

**EXPLANATORY MEMORANDUM TO**  
**THE SENTENCING ACT 2020 (MAGISTRATES' COURT SENTENCING POWERS)**  
**(AMENDMENT) REGULATIONS 2023**

**2023 No. 298**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

2.1 These Regulations reduce the applicable limit available to a magistrates' court in imposing a custodial sentence in respect of a single triable either way offence from 12 months to 6 months. Section 224 of the Sentencing Act 2020 specifies the general limit on a magistrates' court's power to impose imprisonment or detention in a young offender institution in respect of any one offence. Section 224(1A)(b) provides for the "applicable limit" that may be imposed in respect of triable either way offences. Paragraph 14A of Schedule 23 to that Act gives the Secretary of State powers to alter that applicable limit in specified ways, by Regulations.

**3. Matters of special interest to Parliament**

3.1 None.

**4. Extent and Territorial Application**

4.1 This instrument extends to England and Wales.

4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

5.1 The Parliamentary Under Secretary of State for Justice, Mike Freer MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023 are compatible with the Convention rights."

**6. Legislative Context**

6.1 The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500) came into force on 2 May 2022 and extended magistrates' court's sentencing powers from 6 months to 12 months' imprisonment for a single triable either way offence.

6.2 Section 224 of the Sentencing Act 2020 specifies the general limit on a magistrates' court's power to impose imprisonment or detention in a young offender institution in respect of any one offence. Section 13(1) of the Judicial Review and Courts Act 2022 (JRCA) amended section 224 of the Sentencing Act 2020 to establish separate general limits on the sentencing powers of the magistrates' court for summary only and triable either way offences. Further, section 13(2) of the JRCA amended Schedule 23 to the

Sentencing Act 2020 to insert paragraph 14A to provide a power to amend the general limit for triable either way offences only. This allows for the limit for custodial sentences for triable either way offences to be varied between either 6 months or 12 months maximum. Lastly, section 13(3) of the JRCAs amended Schedule 1 of the Interpretation Act 1978 to insert a definition of the term “general limit in a magistrates’ court” to provide that the general limit for triable either way offences is the limit currently specified in s224 of the Sentencing Act 2020. These powers came into force on 14 July 2022.

- 6.3 Using the power in paragraph 14A(1) of Schedule 23 to the Sentencing Act 2020 these Regulations amend section 224(1A)(b) of the Sentencing Act 2020 to reduce the general limit in a magistrates’ courts to 6 months imprisonment or detention in a young offender institution for a single triable either way offence.
- 6.4 This reduction in sentencing powers will apply to all magistrates’ courts in England and Wales from 30 March 2023, the day these Regulations come into force.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Once a criminal case enters a magistrates’ court, magistrates or a District Judge will deal with the preliminary pre-trial proceedings. The nature of these proceedings will be dependent upon the categories of criminal offences that feature as part of the case, which are specified in law and dictate which criminal courts are able to try and sentence them:
  - (a) Summary-only (SO) offences, which is the least serious category of criminal offence and carries a maximum penalty of up to 6 months’ imprisonment. SO offences can only be tried and sentenced in a magistrates’ court.
  - (b) Indictable-only (IO) offences, which is the most serious category of criminal offence and can only be tried by a jury, convicted and sentenced in the Crown Court.
  - (c) Triable-either-way (TEW) offences, which can be tried and sentenced in either a magistrates’ court or the Crown Court.
- 7.2 The vast majority of criminal cases are completed at a magistrates’ court (over 95% in 2021), with the remainder of IO and more TEW cases being directed to the Crown Court for a jury trial or to be sentenced by a judge.
- 7.3 The sentences a magistrates’ court can currently hand out include a fine, a community sentence and up to twelve months in prison for both single and multiple TEW offences. This was extended from a maximum of six months in prison in May 2022 for a single TEW offence. The increase was introduced as an efficiency measure to keep cases out of the Crown Court following the unprecedented impacts of the Covid-19 pandemic. It extended magistrates’ court sentencing powers so that more cases would be retained in the magistrates’ courts, therefore reducing the flow of cases into the Crown Court. The JRCAs contains a power that allows magistrates’ sentencing powers (MSPs) to be varied between 6 and 12 months via a negative statutory instrument. This was included before MSPs were extended to give flexibility in case any adverse impacts arose.
- 7.4 These additional powers were designed to be an efficiency measure in two ways:

- (a) MSP diverted cases away from the Crown Court backlogs, which had a reasonably rapid impact on the size of the outstanding caseload.
- (b) Diverting the cases freed up the time the Crown Court would otherwise use on these cases for other work, allowing the Crown Court to bring down the backlog and reach a recovery point at a quicker pace.

7.5 The increase in magistrates' courts sentencing powers does not increase the maximum sentence for specific offences or overall magistrates' courts capacity; it only changes which court can hand down six-to-twelve-month sentences. In doing so, it was expected that some cases would move through the courts system more quickly as magistrates' courts dispose of cases faster than the Crown Court.

7.6 We are currently experiencing downstream pressures in the criminal justice system as, for example, manifested in Operation Safeguard and it is important that the government ensures a cohesive cross-system response to this growing pressure. Whilst increased MSPs is not the only factor behind this pressure and the data on the impact of MSPs is still limited, it is safest to temporarily reduce MSPs to 6 months so that the Crown Court retains power over decisions in respect of longer sentences, particularly given the Crown Court backlog is again recovering following the impact of the Criminal Bar Association strike action.

7.7 The varying power allows us to extend sentencing powers back to 12 months in the future should circumstances allow, and we will keep the effect of reducing sentencing powers to 6 months under review.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 The Ministry of Justice has no plans to consolidate the legislation at this time.

## **10. Consultation outcome**

10.1 No public consultation has been carried out in relation to these Regulations. These Regulations implement the policy approved by Parliament by providing the necessary flexibility to reduce magistrates' courts sentencing powers should unsustainable pressures be caused due to the increase in sentencing powers to 12 months' imprisonment in force from May 2022.

## **11. Guidance**

11.1 No formal guidance has been produced by the Ministry of Justice but information about the reduction in sentences will be made available to the judiciary, magistracy, and HMCTS operational staff ahead of changes coming into force. The Sentencing Council will also be notified so that their guidance can be updated.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 The impact on the public sector is Option 0 in the impact assessment published alongside the Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 on [www.legislation.gov.uk](http://www.legislation.gov.uk).<sup>1</sup>
- 12.3 An impact assessment has not been prepared for this instrument because it is Option 0 in the impact assessment published alongside the Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 on [www.legislation.gov.uk](http://www.legislation.gov.uk).
- 13. Regulating small business**
- 13.1 The legislation does not apply to activities that are undertaken by small businesses.
- 14. Monitoring & review**
- 14.1 The effects of the changes made by this instrument will be monitored and reviewed as part of on-going criminal justice system operational agency meetings and functions.
- 15. Contact**
- 15.1 Ben Archibald, Deputy Director, Criminal Justice Strategy & Criminal Court Process and Procedure, Court Recovery, Criminal and Family Justice Directorate at the Ministry of Justice, can be contacted with any queries regarding this instrument. Email: [Ben.Archibald@justice.gov.uk](mailto:Ben.Archibald@justice.gov.uk).
- 15.2 Ed Lidington, Director, Court Recovery, Criminal and Family Justice Directorate at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mike Freer MP, Parliamentary Under Secretary of State for the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

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<sup>1</sup> [Extending Magistrates' Court Sentencing Powers \(legislation.gov.uk\)](http://www.legislation.gov.uk)