs (i) and (ii) substitute “£2,500”.
- (3) In paragraph 8 (powers of Crown Court in case of breach), in sub-paragraph (2)(a), for sub-paragraphs (i) and (ii) substitute “£2,500”.
- (4) In paragraph 10 (power to amend amounts of fine)—
  - (a) in sub-paragraph (1) omit “(i) or (ii)” in both places, and
  - (b) in sub-paragraph (3)—
    - (i) in paragraph (a) omit “(i) or (ii)” in both places, and

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- (ii) in paragraph (b), for “this Act was passed” substitute “ section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force ”.

#### Commencement Information

**I10** S. 84 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 4)

### *Fines*

#### **85 Removal of limit on certain fines on conviction by magistrates' court**

- (1) Where, on the commencement day, a relevant offence would, apart from this subsection, be punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the offence is punishable on summary conviction on or after that day by a fine of any amount.
- (2) Where, on the commencement day, a relevant power could, apart from this subsection, be exercised to create an offence punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the power may be exercised on or after that day to create an offence punishable on summary conviction by a fine of any amount.
- (3) For the purposes of this section—
  - (a) an offence is relevant if, immediately before the commencement day, it is a common law offence or it is contained in an Act or an instrument made under an Act (whether or not the offence is in force at that time), and
  - (b) a power is relevant if, immediately before the commencement day, it is contained in an Act or an instrument made under an Act (whether or not the power is in force at that time).
- (4) Nothing in subsection (1) affects—
  - (a) fines for offences committed before the commencement day,
  - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
  - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
 and provision made in exercise of a relevant power in reliance on subsection (2) does not affect such fines or the operation of such restrictions.
- (5) The Secretary of State may by regulations make provision disapplying subsection (1) or (2).
- (6) The Secretary of State may by regulations make provision—
  - (a) for an offence in relation to which subsection (1) is disappplied to be punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations, and
  - (b) for a power in relation to which subsection (2) is disappplied to be exercisable to create an offence punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.
- (7) Subsection (8) applies in relation to—



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- (a) a relevant offence that, immediately before the commencement day, is punishable on summary conviction by a fine or maximum fine expressed as a proportion of an amount of £5,000 or more (however that amount is expressed), and
  - (b) a relevant power which, immediately before the commencement day, can be exercised to create an offence punishable on summary conviction by such a fine or maximum fine.
- (8) The Secretary of State may by regulations make provision—
- (a) for the offence to be punishable on summary conviction by a fine or maximum fine of that proportion of an amount specified or described in the regulations, and
  - (b) for the power to be exercisable to create an offence punishable on summary conviction by such a fine or maximum fine.
- (9) Regulations under this section may not include provision affecting—
- (a) fines for offences committed before the regulations come into force,
  - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
  - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
- and provision made in exercise of a relevant power in reliance on regulations under this section may not include such provision.
- (10) Regulations under this section—
- (a) may make different provision for different cases or circumstances,
  - (b) may make provision generally or only for specified cases or circumstances, and
  - (c) may make consequential, incidental, supplementary, transitional, transitory or saving provision.
- (11) Regulations under this section, and regulations under section 149 making provision in relation to this section, may amend, repeal, revoke or otherwise modify any provision which, immediately before the commencement day, is contained in an Act or an instrument made under an Act (whether or not the provision is in force at that time).
- (12) Regulations under this section are to be made by statutory instrument.
- (13) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (14) If, immediately before the commencement day, the sum specified as level 5 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) is greater than £5,000, the references in this section to £5,000 have effect as if they were references to that sum.
- (15) Powers under this section—
- (a) may be exercised from time to time, and
  - (b) are without prejudice to other powers to modify fines for relevant offences or fines that may be specified or described when exercising a relevant power.
- (16) For the purposes of this section, an offence is relevant whether it is a summary offence or an offence triable either way.

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(17) In this section—

“Act” includes an Act or Measure of the National Assembly for Wales;

“the commencement day” means the day on which subsection (1) of this section comes into force;

and references to an offence, power or provision contained in an Act or instrument include an offence, power or provision applied by, or extending to England and Wales by virtue of, an Act or instrument.

