



Sentencing Act 2020

2020 CHAPTER 17

THIRD GROUP OF PARTS Disposals

PART 10

CUSTODIAL SENTENCES

CHAPTER 1

CUSTODY: GENERAL PROVISIONS

Introductory

221 Overview of Part

- (1) This Chapter applies generally for the purposes of determining whether a custodial sentence should be passed and, if so, what its term should be.

In particular—

- (a) section 222 defines “custodial sentence”;
 - (b) sections 227 and 228 make provision about when a custodial sentence is not available or subject to restrictions;
 - (c) section 229 permits a magistrates’ court to impose imprisonment for less than the term specified;
 - (d) sections 230 to 232 make provision about how a court should decide whether to impose a custodial sentence and the term of such a sentence.
- (2) Chapter 2 is about the kinds of custodial sentence that are available for an offender aged under 18—
- (a) detention and training orders (sections 233 to 248);
 - (b) sentences of detention under section 250, including life sentences (and see section 258);
 - (c) extended sentences of detention (sections 254 to 257);

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- (d) detention during Her Majesty’s pleasure for murder etc where the offender is under 18 at the time of the offence (section 259).
- (3) Chapter 3 is about the kinds of custodial sentence that are available for an offender aged 18, 19 or 20—
 - (a) sentences of detention in a young offender institution (sections 262 to 271), including—
 - (i) suspended sentences,
 - (ii) special sentences for offenders of particular concern, and
 - (iii) extended sentences;
 - (b) sentences of custody for life (sections 272 to 276).
- (4) Chapter 4 is about imprisonment in the case of an adult aged at least 21 at the time of conviction, including—
 - (a) suspended sentences,
 - (b) special sentences for offenders of particular concern,
 - (c) extended sentences, and
 - (d) imprisonment for life.
- (5) Chapter 5 is about suspended sentences.
- (6) Chapter 6 is about dangerous offenders.
- (7) Chapter 7 is about mandatory minimum sentences.
- (8) Chapter 8 is about life sentences and in particular about when minimum term orders and whole life orders must be passed.
- (9) Chapter 9 contains certain provisions about administration of custodial sentences and includes certain powers and duties of a sentencing court that are relevant to an offender’s release from custody.

222 Meaning of “custodial sentence”

- (1) In this Code “custodial sentence” means—
 - (a) a detention and training order under section 233,
 - (b) a sentence of detention under Chapter 2 of this Part,
 - (c) a sentence of detention in a young offender institution,
 - (d) a sentence of custody for life under section 272 or 275, or
 - (e) a sentence of imprisonment.

This is subject to subsection (3).

- (2) In subsection (1) “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence.
- (3) Subsection (1)—
 - (a) does not apply to “custodial sentence” in the following expressions—
 - “appropriate custodial sentence”;
 - “current custodial sentence”;
 - “pre-Code custodial sentence”;
 - “relevant custodial sentence”, and

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- (b) is subject to express provision to the contrary.
- (4) In this Code, “pre-Code custodial sentence” means—
- (a) a detention and training order imposed under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (b) a sentence of detention imposed under any of the following (sentences of detention for children)—
 - (i) section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (ii) section 53(1) or (3) of the Children and Young Persons Act 1933, or
 - (iii) section 226B or 228 of the Criminal Justice Act 2003,
 - (c) a sentence of detention for public protection imposed under section 226 of the Criminal Justice Act 2003, or
 - (d) a sentence of custody for life under—
 - (i) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (ii) section 8 of the Criminal Justice Act 1982.

General limits on powers to impose custodial sentences

223 Two year limit on imprisonment for statutory offence if no maximum specified

Where—

- (a) a person is convicted on indictment of an offence under any enactment which is punishable with imprisonment, and
 - (b) no enactment—
 - (i) limits the sentence to a specified term, or
 - (ii) expresses it to extend to imprisonment for life,
- the person is liable to imprisonment for not more than 2 years.

224 General limit on magistrates’ court’s power to impose imprisonment or detention in a young offender institution

- (1) A magistrates’ court does not have power to impose—
 - (a) imprisonment, or
 - (b) detention in a young offender institution,for more than 6 months in respect of any one offence.
- (2) Unless expressly excluded, subsection (1) applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than 6 months.
- (3) Nothing in subsection (1) affects section 133 of the Magistrates’ Courts Act 1980 (consecutive terms of imprisonment).
- (4) Subsection (1) does not limit any power of a magistrates’ court to impose a term of imprisonment for—
 - (a) non-payment of a fine, or
 - (b) want of sufficient goods to satisfy a fine.

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- (5) In subsection (4)—
- (a) “fine”—
 - (i) includes a pecuniary penalty, but
 - (ii) does not include a pecuniary forfeiture or pecuniary compensation;
 - (b) the reference to want of sufficient goods to satisfy a fine is a reference to circumstances where—
 - (i) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the fine from a person, but
 - (ii) it appears, after an attempt has been made to exercise the power, that the person’s goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule).
- (6) In this section “impose imprisonment” means—
- (a) pass a sentence of imprisonment, or
 - (b) fix a term of imprisonment for—
 - (i) failure to pay any sum of money,
 - (ii) want of sufficient distress to satisfy any sum of money (see section 397(3)), or
 - (iii) failure to do or abstain from doing anything required to be done or left undone.
- (7) Section 132 of the Magistrates’ Courts Act 1980 (5 day minimum term) provides for the minimum term of imprisonment that a magistrates’ court may impose.

225 Restriction on consecutive sentences for released prisoners

- (1) A court sentencing a person to a relevant custodial term may not order or direct that the term is to commence on the expiry of any current custodial sentence from which the offender has been released under—
- (a) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall), or
 - (b) Part 2 of the Criminal Justice Act 1991 (early release of prisoners).
- (2) In this section “relevant custodial term” means a term of—
- (a) detention under Chapter 2 of this Part,
 - (b) detention in a young offender institution (under this Code), or
 - (c) imprisonment.
- (3) In this section, “current custodial sentence” means a sentence that has not yet expired which is—
- (a) a sentence of imprisonment,
 - (b) a sentence of detention in a young offender institution, or
 - (c) a sentence of detention imposed under any of the following—
 - (i) section 250,
 - (ii) section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006),
 - (iii) section 226B or 228 of the Criminal Justice Act 2003 (including one passed as a result of section 221A or 222 of the Armed Forces Act 2006),

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- (iv) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,
- (v) section 53(3) of the Children and Young Persons Act 1933,
- (vi) section 209 of the Armed Forces Act 2006, or
- (vii) section 71A(4) of the Army Act 1955 or the Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957.

226 Custodial sentence: restrictions in certain cases where offender not legally represented

- (1) This section applies where—
- (a) a magistrates’ court is dealing with an offender on summary conviction, or
 - (b) the Crown Court is dealing with an offender—
 - (i) on committal for sentence, or
 - (ii) on conviction on indictment.

Offenders aged under 21

- (2) The court may not—
- (a) make a detention and training order,
 - (b) pass a sentence of detention under section 250 (or 254) or under section 259 (offenders under 18),
 - (c) pass a sentence of detention in a young offender institution, or
 - (d) pass a sentence of custody for life (see sections 272 and 275),
- unless the offender is legally represented in that court, or has failed, or is ineligible on financial grounds, to benefit from relevant representation (see subsections (7) and (8)).

Offenders aged 21 or over

- (3) The court may not pass a sentence of imprisonment unless—
- (a) the offender—
 - (i) is legally represented in that court, or
 - (ii) has failed, or is ineligible on financial grounds, to benefit from relevant representation (see subsections (7) and (8)), or
 - (b) the offender has previously been sentenced to imprisonment by a court in any part of the United Kingdom.
- (4) For the purposes of subsection (3) a previous sentence of imprisonment which has been suspended and which has not taken effect under—
- (a) paragraph 8 of Schedule 16,
 - (b) paragraph 8 of Schedule 12 to the Criminal Justice Act 2003,
 - (c) section 119 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (d) section 19 of the Treatment of Offenders Act (Northern Ireland) 1968,
- is to be disregarded.
- (5) For those purposes, “sentence of imprisonment” does not include a committal for contempt of court or any kindred offence (and “sentenced to imprisonment” is to be read accordingly).

When a person is legally represented

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- (6) For the purposes of this section an offender is legally represented in a court if the offender has the assistance of counsel or a solicitor to represent him or her in the proceedings in that court at some time after being found guilty and before being sentenced.

Relevant representation: failure or ineligibility to benefit

- (7) For the purposes of subsections (2) and (3), “relevant representation”, in relation to proceedings in a court, means representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid) for the purposes of the proceedings.
- (8) For those purposes, an offender has failed, or is ineligible on financial grounds, to benefit from relevant representation if—
- (a) the offender has refused or failed to apply for relevant representation, having—
 - (i) been informed of the right to apply for it, and
 - (ii) had the opportunity to do so,
 - (b) the offender’s application for relevant representation was refused on financial grounds, or
 - (c) relevant representation was made available to the offender but withdrawn—
 - (i) because of the offender’s conduct, or
 - (ii) on financial grounds.

Relevant representation is refused or withdrawn on financial grounds if it appears that the offender’s financial resources are such that the offender is not eligible for such representation.

227 Restriction on imposing imprisonment on persons under 21

Sentence of imprisonment

- (1) No court may pass a sentence of imprisonment on an offender for an offence if the offender is aged under 21 when convicted of the offence.

Committal to prison

- (2) No court may commit a person who is aged under 21 to prison for any reason, except as provided by subsection (3).
- (3) Subsection (2) does not prevent the committal to prison of a person aged under 21 who is—
- (a) remanded in custody,
 - (b) committed in custody for sentence, or
 - (c) sent in custody for trial under section 51 or 51A of the Crime and Disorder Act 1998.

228 Other restrictions on custodial sentence

Custodial sentence not indicated in indication of sentence

- (1) For restrictions on a custodial sentence where the case is dealt with under section 20(7) of the Magistrates’ Courts Act 1980 (procedure where summary trial appears more

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suitable and indication of sentence is given), see section 20A(1) of that Act (restriction where indication of sentence does not indicate custodial sentence).

Hospital order or guardianship order

- (2) For restrictions on a custodial sentence where a hospital order or guardianship order is made, see section 37(8) of the Mental Health Act 1983.

Power of magistrates' court to imprison for less than specified term

229 Power of magistrates' court to imprison for less than specified term

- (1) Where a magistrates' court has power to sentence an offender to imprisonment for a period specified by an enactment (whether passed or made before or after this Act), the court may sentence the offender to imprisonment for less than that period.
- (2) This is subject to—
- (a) section 132 of the Magistrates' Courts Act 1980 (5 day minimum term);
 - (b) express provision to the contrary in an Act passed after 31 December 1879.
- (3) In this section “enactment” includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act.

Exercise of powers to impose discretionary custodial sentences

230 Threshold for imposing discretionary custodial sentence

- (1) Subsection (2) applies where a person is convicted of an offence which is punishable with a custodial sentence.

This is subject to subsection (3).

- (2) The court must not pass a custodial sentence unless it is of the opinion that—
- (a) the offence, or
 - (b) the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.

Threshold generally not applicable where mandatory sentence requirement applies

- (3) This section does not apply if the offence is one in relation to which a mandatory sentence requirement applies (see section 399), except as provided in sections 273(4) and 283(4) (pre-condition for life sentence for second listed offence).

Exceptions to subsection (2) relating to community sentences

- (4) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if the offender fails to express willingness to comply with a requirement—
- (a) which the court proposes to include in a community order, but
 - (b) which may be included only if the offender expresses willingness to comply with it.
- (5) Subsection (2) is also subject to—

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- (a) paragraph 11(3) of Schedule 7 (power to impose custodial sentence in case involving wilful and persistent breach of youth rehabilitation order with intensive supervision and surveillance);
- (b) paragraph 22(5)(b) of Schedule 9 (power to deal with offender who does not express willingness to comply with amended drug rehabilitation requirement);
- (c) paragraph 10(9) of Schedule 10 (power of magistrates' court to impose custodial sentence following wilful and persistent breach of community order);
- (d) paragraph 11(6) of that Schedule (corresponding power of Crown Court);
- (e) paragraph 18(9)(b) of that Schedule (power to deal with offender who does not express willingness to comply with amended treatment requirement).

