



JUDICIAL
COLLEGE

The Crown Court Compendium

Part II: Sentencing

February 2017

Maddison – Ormerod – Tonking – Wait

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S1 STYLE AND ABBREVIATIONS

Unless the context indicates otherwise: any reference to a person in the masculine is to be read as including the feminine; and 'Judge' includes 'Recorder'.

Cases are usually referred to by the name of the defendant only, and by neutral citations.

The following abbreviations are used:

AJA	Administration of Justice Act 1970
CDA	Crime and Disorder Act 1998
CAJA	Coroners and Justice Act 2009
CCA	Crime and Courts Act 2013
CDDA	Company Directors Disqualification Act 1986
CJA	Criminal Justice Act 2003
CJCA	Criminal Justice and Courts Act 2015
CJPOA	Criminal Justice and Public Order Act 1994
CJIA	Criminal Justice and Immigration Act 2008
CJPA	Criminal Justice and Police Act 2001
CrimPD	Consolidated Criminal Practice Directions
CrimPR	Criminal Procedure Rules 2016
CYPA	Children and Young Persons Act 1933
D	The/a defendant
DPP	Detention for Public Protection
D+TO	Detention and training order
IPP	Imprisonment for Public Protection
LASPO	Legal Aid and Sentencing and Punishment of Offenders Act 2012
LP(ECP)A	Licensed Premises (Exclusion of Certain Persons) Act 1980
MDA	Misuse of Drugs Act 1971
MHA	Mental Health Act 1983
ORA	Offender Rehabilitation Act 2014
PCC(S)A	Powers of Criminal Courts (Sentencing) Act 2000
PoCA	Proceeds of Crime Act 2002
SC	Sentencing Council
SGC	Sentencing Guidelines Council
SOA	Sexual Offences Act 2003
YOI	Young Offender Institution

S2 STATUTORY PRINCIPLES OF SENTENCING

1. Purposes (age 18 and over at date of sentence) [[CJA 2003 s.142](#)]
The court must have regard to the following:
 - (1) Punishment
 - (2) Crime reduction
 - (3) Reform and rehabilitation
 - (4) Public protection
 - (5) Making of reparation
2. Purposes (under age 18 at date of sentence)
The court must have regard to the following:
 - (1) The welfare of the child or young person and in a proper case take steps for removing him from undesirable surroundings and for securing that proper provision is made for his education and training [[CYPA s.44](#)]
 - (2) The need to prevent offending by children and young persons [[CDA s.37](#)]
3. Determining seriousness [[CJA 2003 s.143](#)]:
 - (1) Assess culpability and harm (actual, intended or foreseeable) [CJA 2003 s.143(1)]
 - (2) Previous convictions [CJA 2003 s.143(2)] to be treated as an aggravating factor.
 - (3) Offence committed while on bail [CJA 2003 s.143(3)] to be treated as an aggravating factor.
 - (4) Further aggravating factors:
 - (a) hostility by reason of race or religion [[CJA 2003 s.145](#)];
 - (b) hostility by reason of disability, sexual orientation or transgender identity [[CJA 2003 s.146](#) as amended by [s.65 LASPO](#)]
 - (c) supply of controlled drug outside a school [[MDA 1971](#) s.4A]
4. Reduction for plea of guilty [[CJA 2003 s.144](#) and [SGC Guideline: Reduction in Sentence for A Guilty Plea](#)].
5. Discretionary custodial sentences:
 - (1) The offence, or the combination of the offence and any other/s associated with it, must be such that neither a fine alone nor a community sentence can be justified [[CJA 2003 s.152\(2\)](#)]
 - (2) If not a minimum sentence, must be for the shortest term commensurate with the seriousness of the offence/combination of offences [[CJA 2003 s.153\(2\)](#)]

6. Community sentences: the offence/combination of offences must be serious enough to warrant such a sentence [[CJA 2003 s.148](#)].
7. Where there is a sentencing guideline in respect of the offence the sentence passed must follow the guideline (though not necessarily the category) unless it would be contrary to the interests of justice to do so [[CAJA 2009 s.125](#)].

S3 IN EVERY CASE

This note seeks to assist sentencers in following the process required by statute, the Guidelines of the SC and SGC and the Court of Appeal.

