



# Sentencing Act 2020

## 2020 CHAPTER 17

### SECOND GROUP OF PARTS Provisions applying to sentencing courts generally

#### PART 4

##### EXERCISE OF COURT'S DISCRETION

#### CHAPTER 3

##### SERIOUSNESS AND DETERMINING SENTENCE

##### *Generally*

### 63 Assessing seriousness

Where a court is considering the seriousness of any offence, it must consider—

- (a) the offender's culpability in committing the offence, and
- (b) any harm which the offence—
  - (i) caused,
  - (ii) was intended to cause, or
  - (iii) might foreseeably have caused.

#### Commencement Information

**II** S. 63 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

### *Aggravating factors*

#### 64 Offence committed on bail

In considering the seriousness of an offence committed while the offender was on bail, the court must—

- (a) treat the fact that it was committed in those circumstances as an aggravating factor, and
- (b) state in open court that the offence is so aggravated.

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

- C1** S. 64 modified by S.I. 2009/1042, reg. 9A (as inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 398](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, [reg. 2](#))

#### **Commencement Information**

- I2** S. 64 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

#### 65 Previous convictions

- (1) This section applies where a court is considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more relevant previous convictions.
- (2) The court must treat as an aggravating factor each relevant previous conviction that it considers can reasonably be so treated, having regard in particular to—
  - (a) the nature of the offence to which the relevant previous conviction relates and its relevance to the current offence, and
  - (b) the time that has elapsed since the relevant previous conviction.
- (3) Where the court treats a relevant previous conviction as an aggravating factor under subsection (2) it must state in open court that the offence is so aggravated.
- (4) In subsections (1) to (3) “relevant previous conviction” means—
  - (a) a previous conviction by a court in the United Kingdom,
  - (b) a previous conviction of a relevant offence under the law of another member State by a court in that State,
  - (c) a previous conviction of a service offence (see subsection (5)), or
  - (d) a finding of guilt in respect of a member State service offence (see subsection (6)).
- (5) In subsection (4)(c) (previous convictions of service offences)—
  - (a) “conviction” includes anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction (which relates to summary hearings and the Summary Appeal Court);
  - (b) “service offence” means—
    - (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);

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (c) the previous convictions referred to are to be taken to include a previous finding of guilt in—
- (i) 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) proceedings before a Standing Civilian Court established under section 6 of the Armed Forces Act 1976.
- (6) In subsection (4)(d) “member State service offence” means an offence which—
- (a) was the subject of proceedings under the service law of a member State other than the United Kingdom, and
  - (b) would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006), if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the offender for the current offence,
- and, for this purpose—
- “Her Majesty's forces” has the same meaning as in the Armed Forces Act 2006;
  - “service law”, in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.
- (7) For the purposes of this section, an offence is “relevant” if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the offender for the current offence.

#### Commencement Information

**I3** S. 65 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

## 66 Hostility

- (1) This section applies where a court is considering the seriousness of an offence which is aggravated by—
- (a) racial hostility,
  - (b) religious hostility,
  - (c) hostility related to disability,
  - (d) hostility related to sexual orientation, or
  - (e) hostility related to transgender identity.
- This is subject to subsection (3).
- (2) The court—
- (a) must treat the fact that the offence is aggravated by hostility of any of those types as an aggravating factor, and
  - (b) must state in open court that the offence is so aggravated.
- (3) So far as it relates to racial and religious hostility, this section does not apply in relation to an offence under sections 29 to 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated offences).

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (4) For the purposes of this section, an offence is aggravated by hostility of one of the kinds mentioned in subsection (1) if—
- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—
    - (i) the victim's membership (or presumed membership) of a racial group,
    - (ii) the victim's membership (or presumed membership) of a religious group,
    - (iii) a disability (or presumed disability) of the victim,
    - (iv) the sexual orientation (or presumed sexual orientation) of the victim, or (as the case may be)
    - (v) the victim being (or being presumed to be) transgender, or
  - (b) the offence was motivated (wholly or partly) by—
    - (i) hostility towards members of a racial group based on their membership of that group,
    - (ii) hostility towards members of a religious group based on their membership of that group,
    - (iii) hostility towards persons who have a disability or a particular disability,
    - (iv) hostility towards persons who are of a particular sexual orientation, or (as the case may be)
    - (v) hostility towards persons who are transgender.
- (5) For the purposes of paragraphs (a) and (b) of subsection (4), it is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.
- (6) In this section—
- (a) references to a racial group are to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;
  - (b) references to a religious group are to a group of persons defined by reference to religious belief or lack of religious belief;
  - (c) “membership” in relation to a racial or religious group, includes association with members of that group;
  - (d) “disability” means any physical or mental impairment;
  - (e) references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment;
  - (f) “presumed” means presumed by the offender.