Procedure for forming opinion

- (6) In forming its opinion for the purposes of subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated or offence or offences, including any aggravating or mitigating factors.
- (7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (8) See also—
 - (a) section 77(2) (effect of mitigation: community sentence not precluded even if threshold for custodial sentence met);
 - (b) section 232 (additional requirements for offender suffering from mental disorder).

231 Length of discretionary custodial sentences: general provision

- (1) Subsection (2) applies where a court passes a custodial sentence in respect of an offence.

This is subject to subsections (3) to (6).

- (2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of—
 - (a) the offence, or
 - (b) the combination of the offence and one or more offences associated with it.

Application of subsection (2) to mandatory sentences and extended sentences

- (3) Subsection (2) does not apply where the sentence is—
 - (a) fixed by law, or
 - (b) a required life sentence,
 except as provided in sections 273(4) and 283(4) (pre-condition for life sentence for second listed offence).
- (4) In subsection (3), “required life sentence” means a sentence of—
 - (a) detention for life under section 250,
 - (b) custody for life under section 272, or
 - (c) imprisonment for life,

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required under a provision mentioned in section 399(b) (mandatory sentences).

- (5) Subsection (2) is subject to the provisions mentioned in section 399(c) (minimum sentences).
- (6) Subsection (2) does not apply where the custodial sentence is an extended sentence, except as provided in sections 256(2), 268(2) and 281(2) (determination of appropriate custodial term).

Procedure for forming opinion

- (7) In forming its opinion for the purposes of subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.
- (8) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion, except where the sentence is an extended sentence.
- (9) See section 232 for additional requirements in the case of an offender suffering from a mental disorder.

232 Additional requirements in case of offender suffering from mental disorder

- (1) This section applies where—
 - (a) the offender is or appears to be suffering from a mental disorder, and
 - (b) the court passes a custodial sentence other than one fixed by law (“the sentence”).
- (2) Before passing the sentence, the court must obtain and consider a medical report unless, in the circumstances of the case, it considers that it is unnecessary to obtain a medical report.
- (3) Before passing the sentence, the court must consider—
 - (a) any information before it which relates to the offender’s mental condition (whether given in a medical report, a pre-sentence report or otherwise), and
 - (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) If the court did not obtain a medical report where required to do so by this section, the sentence is not invalidated by the fact that it did not do so.
- (5) Any court, on an appeal against the sentence, must—
 - (a) obtain a medical report if none was obtained by the court below, and
 - (b) consider any such report obtained by it or by that court.

- (6) In this section—

“medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983—

- (a) by the Secretary of State, or
 - (b) by another person by virtue of section 12ZA or 12ZB of that Act, as having special experience in the diagnosis or treatment of mental disorder;
- “mental disorder” has the same meaning as in the Mental Health Act 1983.

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- (7) Nothing in this section is to be taken to limit—
- (a) the pre-sentence report requirements (see section 30), or
 - (b) any requirement for a court to take into account all information that is available to it about the circumstances of any offence, including any aggravating or mitigating factors.

CHAPTER 2

OFFENDERS AGED UNDER 18

Detention and training orders

233 Detention and training order

A detention and training order in respect of an offender is an order that the offender is subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

234 Detention and training order: availability

- (1) A detention and training order is available where a court is dealing with an offender for an offence if—
 - (a) the offender is aged under 18, but at least 12, when convicted,
 - (b) the offence is an imprisonable offence, and
 - (c) the court is not required to pass—
 - (i) a sentence of detention under section 250 (see section 249(2)), or
 - (ii) a sentence of detention during Her Majesty's pleasure under section 259.
- (2) For circumstances in which the court is required to impose a detention and training order, see—
 - (a) section 312 (minimum sentence for offences of threatening with weapon or bladed article);
 - (b) section 315 (minimum sentence for repeat offence involving weapon or bladed article).

235 Exercise of power to make a detention and training order

- (1) This section applies where a detention and training order is available.
- (2) The court may not make a detention and training order if it imposes—
 - (a) a sentence of detention under section 250, or
 - (b) an extended sentence of detention under section 254,
 in respect of the offence.
- (3) If the offender is aged under 15 when convicted the court may not make a detention and training order unless it is of the opinion that the offender is a persistent offender.

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- (4) The court’s power to make a detention and training order is subject to (in particular) section 230 (threshold for imposing discretionary custodial sentence).

236 Term of detention and training order

- (1) The term of a detention and training order made in respect of an offence (whether by a magistrates’ court or otherwise) must be 4, 6, 8, 10, 12, 18 or 24 months.

This is subject to subsection (2).

- (2) The term of a detention and training order in respect of an offence may not exceed—
- (a) in the case of a summary offence, the maximum sentence of imprisonment that could be imposed (in the case of an offender aged 21 or over) for the offence;
 - (b) in the case of any other offence, the maximum term of imprisonment that the Crown Court could impose (in the case of an offender aged 21 or over) for the offence.
- (3) Section 231 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a detention and training order.
- (4) A detention and training order takes effect at the beginning of the day on which it is made, unless the court orders otherwise under section 237.

237 Making of order where offender subject to other order or sentence of detention

- (1) This section applies where a court makes a detention and training order.
- (2) The court may order that the term of the detention and training order is to take effect on the expiry of any other detention and training order which it imposes on the same occasion.

This is subject to section 238(1).

- (3) If the offender—
- (a) is subject to another relevant detention and training order (“the existing order”), and
 - (b) has not at any time been released for supervision under the existing order,
- the court may order that the detention and training order is to take effect on the expiry of the existing order.

This is subject to section 238(1).

- (4) If the offender—
- (a) is subject to a relevant sentence of detention (see section 248), and
 - (b) has not at any time been released under Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence of fixed-term prisoners),
- the court may order that the detention and training order is to take effect at the time when the offender would otherwise be released under that Chapter.
- (5) Section 246 of that Act (power of Secretary of State to release prisoners on licence earlier than required to do so) is to be disregarded in determining for this purpose when an offender would otherwise be released under that Chapter.
- (6) If the offender is subject to a further period of detention imposed—

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- (a) under paragraph 3(2)(a) of Schedule 12 (breach of supervision requirement of existing detention and training order),
- (b) under section 104(3)(a) of the Powers of Criminal Courts (Sentencing) Act 2000, or
- (c) under either of those provisions by virtue section 213 of the Armed Forces Act 2006,

the court may order that the detention and training order is to take effect at the end of the further period of detention.

238 Offender subject to more than one order: maximum overall term

- (1) A court may not make a detention and training order as a result of which the offender would be subject to relevant detention and training orders for a term exceeding 24 months.
- (2) Where—
 - (a) a court makes a detention and training order, and
 - (b) the term of the relevant detention and training orders to which the offender would otherwise be subject exceeds 24 months,
 the excess is to be treated as remitted.
- (3) Where—
 - (a) a court makes a detention and training order, and
 - (b) as a result the offender is subject to two or more relevant detention and training orders,
 the terms of those orders are to be treated for the purposes of sections 241 to 243 and 247 and Schedule 12 as a single term.
- (4) See section 248 for the meaning of “relevant detention and training order”.

239 Period on remand etc: effect on term of detention and training order

- (1) Subsection (2) applies where—
 - (a) a court proposes to make a detention and training order in respect of an offence, and
 - (b) the offender has been remanded—
 - (i) in custody, or
 - (ii) on bail subject to a qualifying curfew condition and an electronic monitoring condition,
 in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.
- (2) In determining the term of the detention and training order, the court must take account of the period for which the offender was so remanded.
- (3) If the court proposes to make two or more detention and training orders in respect of two or more offences—
 - (a) subsection (2) does not apply, but
 - (b) in determining the total term of those detention and training orders, the court must take account of the total period for which the offender has been remanded as mentioned in subsection (1)(b)(i) and (ii) in connection with—

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- (i) any of those offences, or
 - (ii) any other offence the charge for which was founded on the same facts or evidence.
- (4) A period of remand may be taken account of under this section only once.
- (5) For the purposes of this section, an offender is remanded in custody when—
- (a) in police detention for the purposes of the Police and Criminal Evidence Act 1984,
 - (b) detained under section 41 of the Terrorism Act 2000 (arrest without warrant),
 - (c) remanded in or committed to custody by an order of a court,
 - (d) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
 - (e) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.
- (6) For the purposes of this section, “qualifying curfew condition” and “electronic monitoring condition” have the same meanings as in section 325 (direction for time on bail under certain conditions to count as time served): see section 326(3).

240 Period of custody awaiting extradition: effect on term of detention and training order

- (1) This section applies where—
- (a) a court proposes to make a detention and training order in respect of an offence,
 - (b) the offender was tried for the offence, or is to be sentenced—
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (c) the offender was kept in custody for any period while awaiting extradition to the United Kingdom.
- (2) The court must—
- (a) specify in open court the number of days for which the offender was kept in custody while awaiting extradition, and
 - (b) take account of those days in determining the term of the detention and training order.

241 The period of detention and training

- (1) An offender must serve the period of detention and training under a detention and training order in such youth detention accommodation as may be determined by the Secretary of State.

Release at half-way point

- (2) Subject to subsections (3) to (5), the period of detention and training under a detention and training order is half of the term of the order.

Early release on compassionate grounds

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- (3) The Secretary of State may release the offender at any time if satisfied that exceptional circumstances exist which justify the offender’s release on compassionate grounds.

Release before half-way point

- (4) The Secretary of State may release the offender—
- (a) in the case of an order for a term of—
 - (i) 8 months or more, but
 - (ii) less than 18 months,
 at any time during the period of 1 month ending with the half-way point of the term of the order, and
 - (b) in the case of an order for a term of 18 months or more, at any time during the period of 2 months ending with that point.

Release after half-way point

- (5) If a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State must release the offender—
- (a) in the case of an order for a term of—
 - (i) 8 months or more, but
 - (ii) less than 18 months,
 1 month after the half-way point of the term of the order, and
 - (b) in the case of an order for a term of 18 months or more, 1 month or 2 months after that point.
- (6) Where—
- (a) the court makes an order under subsection (5), and
 - (b) the offender is also subject to a sentence of any of the following kinds that is to take effect, by virtue of an order to which subsection (7) applies, when the offender would otherwise be released for supervision—
 - (i) a sentence of detention under section 250,
 - (ii) a sentence of detention under section 209 of the Armed Forces Act 2006, or
 - (iii) an extended sentence of detention under section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006),
 the order under subsection (5) must be expressed as an order that the period of detention and training attributable to the detention and training order is to end at the time determined under that subsection.
- (7) This subsection applies to orders under the following provisions (which provide for sentences of detention to take effect when an offender is released for supervision under a detention and training order)—
- (a) section 253(2) (offender under 18: sentence of detention to take effect on release for supervision under detention and training order),
 - (b) section 257(2) (offender under 18: extended sentence of detention), or
 - (c) any corresponding provision relating to an order under section 209 of, or made as a result of section 221A of, the Armed Forces Act 2006.

Detention to be legal custody

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- (8) An offender detained under a detention and training order is deemed to be in legal custody.

242 The period of supervision

- (1) The period of supervision of an offender who is subject to a detention and training order—
- (a) begins when the offender is released for supervision (whether at the half-way point of the term of the order or otherwise), and
 - (b) ends when the term of the order ends.
- (2) During the period of supervision, the offender—
- (a) is to be under the supervision of—
 - (i) an officer of a provider of probation services, or
 - (ii) a member of a youth offending team, and
 - (b) may be required to comply with particular requirements.
- (3) Any such requirements, and the category of person to supervise the offender, are to be determined from time to time by the Secretary of State.
- (4) The offender must be notified by the Secretary of State of—
- (a) the category of person responsible for the offender's supervision, and
 - (b) any requirements with which the offender must comply.
- (5) A notice under subsection (4) must be given to the offender—
- (a) before the period of supervision begins, and
 - (b) before any change in the matters mentioned in that subsection.
- (6) Where the supervision is to be provided by an officer of a provider of probation services, the officer must be an officer acting in the local justice area within which the offender resides for the time being.
- (7) Where the supervision is to be provided by a member of a youth offending team, the member must be a member of a youth offending team established by the local authority in whose area the offender resides for the time being.

