



Sentencing Act 2020

2020 CHAPTER 17

FIFTH GROUP OF PARTS Sentencing: miscellaneous provision and interpretation

PART 12

MISCELLANEOUS PROVISION ABOUT SENTENCING

CHAPTER 1

COSTS, FINES AND OTHER FINANCIAL ORDERS WHERE OFFENDER AGED UNDER 18

Offender aged under 18: order for payment by parent or guardian

380 Order for parent or guardian to pay fine, costs, compensation or surcharge

- (1) Where any enactment provides that this section applies to an amount which, but for that enactment, the court would order the offender to pay, the court—
 - (a) must, or
 - (b) if the offender is aged 16 or over, may,order that the amount is to be paid by the parent or guardian instead of by the offender himself or herself.
- (2) Subsection (1) does not apply if the court is satisfied that—
 - (a) the parent or guardian cannot be found, or
 - (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.
- (3) No order may be made under subsection (1) without giving the parent or guardian an opportunity of being heard.
- (4) But an order under subsection (1) may be made against a parent or guardian who, having been required to attend, has failed to do so.

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- (5) A parent or guardian may appeal to the Crown Court against an order under subsection (1) made by a magistrates' court.
- (6) A parent or guardian may appeal to the Court of Appeal against an order under subsection (1) made by the Crown Court, as if the parent or guardian had been convicted on indictment and the order were a sentence passed on the parent's or guardian's conviction.

381 Costs awarded against offender under 18: payment by parent or guardian

Where—

- (a) but for this section, a court would impose costs in respect of an offence on an offender, and
 - (b) the offender was aged under 18 when convicted of the offence,
- section 380 applies to the amount of the costs awarded.

382 Power to determine financial circumstances of offender's parent or guardian

- (1) For the purposes of any order under section 380, where—
 - (a) the parent or guardian of an offender aged under 18—
 - (i) has failed to comply with a financial circumstances order imposed by virtue of section 35(4), or
 - (ii) has otherwise failed to co-operate with the court in its inquiry into the parent's or guardian's financial circumstances, and
 - (b) the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances,

the court may make such determination as it thinks fit.
- (2) Subsections (3) to (5) apply where a court has—
 - (a) made an order under section 380 in respect of a parent or guardian of an offender to pay the amount of a fine, and
 - (b) in fixing the amount of the fine, determined the financial circumstances of the parent or guardian under subsection (1).
- (3) If on subsequently inquiring into the financial circumstances of the parent or guardian the court is satisfied that, had it had the results of that inquiry when sentencing the offender, it—
 - (a) would have fixed a smaller amount, or
 - (b) would not have fined the offender,

it may remit the whole or part of the fine.
- (4) Where under subsection (3) the court remits the whole or part of the fine after a term of—
 - (a) imprisonment, or
 - (b) detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000,

has been fixed under section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default) in respect of the amount ordered to be paid under section 380, the court must reduce the term by the corresponding proportion.

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- (5) In calculating any reduction required by subsection (4), any fraction of a day is to be ignored.

Orders other than fines: powers of Crown Court to order time for payment etc

383 Power of Crown Court to allow time for payment, or payment by instalments, of costs and compensation

Where the Crown Court makes an order mentioned in Part 1 of Schedule 9 to the Administration of Justice Act 1970 (orders against accused for the payment of costs or compensation), the court may—

- (a) allow time for the payment of the sum due under the order;
- (b) direct payment of that sum by instalments of the amounts and on the dates specified in the order.