**Commencement Information**

**14** S. 66 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

**67 Assaults on emergency workers**

- (1) This section applies where a court is considering the seriousness of an offence listed in subsection (3).

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (2) If the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court—
  - (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence is so aggravated.
- (3) The offences referred to in subsection (1) are—
  - (a) an offence under any of the following provisions of the Offences against the Person Act 1861—
    - (i) section 16 (threats to kill);
    - (ii) section 18 (wounding with intent to cause grievous bodily harm);
    - (iii) section 20 (malicious wounding);
    - (iv) section 23 (administering poison etc);
    - (v) section 28 (causing bodily injury by explosives);
    - (vi) section 29 (using explosives etc with intent to do grievous bodily harm);
    - (vii) section 47 (assault occasioning actual bodily harm);
  - (b) an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);
  - (c) manslaughter;
  - (d) kidnapping;
  - (e) an inchoate offence in relation to any of the preceding offences.
- (4) For the purposes of subsection (2) the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.
- (5) In this section, “emergency worker” has the meaning given by section 68.
- (6) Nothing in this section prevents a court from treating the fact that an offence was committed against an emergency worker acting in the exercise of functions as such as an aggravating factor in relation to offences not listed in subsection (3).

#### **Commencement Information**

**I5** S. 67 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

## **68 Emergency workers for the purposes of section 67**

- (1) In section 67, “emergency worker” means—
  - (a) a constable;
  - (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
  - (c) a National Crime Agency officer;
  - (d) a prison officer;
  - (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (f) a prisoner custody officer, so far as relating to the exercise of escort functions;
  - (g) a custody officer, so far as relating to the exercise of escort functions;
  - (h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;
  - (i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);
  - (j) a person employed for the purposes of providing, or engaged to provide—
    - (i) NHS health services, or
    - (ii) services in the support of the provision of NHS health services,
 and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.
- (2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.
- (3) In this section—
- “custodial institution” means any of the following—
    - (a) a prison;
    - (b) a young offender institution, secure training centre or secure college;
    - (c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by section 147 of the Immigration and Asylum Act 1999;
    - (d) services custody premises, as defined by section 300(7) of the Armed Forces Act 2006;
  - “custody officer” has the meaning given by section 12(3) of the Criminal Justice and Public Order Act 1994;
  - “escort functions”—
    - (a) in the case of a prisoner custody officer, means the functions specified in section 80(1) of the Criminal Justice Act 1991;
    - (b) in the case of a custody officer, means the functions specified in paragraph 1 of Schedule 1 to the Criminal Justice and Public Order Act 1994;
  - “NHS health services” means any kind of health services provided as part of the health service continued under section 1(1) of the National Health Service Act 2006 and under section 1(1) of the National Health Service (Wales) Act 2006;
  - “prisoner custody officer” has the meaning given by section 89(1) of the Criminal Justice Act 1991.

#### Commencement Information

**I6** S. 68 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

## 69 Terrorist connection

- (1) This section applies where a court is considering the seriousness of an offence specified in Schedule 1 (offences where terrorist connection to be considered).
- (2) If the offence has a terrorist connection, the court—

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence is so aggravated.
- (3) For the purposes of this section, an offence has a terrorist connection if the offence—
- (a) is, or takes place in the course of, an act of terrorism, or
  - (b) is committed for the purposes of terrorism.

For this purpose, “terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1 of that Act).

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

**C2** S. 69 modified by 2006 c. 52, s. 238(6) (as inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 25 para. 53](#) (with s. 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2)

**Commencement Information**

**I7** S. 69 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

**70 Using minor to mind weapon**

- (1) This section applies where—
- (a) a court is considering the seriousness of an offence under section 28 of the Violent Crime Reduction Act 2006 (using someone to mind a weapon), and
  - (b) when the offence was committed—
    - (i) the offender was aged 18 or over, and
    - (ii) the person used to look after, hide or transport the weapon in question (“the person used”) was not.
- (2) The court—
- (a) must treat the fact that the person used was under the age of 18 when the offence was committed as an aggravating factor, and
  - (b) must state in open court that the offence is so aggravated.
- (3) Subsection (4) applies where the offence is found to have involved the person used's having possession of a weapon, or being able to make it available—
- (a) over a period of two or more days, or
  - (b) at some time during a period of two or more days.
- (4) If, on a day during that period, sub-paragraphs (i) and (ii) of subsection (1)(b) were both satisfied, they are to be treated as both being satisfied when the offence was committed.

