



# Sentencing Act 2020

## 2020 CHAPTER 17

### THIRD GROUP OF PARTS Disposals

#### PART 10

#### CUSTODIAL SENTENCES

#### CHAPTER 1

#### CUSTODY: GENERAL PROVISIONS

#### *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.

#### **Commencement Information**

- II** S. 223 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

#### **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—

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*Changes to legislation: Sentencing Act 2020, Cross Heading: General limits on powers to impose custodial sentences is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (a) imprisonment, or
  - (b) detention in a young offender institution,  
 [<sup>F1</sup>for a term exceeding the applicable limit in respect of any one offence].
- [<sup>F2</sup>(1A) The applicable limit is—
- (a) 6 months in the case of a summary offence, or
  - (b) [<sup>F3</sup>6 months] in the case of an offence triable either way.]
- (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 [<sup>F4</sup>a term exceeding the applicable limit].
- (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.
- (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.

#### Textual Amendments

- F1** Words in s. 224(1) substituted (14.7.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), **ss. 13(1)(a)**, 51(4); S.I. 2022/816, regs. 1(2), 3(c)
- F2** S. 224(1A) inserted (14.7.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), **ss. 13(1)(b)**, 51(4); S.I. 2022/816, regs. 1(2), 3(c)

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- F3** Words in s. 224(1A)(b) substituted (30.3.2023) by [The Sentencing Act 2020 \(Magistrates' Court Sentencing Powers\) \(Amendment\) Regulations 2023 \(S.I. 2023/298\)](#), regs. 1(3), 2
- F4** Words in s. 224(2) substituted (14.7.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), **ss. 13(1)(c), 51(4)**; [S.I. 2022/816](#), regs. 1(2), 3(c)

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**Commencement Information**

- I2** S. 224 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

## **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—
- Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall), or
  - Part 2 of the Criminal Justice Act 1991 (early release of prisoners).
- (2) In this section “relevant custodial term” means a term of—
- detention under Chapter 2 of this Part,
  - detention in a young offender institution (under this Code), or
  - imprisonment.
- (3) In this section, “current custodial sentence” means a sentence that has not yet expired which is—
- a sentence of imprisonment,
  - a sentence of detention in a young offender institution, or
  - a sentence of detention imposed under any of the following—
    - section 250,
    - <sup>F5</sup>(ia) section 252A,]
    - section 254 (including one passed as a result of section 221A of the Armed Forces Act 2006),
    - 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),
    - section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,
    - section 53(3) of the Children and Young Persons Act 1933,
    - section 209 of the Armed Forces Act 2006, or
    - section 71A(4) of the Army Act 1955 or the Air Force Act 1955 or section 43A(4) of the Naval Discipline Act 1957.

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**Textual Amendments**

- F5** S. 225(3)(c)(ia) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), **Sch. 13 para. 26(8)**

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**Commencement Information**

- I3** S. 225 in force at 1.12.2020 by [S.I. 2020/1236](#), **reg. 2**

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## 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) [F6, under section 252A] 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*

- (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*

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- (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.

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**Textual Amendments**

- F6** Words in s. 226(2)(b) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\)](#), s. 50(1)(i), [Sch. 13 para. 26\(9\)](#)

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**Commencement Information**

- I4** S. 226 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

## 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.

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**Commencement Information**

- I5** S. 227 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

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## 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 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.

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### Commencement Information

**16** S. 228 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 224 heading words omitted by 2020 c. 17 Sch. 22 para. 42(c)
- s. 227 heading words substituted by 2020 c. 17 Sch. 22 para. 44