243 Breach of supervision requirement and further offences during order

Schedule 12 makes provision about—

- (a) breach of supervision requirements imposed under a detention and training order etc, and
- (b) offences committed during the term of a detention and training order.

244 Offender subject concurrently to detention and training order and sentence of detention in a young offender institution

- (1) This section applies where an offender is subject concurrently—
- (a) to a relevant detention and training order (see section 248), and
 - (b) to a sentence of detention in a young offender institution,
- at least one of which is imposed in respect of an offence of which the offender was convicted on or after the commencement date.

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- (2) The offender is to be treated for the purposes of the following provisions as if subject only to the sentence of detention in a young offender institution—
- (a) sections 241 to 243 and Schedule 12 (periods of detention and training and supervision, breach of supervision requirements and further offences);
 - (b) section 271 (detention in a young offender institution: place of detention);
 - (c) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall).

This is subject to subsection (3).

- (3) Nothing in subsection (2) requires the offender to be released in respect of either the order or the sentence unless and until the offender is required to be released in respect of each of them.
- (4) In subsection (1), “sentence of detention in a young offender institution” includes any sentence of detention in a young offender institution, whether imposed under this Code or otherwise.
- (5) Subsection (2) has effect in relation to an order or sentence imposed in respect of an offence of which the offender was convicted before the commencement date as if the provisions referred to in paragraphs (a) to (c) included the provisions referred to in section 106(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (interaction of detention and training orders with sentences of detention in a young offender institution).

245 Offender subject concurrently to detention and training order and other sentence of detention

- (1) This section applies where an offender is subject concurrently to—
- (a) a relevant detention and training order, and
 - (b) a relevant sentence of detention,
- at least one of which is imposed in respect of an offence of which the offender was convicted on or after the commencement date.
- (See section 248 for the meaning of “relevant detention and training order” and “relevant sentence of detention”.)
- (2) The offender is to be treated as if subject only to the relevant sentence of detention for the purposes of the following provisions—
- (a) sections 241 to 243 and Schedule 12 (periods of detention and training and supervision, breach of supervision requirements and further offences);
 - (b) section 260 and section 261 (place of detention);
 - (c) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release and supervision following release);
 - (d) section 210 of the Armed Forces Act 2006 (place of detention etc);
 - (e) section 214 of the Armed Forces Act 2006 (offences committed during a detention and training order under that Act).

This is subject to subsection (3).

- (3) Nothing in subsection (2) requires the offender to be released in respect of either the order or the sentence unless and until the offender is required to be released in respect of each of them.

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- (4) Subsection (2) has effect in relation to a relevant detention and training order or relevant sentence of detention that is imposed in respect of an offence of which the offender was convicted before the commencement date as if the provisions referred to in paragraphs (a) to (e) included the provisions referred to in section 106A(8) of the Powers of Criminal Courts (Sentencing) Act 2000.

246 Effect of detention and training order made where offender has reached 18

- (1) This section applies where—
- (a) a court has power, by virtue of any enactment, to deal with a person for an offence in any way in which—
 - (i) a court could have dealt with the person on a previous occasion, or
 - (ii) a court could deal with the person if the person were the same age as when convicted,
 - (b) in exercise of the power, the court makes a detention and training order for any term, and
 - (c) the person has reached the age of 18.
- (2) The person is to be treated as if sentenced to detention in a young offender institution for the same term.

247 Further supervision after end of term of detention and training order

- (1) This section applies where a detention and training order is made in respect of an offender if—
- (a) the offender is aged 18 or over at the half-way point of the term of the order,
 - (b) the term of the order is less than 24 months, and
 - (c) the order was imposed in respect of an offence committed on or after 1 February 2015.
- (2) The following provisions of the Criminal Justice Act 2003 (which relate to supervision after end of sentence) apply as they apply in cases described in section 256AA(1) of that Act—
- (a) sections 256AA(2) to (11), 256AB and 256AC,
 - (b) sections 256D and 256E, and
 - (c) Schedule 19A,
- but with the following modifications.
- (3) “The supervision period”, in relation to the offender, is the period which—
- (a) begins on the expiry of the term of the detention and training order, and
 - (b) ends on the expiry of the period of 12 months beginning immediately after the half-way point of the term of the order.
- (4) “The supervisor”, in relation to the offender, must be—
- (a) an officer of a provider of probation services, or
 - (b) a member of a youth offending team established by the local authority in whose area the offender resides for the time being.
- (5) The power in section 256AB(4) of the Criminal Justice Act 2003 (power of Secretary of State to amend requirements that may be imposed) includes power—

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- (a) to make provision about the supervision requirements that may be imposed under section 256AA of that Act as applied by this section, and
 - (b) to amend any provision of the Powers of Criminal Courts (Sentencing) Act 2000 or any provision of this Code derived from that Act.
- (6) Subsection (7) applies where the term of the detention and training order is determined by section 238(3) (offender subject to two or more detention and training orders).
- (7) The offender is subject to supervision under section 256AA of the Criminal Justice Act 2003 (as applied by this section) if that section (as applied) so requires in respect of one or more of the detention and training orders.
- (8) For the purposes of subsection (1), where an offence is found to have been committed—
- (a) over a period of 2 or more days, or
 - (b) at some time during a period of 2 or more days,
- it is taken to have been committed on the last of those days.

248 Detention and training orders: interpretation

- (1) In section 241 and Schedule 12 “youth detention accommodation” means—
- (a) a secure training centre,
 - (b) a secure college,
 - (c) a young offender institution,
 - (d) accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons,
 - (e) accommodation provided for that purpose under section 82(5) of the Children Act 1989 (financial support by the Secretary of State), or
 - (f) such other accommodation or descriptions of accommodation as the Secretary of State may specify by regulations.
- (2) In sections 241, 242 and 247 and in Schedule 12, references to the term of a detention and training order are to be read in accordance with section 238(3).
- (3) In sections 237, 238, 244 and 245 and Schedule 12, “relevant detention and training order” means—
- (a) a detention and training order under section 233,
 - (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
 - (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before Code comes into force).
- (4) In sections 237 and 245, “relevant sentence of detention” means—
- (a) a sentence of detention under section 250,
 - (b) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18 convicted of certain serious offences: power to detain for specified period),
 - (c) a sentence of detention under section 209 of the Armed Forces Act 2006 (whether passed before or after this Code comes into force),
 - (d) an extended sentence of detention under section 254, including one passed as a result of section 221A of the Armed Forces Act 2006, or

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- (e) a sentence under section 226B or 228 of the Criminal Justice Act 2003 (extended sentence of detention: offenders aged under 18 convicted before this Code comes into force), including one passed as a result of section 221A or 222 of the Armed Forces Act 2006.
- (5) For the purposes of this Code, an offender who is subject to a detention and training order or an order mentioned in subsection (3)(b) or (c) is released for supervision when released by virtue of—
 - (a) section 241(2), (3), (4) or (5), or
 - (b) in the case of an order to which section 102 of the Powers of Criminal Courts (Sentencing) Act 2000 (the “2000 Act”) applies (including one made under section 211 of the Armed Forces Act 2006), subsection (2), (3), (4) or (5) of section 102 of the 2000 Act.
- (6) Regulations under subsection (1)(f) are subject to the affirmative resolution procedure.
- (7) Subsection (4) of section 407 (general powers to make provision in regulations) does not apply to the power conferred by subsection (1)(f).

Detention for specified period

249 Sentence of detention under section 250: availability

- (1) A sentence of detention under section 250 is available where a person aged under 18 is convicted on indictment of an offence listed in the following table—

Offences punishable with imprisonment for at least 14 years

- (a) an offence which—
 - (i) is not an offence for which the sentence is fixed by law, and
 - (ii) is punishable in the case of a person aged 21 or over with imprisonment for 14 years or more;

Sexual offences

- (b) an offence under any of the following provisions of the Sexual Offences Act 2003—
 - (i) section 3 (sexual assault);
 - (ii) section 13 (child sex offences committed by children or young persons);
 - (iii) section 25 (sexual activity with a child family member);
 - (iv) section 26 (inciting a child family member to engage in sexual activity);

Offences related to firearms

- (c) an offence (other than one within paragraph (a)) which—
 - (i) is listed in Schedule 20 (firearms offences to which minimum sentence applies), and
 - (ii) was committed when the offender was aged 16 or over.

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- (2) For circumstances in which a court is required to impose a sentence of detention under section 250, see—
 - (a) section 258 (required sentence of detention for life);
 - (b) section 311 (minimum sentence for certain offences involving firearms that are prohibited weapons).

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- (3) Where an offence is found to have been committed—
- (a) over a period of 2 or more days, or
 - (b) at some time during a period of 2 or more days,
- it is to be taken for the purposes of paragraph (c)(ii) of the table in subsection (1) to have been committed on the last of those days.

250 Sentence of detention: offender convicted of certain serious offences

A sentence of detention under this section is a sentence requiring the offender to be detained for the period specified in the sentence.

251 Exercise of power to impose sentence of detention under section 250

- (1) Subsection (2) applies where a sentence of detention under section 250 is available by virtue of section 249(1).
- (2) The court may impose such a sentence if it is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable.
- (3) This is subject to (in particular) section 230 (threshold for imposing discretionary custodial sentence) and section 231 (length of discretionary custodial sentences: general provision).

252 Maximum sentence

- (1) This section applies where the court imposes a sentence of detention under section 250 by virtue of—
 - (a) section 251, or
 - (b) section 311 (minimum sentence for certain offences involving firearms that are prohibited weapons).
- (2) The period of detention specified in the sentence must not exceed—
 - (a) the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, or
 - (b) life, if the offence is punishable with imprisonment for life in the case of a person aged 21 or over.

253 Sentence of detention passed on offender subject to detention and training order

- (1) This section applies where a court imposes a sentence of detention under section 250 in the case of an offender who is subject to a relevant detention and training order.
- (2) If the offender has not at any time been released for supervision under the relevant detention and training order, the court may order that the sentence of detention is to take effect at the time when the offender would otherwise be released for supervision under the relevant detention and training order (see section 248(5)).
- (3) Otherwise, the sentence of detention takes effect at the beginning of the day on which it is passed.
- (4) In this section “relevant detention and training order” means—
 - (a) a detention and training order under section 233,

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- (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
- (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

Extended sentences

254 Extended sentence for certain violent, sexual or terrorism offences

An extended sentence of detention under this section is a sentence of detention the term of which is equal to the aggregate of—

- (a) the appropriate custodial term (see section 256), and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

255 Extended sentence of detention: availability

- (1) An extended sentence of detention under section 254 is available where a court is dealing with an offender for an offence if—
 - (a) the offence—
 - (i) is a specified offence (see section 306(1)), and
 - (ii) is listed in the table in section 249(1) (sentence of detention under section 250: availability),
 - (b) the offender is aged under 18 when convicted,
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
 - (d) the court is not required by section 258(2) to impose a sentence of detention for life under section 250, and
 - (e) if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term (see section 256) would be at least 4 years.
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion referred to in subsection (1)(c).

256 Term of extended sentence of detention under section 254

- (1) This section applies where a court is determining—
 - (a) the appropriate custodial term, and
 - (b) the extension period,of an extended sentence of detention under section 254 to be imposed on an offender in respect of an offence.
- (2) The appropriate custodial term is the term of detention that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.

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- (3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

- (4) The extension period must—
- (a) be at least 1 year, and
 - (b) not exceed—
 - (i) 5 years in the case of a specified violent offence;
 - (ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of “specified violent offence”, “specified sexual offence” and “specified terrorism offence”.