**Commencement Information**

**I8** S. 70 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

**71 Supply of controlled drug near school premises or involving child**

- (1) This section applies where—

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (a) a court is considering the seriousness of an offence under section 4(3) of the Misuse of Drugs Act 1971 (supplying controlled drug etc), and
  - (b) the offender was aged 18 or over when the offence was committed.
- (2) If condition A or B is met, the court—
- (a) must treat the fact that the condition is met as an aggravating factor, and
  - (b) must state in open court that the offence is so aggravated.
- (3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.
- (4) For the purposes of subsection (3)—
- “relevant time”, in relation to school premises, is—
- (a) any time when the school premises are in use by persons under the age of 18;
  - (b) one hour before the start and one hour after the end of any such time;
- “school” has the same meaning as it has in section 4A of the Misuse of Drugs Act 1971;
- “school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school.
- (5) Condition B is that in connection with the commission of the offence the offender used a courier who, when the offence was committed, was aged under 18.
- (6) For the purposes of subsection (5), a person uses a courier in connection with an offence under section 4(3) of the Misuse of Drugs Act 1971 if the person causes or permits another person (“the courier”)—
- (a) to deliver a controlled drug to a third person, or
  - (b) to deliver a drug-related consideration to the person or a third person.
- (7) For the purposes of subsection (6), a drug-related consideration is a consideration of any description which—
- (a) is obtained in connection with the supply of a controlled drug, or
  - (b) is intended to be used in connection with obtaining a controlled drug.
- (8) In this section, “controlled drug” and “supply” have the same meanings as in the Misuse of Drugs Act 1971.

#### **Commencement Information**

**19** S. 71 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

## **72 Supply of psychoactive substance in certain circumstances**

- (1) This section applies where—
- (a) a court is considering the seriousness of an offence under section 5 of the Psychoactive Substances Act 2016 (supplying psychoactive substance etc), and
  - (b) the offender was aged 18 or over when the offence was committed.
- (2) If condition A, B or C is met the court—
- (a) must treat the fact that the condition is met as an aggravating factor, and



*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (b) must state in open court that the offence is so aggravated.
- (3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.
- (4) For the purposes of subsection (3)—
- “relevant time”, in relation to school premises, means—
    - (a) any time when the school premises are in use by persons under the age of 18;
    - (b) one hour before the start and one hour after the end of any such time;
  - “school” has the same meaning as in section 6 of the Psychoactive Substances Act 2016;
  - “school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school.
- (5) Condition B is that, in connection with the offence, the offender used a courier who, when the offence was committed, was aged under 18.
- (6) For the purposes of subsection (5), a person uses a courier in connection with an offence under section 5 of the Psychoactive Substances Act 2016 if the person causes or permits another person (“the courier”)—
- (a) to deliver a substance to a third person, or
  - (b) to deliver a drug-related consideration to the person or a third person.
- (7) For the purposes of subsection (6), a drug-related consideration is a consideration of any description which—
- (a) is obtained in connection with the supply of a psychoactive substance, or
  - (b) is intended to be used in connection with obtaining a psychoactive substance.
- (8) Condition C is that the offence was committed in a custodial institution.
- (9) For the purposes of subsection (8), “custodial institution” means any of the following—
- (a) a prison;
  - (b) a young offender institution, secure training centre or secure college;
  - (c) a removal centre, short-term holding facility or pre-departure accommodation (each, as defined in section 147 of the Immigration and Asylum Act 1999);
  - (d) service custody premises (as defined in section 300(7) of the Armed Forces Act 2006).
- (10) In this section “psychoactive substance” has the same meaning as in the Psychoactive Substances Act 2016 (see section 2 of that Act).

#### **Commencement Information**

**I10** S. 72 in force at 1.12.2020 by [S.I. 2020/1236](#), [reg. 2](#)

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

### *Mitigating factors*

#### **73 Reduction in sentence for guilty plea**

- (1) This section applies where a court is determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court.
- (2) The court must take into account the following matters—
  - (a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and
  - (b) the circumstances in which the indication was given.
- (3) If—
  - (a) a mandatory sentence requirement applies in relation to the offence (see section 399) by virtue of a provision mentioned in subsection (4), and
  - (b) the offender is aged 18 or over when convicted,
 the mandatory sentence requirement does not prevent the court, after taking into account any matter referred to in subsection (2), from imposing any sentence which is not less than 80 per cent of the sentence which would otherwise be required by that requirement.
- (4) The provisions referred to in subsection (3)(a) are—
  - (a) section 312 (minimum sentence for threatening with weapon or bladed article);
  - (b) section 313 (minimum of 7 years for third class A drug trafficking offence);
  - (c) section 314 (minimum of 3 years for third domestic burglary);
  - (d) section 315 (minimum sentence for repeat offence involving weapon or bladed article).
- (5) If—
  - (a) a mandatory sentence requirement applies in relation to the offence by virtue of—
    - (i) section 312, or
    - (ii) section 315, and
  - (b) the offender is aged 16 or 17 when convicted,
 the mandatory sentence requirement does not prevent the court from imposing any sentence that it considers appropriate after taking into account any matter referred to in subsection (2).