CHAPTER 2

COMMENCEMENT AND ALTERATION OF SENTENCE

384 Commencement of sentence

- (1) A sentence imposed by a court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs.
- (2) The power to give a direction under subsection (1) is subject to section 225 (restriction on consecutive sentences for released prisoners).
- (3) This section is subject to—
 - (a) section 198 (when a youth rehabilitation order is in force);
 - (b) sections 237, 253, 257 and 270 (interaction of detention and training order with other sentences);
 - (c) section 334 (duration of criminal behaviour order);
 - (d) section 385(5) (alteration of Crown Court sentence);
 - (e) section 142(5) of the Magistrates' Courts Act 1980 (power of magistrates' court to re-open cases to rectify mistakes etc).
- (4) In this section—
 - “sentence” has the meaning given by section 401, but—
 - (a) also includes a recommendation for deportation made when dealing with an offender, and
 - (b) does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid: payment for services and enforcement);
 - “imposed” includes made.

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385 Alteration of Crown Court sentence

- (1) Subsection (2) applies where the Crown Court has imposed a sentence when dealing with an offender.
- (2) The Crown Court may vary or rescind the sentence at any time within the period of 56 days beginning with the day on which the sentence was imposed.

This subsection is subject to subsections (3) and (4).

- (3) Subsection (2) does not apply where an appeal, or an application for leave to appeal, against that sentence has been determined.
- (4) The power in subsection (2) may be exercised only by—
 - (a) the court constituted as it was when the sentence was imposed, or
 - (b) where that court comprised one or more justices of the peace, a court so constituted except for the omission of any one or more of those justices.
- (5) Where a sentence is varied under this section, the sentence, as so varied, is to take effect from the beginning of the day on which it was originally imposed, unless the court directs otherwise.

This is subject to subsection (6).

- (6) For the purposes of—
 - (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or of application for leave to appeal), and
 - (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act),the sentence is to be regarded as imposed on the day on which it is varied under this section.
- (7) Criminal Procedure Rules may—
 - (a) provide for extending the period fixed by subsection (2) for cases where two or more persons are tried separately on the same or related facts alleged in one or more indictments;
 - (b) subject to the other provisions of this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Crown Court may be varied or rescinded by that court.
- (8) In this section—

“sentence” has the meaning given by section 401, but—

 - (a) also includes a recommendation for deportation made when dealing with an offender, and
 - (b) does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid: payment for services and enforcement);“imposed” includes made.

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CHAPTER 3

DEPORTATION

386 Deportation recommendations

See section 6 of the Immigration Act 1971 for provision about recommendations for deportation by a court dealing with an offender for an offence punishable with imprisonment where—

- (a) the offender is not a British citizen, and
- (b) is aged 17 or over when convicted.

CHAPTER 4

ASSISTANCE FOR PROSECUTION ETC: REVIEW OF SENTENCE

Reference back to court for review of sentence

387 Failure by offender to provide agreed assistance: review of sentence

- (1) This section applies if—
 - (a) the Crown Court has passed a sentence on an offender in respect of an offence,
 - (b) the sentence (“the original sentence”) is a discounted sentence in consequence of the offender’s having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence, and
 - (c) the offender knowingly fails to any extent to give assistance in accordance with the agreement.
- (2) A specified prosecutor may at any time refer the case back to the Crown Court if—
 - (a) the offender is still serving the original sentence, and
 - (b) the specified prosecutor thinks it is in the interests of justice to do so.
- (3) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (4) If the court is satisfied that the offender knowingly failed to give the assistance it may substitute for the original sentence a sentence that is—
 - (a) greater than the original sentence, but
 - (b) not greater than the sentence which it would have passed but for the agreement mentioned in subsection (1)(b) (“the original maximum”).
- (5) Subsections (6) to (9) apply where a sentence is substituted under subsection (4).
- (6) Where the substitute sentence is less than the original maximum, the court must state in open court—
 - (a) that fact, and
 - (b) the original maximum.

This is subject to subsection (8).