- (5) The term of the extended sentence of detention under section 254 must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

257 Extended sentence under section 254 where offender subject to detention and training order

- (1) This section applies where the court imposes an extended sentence of detention under section 254 in the case of an offender who is subject to a relevant detention and training order.
- (2) If the offender has not at any time been released for supervision under the relevant detention and training order, the court may order that the extended sentence of detention is to take effect at the time when the offender would otherwise be released for supervision under the relevant detention and training order (see section 248(5)).
- (3) Otherwise, the extended sentence of detention takes effect at the beginning of the day on which it is passed.
- (4) In this section “relevant detention and training order” means—
 - (a) a detention and training order under section 233,
 - (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
 - (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

Detention for life etc

258 Required sentence of detention for life for offence carrying life sentence

- (1) This section applies where—
 - (a) a person aged under 18 is convicted of a Schedule 19 offence (see section 307),
 - (b) the court considers that the seriousness of—
 - (i) the offence, or
 - (ii) the offence and one or more offences associated with it,

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- is such as to justify the imposition of a sentence of detention for life, and
- (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).
- (2) The court must impose a sentence of detention for life under section 250.
 - (3) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
 - (4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

259 Offenders who commit murder etc when under 18: duty to detain at Her Majesty's pleasure

- (1) This section applies where—
 - (a) a court is dealing with a person convicted of—
 - (i) murder, or
 - (ii) any other offence the sentence for which is fixed by law as life imprisonment, and
 - (b) the person appears to the court to have been aged under 18 at the time the offence was committed.
- (2) The court must sentence the offender to be detained during Her Majesty's pleasure.
- (3) Subsection (2) applies notwithstanding anything in this or any other Act.

Detention under this Chapter

260 Detention under section 250 or 259

- (1) Detention under section 250 or 259 is to be in such place and under such conditions—
 - (a) as the Secretary of State may direct, or
 - (b) as the Secretary of State may arrange with any person.
- (2) A person detained pursuant to directions or arrangements made by the Secretary of State under this section is deemed to be in legal custody.

261 Detention in pursuance of extended sentence

Detention under section 254 (extended sentence of detention) is to be in a place and under conditions determined by, or by a person authorised for the purpose by, the Secretary of State.

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CHAPTER 3

ADULTS AGED UNDER 21

Detention in a young offender institution

262 Detention in a young offender institution for offender at least 18 but under 21

- (1) A sentence of detention in a young offender institution is available to a court dealing with an offender for an offence where—
 - (a) the offender is aged at least 18 but under 21 when convicted,
 - (b) the offence is punishable by that court with imprisonment in the case of a person aged 21 or over, and
 - (c) the court is not required to pass a sentence of—
 - (i) detention during Her Majesty’s pleasure (see section 259), or
 - (ii) custody for life (see sections 272 and 275).
- (2) Where—
 - (a) a sentence of detention in a young offender institution is available, and
 - (b) the court is not required to impose such a sentence,
 the power of the court to impose such a sentence is subject (in particular) to section 230 (threshold for imposing discretionary custodial sentence).
- (3) For circumstances in which a court is required to impose a sentence of detention in a young offender institution, see the provisions mentioned in section 399(c) (mandatory minimum sentences).

263 Term of detention in a young offender institution

- (1) The maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for the offence in the case of a person aged 21 or over.
- (2) The minimum term of a sentence of detention in a young offender institution is 21 days.
- (3) Section 231 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a sentence of detention in a young offender institution.
- (4) For further provision about the term of a sentence of detention in a young offender institution, see—
 - (a) section 265 (special sentence for certain offenders of particular concern);
 - (b) section 268 (extended sentence).

Suspended sentence of detention in a young offender institution

264 Suspended sentence order for offender under 21: availability

- (1) This section applies where, in dealing with an offender for an offence, the court imposes a sentence of detention in a young offender institution.

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- (2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of detention in a young offender institution is not more than 2 years.
- (3) But a suspended sentence order is not available in relation to that sentence if—
 - (a) the sentence of detention in a young offender institution is one of two or more sentences imposed on the same occasion which are to be served consecutively, and
 - (b) the terms of those sentences are in aggregate more than 2 years.
- (4) For provision about suspended sentences see Chapter 5 .

Special custodial sentence for certain offenders of particular concern

265 Required special sentence for certain offenders of particular concern

- (1) This section applies where a court imposes a sentence of detention in a young offender institution for an offence where—
 - (a) the offence is listed in Schedule 13,
 - (b) the offender—
 - (i) was aged 18 or over when the offence was committed, and
 - (ii) is aged under 21 when convicted of the offence, and
 - (c) the court does not impose either of the following for the offence (or for an offence associated with it)—
 - (i) an extended sentence under section 266, or
 - (ii) a sentence of custody for life under section 272.
- (2) The term of the sentence must be equal to the aggregate of—
 - (a) the appropriate custodial term, and
 - (b) a further period of 1 year for which the offender is to be subject to a licence, and must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.
- (3) For the purposes of subsection (2), the “appropriate custodial term” is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Extended sentence of detention in a young offender institution

266 Extended sentence of detention in a young offender institution for certain violent, sexual or terrorism offences

An extended sentence of detention in a young offender institution is a sentence of detention in a young offender institution the term of which is equal to the aggregate of—

- (a) the appropriate custodial term (see section 268), and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

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267 Extended sentence of detention in a young offender institution: availability

- (1) An extended sentence of detention in a young offender institution is available in respect of an offence where—
 - (a) the offence is a specified offence (see section 306(1)),
 - (b) the offender is aged at least 18 but under 21 when convicted of the offence,
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
 - (d) the court is not required by section 273 or 274 to impose a sentence of custody for life, and
 - (e) the earlier offence condition or the 4 year term condition is met.
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
- (3) The earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Schedule 14.
- (4) The 4 year term condition is that, if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term (see section 268) would be at least 4 years.

268 Term of extended sentence of detention in a young offender institution

- (1) This section applies where a court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of detention in a young offender institution under section 266.
- (2) The appropriate custodial term is the term of detention in a young offender institution that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.
- (3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

- (4) The extension period must—
 - (a) be at least 1 year, and
 - (b) not exceed—
 - (i) 5 years in the case of a specified violent offence, or
 - (ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of “specified violent offence”, “specified sexual offence” and “specified terrorism offence”.

- (5) The term of the extended sentence must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

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Detention in a young offender institution: consecutive sentences etc

269 Detention in a young offender institution: consecutive sentences

- (1) Where—
- (a) an offender is convicted of more than one offence for which a sentence of detention in a young offender institution is available, or
 - (b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which a sentence of detention in a young offender institution is available,
- the court has the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

- (2) Where an offender who—
- (a) is serving a sentence of detention in a young offender institution, and
 - (b) is aged 21 or over,
- is convicted of one or more further offences for which the offender is liable to imprisonment, the court has the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.
- This is subject to section 225 (restriction on consecutive sentences for released prisoners).

270 Sentence of detention in a young offender institution where offender subject to detention and training order

- (1) This section applies where the court imposes a sentence of detention in a young offender institution in the case of an offender who is subject to a relevant detention and training order.
- (2) If the offender has not at any time been released for supervision under the detention and training order, the court may order that the sentence of detention in a young offender institution is to take effect at the time when the offender would otherwise be released under the relevant detention and training order (see section 248(5)).
- (3) Otherwise, the sentence of detention in a young offender institution takes effect at the beginning of the day on which it is passed.
- (4) In this section “relevant detention and training order” means—
- (a) a detention and training order under section 233,
 - (b) an order under section 211 of the Armed Forces Act 2006 (corresponding order under that Act), or
 - (c) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training order: offender convicted before the commencement of this Act).

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Detention in a young offender institution: further provision

271 Detention in a young offender institution: place of detention

- (1) An offender sentenced to detention in a young offender institution is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.

This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).

- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution is to be detained in a prison instead of a young offender institution.

Custody for life

272 Offences other than murder

- (1) This section applies where a person aged at least 18 but under 21 is convicted of an offence for which the sentence is not fixed by law.
- (2) The court must sentence the offender to custody for life if—
- (a) the offence is punishable in the case of a person aged 21 or over with imprisonment for life, and the court considers that a sentence for life would be appropriate, or
 - (b) the court is required by section 273 or 274 to impose a sentence of custody for life.
- (3) Sections 230 (threshold for imposing discretionary custodial sentence) and 231 (length of discretionary custodial sentences: general provision), in particular, apply for the purposes of subsection (2)(a).

273 Custody for life for second listed offence

- (1) Subsection (3) applies where—
- (a) a court is dealing with an offender for an offence (“the index offence”) that is listed in Part 1 of Schedule 15,
 - (b) the index offence was committed on or after the relevant date,
 - (c) the offender is aged 18 or over but under 21 when convicted of the index offence, and
 - (d) the sentence condition and the previous offence condition are met.
- (2) In subsection (1)(b), “relevant date”, in relation to an offence, means the date specified for that offence in Part 1 of Schedule 15.
- (3) The court must impose a sentence of custody for life under section 272 unless the court is of the opinion that there are particular circumstances which—
- (a) relate to—
 - (i) the index offence,
 - (ii) the previous offence referred to in subsection (5), or
 - (iii) the offender, and
 - (b) would make it unjust to do so in all the circumstances.

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- (4) The sentence condition is that, but for this section, the court would impose a sentence of detention in a young offender institution for 10 years or more, disregarding any extension period that it would impose under section 266.

Sections 230(2) and 231(2) apply for this purpose.

- (5) The previous offence condition is that—
- (a) when the index offence was committed, the offender had been convicted of an offence (“the previous offence”) listed in Schedule 15, and
 - (b) a relevant life sentence or a relevant sentence of detention for a determinate period was imposed on the offender for the previous offence.
- (6) For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include any offence for which the date specified in that Part is after the date on which the index offence was committed.
- (7) A life sentence is relevant for the purposes of subsection (5)(b) if—
- (a) the offender was not eligible for release during the first 5 years of the sentence, or
 - (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.
- (8) An extended sentence imposed under the Criminal Justice Act 2003 or this Code (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (5)(b) if the appropriate custodial term imposed was 10 years or more.
- (9) Any other extended sentence is relevant for the purposes of subsection (5)(b) if the custodial term imposed was 10 years or more.
- (10) Any other sentence of detention for a determinate period is relevant for the purposes of subsection (5)(b) if it was for a period of 10 years or more.
- (11) An extended sentence or other sentence of detention is also relevant if it would have been relevant under subsection (9) or (10) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.
- (12) For the purposes of subsections (5) to (11)—
- “extended sentence” means—
- (a) a sentence imposed under section 254 or 266 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006), or
 - (b) a sentence imposed under section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003 (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006),
- or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “life sentence” means—
- (a) a sentence of detention for life under—
 - (i) section 250,
 - (ii) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (iii) section 209 of the Armed Forces Act 2006,

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- (b) a sentence of detention during Her Majesty’s pleasure under—
 - (i) section 259,
 - (ii) section 90 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (iii) section 218 of the Armed Forces Act 2006, or
- (c) a sentence of custody for life under—
 - (i) section 272 or 275 (including one passed as a result of section 210A, 217, 218A or 219 of the Armed Forces Act 2006), or
 - (ii) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (including one passed as a result of paragraph 6 or 7 of Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059)),

or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

“relevant pre-sentence period”, in relation to the previous offence referred to in subsection (5), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

“sentence of detention” includes any sentence of a period in custody (however expressed).

- (13) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.
- (14) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (1)(b), (5)(a) and (6) to have been committed on the last of those days.

274 Required sentence of custody for life for offence carrying life sentence

- (1) This section applies where a court is dealing with an offender for an offence where—
 - (a) the offender is aged 18 or over but under 21 when convicted of the offence,
 - (b) the offence is a Schedule 19 offence (see section 307), and
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
- (3) If the court considers that the seriousness of—
 - (a) the offence, or
 - (b) the offence and one or more offences associated with it,
 is such as to justify the imposition of a sentence of custody for life, the court must impose a sentence of custody for life under section 272.
- (4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

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275 Duty to impose custody for life for offence of murder

- (1) Where a person aged under 21 is convicted of—
 - (a) murder, or
 - (b) any other offence the sentence for which is fixed by law as life imprisonment, the court must sentence the offender to custody for life.
- (2) Subsection (1) does not apply where the offender is liable to be detained under section 259 (detention at Her Majesty's pleasure for offender under 18).