#### **Commencement Information**

**III** S. 73 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

#### **74 Reduction in sentence for assistance to prosecution**

- (1) This section applies where the Crown Court is determining what sentence to pass in respect of an offence on an offender who—
  - (a) pleaded guilty to the offence,
  - (b) was convicted in the Crown Court or committed to the Crown Court for sentence, and

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

- (c) pursuant to a written agreement made with a specified prosecutor, has assisted or offered to assist—
  - (i) the investigator,
  - (ii) or the specified prosecutor or any other prosecutor,in relation to that or any other offence.
- (2) The court may take into account the extent and nature of the assistance given or offered.
- (3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
  - (a) that it has passed a lesser sentence than it would otherwise have passed, and
  - (b) what the greater sentence would have been.This is subject to subsection (4).
- (4) If the court considers that it would not be in the public interest to disclose that the sentence has been discounted by virtue of this section—
  - (a) subsection (3) does not apply,
  - (b) the court must give a written statement of the matters specified in subsection (3)(a) and (b) to—
    - (i) the prosecutor, and
    - (ii) the offender, and
  - (c) sections 52(2) and 322(4) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted by virtue of this section.
- (5) Nothing in—
  - (a) any of the provisions listed in section 399(b) or (c) (minimum sentences in certain circumstances), or
  - (b) section 321 (and Schedule 21) (determination of minimum term in relation to mandatory life sentence),affects the court's power under subsection (2).

#### **Commencement Information**

**I12** S. 74 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

## **75 Specified prosecutors**

- (1) In section 74 “specified prosecutor” is to be read in accordance with section 71 of the Serious Organised Crime and Police Act 2005 (assistance by offender: immunity from prosecution).
- (2) The Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under—
  - (a) section 74, and
  - (b) sections 387 to 389 (assistance for prosecution etc: review of sentence).
- (3) The Attorney General may revise any guidance issued under subsection (2).

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

**Commencement Information**

**I13** S. 75 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

*Effect of Code on other powers of court in assessing seriousness*

**76 Effect of Chapter on other powers of court to consider seriousness**

Nothing in this Chapter that requires or permits a court to take any matter into account for the purpose of sentencing an offender for an offence is to be taken to prevent a court taking any other matter into account for that purpose.

**Commencement Information**

**I14** S. 76 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

**77 Basis of opinion provisions not to affect power to mitigate sentences**

- (1) Nothing in any of the basis of opinion provisions prevents a court from mitigating an offender's sentence by taking into account any matters that, in the opinion of the court, are relevant in mitigation of sentence.
- (2) Section 230(2) (threshold for imposing discretionary custodial sentence) does not prevent a court, after taking into account such matters, from passing a community sentence even though 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 a community sentence could not normally be justified for the offence.
- (3) Nothing in any of the basis of opinion provisions prevents a court—
  - (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence, and
  - (b) in the case of an offender who is convicted of one or more other offences, from mitigating the offender's sentence by applying any rule of law as to the totality of sentences.
- (4) Subsections (2) and (3) are not to be taken to limit subsection (1).
- (5) In this section “basis of opinion provision” means any of the following—
  - (a) section 30 or 33 (pre-sentence reports and other requirements);
  - (b) section 124, 125 or 126 (fixing of fine);
  - (c) section 179, 180 or 186(3) to (9) (exercise of power to impose youth rehabilitation order, with or without intensive supervision and surveillance or fostering, and other requirements);
  - (d) section 204 or 208(3) to (9) (exercise of power to impose community order, and community requirements);
  - (e) section 230, 231 or 232 (imposing custodial sentences).

*Status: Point in time view as at 01/12/2020.*

*Changes to legislation: Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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)*

**Commencement Information**

**I15** S. 77 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

**78 Basis of opinion provisions: offenders suffering from a mental disorder**

- (1) Nothing in any of the basis of opinion provisions is to be taken—
- (a) as requiring a court to pass—
    - (i) a custodial sentence, or
    - (ii) any particular custodial sentence,on an offender suffering from a mental disorder, or
  - (b) as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.
- (2) In this section—
- “mental disorder” has the same meaning as in the Mental Health Act 1983 (see section 1 of that Act);
  - “basis of opinion provision” has the same meaning as in section 77.

**Commencement Information**

**I16** S. 78 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

**Status:**

Point in time view as at 01/12/2020.

**Changes to legislation:**

Sentencing Act 2020, CHAPTER 3 is up to date with all changes known to be in force on or before 19 June 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.