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 34A and cross-heading inserted by 2020 c. 17 Sch. 22 para. 1
- s. 80(3)(f) inserted by 2021 c. 17 s. 54(2)
- s. 179(4A) inserted by 2020 c. 17 Sch. 22 para. 11(1)
- s. 179A inserted by 2020 c. 17 Sch. 22 para. 12(2)
- s. 179A(1)(b)(i)(ii) substituted for words by 2020 c. 17 Sch. 22 para. 16(2)
- s. 180(5) inserted by 2020 c. 17 Sch. 22 para. 11(2)
- s. 186(8A) inserted by 2020 c. 17 Sch. 22 para. 11(3)
- s. 202(1A)(1B) inserted by 2020 c. 17 Sch. 22 para. 13(b)
- s. 202(1A)(b)(i)(ii) substituted for words by 2020 c. 17 Sch. 22 para. 17(2)
- s. 204A inserted by 2020 c. 17 Sch. 22 para. 14(2)
- s. 204A(3)(c)(i)(ii) substituted for words by 2020 c. 17 Sch. 22 para. 18(2)
- s. 215(1A)(1B) inserted by 2022 c. 32 s. 149(2)(a)
- s. 215(2A) inserted by 2022 c. 32 s. 149(2)(c)
- s. 226(2)(ba) and word substituted for s. 226(2)(c)(d) by 2020 c. 17 Sch. 22 para. 43
- s. 230(3A) and words inserted by 2020 c. 17 Sch. 22 para. 2
- s. 234(1)(aa) inserted by 2020 c. 17 Sch. 22 para. 27(1)(b)
- s. 234(1)(aa) omitted by 2020 c. 17 Sch. 22 para. 28(1)
- s. 235(3A) inserted by 2020 c. 17 Sch. 22 para. 27(2)
- s. 236(2A) inserted by 2020 c. 17 Sch. 22 para. 29(3)
- s. 236(2A)(b) word substituted by 2020 c. 17 Sch. 22 para. 47(b)
- s. 301(1A)(1B) inserted by 2022 c. 32 s. 149(3)(a)
- s. 301(2A) inserted by 2022 c. 32 s. 149(3)(c)
- s. 323(2A)-(2C) inserted by 2020 c. 17 Sch. 22 para. 85(3)
- s. 343(4) inserted by 2022 c. 32 s. 178(2)
- s. 348A348B inserted by 2022 c. 32 s. 178(4)
- s. 350(6C)(6D) inserted by 2022 c. 32 s. 178(5)
- s. 387A inserted by 2021 c. 17 s. 54(3)
- s. 397A inserted by 2020 c. 17 Sch. 22 para. 15
- s. 397A(4)(a)(ia) inserted by 2020 c. 17 Sch. 22 para. 19(2)(b)
- s. 397A(4)(a)(i) words omitted by 2020 c. 17 Sch. 22 para. 19(2)(a)
- s. 397A(5) words inserted by 2020 c. 17 Sch. 22 para. 19(3)
- s. 397A(6)(7) inserted by 2020 c. 17 Sch. 22 para. 19(4)
- s. 418(2A) inserted by 2021 c. 11 Sch. 13 para. 43(5)
- Sch. 1 para. 13A inserted by 2020 c. 17 Sch. 22 para. 4(a)
- Sch. 10 para. 10(5)(d) inserted by 2020 c. 17 Sch. 22 para. 21(2)(a)
- Sch. 10 para. 10(9A) inserted by 2020 c. 17 Sch. 22 para. 21(2)(c)
- Sch. 10 para. 11(2)(d) inserted by 2020 c. 17 Sch. 22 para. 21(3)(a)
- Sch. 10 para. 11(6A) inserted by 2020 c. 17 Sch. 22 para. 21(3)(c)
- Sch. 10 para. 10(9A) omitted by 2020 c. 17 Sch. 22 para. 74(1)(b)
- Sch. 10 para. 11(6A) omitted by 2020 c. 17 Sch. 22 para. 75(1)(b)
- Sch. 10 para. 10(5)(d) words substituted by 2020 c. 17 Sch. 22 para. 25(a)

- Sch. 10 para. 10(5)(d) words substituted by 2020 c. 17 Sch. 22 para. 74(1)(a)
- Sch. 10 para. 11(2)(d) words substituted by 2020 c. 17 Sch. 22 para. 26(a)
- Sch. 10 para. 11(2)(d) words substituted by 2020 c. 17 Sch. 22 para. 75(1)(a)
- Sch. 17A para. 24A inserted by 2020 c. 17, Sch. 22 para. 79A (as inserted) by 2021 c. 11 Sch. 13 para. 11(20)(m)
- Sch. 18 para. 26A and cross-heading inserted by 2020 c. 17 Sch. 22 para. 80
- Sch. 19 para. 22A and cross-heading inserted by 2020 c. 17 Sch. 22 para. 84
- Sch. 26 para. 13A inserted by 2021 c. 11 Sch. 13 para. 43(7)(a)
- Sch. 26 para. 15(a)(iii) inserted by 2021 c. 11 Sch. 13 para. 43(7)(c)
- Sch. 26 para. 19(a)(ia) inserted by 2021 c. 11 Sch. 13 para. 43(7)(e)(i)
- Sch. 26 para. 20(c) inserted by 2021 c. 11 Sch. 13 para. 43(7)(f)
- Sch. 26 para. 20A inserted by 2021 c. 11 Sch. 13 para. 43(7)(g)
- Sch. 26 para. 24A inserted by 2021 c. 11 Sch. 13 para. 43(7)(i)
- Sch. 26 para. 20A(za) inserted by 2022 c. 32 s. 129(3)(d)
- Sch. 27 para. 16(2)(a)(b) substituted for words by 2021 c. 11 Sch. 13 para. 43(8)