1. In every case the sentencer is required to determine the seriousness of the case. Seriousness involves considering the culpability of the offender and the harm or potential harm that was caused or might foreseeably have been caused [[CJA 2003 s.143](#)]. Individual Sentencing Guidelines explain how culpability and harm are to be assessed in respect of particular offences. The sentencing judge must determine seriousness, whether that be as part of considering the category of offence within a SC Guideline or more generally as part of the statutory duty explained in SGC Guideline: [Overarching Principles: Seriousness](#).
2. Following an initial determination of seriousness the sentencer must consider aggravating factors i.e. those increasing seriousness both statutory (previous relevant convictions, on bail, racial religious, disability or sexual aggravation) and other non-statutory matters (alcohol, abuse of power, breach of trust) and mitigating factors i.e. those making the offence less serious e.g. positive good character, offender's vulnerability, remorse or other personal mitigation.
3. Having reached a determination of the overall seriousness of the offence there may be a specific matter to take into account such as particular assistance to the prosecution.
4. If the offence is a specified or serious specified offence to which CJA 2003 Part 12 Chapter 5 applies the sentencer must assess whether the offender presents a significant risk of causing death or serious personal injury, whether physical or psychological, by the commission of further such offences. If the offender is dangerous because he presents such a risk the sentencer may pass a sentence within [CJA 2003 Part 12 Chapter 5 if either \(a\)](#) the offender has a previous conviction for an offence listed in [CJA 2003 Schedule 15b Part I](#) [inserted by Schedule 18 LASPO] or (b) the sentence for the offence (and any others associated with it) for which the offender falls to be sentenced on the same occasion is 4 years or more.
5. If an offender aged 18 or over at the date of conviction is to be sentenced for an offence listed in [Schedule 15b](#) the sentencer must impose a life sentence unless it would be unjust to do so **if** (a) the court would have imposed a custodial term of 10 years or more and (b) at the time that the offence was committed the offender had been convicted of an offence listed in Schedule 15b and received either (i) a life sentence with a minimum custodial term of 5 years or more or (ii) a sentence of imprisonment or detention of 10 years or more [CJA 2003 s.224A inserted by [s.122\(1\) LASPO](#)].
6. If an extended sentence is imposed, the custodial term must be commensurate with the seriousness of the offence.

7. If the offender does not fall to be sentenced within the dangerousness provisions the sentencer must pass a sentence which is commensurate with the seriousness of the offence, whether that is a community sentence or a custodial sentence.
8. If the conviction followed a guilty plea the sentencer must consider the extent of credit to be given for the plea, following the [SGC Guideline: Reduction in Sentence for a Guilty Plea](#) and any local Early Guilty Plea scheme.
9. Totality must be considered. This may relate to multiple offences to be sentenced and/or to a sentence the offender is already serving: the [SGC Guideline: Offences Taken into Consideration and Totality](#) must be followed.
10. Appropriate ancillary orders must be considered e.g. compensation, disqualification, forfeiture, restraining order, costs, surcharge, Criminal Courts Charge.
11. But in any case where PoCA proceedings are adjourned the court may pass sentence but must not impose most financial orders (a fine, compensation, unlawful profit, forfeiture, deprivation, statutory surcharge, costs), but the court must make a criminal courts charge [[PoCA s.14\(12\)](#)].
12. An explanation must be given to the offender, in ordinary language, of the reasons for passing the sentence and its effect [[CJA 2003 s.174](#)].
13. Where a determinate or extended sentence is passed, time spent on remand in custody will count towards the sentence automatically without any direction. Where a life sentence is passed, the minimum term must be adjusted to take account of time spent on remand in custody. In any event the sentencer must give credit for time spent on an electronically monitored curfew, or give reasons why it would be unjust to do so, applying the 5 step process set out in LASPO s.109(3) [[CJA s.240ZA](#) (as inserted) and [CJA 2003 s.240A](#) (as amended) – see ss.108 and 109 LASPO and [chapter S4-8](#) below].
14. Where applicable, the court must order payment of the statutory surcharge and criminal courts charge [see [chapter S7-14](#) below].

NOTE: A template for constructing sentencing remarks in accordance with guidelines appears at [Appendix S II](#) below.

S4 CUSTODIAL SENTENCES

S4-1 Mandatory life sentences

[CJA 2003 s.269](#) and [Sch.21](#)

ARCHBOLD 5-399; BLACKSTONE'S E3.1; SENTENCING REFERENCER 176

1. Criteria for sentence

The offence must be an offence for which the sentence is "fixed by law": i.e. Murder.

2. Nature of sentence

(3) Imprisonment for life [age 21 or over at date of conviction]

(4) Custody for life [age 18 to 20 inclusive at date of conviction: see [PCC\(S\)A s.93](#)]

(5) Order for Detention during Her Majesty's pleasure [age under 18 at the time of the offence was committed: see [PCC\(S\)A s.90](#).

Note: this will lead to much older offenders being detained at Her Majesty's pleasure if convicted as adults of offences committed when under age 18: s.90 takes precedence over the other age provisions.]

3. Fixing the minimum term

(1) To fix the minimum term the court must consider the seriousness of the offence/s. In doing so the court must have regard to the general principles in [CJA 2003 Sch.21](#) and follow any relevant guidelines which are not incompatible with the provisions of that schedule.