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- (7) Section 52(2) or, as the case may be, 322(4) (requirement to explain reasons for sentence or other order) applies where a substitute sentence is imposed under subsection (4) unless—
- (a) the court considers that it is not in the public interest to disclose that the original sentence was a discounted sentence, or
 - (b) subsection (8) provides otherwise.
- (8) Where the substitute sentence is less than the original maximum and the court considers that it would not be in the public interest to disclose that fact—
- (a) subsection (6) does not apply;
 - (b) the court must give a written statement of the matters specified in subsection (6)(a) and (b) to—
 - (i) the prosecutor, and
 - (ii) the offender;
 - (c) section 52(2) or, as the case may be, 322(4) does not apply to the extent that the explanation would disclose that the substitute sentence is less than the original maximum.
- (9) Any part of the original sentence which the offender has already served must be taken into account in determining when the substitute sentence has been served.

388 Review of sentence following subsequent agreement for assistance by offender

- (1) A case is eligible for review under this section if—
- (a) the Crown Court has passed a sentence on an offender in respect of an offence,
 - (b) the offender is still serving the sentence, and
 - (c) pursuant to a written agreement subsequently made with a specified prosecutor, the offender has assisted or offered to assist the investigator or prosecutor of any offence,
- but this is subject to subsection (2).
- (2) A case is not eligible for review under this section if—
- (a) the sentence was discounted and the offender has not given the assistance offered in accordance with the written agreement by virtue of which it was discounted, or
 - (b) the offence was one for which the sentence was fixed by law and the offender did not plead guilty to it.
- (3) A specified prosecutor may at any time refer a case back to the Crown Court if—
- (a) the case is eligible for review under this section, and
 - (b) the prosecutor considers that it is in the interests of justice to do so.
- (4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (5) The court may—
- (a) take into account the extent and nature of the assistance given or offered;
 - (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.
- (6) Nothing in—

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- (a) any of the provisions listed in section 399(b) or (c) (minimum sentences in certain circumstances), or
 - (b) section 321 (and Schedule 21) (determination of minimum term in relation to mandatory life sentence),
- affects the court's power under subsection (5).
- (7) Subsections (8) to (11) apply where a sentence is substituted under subsection (5).
- (8) The court must state in open court—
- (a) the fact that the substitute sentence is a discounted sentence, and
 - (b) the original maximum.
- This is subject to subsection (10).
- (9) Section 52(2) or, as the case may be, 322(4) (requirement to explain reasons for sentence or other order) applies where a sentence is imposed under subsection (5).
- But this is subject to subsection (10).
- (10) Where the court considers that it would not be in the public interest to disclose that the substitute sentence is a discounted sentence —
- (a) subsection (7) does not apply;
 - (b) the court must give a written statement of the matters specified in subsection (8)(a) and (b) to—
 - (i) the prosecutor, and
 - (ii) the offender;
 - (c) section 52(2) or, as the case may be, 322(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.
- (11) Any part of the sentence to which the referral relates which the offender has already served must be taken into account in determining when the substitute sentence has been served.

References under this Chapter: further provision

389 References under sections 387 and 388: appeals

- (1) Where a reference is made under section 387 or 388—
- (a) the person in respect of whom the reference is made, or
 - (b) the specified prosecutor,
- may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision of the Crown Court.
- (2) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- (3) In relation to any proceedings under this section, the Secretary of State may by regulations make provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).
- (4) Regulations under this section are subject to the negative resolution procedure.

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390 Proceedings under section 387 or 388: exclusion of public

- (1) This section applies to—
 - (a) any proceedings relating to a reference made under section 387 or 388, and
 - (b) any other proceedings arising in consequence of such proceedings.
- (2) The court in which the proceedings will be or are being heard may make such order as it considers appropriate—
 - (a) to exclude from the proceedings any person who does not fall within subsection (4);
 - (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) The court may make an order under subsection (2) only if the court considers that the order is—
 - (a) necessary to protect the safety of any person, and
 - (b) in the interests of justice.
- (4) The following persons fall within this subsection—
 - (a) a member or officer of the court;
 - (b) a party to the proceedings;
 - (c) counsel or a solicitor for a party to the proceedings;
 - (d) a person otherwise directly concerned with the proceedings.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
 - (a) to exclude any person from proceedings, or
 - (b) to restrict the publication of any matter relating to proceedings.