276 Custody for life: place of detention

- (1) An offender sentenced to custody for life is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.
This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).
- (2) The Secretary of State may from time to time direct that an offender sentenced to custody for life is to be detained in a prison instead of a young offender institution.

CHAPTER 4

ADULTS AGED 21 AND OVER

Suspended sentence of imprisonment

277 Suspended sentence order for person aged 21 or over: availability

- (1) This section applies where, in dealing with an offender for an offence, a court passes a sentence of imprisonment.
- (2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of imprisonment is—
 - (a) at least 14 days, but
 - (b) not more than 2 years.
- (3) But a suspended sentence order is not available in relation to that sentence if—
 - (a) the sentence of imprisonment is one of two or more sentences imposed on the same occasion which are to be served consecutively, and
 - (b) the terms of those sentences are in aggregate more than 2 years.
- (4) For provision about suspended sentences, see Chapter 5 .

Special custodial sentence for certain offenders of particular concern

278 Required special custodial sentence for certain offenders of particular concern

- (1) This section applies where the court imposes a sentence of imprisonment for an offence where—
 - (a) the offence is listed in Schedule 13,
 - (b) the person—

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- (i) was aged 18 or over when the offence was committed, and
- (ii) is aged 21 or over when convicted of the offence, and
- (c) the court does not impose either of the following for the offence (or for an offence associated with it)—
 - (i) an extended sentence under section 279, or
 - (ii) a sentence of imprisonment for life.
- (2) The term of the sentence must be equal to the aggregate of—
 - (a) the appropriate custodial term, and
 - (b) a further period of 1 year for which the offender is to be subject to a licence, and must not exceed the maximum term of imprisonment with which the offence is punishable.
- (3) For the purposes of subsection (2), the “appropriate custodial term” is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Extended sentences

279 Extended sentence of imprisonment for certain violent, sexual or terrorism offences: persons 21 or over

An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—

- (a) the appropriate custodial term (see section 281), and
- (b) a further period (the “extension period”) for which the offender is to be subject to a licence.

280 Extended sentence of imprisonment: availability

- (1) An extended sentence of imprisonment is available in respect of an offence where—
 - (a) the offence is a specified offence (see section 306(1)),
 - (b) the offender is aged 21 or over when convicted of the offence,
 - (c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 308),
 - (d) the court is not required by section 283 or 285 to impose a sentence of imprisonment for life, and
 - (e) the earlier offence condition or the 4 year term condition is met.
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).
- (3) The earlier offence condition is that, when the offence was committed, the offender had been convicted of an offence listed in Schedule 14.
- (4) The 4 year term condition is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term (see section 281) would be at least 4 years.

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281 Term of extended sentence of imprisonment

- (1) This section applies where the court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of imprisonment under section 279.
- (2) The appropriate custodial term is the term of imprisonment that would be imposed in respect of the offence in compliance with section 231(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence of imprisonment.
- (3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

- (4) The extension period must—
 - (a) be at least 1 year, and
 - (b) not exceed—
 - (i) 5 years in the case of a specified violent offence;
 - (ii) 8 years in the case of a specified sexual offence or a specified terrorism offence.

See section 306(2) for the meanings of “specified violent offence”, “specified sexual offence” and “specified terrorism offence”.

- (5) The term of the extended sentence of imprisonment must not exceed the maximum term of imprisonment with which the offence is punishable.

282 Extended sentences for offences committed before 4 April 2005

In section 280(1)(a) and section 281(4)(b), references to a specified offence, a specified violent offence, a specified sexual offence and a specified terrorism offence include an offence that—

- (a) was abolished before 4 April 2005, and
- (b) would have constituted such an offence if committed on the day on which the offender is convicted of the offence.

Life sentences

283 Life sentence for second listed offence

- (1) Subsection (3) applies where—
 - (a) a court is dealing with an offender for an offence (“the index offence”) that is listed in Part 1 of Schedule 15,
 - (b) the index offence was committed on or after the relevant date,
 - (c) the offender is aged 21 or over when convicted of the index offence, and
 - (d) the sentence condition and the previous offence condition are met.
- (2) In subsection (1)(b), “relevant date”, in relation to an offence, means the date specified for that offence in Part 1 of Schedule 15.

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- (3) The court must impose a sentence of imprisonment for life unless the court is of the opinion that there are particular circumstances which—
- (a) relate to—
 - (i) the index offence,
 - (ii) the previous offence referred to in subsection (5), or
 - (iii) the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (4) The sentence condition is that, but for this section, the court would impose a sentence of imprisonment for 10 years or more, disregarding any extension period it would impose under section 279.
- Sections 230(2) and 231(2) apply for this purpose.
- (5) The previous offence condition is that—
- (a) when the index offence was committed, the offender had been convicted of an offence (“the previous offence”) listed in Schedule 15, and
 - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) For the purposes of subsection (5), Schedule 15 is to be read as if Part 1 did not include any offence for which the date specified in that Part is after the date on which the index offence was committed.
- (7) A life sentence is relevant for the purposes of subsection (5)(b) if—
- (a) the offender was not eligible for release during the first 5 years of the sentence, or
 - (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.
- (8) An extended sentence imposed under the Criminal Justice Act 2003 or this Code (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (5)(b) if the appropriate custodial term imposed was 10 years or more.
- (9) Any other extended sentence is relevant for the purposes of subsection (5)(b) if the custodial term imposed was 10 years or more.
- (10) Any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (5)(b) if it was for a period of 10 years or more.
- (11) An extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (9) or (10) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.
- (12) For the purposes of subsections (5) to (11)—
- “extended sentence” means—
- (a) a sentence under section 254, 266 or 279 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006),
 - (b) a sentence under section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003 (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or

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- (c) a sentence under—
- (i) section 85 of the Powers of Criminal Courts (Sentencing) Act 2000, or
 - (ii) section 58 of the Crime and Disorder Act 1998,
- or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “life sentence” means—
- (a) a sentence of imprisonment for life;
 - (b) a sentence of detention for life under—
 - (i) section 250,
 - (ii) section 91 of the Powers of Criminal Courts (Sentencing) Act 2000;
 - (iii) section 53(3) of the Children and Young Persons Act 1933;
 - (iv) section 209 of the Armed Forces Act 2006;
 - (v) section 71A(4) of the Army Act 1955 or Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957;
 - (c) a sentence of detention during Her Majesty’s pleasure under—
 - (i) section 259,
 - (ii) section 90 of the Powers of Criminal Courts (Sentencing) Act 2000,
 - (iii) section 53(1) of the Children and Young Persons Act 1933,
 - (iv) section 218 of the Armed Forces Act 2006, or
 - (v) section 71A(3) of the Army Act 1955 or Air Force Act 1955 or section 43A(3) of the Naval Discipline Act 1957;
 - (d) a sentence of custody for life under—
 - (i) section 272 or 275 (including one passed as a result of section 210A, 217, 218A or 219 of the Armed Forces Act 2006),
 - (ii) section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000 (including one passed as a result of paragraph 6 or 7 of Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059)),
 - (iii) section 8 of the Criminal Justice Act 1982, or
 - (iv) section 71A(1A) or (1B) of the Army Act 1955 or Air Force Act 1955 or section 43(1A) or (1B) of the Naval Discipline Act 1957;
 - (e) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006);
 - (f) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);
- or an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “relevant pre-sentence period”, in relation to the previous offence referred to in subsection (5), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

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“sentence of imprisonment or detention” includes any sentence of a period in custody (however expressed).

- (13) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.
- (14) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (1)(b), (5)(a) and (6) to have been committed on the last of those days.

284 Required life sentence where second offence committed before 4 April 2005

For cases in which a sentence of life imprisonment must be imposed for an offence which—

- (a) is a second offence, and
(b) was committed on or after 1 October 1997 but before 4 April 2005,

see section 109 of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence for second serious offence), as it has effect by virtue of paragraph 5(2) of Schedule 2 to the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 (S.I. 2005/950).

285 Required life sentence for offence carrying life sentence

- (1) This section applies where a court is dealing with an offender for an offence where—
- (a) the offender is aged 21 or over at the time of conviction,
(b) the offence is a Schedule 19 offence (see section 307),
(c) the offence was committed on or after 4 April 2005, and
(d) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308).
- (2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(d).
- (3) If the court considers that the seriousness of—
- (a) the offence, or
(b) the offence and one or more offences associated with it,
- is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life.
- (4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

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CHAPTER 5

SUSPENDED SENTENCES

What a suspended sentence order is

286 Suspended sentence order

- (1) A suspended sentence order is an order providing that a sentence of imprisonment or detention in a young offender institution in respect of an offence is not to take effect unless—
 - (a) an activation event occurs, and
 - (b) a court having power to do so subsequently orders under paragraph 13 of Schedule 16 that the sentence is to take effect.
- (2) A suspended sentence order may also specify one or more available community requirements with which the offender must comply during the supervision period.
- (3) An activation event occurs if the offender—
 - (a) commits another offence in the United Kingdom during the operational period (whether or not punishable with imprisonment), or
 - (b) during the supervision period, contravenes any community requirement imposed by the order.
- (4) The community requirements are listed in column 1 of the community requirements table (see section 287).
- (5) Provision about each requirement is made by the provisions of Schedule 9 mentioned in the corresponding entry in column 2 of that table.
- (6) In this Code—
 - “suspended sentence order” has the meaning given by subsection (1);
 - “suspended sentence” means a sentence to which a suspended sentence order relates.
- (7) In this Code, references to a community requirement of, or imposed by, a suspended sentence order are to a requirement specified in the order under subsection (2).

287 Suspended sentence order: community requirements table

The community requirements table referred to in sections 286, 290 and 292 is—

<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
unpaid work requirement	Part 1	
rehabilitation activity requirement	Part 2	
programme requirement	Part 3	
prohibited activity requirement	Part 4	

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<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
curfew requirement	Part 5	
exclusion requirement	Part 6	
residence requirement	Part 7	
foreign travel prohibition requirement	Part 8	
mental health treatment requirement	Part 9	
drug rehabilitation requirement	Part 10	
alcohol treatment requirement	Part 11	
alcohol abstinence and monitoring requirement	Part 12	section 291(1) or (2)
attendance centre requirement	Part 13	section 291(3)
electronic compliance monitoring requirement	Part 14	section 291(4)
electronic whereabouts monitoring requirement	Part 14	

288 Operational period and supervision period

- (1) A suspended sentence order must specify the operational period (see section 286(3)(a)).
- (2) The operational period must be a period, beginning with the day on which the order is made, of—
 - (a) at least 6 months, and
 - (b) not more than 2 years.
- (3) If a suspended sentence order imposes any community requirement or requirements, the order must specify the supervision period (see section 286(2)).
- (4) The supervision period specified must be a period, beginning with the day on which the order is made, of—
 - (a) at least 6 months, and
 - (b) not more than—
 - (i) 2 years, or
 - (ii) if less, the operational period.
- (5) But if the suspended sentence order imposes an unpaid work requirement, the supervision period—
 - (a) continues until the offender has worked under the order for the number of hours specified in the order under paragraph 2(1) of Schedule 9, but
 - (b) does not continue beyond the end of the operational period.

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289 Suspended sentence to be treated generally as sentence of imprisonment etc

- (1) A suspended sentence which has not taken effect under paragraph 13 of Schedule 16 is to be treated as—
 - (a) a sentence of imprisonment, or
 - (b) as the case may be, a sentence of detention in a young offender institution, for the purposes of all enactments and instruments made under enactments.
- (2) Subsection (1) is subject to any provision to the contrary contained in—
 - (a) the Criminal Justice Act 1967,
 - (b) any enactment passed or instrument made under any enactment after 31 December 1967.