(2) Sch.21 sets five starting points: whole life (for offenders aged 21 or over at the time of the commission of the offence), 30 years, 25 years, 15 years (for all offenders aged 18 or over at the time of the commission of the offence) and 12 years (only for offenders aged less than 18 at the time of commission of the offence).

(3) Having chosen a starting point, the court should take into account any aggravating and mitigating factors, noting that (i) the lists of such factors set out in Sch.21 paragraphs 8 – 11 are not exclusive and (ii) other aggravating factors may include previous convictions and the offence/s having been committed whilst on bail. This exercise may result in fixing a minimum term of any length.

(4) Credit should (almost invariably) be given for (a) a plea of guilty and (b) time spent on remand in custody or on qualifying electronically monitored curfew. Credit which may be given for a plea of guilty in such cases is set by the SGC Guideline [Reduction in Sentence for a Guilty Plea](#) and "will not exceed one sixth and will never exceed 5 years", There is obviously no reduction for a guilty plea in the case of a whole life term, although the plea may be a factor in deciding whether a whole life term is necessary.

- (5) If the court is of the opinion because of the seriousness of the offence/s, that a whole life order must be made, the court must order that the early release provisions are not to apply.
- (6) In any other case, the court must order that the early release provisions are to apply when the offender has served the minimum term.

4. Passing the sentence

- (1) State that the sentence is one of imprisonment for life/custody for life/detention during Her Majesty's pleasure.
- (2) **Either**, if D is 21 or over and it is the case, state that because of the [extreme] seriousness of the offence/combination of offences, the early release provisions are not to apply and so the sentence is a whole life order.
- (3) **Or**, in any other case, state the minimum term, giving reasons for having fixed it at the level stated, in particular by reference to the applicable provision/s of Schedule 21 and the aggravating and mitigating factors. E.g. (having given reasons), "...so having regard to all the aggravating and mitigating features in your case, I fix the minimum term which you will serve in custody, before the Parole Board may consider your possible release, at 18 years."
- (4) Credit should (almost invariably) be given, in this order, for:
 - (d) any plea of guilty.

Example

But for your plea of Guilty I would have fixed the minimum term which you would have to serve in custody before you may apply to the Parole Board for your release at 18 years. Giving you credit for your plea of Guilty, I reduce that by one sixth and fix the minimum term at 15 years.

- (e) any time spent on remand in custody or half the time spent on remand on qualifying electronic curfew.

Example

From this will be deducted the 157 days which you have already spent on remand in custody so that the minimum term which you will serve is 14 years and 208 days.

- (5) Explain the consequences:
 - (a) The minimum term will be served in full before D is eligible to be considered for release by the Parole Board;
 - (b) The decision about whether or when he will be released on licence will be taken by the Parole Board upon consideration of the risk(s) of D causing further harm;
 - (c) If D is released he will be on licence for the rest of his life;
 - (d) The licence will be subject to conditions, which will be set at the time of his release, and if he were to break any condition he would be liable to be returned to prison to continue to serve his sentence and may not be released again.

Example

It is most important that you and everyone concerned with this case should understand what this in fact means. The minimum term is **not** a fixed term after which you will automatically be released but the **minimum** time that you will spend in custody before your case can be considered by the Parole Board and it will be for the Parole Board to say, at that time, whether or not you will be released: and if they do not you will remain in custody. If and when you are released you will still be subject to licence; and this will remain the case for the rest of your life. If for any reason your licence were to be revoked, you would be recalled to prison to continue to serve your life sentence in custody.

S4-2 Sentences for dangerous offenders

CJA 2003 sections 224 – 229 as amended

ARCHBOLD 5-495; BLACKSTONE'S E4.1; SENTENCING REFERENCER 120 and 163

1. Introduction

The law relating to the sentencing of dangerous offenders was substantially amended by [LASPO ss.122–125](#).

- (1) In respect of offenders **convicted** on or after 3rd December 2012
 - (a) IPP and DPP were abolished.
 - (b) The old Extended Sentence provisions [CJA 2003 s.227 and s.228] were replaced by new Extended Sentence provisions [[CJA 2003 s.226A and s.226B, inserted by LASPO s.124](#)] which apply to anyone convicted on or after 3rd December 2012 of any specified offence, whenever the offence was committed.
- (2) In respect of offences **committed** on or after 3rd December 2012
 - (a) A life sentence for a second listed offence may be imposed [[CJA 2003 s.224A, inserted by LASPO s.122](#)]. The list is provided by [CJA 2003 Sch.15b, Part I](#) [LASPO Sch.18].
 - (b) Discretionary life sentences, in respect of offences that carry a life sentence as a statutory maximum, remain available in cases where the seriousness of the offence/s is/are such that a determinate sentence is inadequate.