391 Proceedings under section 387 or 388: use of live link

Section 57E of the Crime and Disorder Act 1998 (use of live link in sentencing hearings) applies to hearings relating to a reference under section 387 or 388 as it applies to sentencing hearings.

392 Interpretation of Chapter

- (1) This section applies for the purposes of this Chapter.
- (2) A discounted sentence is a sentence passed in pursuance of—
 - (a) section 74, or
 - (b) section 388.
- (3) References—
 - (a) to a written agreement are to an agreement made in writing with a specified prosecutor;
 - (b) to a specified prosecutor are to be read in accordance with section 71 of the Serious Organised Crime and Police Act 2005 (assistance by offender: immunity from prosecution).

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CHAPTER 5

RECOGNIZANCES

393 Power of magistrates' court to dispense with recognizance

- (1) This section applies where under an enactment, whether passed before or after the commencement of this Act, an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognizance with or without sureties to—
 - (a) keep the peace, or
 - (b) observe any other condition.
- (2) The magistrates' court which convicted the offender may dispense with or modify the requirement.
- (3) In subsection (1) “enactment” includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act.

CHAPTER 6

ORDERS IMPOSING COMMUNITY REQUIREMENTS

394 Rules relating to community orders and suspended sentence orders etc

- (1) The Secretary of State may make rules for regulating—
 - (a) the supervision of persons who are subject to community orders or suspended sentence orders,
 - (b) without prejudice to the generality of paragraph (a), the functions of responsible officers within the meaning of section 213 or 299 in relation to offenders subject to community orders or suspended sentence orders,
 - (c) the arrangements to be made by providers of probation services for—
 - (i) persons subject to unpaid work requirements of such orders to perform work, and
 - (ii) the performance of such work,
 - (d) the provision and carrying on of attendance centres,
 - (e) the attendance of persons subject to—
 - (i) rehabilitation activity requirements,
 - (ii) attendance centre requirements, or
 - (iii) attendance centre requirements imposed by youth rehabilitation orders,at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records,
 - (f) electronic monitoring in pursuance of an electronic monitoring requirement of a community order or a suspended sentence order, and
 - (g) without prejudice to the generality of paragraph (f), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.

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- (2) Rules under subsection (1)(c) may, in particular, make provision—
- (a) limiting the number of hours of work to be done by a person on any one day,
 - (b) as to the reckoning of hours worked and the keeping of work records, and
 - (c) for the payment of travelling and other expenses in connection with the performance of work.
- (3) Rules under this section are subject to the negative resolution procedure.

395 Data from electronic monitoring: code of practice

- (1) The Secretary of State must issue a code of practice relating to processing of data gathered in the course of electronic monitoring of offenders under electronic monitoring requirements imposed by community orders and suspended sentence orders.
- (2) A failure to observe a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.

CHAPTER 7

WARRANTS

396 Execution of process between England and Wales and Scotland

Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English and Welsh courts in Scotland) applies to any process issued by a magistrates' court under any of the following provisions as it applies to process issued under the Magistrates' Courts Act 1980 by a magistrates' court—

- section 6(4) (effect of deferment order);
- section 9(2) (failure to comply with deferment requirement);
- section 10(3) (conviction of offence during period of deferment);
- paragraph 3(2) of Schedule 2 (order for conditional discharge: commission of further offence);
- paragraph 3(2) of Schedule 4 (referral order: further court proceedings);
- paragraph 6(3) of Schedule 5 (breach, revocation and amendment of reparation order);
- paragraph 8(2) or (4), 14(4) or 24(4) of Schedule 10 (breach, revocation or amendment of community order);
- paragraph 24(2) of Schedule 11 (transfer of community orders to Scotland or Northern Ireland);
- paragraph 2(2) of Schedule 12 (detention and training order: breach of supervision requirements and further offences);
- paragraph 8(2) or (4), 20(2) or 25(6) of Schedule 16 (breach or amendment of suspended sentence order, and effect of further conviction).