Available community requirements

290 Suspended sentence order: available community requirements

- (1) A suspended sentence order may not impose a community requirement that is not an available requirement.
- (2) A community requirement is an available requirement in relation to a suspended sentence order unless a provision mentioned in column 3 of the entry for that requirement in the table in section 287 provides otherwise.

291 Suspended sentence order: availability of particular requirements

Alcohol abstinence and monitoring requirement

- (1) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 9 (prescribed arrangements for monitoring).
- (2) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 9 (alcohol level to be kept below specified level) is not an available requirement unless regulations are in force under paragraph 25(7)(b) of that Schedule (prescribed alcohol level).

Attendance centre requirement

- (3) An attendance centre requirement is not an available requirement unless the offender is aged under 25 when convicted of the offence.

Electronic compliance monitoring requirement

- (4) An electronic compliance monitoring requirement is not an available requirement in relation to a suspended sentence order unless the suspended sentence order imposes at least one other available requirement, other than—
 - (a) an alcohol abstinence and monitoring requirement;
 - (b) an electronic whereabouts monitoring requirement.

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Exercise of power to impose community requirements

292 Suspended sentence order: exercise of power to impose requirements

- (1) This section applies where a court makes a suspended sentence order which imposes community requirements.
- (2) The power to impose a particular community requirement is subject to the provisions of the Part of Schedule 9 relating to requirements of that kind (see column 2 of the table in section 287).
- (3) If the suspended sentence order imposes two or more different community requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (4) The court must also ensure, so far as practicable, that any community requirement imposed by a suspended sentence order is such as to avoid—
 - (a) any conflict with the offender’s religious beliefs,
 - (b) any conflict with any other court order to which the offender may be subject, and
 - (c) any interference with the times, if any, at which the offender normally—
 - (i) works, or
 - (ii) attends any educational establishment,
 and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

Provision for review of suspended sentence order with community requirements

293 Power to provide for review of suspended sentence order

- (1) A suspended sentence order which imposes one or more community requirements may make provision for the order to be reviewed periodically (“provision for review”).
 This is subject to subsection (3).
- (2) Where an order contains provision for review, it must—
 - (a) specify the intervals at which the order is to be reviewed,
 - (b) provide for each review to be made, subject to section 295, at a hearing held for the purpose by the responsible court (a “review hearing”),
 - (c) require the offender to attend each review hearing, and
 - (d) provide for a report by an officer of a provider of probation services on the offender’s progress in complying with the community requirements of the order (“a progress report”) to be made to the responsible court before each review.
- (3) If the suspended sentence order—
 - (a) imposes a drug rehabilitation requirement, and
 - (b) contains provision for review under this section,

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the provision for review must not include provision relating to that requirement (but see paragraph 22 of Schedule 9 for separate provision about review of such a requirement).

- (4) In this section “the responsible court” in relation to a suspended sentence order means—
- (a) if a court is specified in the order in accordance with subsection (5), that court;
 - (b) otherwise, the court by which the order is made.
- (5) Where—
- (a) a suspended sentence order is made by a magistrates’ court, and
 - (b) the offender’s home local justice area is not the area in which the court acts,
- the order may specify that the responsible court is to be a magistrates’ court which acts in the offender’s home local justice area.
- (6) A suspended sentence order made on an appeal from—
- (a) the Crown Court, or
 - (b) the Court of Appeal,
- is to be taken for the purposes of subsection (4)(b) to have been made by the Crown Court.

294 Review hearings: power to amend community requirements etc

- (1) This section applies where a review hearing is held on a review of a suspended sentence order by virtue of section 293.
- (2) The court may, after considering the progress report, amend—
- (a) the community requirements of the suspended sentence order, or
 - (b) any provision of the order which relates to those requirements.
- (3) But the court—
- (a) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses willingness to comply with that requirement,
 - (b) may not amend—
 - (i) a mental health treatment requirement,
 - (ii) a drug rehabilitation requirement, or
 - (iii) an alcohol treatment requirement,unless the offender expresses willingness to comply with the requirement as amended,
 - (c) may amend the supervision period only if the period as amended complies with section 288(4),
 - (d) may not amend the operational period, and
 - (e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.
- (4) For the purposes of subsection (3)(a)—
- (a) a community requirement of a kind within any entry in the table in section 287 is of the same kind as any other community requirement within that entry, and
 - (b) an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

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- (5) If the court is of the opinion that the offender has without reasonable excuse breached a community requirement of the order, the court may adjourn the hearing so that it can deal with the case under paragraph 13 of Schedule 16 (powers of court to deal with offender on breach of requirement or subsequent conviction).
- (6) In this section—
“review hearing”, and
“progress report”,
have the meanings given by section 293(2).

295 Suspended sentence order: alteration of periodic review arrangements

- (1) Subsections (2) and (3) apply where the court—
(a) considers the progress report relating to a review (the “current review”), and
(b) forms the opinion that the offender’s progress in complying with the community requirements of the order is satisfactory.
- (2) If the court forms that opinion before a review hearing is held at the current review—
(a) it may order that no review hearing is to be held at the current review, and
(b) it may amend the suspended sentence order so as to provide for each subsequent review to be held without a review hearing.
- (3) If a review hearing is held at the current review, the court may at the hearing amend the suspended sentence order so as to provide for each subsequent review to be held without a review hearing.
- (4) If at a review held without a review hearing the court—
(a) considers the progress report, and
(b) forms the opinion that the offender’s progress under the order is no longer satisfactory,
it may require the offender to attend a hearing of the court at a specified time and place.
- (5) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 293(2)(a).
- (6) The functions of a court under this section that are exercisable in relation to a review without a hearing are to be exercised—
(a) in the case of the Crown Court, by a judge of the court, and
(b) in the case of a magistrates’ court, by a justice of the peace.
- (7) In this section—
“review hearing”, and
“progress report”,
have the meanings given by section 293(2).

Making a suspended sentence order with community requirements

296 Order to specify offender’s home local justice area

- (1) A suspended sentence order which imposes any community requirement must specify the area which is the offender’s home local justice area.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

(2) That area must be the local justice area in which the offender resides or will reside.

297 Power to direct magistrates' court supervision of order

Where the Crown Court makes a suspended sentence order which imposes any community requirement, it may make a direction that the order is to be subject to magistrates' court supervision.

For the effect of such a direction, see Parts 2 and 3 of Schedule 16 (breach or amendment of a community requirement of a suspended sentence order).

298 Provision of copies of order and related documents

- (1) This section applies on the making by a court of a suspended sentence order which imposes one or more community requirements.
- (2) The court must forthwith provide copies of the order—
 - (a) to the offender,
 - (b) to the responsible officer,
 - (c) to an officer of a provider of probation services that is a public sector provider who is acting at the court, and
 - (d) if the court does not act in the offender's home local justice area, to a provider of probation services that is a public sector provider and is operating in that area.
- (3) If the order imposes any requirement specified in column 1 of the following table the court must also forthwith provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

<i>The requirement</i>	<i>The person to whom a copy must be provided</i>
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected
A residence requirement relating to residence in an institution.	The person in charge of the institution
A mental health treatment requirement.	The person specified under paragraph 16(3)(b)(iii) of Schedule 9 or the person in charge of the institution or place specified under paragraph 16(3)(b)(i) or (ii) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(5)(b) or (c) of Schedule 9
An alcohol treatment requirement	The person in charge of the institution or place specified under paragraph 23(5)(c) or (d) of Schedule 9 or, in the case of practitioner-based treatment, the person specified under paragraph 23(5)(a) of that Schedule

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<i>The requirement</i>	<i>The person to whom a copy must be provided</i>
An electronic monitoring requirement	Any person who by virtue of paragraph 31(1) of Schedule 9 will be responsible for the electronic monitoring
	Any person without whose consent the requirement could not be included in the order.

- (4) If the court does not act in the offender’s home local justice area, it must provide the magistrates’ court acting in that area with—
- (a) a copy of the order, and
 - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.
- (5) In subsection (2) “public sector provider” means—
- (a) a probation trust or other public body, or
 - (b) the Secretary of State.

*Suspended sentence order with community requirement:
obligations of responsible officer and offender*

299 Responsible officer

- (1) This section applies for the purposes of this Chapter in relation to a suspended sentence order made in respect of an offender which imposes one or more community requirements.
- (2) “The responsible officer”, in relation to the offender, means the person who for the time being is responsible for discharging the functions conferred by this Chapter on the responsible officer in accordance with arrangements made by the Secretary of State.
- (3) The responsible officer must be—
 - (a) an officer of a provider of probation services, or
 - (b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the order.

300 Obligations of responsible officer

- (1) This section applies during the supervision period of a suspended sentence order which imposes any community requirement.

Functions of the responsible officer

- (2) The responsible officer must—
 - (a) make any arrangements that are necessary in connection with the requirements imposed by the order, and
 - (b) promote the offender’s compliance with those requirements.
- (3) This is subject to paragraph 16(6) of Schedule 9 (in-patient treatment under mental health treatment requirement).

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Exercise of functions by responsible officer

- (4) The responsible officer must also ensure, as far as practicable, that any instruction given or requirement imposed by the responsible officer is such as to avoid—
- (a) any conflict with the offender’s religious beliefs,
 - (b) any conflict with the requirements of any other court order to which the offender may be subject, and
 - (c) any interference with the times, if any, at which the offender normally—
 - (i) works, or
 - (ii) attends any educational establishment,
- and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

301 Duty of offender to keep in touch with responsible officer

- (1) This section applies during the supervision period of a suspended sentence order which imposes one or more community requirements.
- (2) The offender must keep in touch with the responsible officer in accordance with such instructions as the responsible officer may give the offender from time to time.
- (3) That obligation is enforceable as if it were a community requirement imposed by the suspended sentence order.

302 Duty to obtain permission before changing residence

- (1) This section applies during the supervision period of a suspended sentence order which imposes one or more community requirements.
- But it does not apply if the order includes a residence requirement (see paragraph 13 of Schedule 9).
- (2) The offender must not change residence without permission given in accordance with this section by—
- (a) the responsible officer, or
 - (b) a court.
- (3) The obligation imposed by subsection (2) has effect as if it were a community requirement imposed by the suspended sentence order.
- (4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.
- (5) A court may also give permission in any proceedings before it under Schedule 16 (breach or amendment of orders etc).
- (6) The grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
- (a) is likely to prevent the offender complying with a requirement imposed by the suspended sentence order, or
 - (b) would hinder the offender’s rehabilitation.

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- (7) The responsible officer must refuse an application for permission if—
- (a) the offender’s present residence is in England or Wales, and
 - (b) the offender’s proposed residence is outside England and Wales.
- (8) For cases in which a suspended sentence order has to be amended because of permission given under this section, see paragraph 23 of Schedule 16 (amendment to reflect change in local justice area).
- (9) In this section “the appropriate court” has the same meaning as in Schedule 16.

Activation of sentence and amendment of order etc

303 Breach or amendment of suspended sentence order, and effect of further conviction

Schedule 16 makes provision about—

- (a) the effect of any further conviction where an offender is subject to a suspended sentence order, and
- (b) breach or amendment of the community requirements of a suspended sentence order.

Transferring order with community requirements to Scotland or Northern Ireland

304 Transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements

Schedule 17 makes provision about the transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements.

Interpretation

305 Suspended sentences: interpretation

In this Chapter—

“the operational period”, in relation to a suspended sentence, means the period specified under—

- (a) section 288(1), or
- (b) paragraph 13(1)(d)(iii) of Schedule 16 (extension of operational period on breach of order);

“sentence of imprisonment” does not include a committal for contempt of court or any kindred offence;

“the supervision period”, in relation to a suspended sentence, means the period (if any) specified under—

- (a) section 288(3),
- (b) section 294 (review of order), or
- (c) paragraph 13(1)(d)(ii) of Schedule 16 (extension of supervision period on breach of order),

but subject to section 288(5) (extension to allow completion of unpaid work requirement).