2. Criteria for a finding of dangerousness

- (1) The offence must be a “specified” offence: a violent or sexual offence specified in [CJA 2003 Sch.15](#).
- (2) The court must find that there is a significant risk that
 - (a) D will commit further specified offences; and
 - (b) by doing so he will cause serious physical or psychological harm to one or more people.

3. Available sentences

Serious specified offences only i.e. specified offences which carry a maximum sentence of at least 10 years' imprisonment:

- (1) Imprisonment for life (age 21 or over at conviction); Custody for life (age 18 to 20 at conviction); Detention for life (age under 18 at conviction)
 - (a) Where the statutory maximum is life and the offence is of the utmost gravity
- (2) Life sentence for a second listed offence [age 18 or over at conviction].
 - (a) The offence is one listed in [CJA 2003 Sch.15b Part I](#);
 - (b) D has a previous conviction for an offence listed in [Sch.15b](#) for which he received Life/IPP/DPP with a minimum term of 5 years or more or a determinate or extended sentence with a custodial term of 10 years or more; and

- (c) The court would otherwise impose a determinate sentence of 10 years or more;

Such a sentence is mandatory unless the circumstances relating to the offence, the previous offence or to the offender would make it unjust in all the circumstances.

(3) Serious specified and specified offences:

(a) Extended sentence

Either D has a previous conviction listed in [Sch.15b](#) or if the court were to impose an extended sentence of imprisonment the term that it would specify as the appropriate custodial term would be at least 4 years.

(b) Determinate sentence

4. The order in which various sentences should be considered:

The CACD provided a step by step guide to the order in which the court should consider various sentences under the dangerousness provisions in the case or [AG's reference no. 27 of 2013](#).

“43. The order in which a judge should approach sentencing in a case of this type is this:-

- (i) Consider the question of dangerousness. If the offender is not dangerous and s.224A does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s.224A are satisfied then (subject to ss.[224A] 2 (a) and (b)), a life sentence must be imposed.
- (ii) If the offender is dangerous, consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be considered as we have set out at paragraph 22.
- (iii) If a life sentence is justified then the judge must pass a life sentence in accordance with s.225. If s.224A also applies, the judge should record that fact in open court.
- (iv) If a life sentence is not justified, then the sentencing judge should consider whether s.224A applies. If it does then (subject to the terms of s.224A) a life sentence must be imposed.
- (v) If s.224A does not apply the judge should then consider the provisions of s.226A. Before passing an extended sentence the judge should consider a determinate sentence.”

5. Discretionary life sentences

Fixing the minimum term

- (1) If a sentence of imprisonment/custody/detention for life is passed it is necessary to fix a minimum term to be served in custody before the Parole Board may consider a release on licence, unless a sentence of imprisonment is imposed with a “whole life” order. A whole life order is not available for detention/custody for life.

- (2) The court must consider the seriousness of the offence/s, following any applicable guidelines, to determine what would have been the commensurate determinate term.
- (3) Credit should then (except in the most exceptional circumstances) be given for any guilty plea.
- (4) This term should almost always be halved to reflect the time that would have been served in custody on a determinate sentence. If the court takes any other course it must explain its reasons [[PCC\(S\)A 2000 s. 82A](#)].
- (5) Time spent on remand in custody or the proportion of time spent on qualifying electronically monitored curfew calculated by reference to the 5 step test [see [chapter S4-9](#) below] should then (except in the most exceptional circumstances) be deducted. This must be done notwithstanding the fact that in the case of all other custodial sentences (with the exception of a Detention and Training Order) time spent on remand in custody is automatically deducted from the sentence.

Passing a life sentence

The court must:

- (1) Set out findings in relation to those matters described in paragraphs 1 – 3 of [chapter S3 above](#).
- (2) State that the sentence is one of imprisonment/ custody/detention for life.
- (3) EITHER state that because of the [extreme] seriousness of the offence/combination of offences, the early release provisions will not apply and that the sentence is a whole life order.
- (4) OR (in any other case) state the minimum term by explaining:
 - (a) what the determinate sentence would have been after a trial (taking account of any aggravating and mitigating factors);
 - (b) any reduction which would have been given for a guilty plea;
 - (c) that the minimum term is almost always one half of that notional sentence (explaining that this would have been the custodial element of a determinate term); and
 - (d) the deduction made for days spent on remand in custody and/or on qualifying electronically monitored curfew.
- (5) Explain the consequences:
 - (a) The minimum term will be served in full before D is eligible to be considered for release by the Parole Board.
 - (b) The decision about whether or when he will be released will be taken by the Parole Board.
 - (c) If D is released he will be on licence for the rest of his life.
 - (d) The licence will be subject to conditions, which will be set at the time of his release, and if he were to break any condition he would be liable to be returned to prison to continue to serve his sentence and might not be released again.