#### Modifications etc. (not altering text)

- C1** S. 85 applied (with modifications) (cond.) (30.1.2014) by [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 \(c. 4\)](#), ss. **30(10)**, 45(3)(b) (with s. 46(1)(2))
- C2** S. 85 applied (with modifications) (cond.) (30.1.2014) by [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 \(c. 4\)](#), ss. **35(10)(a)**, 45(3)(b) (with s. 46(1)(2))
- C3** S. 85 applied (with modifications) (cond.) (30.1.2014) by [Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 \(c. 4\)](#), ss. **33(9)**, 45(3)(b) (with s. 46(1)(2))

VALID FROM 28/05/2014

#### 86 Power to increase certain other fines on conviction by magistrates' court

- (1) Subsection (2) applies in relation to a relevant offence which, immediately before the commencement day, is punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000.
- (2) The Secretary of State may by regulations make provision for the offence to be punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.
- (3) Subsection (4) applies in relation to a relevant power which, immediately before the commencement day, can be exercised to create an offence punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000 but not to create an offence so punishable by a fine or maximum fine of a fixed amount of £5,000 or more.
- (4) The Secretary of State may by regulations make provision for the power to be exercisable to create an offence punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.
- (5) Regulations under this section may not specify or describe an amount exceeding whichever is the greater of—
  - (a) £5,000, or
  - (b) the sum specified for the time being as level 4 on the standard scale.
- (6) Regulations under this section may not include provision affecting—
  - (a) fines for offences committed before the regulations come into force,
  - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or

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- (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment, and provision made in exercise of a relevant power in reliance on regulations under subsection (4) may not include such provision.
- (7) Regulations under this section—
- (a) may make different provision for different cases or circumstances,
  - (b) may make provision generally or only for specified cases or circumstances, and
  - (c) may make consequential, incidental, supplementary, transitional, transitory or saving provision.
- (8) Regulations under this section may amend, repeal, revoke or otherwise modify any provision which, immediately before the commencement day, is contained in an Act or an instrument made under an Act (whether or not the provision is in force at that time).
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) If, immediately before the commencement day, the sum specified as level 5 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) is greater than £5,000, the references in this section to £5,000 have effect as if they were references to that sum.
- (12) Powers under this section—
- (a) may be exercised from time to time, and
  - (b) are without prejudice to other powers to modify fines for relevant offences or fines that may be specified or described when exercising a relevant power.
- (13) In this section “Act”, “the commencement day”, “relevant offence” and “relevant power”, and references to a provision contained in an Act or instrument, have the same meaning as in section 85.

VALID FROM 28/05/2014

## **87 Power to amend standard scale of fines for summary offences**

- (1) The Secretary of State may by order substitute for the sums for the time being specified as levels 1 to 4 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) such other sums as the Secretary of State considers appropriate.
- (2) The power under subsection (1) may not be exercised so as to alter the ratio of one of those levels to another.
- (3) In section 143 of the Magistrates' Courts Act 1980 (power to alter sums including standard scale of fines for summary offences), in subsection (3)(b), after “subsection (1) above” insert “ or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

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- (4) In section 37 of the Criminal Justice Act 1982 (standard scale of fines for summary offences), in subsection (3), at the end insert “ or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- (5) An order under this section is to be made by statutory instrument.
- (6) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) An order under this section does not affect fines for offences committed before the order comes into force.

## 88 **Withdrawal of warrants of control issued by fines officer**

- (1) Schedule 5 to the Courts Act 2003 (collection of fines and other sums imposed on conviction) is amended as follows.
- (2) In paragraph 7(1) (Part 3 of Schedule does not apply on an appeal against a further steps notice) for “or 37(9)” substitute “, 37(9) or 37A(4) ”.
- (3) In paragraph 37(7) (further steps notice must specify steps that fines officer intends to take) for “intends” substitute “ wishes to be able ”.
- (4) After paragraph 37 insert—

