



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 3

#### SENTENCING AND PUNISHMENT OF OFFENDERS

#### CHAPTER 1

#### SENTENCING

#### *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

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- (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—
- (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,

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- (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.
- (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))

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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
  - (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.

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- (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 ”.
- (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) ”.

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- (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.”
- (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—

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#### 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.
- (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

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- (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.”



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