Example

[As I have already told your advocate] I am satisfied that you present a significant risk of causing serious harm by committing further similar offences and I am satisfied that your offence is so serious that a sentence of life imprisonment is required; and that is the sentence which I impose.

As to the minimum term which you must serve: if I had been sentencing you to a fixed term sentence, taking account of all of the aggravating and mitigating factors in this case, after a trial I would have sentenced you to 15 years' imprisonment. Giving you full credit for your prompt plea of guilty I would have reduced that to 10 years. Because you would have served up to half of that sentence in custody I fix the minimum term which you will serve at half of 10 years: that is 5 years. Finally I reduce that minimum term of 5 years by the number of days which you have spent on remand in custody: 71 days. This means that the minimum term which you will serve before the Parole Board may consider your possible release is one of 4 years and 294 days.

It is most important that you – and everyone concerned with this case – should understand what this in fact means. The minimum term is **not** a fixed term after which you will automatically be released but the **minimum** time that you will spend in custody before your case can be considered by the Parole Board and it will be for the Parole Board to say, at that time, whether and if so on what conditions you are to be released. If and when you are released you will be subject to licence for the rest of your life. If you were to be in breach of any condition of your licence, your licence could be revoked and you would then be recalled to prison to continue to serve your life sentence in custody.

6. Extended sentences

- (1) Where the court passes such a sentence, it must set the custodial term and the (licence) extension period. These must not, in total, exceed the maximum sentence permitted for the offence and any extension period must not exceed 5 years (specified violent offence) or 8 years (specified sexual offence).
- (2) In setting the custodial term the usual principles of sentencing apply. The extension period is a further period of licence necessary to protect members of the public from the significant risk of serious harm caused by D's commission of further specified offences.
- (3) In respect of offences committed on or after 1st February 2015: there is a minimum extension period of 1 year: CJA 2003 ss.226A and 226B as amended by [ORA s.8](#).
- (4) Any extended sentence must be attached to an individual offence or individual offences. It cannot be imposed on a global sentence.

Passing an extended sentence:

The court must:

- (1) Set out findings in relation to those matters described in paragraphs 1 – 3 of [chapter S3 above](#).
- (2) Set out the reasons for finding that D is dangerous within the meaning of [CJA 2003 Part 12 Chapter V](#).
- (3) Set out the reasons for passing an extended sentence.
- (4) State that the sentence is an extended sentence of imprisonment/detention in a Young Offender Institution, which has two parts: a custodial term and an extended licence period.
- (5) Fix the custodial term. In doing so, credit should (almost invariably) be given for any plea of guilty and this should be spelt out clearly.

Example

But for your plea of Guilty the custodial term of your sentence would have been 6 years. Giving you [full] credit for your plea of Guilty, I reduce this to 4 years.

- (6) Give credit for time spent on remand subject to a qualifying electronically monitored curfew: time spent on remand in custody counts automatically. For a full explanation of the provisions relating to time on remand, see [chapter S4-9 below](#).
- (7) Where the court makes a direction in relation to time spent on remand subject to a qualifying electronically monitored curfew it should also state that if the calculation of days is not correct, a correction will be made administratively without the need for a further hearing.
- (8) Fix the extension period.
- (9) Explain the consequences:
 - (a) Every D subject to an extended sentence will serve at least two thirds of the custodial term in custody before his case is referred to the Parole Board for them to consider his release. D will not serve more than the whole of the custodial term.
 - (b) On release D will be on licence, which will last until the end of the custodial term, and he will then serve the extended period of licence: this begins when the licence period of the custodial term ends and lasts until the end of the extended licence period.
 - (c) D's licence will be subject to conditions; and if he were to break any condition he would be liable to have his licence revoked and be returned to custody to serve the rest of his sentence in custody.

Example

You will serve at least two thirds of the custodial term of 9 years in custody. Your case will then be referred to the Parole Board who will decide whether you should be released and you will only be released if the Parole Board decide that it is safe to do so. Whenever you are released, which will be no later than the date on which the 9 year custodial term expires, you will be on licence which will continue until the end of the extended licence period of 4 years, making the total length of the sentence one of 13 years. Your licence will be subject to a number of conditions and if you break any one of those conditions your licence may be revoked and you will be liable to serve the rest of the total sentence in custody.

[Where time spent on remand in custody: The days which you have spent on remand in custody will automatically count towards the custodial term of your sentence.]

[Where time spent on qualifying electronically monitored curfew: I certify that you have spent 47 days on a qualifying curfew and I direct that 24 days will count towards the custodial term of your sentence. If this calculation is later found to be wrong it will be put right by correcting the record administratively without any further hearing.]