### 37A **“Issue by fines officer of replacement notice**

- (1) This paragraph applies if—
  - (a) the fines officer has delivered to P a notice (“the current notice”) that is—
    - (i) a further steps notice that has not been replaced by a notice under this paragraph, or
    - (ii) a notice under this paragraph that has not been replaced by a further notice under this paragraph,
  - (b) P remains liable to pay any part of the sum due, and
  - (c) the fines officer wishes to be able to take one or more steps listed in paragraph 38 but not specified in the current notice.
- (2) The fines officer may deliver to P a notice replacing the current notice.
- (3) A notice under this paragraph (a “replacement notice”) must—
  - (a) state that the fines officer intends to take one or more of the steps listed in paragraph 38,
  - (b) specify the steps that the fines officer wishes to be able to take, and
  - (c) be in writing and dated.
- (4) P may, within 10 working days from the date of a replacement notice, appeal to the magistrates' court against it.
- (5) If a step is being taken in reliance on a notice at the time when the notice is replaced by a replacement notice, the taking of the step may continue despite the replacement.”

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- (5) In paragraph 38(1) (list of steps referred to)—
- (a) after “37(6)(b)” insert “, 37A(3)(a)”, and
  - (b) in paragraph (a) (steps include issuing warrants that authorise taking control, and sale, of goods) for “levying” substitute “recovering”.
- (6) In paragraph 39 (powers of court on referrals and appeals)—
- (a) in sub-paragraph (1)(c)—
    - (i) after “37(9)” insert “ or 37A(4)”, and
    - (ii) after “further steps notice” insert “ or replacement notice”, and
  - (b) in sub-paragraph (4) after “further steps notice” insert “ or replacement notice”.
- (7) In paragraph 40 (implementation of notice)—
- (a) after “further steps notice”, in both places, insert “ or replacement notice”, and
  - (b) after “may be taken” insert “ and retaken”.
- (8) After paragraph 40 insert—

#### **40A “Withdrawal of warrant of control by fines officer**

- (1) This paragraph applies if, in taking a step specified in a further steps notice or replacement notice, the fines officer has issued a warrant of control for the purpose of recovering the sum due.
- (2) The fines officer may withdraw the warrant if—
  - (a) P remains liable to pay any part of the sum due, and
  - (b) the fines officer is satisfied that the warrant was issued by mistake, including in particular a mistake made in consequence of the non-disclosure or misrepresentation of a material fact.

#### **40B Discharge of warrant of control by magistrates' court**

- (1) This paragraph applies if—
  - (a) in taking a step specified in a further steps notice or replacement notice, the fines officer has issued a warrant of control for the purpose of recovering the sum due, and
  - (b) the fines officer subsequently refers P's case to the magistrates' court under paragraph 42.
- (2) The magistrates' court may discharge the warrant if—
  - (a) P remains liable to pay any part of the sum due, and
  - (b) the power conferred by section 142(1) of the Magistrates' Courts Act 1980 (power of magistrates' court to re-open cases to rectify mistakes etc) would have been exercisable by the court if the court had issued the warrant.

#### **40C Duty of fines officer if warrant of control withdrawn or discharged**

- (1) This paragraph applies if condition A or B is met.

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- (2) Condition A is that the fines officer has withdrawn a warrant of control under paragraph 40A.
- (3) Condition B is that—
  - (a) in taking a step specified in a further steps notice or replacement notice, the fines officer has issued a warrant of control for the purpose of recovering the sum due,
  - (b) the fines officer has referred P's case to the magistrates' court under paragraph 42,
  - (c) the magistrates' court has discharged the warrant of control under paragraph 40B(2), and
  - (d) the magistrates' court has not discharged the collection order or exercised any of its powers under paragraph 42(2).
- (4) If P remains liable to pay any part of the sum due, the fines officer must—
  - (a) take (or retake) one or more of the steps specified in the further steps notice or replacement notice that was the last notice to be delivered to P under paragraph 37 or 37A before the warrant of control was issued, or
  - (b) deliver to P a replacement notice and take one or more of the steps specified in that notice, or
  - (c) refer P's case to, or back to, the magistrates' court under paragraph 42.”

*Repeal of uncommenced provisions*

**89 Custody plus orders and intermittent custody orders**

- (1) In the Criminal Justice Act 2003, omit the following provisions (custody plus and intermittent custody)—
  - (a) sections 181 to 188;
  - (b) Schedules 10 and 11.
- (2) Schedule 10 (amendments consequential on subsection (1)) has effect.

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