Sentencing Act 2020

2020 CHAPTER 17

THIRD GROUP OF PARTSDisposals

PART 5

ABSOLUTE AND CONDITIONAL DISCHARGE

79 Order for absolute discharge

(1) In this Code "order for absolute discharge" means an order discharging an offender absolutely in respect of an offence.

Availability

(2) An order for absolute discharge is available to a court dealing with an offender for an offence where—
   (a) the offender is convicted by or before the court, and
   (b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 399).

Exercise of power to make order for absolute discharge

(3) Where it is available, the court may make an order for absolute discharge if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—
   (a) the nature of the offence, and
   (b) the character of the offender.

Effect on other orders

(4) Nothing in this section is to be taken to prevent a court, on discharging an offender absolutely in respect of an offence, from—
   (a) imposing any disqualification on the offender,
   (b) making any of the following orders in respect of the offence—
      (i) a compensation order (see section 133);

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Changes to legislation: *Sentencing Act 2020, PART 5 is up to date with all changes known to be in force on or before 08 September 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)*

(ii) an order under section 152 (deprivation orders);
(iii) a restitution order (see section 147);
(iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,

(c) making an order under section 46 (criminal courts charge), or
(d) making an order for costs against the offender.

Commencement Information
I1 S. 79 in force at 1.12.2020 by S.I. 2020/1236, **reg. 2**

80 Order for conditional discharge

(1) In this Code "order for conditional discharge" means an order discharging an offender for an offence subject to the condition that the offender commits no offence during the period specified in the order (referred to in this Code as "the period of conditional discharge").

Availability

(2) An order for conditional discharge is available to a court dealing with an offender for an offence where—
(a) the offender is convicted by or before the court, and
(b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 399).

(3) But see the following for circumstances where an order for conditional discharge is not available—
(a) section 66ZB(6) of the Crime and Disorder Act 1998 (effect of youth cautions);
(b) section 66F of that Act (youth conditional cautions);
(c) section 103I(4) of the Sexual Offences Act 2003 (breach of sexual harm prevention order and interim sexual harm prevention order etc);
(d) section 339(3) (breach of criminal behaviour order);
(e) section 354(5) (breach of sexual harm prevention order).

Exercise of power to make order for conditional discharge

(4) Where it is available, the court may make an order for conditional discharge if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—
(a) the nature of the offence, and
(b) the character of the offender.

(5) The period of conditional discharge specified in an order for conditional discharge must be a period of not more than 3 years beginning with the day on which the order is made.

(6) On making an order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.

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Effect on other orders

(7) Nothing in this section prevents a court, on making an order for conditional discharge in respect of an offence, from—
- (a) imposing any disqualification on the offender,
- (b) making any of the following orders in respect of the offence—
  - (i) a compensation order (see section 133),
  - (ii) an order under section 152 (deprivation orders), or
  - (iii) a restitution order (see section 147), or
  - (iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,
- (c) making an order under section 46 (criminal courts charge), or
- (d) making an order for costs against the offender.

Commencement Information
I2 S. 80 in force at 1.12.2020 by S.I. 2020/1236, **reg. 2**

81 Commission of further offence by person conditionally discharged

Schedule 2 makes provision that applies where a person in respect of whom an order for conditional discharge has been made commits a further offence during the period of conditional discharge.

Commencement Information
I3 S. 81 in force at 1.12.2020 by S.I. 2020/1236, **reg. 2**

82 Effect of discharge

(1) This section applies where—
- (a) an order for absolute discharge, or
- (b) an order for conditional discharge,

is made in respect of an offence.

(2) The conviction of that offence is to be deemed not to be a conviction for any purpose other than the purposes of—
- (a) the proceedings in which the order is made, and
- (b) in the case of an order for conditional discharge, any subsequent proceedings which may be taken against the offender under Schedule 2.

This is subject to subsection (3).

(3) In the case of an order for conditional discharge, if the offender is sentenced (under Schedule 2) for the offence—
- (a) the order ceases to have effect, and
- (b) if the offender was aged 18 or over when convicted of the offence, subsection (2) ceases to apply to the conviction.

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(4) Without prejudice to subsections (2) and (3), the offender's conviction is in any event to be disregarded for the purposes of any enactment or instrument which—

(a) imposes any disqualification or disability upon convicted persons, or

(b) authorises or requires the imposition of any such disqualification or disability.

(5) Subsections (2) to (4) do not affect—

(a) any right of the offender to rely on the conviction in bar of any subsequent proceedings for the same offence, or

(b) the restoration of any property in consequence of the conviction.

(6) In subsection (4)—

"enactment" includes an enactment contained in a local Act;

"instrument" means an instrument having effect by virtue of an Act.

(7) Subsection (2) has effect subject to the following (which concern rights of appeal)—

(a) section 50(1A) of the Criminal Appeal Act 1968, and

(b) section 108(1A) of the Magistrates' Courts Act 1980.

Nothing in this subsection affects any other enactment that excludes the effect of subsection (2) or (4) for particular purposes.

Modifications etc. (not altering text)

C1 S. 82(2) excluded by 2015 c. 30, **s. 34(3)(a)** (as amended (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 24 para. 294 (with Sch. 24 para. 447, **Sch. 27**); S.I. 2020/1236, **reg. 2**)

Commencement Information

I4 S. 82 in force at 1.12.2020 by S.I. 2020/1236, **reg. 2**

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