S4-3 Offenders of Particular Concern

CJA 2003 ss.236A and 244A and Sch.18A

ARCHBOLD 5-535; SENTENCING REFERENCER 183

1. These provisions have been introduced by [CJCA s.6](#) and [Sch.1](#) in respect of offences where the offender is convicted on and after 13th April 2015 whatever the date of the commission of the offence.
2. By these provisions additional restrictions are placed upon “offenders of particular concern” i.e. those convicted of certain serious sexual offences (rape of a child under 13 and sexual assault by penetration of a child under 13) and terrorism offences. The full list of offences is set out in [CJCA Sch.1](#), which inserts Schedule 18A CJA 2003.
3. These provisions apply if D is convicted of a Sch.18A offence, was aged 18 or over at the commission of the offence, and the court imposes an immediate custodial sentence which is not a life sentence or an extended sentence.
4. The term of the sentence will be the custodial term (“the appropriate term”) and an additional period of one year during which the offender will be subject to licence.
5. The term of the sentence must not exceed the statutory maximum applicable at the date of the commission of the offence.
6. When the offender has served one half of the custodial term his case will be referred to the Parole Board for consideration whether and on what terms it may be safe to order his release on licence.
7. The offender must be released at the latest at the end of the custodial term but will then be on licence for the remainder of the custodial term (if any) and the additional licence period of one year.
8. The provision is designed to ensure that:
 - (1) Offenders convicted of offences in the Schedule are always referred to the Parole Board for consideration of licence; and
 - (2) There is always a minimum period of one year to be served on licence.

Example

You will serve one half of your custodial term in custody before your case is referred to the Parole Board for consideration of whether and on what terms it is safe for you to be released. You will be released at the direction of the Parole Board at some point not later than the end of the custodial term. You will then serve the remainder of the custodial term (if any) and 12 months on conditional licence and supervision. You must abide by the conditions of your release, or you will be liable to serve the rest of the sentence in custody.

S4-4 Determinate sentences of imprisonment

[PCC\(S\)A 2000 s.76](#); [CJA 2003 ss.152 – 154](#);

[ORA 2014 s.2](#) (inserting [CJA 2003 ss.256AA and 256AB](#) – licence and supervision provisions)

ARCHBOLD 5-458; BLACKSTONE'S E2.1;

SENTENCING REFERENCER 81 and 114

1. Criteria for sentence

- (1) The offence/s is/are so serious that neither a fine alone nor a community sentence can be justified.
- (2) The sentence is the least that can be imposed having regard to the seriousness of the offence.
- (3) The defendant is aged 21 or over.

2. Passing the sentence

- (1) All determinate sentences of imprisonment
 - (a) Set out findings in relation to those matters described in paragraphs 1 – 3 of [chapter S3](#) above.
 - (b) The offence by itself or in combination with other offences must be so serious that neither a fine alone nor a community sentence can be justified [[CJA 2003 s.152\(2\)](#)] **or** the offender refuses to express his willingness to comply with a requirement of a community order proposed by the court for which his willingness to comply is necessary i.e. a drug rehabilitation requirement, an alcohol treatment requirement or a mental health treatment requirement.
 - (c) The sentence must be the shortest term that is commensurate with the seriousness of the offence, either by itself or in combination with others [[CJA 2003 s.153\(2\)](#)].
 - (d) All offenders are released having served no more than half their sentence. This is the “requisite custodial period”: see [CJA 2003 s.244\(3\)](#). Many offenders are released earlier on Home Detention Curfew or other early release provision but such earlier release is at the discretion of the Secretary of State exercised through the Prison Governor and not the court and no reference should be made to the likelihood or otherwise of such release.

Example

The offence is so serious that only a custodial sentence can be justified and the least possible sentence I can impose having regard to the aggravating and mitigating factors of the case is one ofmonths'/years' imprisonment.

- (2) Sentences of imprisonment of 2 years or more
 - (a) Offenders will serve up to one half of the sentence in custody before being released on licence.
 - (b) On release from custody the offender will serve the remainder of the sentence on licence and will be liable to recall if he is in breach of the conditions of licence or is charged with a further offence.

Example

You will serve up to one half of your sentence in custody. You will serve the remainder on licence. You must keep to the terms of your licence and commit no further offence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.

NOTE: ORA has made significant changes to licence periods and has introduced supervision periods on release from immediate sentences of imprisonment of more than one day and less than two years, the effect of which is that on release offenders will be subject to licence followed by supervision for a combined period of 12 months. The changes are effective in respect of offences committed on or after 1st February 2015.

- (3) Sentences of imprisonment of 12 months or more, imposed in respect of offences committed before 1st February 2015
 - (a) Offenders will serve up to one half of the sentence in custody before being released on licence.
 - (b) On release from custody the offender will serve the remainder of the sentence on licence and will be liable to recall if he is in breach of the conditions of licence or is charged with a further offence.