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CHAPTER 6

DANGEROUS OFFENDERS

Interpretation

306 Extended sentences: meaning of “specified offence” etc

- (1) An offence is a “specified offence” for the purposes of this Code if it is—
 - (a) a specified violent offence,
 - (b) a specified sexual offence, or
 - (c) a specified terrorism offence.
- (2) In this Part—
 - “serious harm” means death or serious personal injury, whether physical or psychological;
 - “specified violent offence” means an offence specified in Part 1 of Schedule 18;
 - “specified sexual offence” means an offence specified in Part 2 of that Schedule;
 - “specified terrorism offence” means an offence specified in Part 3 of that Schedule.

307 Life sentences: meaning of “Schedule 19 offence”

- (1) In this Part “Schedule 19 offence” means an offence listed in Schedule 19 (certain specified offences carrying maximum sentence on indictment of imprisonment for life).
- (2) For the purposes of Schedule 19, an offence found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, must be taken to have been committed on the last of those days.

The assessment of dangerousness

308 The assessment of dangerousness

- (1) This section applies where it falls to a court to assess under any of the following provisions (which apply where an offender has committed a specified offence, however described) whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences—
 - (a) section 255, 267 or 280 (extended sentence for certain violent, sexual or terrorism offences);
 - (b) section 258, 274 or 285 (required life sentence for Schedule 19 offence).
- (2) In making that assessment, the court—
 - (a) must take into account all the information that is available to it about the nature and circumstances of the offence,

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- (b) may take into account all the information that is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,
 - (c) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (b) forms part, and
 - (d) may take into account any information about the offender which is before it.
- (3) The reference in subsection (2)(b) to a conviction by a court includes a reference to—
- (a) a conviction of an offence in—
 - (i) any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence), or
 - (ii) any proceedings before a Standing Civilian Court;
 (and “conviction” here includes the recording of a finding that a charge in respect of the offence has been proved), and
 - (b) a conviction of—
 - (i) a service offence within the meaning of the Armed Forces Act 2006, or
 - (ii) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059),
 (and “conviction” here includes anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction).

Supplementary

309 Appeals where previous convictions set aside or previous sentences modified

- (1) Subsection (3) applies where—
- (a) a sentence has been imposed on a person under section 273 or 283 (life sentence for second listed offence),
 - (b) a previous conviction of that person has been subsequently set aside on appeal, and
 - (c) without that conviction, the previous offence condition in section 273(5) or 283(5) would not have been met.
- (2) Subsection (3) also applies where—
- (a) a sentence has been imposed on a person under section 266 or 279 (extended sentences for adults),
 - (b) the earlier offence condition was met but the 4 year term condition was not, and
 - (c) any previous conviction of that person’s without which the earlier offence condition would not have been met has been subsequently set aside on appeal.

For this purpose, references to the earlier offence condition and the 4 year term condition are to be read in accordance with 267 or 280 (as the case may be).

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- (3) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.
- (4) Subsection (5) applies where—
- (a) a sentence has been imposed on a person under section 273 or 283,
 - (b) a previous sentence imposed on that person has been subsequently modified on appeal, and
 - (c) taking account of that modification, the previous offence condition in section 273(5) or 283(5) would not have been met.
- (5) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence mentioned in subsection (4)(a) may be given at any time within 28 days from the date on which the previous sentence was modified.

310 Certificates of conviction

Where—

- (a) a person is convicted in England and Wales of an offence listed in Schedule 14 or 15,
- (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that day, and
- (c) that court subsequently certifies that fact,

that certificate is evidence, for the purposes of section 267, 273, 280 or 283 (extended sentences for adults and life sentences for second listed offence), that the person was convicted of such an offence on that day.

CHAPTER 7

MINIMUM SENTENCES FOR PARTICULAR OFFENCES

Minimum sentence for single offence

311 Minimum sentence for certain offences involving firearms that are prohibited weapons

- (1) This section applies where—
- (a) a person is convicted of an offence listed in Schedule 20 (certain offences involving firearms that are prohibited weapons), and
 - (b) the offender was aged 16 or over when the offence was committed.
- (2) The court must impose an appropriate custodial sentence for a term of at least the required minimum term unless the court is of the opinion that there are exceptional circumstances which—
- (a) relate to the offence or to the offender, and
 - (b) justify not doing so.
- (3) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged under 18 when convicted, a sentence of detention under section 250;

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- (b) in the case of a person who is aged 18 or over but under 21 when convicted, a sentence of detention in a young offender institution (and includes, if the offence is an offence for which a person aged 21 or over would be liable to imprisonment for life, a sentence of custody for life);
 - (c) in the case of a person who is aged 21 or over when convicted, a sentence of imprisonment.
- (4) In this section “the required minimum term” means—
- (a) in the case of an offender who was aged under 18 when the offence was committed, 3 years;
 - (b) in the case of an offender who was aged 18 or over when the offence was committed, 5 years.
- But this is subject to subsection (5).
- (5) In the case of an offence within paragraph 5 of Schedule 20, “the required minimum term” means—
- (a) in the case of an offender who was aged under 18 when convicted, 3 years;
 - (b) in the case of an offender who was aged 18 or over when convicted, 5 years.

312 Minimum sentence for offences of threatening with weapon or bladed article

- (1) This section applies where a person aged 16 or over is convicted of an offence under—
- (a) section 1A of the Prevention of Crime Act 1953 (offence of threatening with offensive weapon in public), or
 - (b) section 139AA of the Criminal Justice Act 1988 (offence of threatening with article with blade or point or offensive weapon).
- (2) The court must impose an appropriate custodial sentence unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged 16 or over but under 18 when convicted, a detention and training order of at least 4 months;
 - (b) in the case of a person who is aged 18 or over but under 21 when convicted, a sentence of detention in a young offender institution for a term of at least 6 months;
 - (c) in the case of a person who is aged 21 or over when convicted, a sentence of imprisonment for a term of at least 6 months.

Minimum sentence for repeat offences

313 Minimum sentence of 7 years for third class A drug trafficking offence

- (1) This section applies where—
- (a) a person is convicted of a class A drug trafficking offence (“the index offence”) committed on or after 1 October 1997,
 - (b) when the index offence was committed, the offender—
 - (i) was aged 18 or over, and

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- (ii) had 2 other relevant drug convictions, and
 - (c) one of the offences to which those other relevant drug convictions related was committed after the offender had been convicted of the other.
- (2) The court must impose an appropriate custodial sentence for a term of at least 7 years unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) For the purposes of subsection (1), “relevant drug conviction” means—
 - (a) a conviction in any part of the United Kingdom of a class A drug trafficking offence,
 - (b) a conviction in another member State of an offence committed on or after 16 August 2010 which would, if committed in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence,
 - (c) a conviction of an offence under section 42 of the Armed Forces Act 2006 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a class A drug trafficking offence,
 - (d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 in respect of which the corresponding civil offence (within the meaning of the Act in question) is a class A drug trafficking offence, or
 - (e) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted a class A drug trafficking offence if committed in England and Wales at the time of conviction.
- (4) Where—
 - (a) a person is charged with a class A drug trafficking offence (which, apart from this subsection, would be triable either way), and
 - (b) the circumstances are such that, if convicted of the offence, the person could be sentenced for it under subsection (2),the offence is to be triable only on indictment.
- (5) In this section “class A drug trafficking offence” means a drug trafficking offence committed in respect of a class A drug; and for this purpose—
 - “class A drug” has the same meaning as in the Misuse of Drugs Act 1971;
 - “drug trafficking offence” means an offence which is specified in—
 - (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
 - (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.
- (6) In this section “an appropriate custodial sentence” means—
 - (a) in relation to an offender who is aged 21 or over when convicted of the index offence, a sentence of imprisonment;
 - (b) in relation to an offender who is aged under 21 when convicted of the index offence, a sentence of detention in a young offender institution (and includes, if the index offence is an offence for which a person aged 21 or over would be liable to imprisonment for life, a sentence of custody for life).

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314 Minimum sentence of 3 years for third domestic burglary

- (1) This section applies where—
- (a) a person is convicted of a domestic burglary (“the index offence”) committed on or after 1 December 1999,
 - (b) when the index offence was committed—
 - (i) the offender was aged 18 or over, and
 - (ii) had 2 other relevant domestic burglary convictions, and
 - (c) one of the burglaries to which those other relevant domestic burglary convictions relate was committed after the person had been convicted of the other.
- (2) The court must impose an appropriate custodial sentence for a term of at least 3 years unless the court is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) For the purposes of subsection (1), “relevant domestic burglary conviction” means—
- (a) a conviction in England and Wales of a domestic burglary committed on or after 1 December 1999,
 - (b) a conviction in another part of the United Kingdom or another member State of an offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary, if committed in England and Wales at the time of the conviction,
 - (c) a conviction of an offence under section 42 of the Armed Forces Act 2006 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is an offence of domestic burglary,
 - (d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 committed on or after 1 December 1999 in respect of which the corresponding civil offence (within the meaning of the Act in question) is an offence of domestic burglary, or
 - (e) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary if committed in England and Wales at the time of conviction.
- (4) Where—
- (a) a person is charged with a domestic burglary which, apart from this subsection, would be triable either way, and
 - (b) the circumstances are such that, if convicted of the burglary, the person could be sentenced for it under subsection (2),
- the burglary is to be triable only on indictment.
- (5) In this section “domestic burglary” means a burglary committed in respect of a building or part of a building which is a dwelling.
- (6) In this section “an appropriate custodial sentence” means—
- (a) in relation to a person who is aged 21 or over when convicted of the index offence, a sentence of imprisonment;
 - (b) in relation to a person who is aged under 21 when convicted of the index offence, a sentence of detention in a young offender institution.

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315 Minimum sentence for repeat offence involving weapon or bladed article

- (1) This section applies where—
 - (a) an offender is convicted of an offence (the “index offence”) under—
 - (i) section 1(1) of the Prevention of Crime Act 1953 (carrying offensive weapon without lawful authority or reasonable excuse),
 - (ii) section 139(1) of the Criminal Justice Act 1988 (having article with blade or point in public place), or
 - (iii) section 139A(1) or (2) of that Act (having article with blade or point or offensive weapon on education premises),
 - (b) the offence was committed on or after 17 July 2015, and
 - (c) when the offence was committed, the offender—
 - (i) was aged at least 16, and
 - (ii) had at least one relevant conviction.
- (2) The court must impose an appropriate custodial sentence unless the court is of the opinion that there are particular circumstances which—
 - (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (3) In subsection (2) “appropriate custodial sentence” means—
 - (a) in the case of a person aged under 18 when convicted of the index offence, a detention and training order of at least 4 months;
 - (b) in the case of a person aged 18 or over but under 21 when convicted of the index offence, a sentence of detention in a young offender institution for a term of at least 6 months;
 - (c) in the case of a person aged 21 or over when convicted of the index offence, a sentence of imprisonment for a term of at least 6 months.
- (4) In this section, “relevant conviction” means—
 - (a) a conviction of a relevant offence,
 - (b) a conviction in another part of the United Kingdom or another member State of a civilian offence which would have constituted a relevant offence if committed in England and Wales at the time of the conviction (whenever the offence was in fact committed),
 - (c) a conviction of an offence under section 42 of the Armed Forces Act 2006 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
 - (d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, or
 - (e) a conviction of a member State service offence which would have constituted a relevant offence if committed in England and Wales at the time of conviction (whenever the offence was in fact committed).
- (5) In this section, “relevant offence” means an offence under—
 - (a) section 1 or 1A of the Prevention of Crime Act 1953 (offences involving offensive weapons), or
 - (b) section 139, 139A or 139AA of the Criminal Justice Act 1988 (offences involving article with blade or point or offensive weapon).

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316 Appeals where previous convictions set aside

- (1) This section applies where—
- (a) a sentence has been imposed on an offender under subsection (2) of any of the following sections—
 - (i) section 313,
 - (ii) section 314, or
 - (iii) section 315,
 - (b) a previous conviction of the offender is subsequently set aside on appeal, and
 - (c) without the previous conviction the section would not have applied.
- (2) Notice of appeal against the sentence may be given at any time within 28 days from the day on which the previous conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968).