Example

You will serve up to one half of your sentence in custody. You will serve the remainder on licence. You must keep to the terms of your licence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.

- (4) Sentences of imprisonment of less than 12 months, imposed in respect of offences committed before 1st February 2015
 - (a) Offenders will serve up to one half of the sentence in custody before being released. There is no licence period on sentences of less than 12 months.

Example

You will serve up to half of your sentence in custody and then you will be released.

- (5) Sentences of imprisonment of more than one day but less than 2 years, imposed in respect of offences committed on or after 1st February 2015
 - (a) The offender will serve up to one half of the sentence in custody before being released on licence.

Example

You will serve up to one half of your sentence in custody before you are released on licence. When you are released, you will be on licence and then supervision for a total of 12 months. You must comply with the terms of the licence and supervision and commit no further offence or you will be liable to serve a further term in custody.

NOTE: this example is deliberately short, to comply with [CJA 2003 s.174\(1\)](#). Some judges may prefer to specify the individual licence and supervision periods and the consequences of breach of each.

- (b) On expiry of the licence period (the expiry of the sentence) the offender will be on supervision for the balance of a period of 12 months from the date of his release.
- (6) Concurrent and consecutive sentences
 - (a) Where D is to be sentenced for more than one offence sentences should be imposed in respect of each offence of which D has been convicted (unless the offence is to be marked with “no separate penalty”).
 - (b) Sentences may be ordered to run concurrently or consecutively. In the absence of express order, sentences will be served concurrently.
 - (c) A determinate sentence of imprisonment may be ordered to run consecutively to any other custodial sentence (including a minimum term of an indeterminate sentence) from which D has not yet been released: [PCC\(S\)A s.154](#).
 - (d) A sentence cannot be ordered to be served consecutively to a sentence from which D has already been released: [CJA 2003 s.265](#).
 - (e) When passing consecutive sentences the sentencer must always have regard to totality.

Example

On count 1 of this indictment, the charge of wounding {name} on {date}, you will go to prison for 2 years. On count 2, the charge of assaulting {name} on {date}, you will go to prison for 1 year. The sentence on count 2 will run consecutively to the sentence on count 1, making a total sentence of 3 years in all. That is the least sentence that I can impose to mark the totality of your offending. You will serve up to half of your total sentence in custody and then

Example: where D is already serving a life sentence with a minimum of 10 years

For this offence of wounding you will serve a sentence of 18 months' imprisonment. This sentence will be served consecutively to the minimum term of 10 years which you are currently serving. This means that when you have completed the minimum term of 10 years you will then serve this sentence of 18 months and you will not be eligible to be considered for parole until you have served up to half of this new sentence.

S4-5 Detention in a Young Offender Institution

[PCC\(S\)A 2000 s.96](#); [ORA 2014 s.2](#) (inserting CJA ss.256AA and 256AB - licence and supervision provisions)

ARCHBOLD 5-594; BLACKSTONE'S E7.4;

SENTENCING REFERENCER 96 and 114

1. Detention in a Young Offender Institution is the custodial sentence for offenders between the ages of 18 and 21 at the date of conviction.
 - (1) The minimum sentence is 21 days.
 - (2) The maximum is the term available for the offence.
 - (3) Release provisions relating to sentences of detention in a Young Offender Institution in respect of offences committed on or after 1st February 2015 are the same as those relating to determinate sentences of imprisonment [[CJA 2003 s.237](#) (see [chapter S4-4 above](#))].
 - (4) In respect of offences committed before 1st February 2015, on release, offenders serving a sentence of less than 12 months, are subject to a supervision period of 3 months [CJA 2003 s.256B inserted by [s.115 LASPO](#)].
2. Criteria for sentence
 - (1) The offence/s is/are so serious that neither a fine alone nor a community sentence can be justified.
 - (2) The sentence is the least that can be imposed having regard to the seriousness of the offence.
3. Passing the sentence

The court must:

 - (1) Set out findings in relation to those matters described in paragraphs 1 – 3 of [chapter S3 above](#).
 - (2) State that
 - (a) the seriousness of the offence is such that neither a fine alone nor a community order can be justified. (These are the words of the statute but are commonly expressed in sentencing remarks as “*the offence is so serious that only a custodial sentence can be justified*”);
 - (b) the sentence is the least that can be imposed having regard to the seriousness of the offence.
 - (3) Explain the effect of the release provisions.

Example

The offence is so serious that only a custodial sentence can be justified and the least possible sentence I can impose having regard to the aggravating and mitigating factors of the case is one ofmonths/years detention in a Young Offender Institution of which you will serve up to half in custody

NOTE: here explain the effect of the release provisions, examples of which, dependent on length of sentence, are to be found in [chapter S4-3 above](#).