317 Certificates of conviction for purposes of sections 313 and 314

- (1) This section applies where an offender is convicted—
- (a) in England and Wales of—
 - (i) a class A drug trafficking offence, or
 - (ii) a domestic burglary,
 - (b) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,
 - (c) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or
 - (d) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence.
- (2) A certificate, given in accordance with subsection (3), of either or both of the following—
- (a) that the offender was convicted of that offence on the date of the conviction;
 - (b) that the offence was committed on a particular day, or over, or at some time during, a particular period,
- is evidence for the purposes of section 313 or 314 of the facts so certified.
- (3) A certificate is given in accordance with this subsection if it is—
- (a) given—
 - (i) by the court by or before which the offender was convicted of the offence, and
 - (ii) in the case of a court in the United Kingdom, after the court has stated in open court the facts certified by it, and
 - (b) in the case of a certificate given by a court outside the United Kingdom, signed by the proper officer of the court.
- (4) In this section—
- “proper officer” means the clerk of the court, that clerk’s deputy or any other person having custody of the court record;
 - “class A drug trafficking offence” and “domestic burglary” have the same meanings as in sections 313 and 314 respectively;
 - “corresponding drug trafficking offence” means an offence within section 313(3)(b);

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“corresponding domestic burglary offence” means an offence within section 314(3)(b).

318 Offences under service law

(1) In sections 313 to 315 and this section—

“civilian offence” means an offence other than—

- (a) an offence under section 42 of the Armed Forces Act 2006,
- (b) an offence under section 70 of the Army Act 1995, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, or
- (c) a member State service offence;

“conviction” includes—

- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction, and
- (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

“member State service offence” means an offence which was the subject of proceedings under the law of a member State other than the United Kingdom governing all or any of the naval, military or air forces of that State.

(2) For the purposes of section 313(3)(c) and (e) (class A drug trafficking which is an offence under section 42 of Armed Forces Act 2006 and corresponding member State service offences), where the offence was committed in a way described in paragraph 10 of Schedule 2 to the Proceeds of Crime Act 2002 (attempting, conspiring, encouraging, assisting, aiding, abetting, etc) in relation to an act that, if done in England and Wales, would have constituted another offence listed in paragraph 1 of that Schedule, it must be assumed that that act was done (or would have been done) in England and Wales.

(3) For the purposes of—

- (a) section 314(3)(c) and (e) (domestic burglary convictions under section 42 of Armed Forces Act 2006 or corresponding member State service offences), and
- (b) section 315(4)(c) and (d) (relevant weapons offences under that section or corresponding offences under previous legislation relating to the armed forces),

where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

Minimum sentences: supplementary

319 Mandatory sentence requirement not to affect power to impose fine

Nothing in this Chapter which requires the court to impose a particular term of imprisonment or other custodial sentence is to be taken to prevent the court from exercising any power to impose a fine in addition to the custodial sentence.

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320 Determination of day when offence committed

Where an offence is found to have been committed—

- (a) over a period of 2 or more days, or
- (b) at some time during a period of 2 or more days,

it is to be taken for the purposes of sections 311, 313, 314 and 315 to have been committed on the last of those days.

CHAPTER 8

EFFECT OF LIFE SENTENCES

321 Life sentence: minimum term order or whole life order

- (1) Where a court passes a life sentence, it must make an order under this section.
- (2) The order must be a minimum term order unless the court is required to make a whole life order under subsection (3).
- (3) The order must be a whole life order if—
 - (a) the offender was 21 or over when the offence was committed, and
 - (b) the court is of the opinion that, because of the seriousness of—
 - (i) the offence, or
 - (ii) the combination of the offence and one or more offences associated with it,
 it should not make a minimum term order.
- (4) A minimum term order is an order that the early release provisions (see section 324) are to apply to the offender as soon as the offender has served the part of the sentence which is specified in the order in accordance with section 322 or 323 (“the minimum term”).
- (5) A whole life order is an order that the early release provisions are not to apply to the offender.

322 Mandatory life sentences: further provision

- (1) This section applies where a court passes a life sentence for an offence the sentence for which is fixed by law.

Minimum term

- (2) If the court makes a minimum term order, the minimum term must be such part of the offender’s sentence as the court considers appropriate taking into account—
 - (a) the seriousness of—
 - (i) the offence, or
 - (ii) the combination of the offence and any one or more offences associated with it, and
 - (b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

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- (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) and section 240A of that Act (crediting periods on bail subject to certain restrictions);
- including the effect of any declaration that the court would have made under section 325 or 327 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition).

Determination of seriousness

- (3) In considering the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, under—
- (a) section 321(3) (determining whether to make a whole life order), or
 - (b) subsection (2) (determining the minimum term),
- the court must have regard to—
- (i) the general principles set out in Schedule 21, and
 - (ii) any sentencing guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

Duty to give reasons for minimum term order or whole life order

- (4) Where the court makes a minimum term order or a whole life order, in complying with the duty under section 52(2) to state its reasons for deciding on the order made, the court must in particular—
- (a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and
 - (b) state its reasons for any departure from that starting point.

323 Minimum term order: other life sentences

- (1) This section applies where a court—
- (a) passes a life sentence in circumstances in which the sentence is not fixed by law, and
 - (b) makes a minimum term order.
- (2) The minimum term must be such as the court considers appropriate, taking into account—
- (a) the seriousness of—
 - (i) the offence, or
 - (ii) the combination of the offence and one or more offences associated with it,
 - (b) the early release provisions as compared with section 244(1) of the Criminal Justice Act 2003 (duty to release prisoners), and
 - (c) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—
 - (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 240A of that Act (crediting periods of remand on bail subject to certain restrictions);

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including the effect of any declaration which the court would have made under section 325 or 327 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition).

324 Life sentences: interpretation

In this Chapter—

“the early release provisions” means section 28(5) to (8) of the Crime (Sentences) Act 1997;

“life sentence” means—

- (a) a sentence of imprisonment for life,
- (b) a sentence of detention for life or during Her Majesty’s pleasure (see sections 250 and 259), or
- (c) a sentence of custody for life (see sections 272 and 275);

“minimum term order” and “minimum term” have the meanings given by section 321(4);

“whole life order” has the meaning given by section 321(5).

CHAPTER 9

SENTENCE ADMINISTRATION

Declaration about time to count as served

325 Time on bail under certain conditions: declaration by court

(1) This section applies where—

- (a) a court passes a determinate sentence on an offender in respect of an offence (see subsection (5)),
- (b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, and
- (c) the offender’s bail was subject to a qualifying curfew condition and an electronic monitoring condition (“the relevant conditions”).

(2) The court must specify the credit period for the purposes of section 240A of the Criminal Justice Act 2003 (time remanded on bail to count towards time served) in relation to the sentence.

(3) The credit period is calculated by taking the following steps.

Step 1

Add—

- (a) the day on which the offender’s bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question), and
- (b) the number of other days on which the offender’s bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).

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Step 2

Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also—

- (a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender’s compliance with a curfew requirement, or
- (b) on temporary release under rules made under section 47 of the Prison Act 1952.

Step 3

From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

Step 4

Divide the result by 2.

Step 5

If necessary, round up to the nearest whole number.

- (4) Where the court makes a declaration under subsection (2) it must state in open court—
 - (a) the number of days on which the offender was subject to the relevant conditions, and
 - (b) the number of days (if any) which it deducted under each of steps 2 and 3.
- (5) For the purposes of subsection (1)(a), a court passes a determinate sentence if it—
 - (a) sentences the offender to imprisonment for a term,
 - (b) passes a determinate sentence of detention in a young offender institution, or
 - (c) passes a determinate sentence of detention under section 250 or 254 (offenders aged under 18).
- (6) For those purposes, a suspended sentence—
 - (a) is to be treated as a determinate sentence when it is activated under paragraph 13(1)(a) or (b) of Schedule 16, and
 - (b) is to be treated as being imposed by the order under which it is activated.
- (7) Section 240ZA of the Criminal Justice Act 2003 makes provision about time remanded in custody which is to count as time served.

326 Section 325: interpretation

- (1) For the purposes of section 325, “sentence of imprisonment” does not include a committal—
 - (a) in default of payment of any sum of money, other than one adjudged to be paid on a conviction,
 - (b) for want of sufficient distress to satisfy any sum of money, or
 - (c) for failure to do or abstain from doing anything required to be done or left undone,

and references to sentencing an offender to imprisonment are to be read accordingly.

This definition has effect in place of the definition of “sentence of imprisonment” in section 397 for those purposes.

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- (2) For the purposes of section 325(1), another offence is “related” to the offence in respect of which the sentence is passed (the “sentenced offence”) if—
- (a) the offender was charged with that other offence, and
 - (b) the charge for that other offence was founded on the same facts or evidence as the sentenced offence.
- (3) In section 325—
- “curfew requirement” means a requirement (however described) to remain at one or more specified places for a specified number of hours in any given day, which—
- (a) is imposed by a court or the Secretary of State, and
 - (b) arises as a result of a conviction;
- “electronic monitoring condition” means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person’s compliance with a qualifying curfew condition;
- “qualifying curfew condition” means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day.

327 Period in custody awaiting extradition: declaration by court

- (1) This section applies where a court imposes a fixed-term sentence on a person who—
- (a) was tried for the offence in respect of which the sentence was imposed, or received the sentence—
 - (i) after having been extradited to the United Kingdom, and
 - (ii) without having first been restored or had an opportunity of leaving the United Kingdom, and
 - (b) was for any period kept in custody while awaiting extradition to the United Kingdom as mentioned in paragraph (a).
- (2) In this section “fixed term sentence” means—
- (a) a sentence of imprisonment for a determinate term,
 - (b) a determinate sentence of detention in a young offender institution, or
 - (c) a determinate sentence of detention under section 250 or 254.
- (3) The court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.

Recommendations

328 Power of court to recommend licence conditions for adults sentenced to term of 12 months or more

- (1) This section applies where a court sentences an offender to—
- (a) a term of imprisonment, or
 - (b) a term of detention in a young offender institution,
- of 12 months or more in respect of any offence.

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- (2) The court may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under Chapter 6 of Part 12 of the Criminal Justice Act 2003 on the offender's release from prison or detention.
- (3) A recommendation under subsection (2) is not to be treated for any purpose as part of the sentence passed on the offender.

Conversion of sentence of detention or custody to sentence of imprisonment

329 Conversion of sentence of detention to sentence of imprisonment

- (1) This section applies where a court has passed a relevant custodial sentence sentencing an offender to a term of detention and the offender—
 - (a) has reached the age of 21, or
 - (b) has reached the age of 18 and has been reported to the Secretary of State by the independent monitoring board of the institution in which the offender is detained as—
 - (i) exercising a bad influence on the other inmates of the institution, or
 - (ii) behaving in a disruptive manner to the detriment of those inmates.
- (2) The Secretary of State may direct that the offender is to be treated as if sentenced to imprisonment for the same term.

This is subject to the following provisions of this section.

Effect of direction

- (3) Subsections (4) and (5) apply where the Secretary of State gives a direction under subsection (2) in relation to the offender.
- (4) The portion of the term of detention imposed under the relevant custodial sentence which the offender has already served is to be deemed to have been a portion of a term of imprisonment.
- (5) If the relevant custodial sentence is—
 - (a) an extended sentence of detention under section 254, or
 - (b) an extended sentence of detention in a young offender institution,the offender is to be treated as if sentenced to an extended sentence of imprisonment under section 279.
- (6) Rules under section 47 of the Prison Act 1952 may provide that any award for an offence against discipline made in respect of an offender serving a relevant custodial sentence is to continue to have effect after a direction under subsection (2) has been given in relation to the offender.

“Relevant custodial sentence”

- (7) In this section “relevant custodial sentence” means any of the following—
 - (a) a sentence of detention under section 250 (including one imposed under section 258 (detention for life));
 - (b) an extended sentence of detention under section 254;

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- (c) a sentence of detention during Her Majesty’s pleasure (see section 259);
- (d) a sentence of detention in a young offender institution;
- (e) an extended sentence of detention in a young offender institution (see section 266);
- (f) a sentence of custody for life (see sections 272 and 275).