S4-6 Minimum Custodial Sentences

PCC(S)A [ss.110](#) and [111](#)

[Firearms Act 1968 s.51A](#)

[Violent Crime Reduction Act 2006 s.29](#)

[Prevention of Crime Act 1953 s.1A](#) and [Criminal Justice Act 1988 s.139AA](#)

[Prevention of Crime Act 1953 s.2B](#) and [Criminal Justice Act 1988 s.139\(6B\)](#)

ARCHBOLD 5-443 and 5-449; BLACKSTONE'S E5;

SENTENCING REFERENCER 191, 193, 195 and 198

1. Minimum sentences are attracted by:
 - (1) A third Class A drug trafficking offence (all committed after 30.9.97, and commission and conviction for each before the next) [[PCC\(S\)A s.110](#)] unless there are circumstances relating to the offence or to the offender which would make it unjust to do so (D aged 18 or over at the time of offence);
 - (2) A third domestic burglary (all committed after 30.11.99, and commission and conviction for each before the next) [[PCC\(S\)A s.111](#)] unless there are circumstances relating to the offence or to the offender which would make it unjust to do so (D aged 18 or over at the time of offence);
 - (3) Certain firearms offences (committed on/after 22.1.04) [[Firearms Act 1968 s.51A](#)] and also offences of minding specified firearms [[Violent Crime Reduction Act 2006 s.29](#)] unless there are exceptional circumstances relating to the offence or to the offender which justify the court in not doing so (D aged 16 or over at the time of offence).
 - (4) Threatening with an offensive weapon in public [[Prevention of Crime Act 1953 s.1A](#)] unless the court is of the opinion that there are particular circumstances relating to the offence or to the offender which make it unjust to do so (D aged 16 or over at the time of offence).
 - (5) Threatening with article with blade or point or offensive weapon in public or on school premises [[Criminal Justice Act 1988 s.139AA](#)] unless the court is of the opinion that there are particular circumstances relating to the offence or to the offender which make it unjust to do so (D aged 16 or over at the time of offence).
 - (6) A second offence of possession of an offensive weapon or bladed article in a public place or on school premises committed on/after 17th July 2015 [[CJCA s.28 and Sch.5 amending Prevention of Crime Act 1953 s.2B and Criminal Justice Act 1988 s.139\(6B\)](#)] unless the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or to the offender which make it unjust to do so (D aged 16 or over at the time of the offence).
2. Where a minimum sentence must be passed this must be stated and, if D has pleaded guilty, it must be made clear what, if any, credit has been given.

3. Where a sentence of more than the minimum is passed, credit is to be given for plea following the [SGC Guideline Reduction in Sentence for Guilty Plea](#) but the sentence must not be lower than the minimum sentence permitted by law (subject to any maximum credit for plea).

Minimum sentences and maximum credit for plea of guilty			
Offence	Age at offence	Minimum	Maximum credit for plea when passing minimum sentence
Class A drug trafficking (3 rd offence)	18 or over	7 years	20%
Domestic burglary (3 rd offence)	18 or over	3 years	20%
Firearms	18 or over	5 years	None
	16 or 17	3 years	None
Minding firearms	18 or over	5 years	None
Threatening with offensive weapon in public; Threatening with article with blade or point or offensive weapon in public or on school premises	18 or over	6 months	20%
	16 or 17	4 months D+TO	No restriction
Second offence of possession of an offensive weapon or bladed article in a public place or on school premises – offence committed on or after 17 th July 2015	18 or over	6 months	20%
	16 or 17	4 months D+TO	No restriction

Example 1: (3rd domestic burglary: reduction for plea of Guilty)

The minimum sentence which I am permitted to pass for this offence is one of 3 years' imprisonment. I am satisfied that it would not be unjust to pass such a sentence but the aggravating and mitigating factors in your case are such that it is not necessary to pass a sentence which is any more than that minimum. As you pleaded guilty to this offence at the first reasonable opportunity I shall give you the credit which I am permitted to give. I therefore reduce the term of your sentence by 20 percent, so that the sentence is one of 876 days' imprisonment.

Example 2: (firearm: minimum term where no reduction for plea of Guilty)

The minimum sentence which I am permitted to pass for this offence is one of 5 years' imprisonment. I am satisfied that it would not be unjust to pass such a sentence but the aggravating and mitigating factors in your case are such that it is not necessary to pass a sentence which is any more than that minimum. Although you pleaded guilty to this offence at the first reasonable opportunity I am not permitted to give you any credit for that plea and so the sentence which you will serve is one of 5 years' imprisonment

Example 3: (firearm: reduction to minimum term where plea of Guilty)

The minimum sentence which I am permitted to pass for this offence is one of 5 years' imprisonment, but given the seriousness of your offence, having taken account of all the aggravating and mitigating factors, I am satisfied that the least sentence that I can pass is one of 7 years. You pleaded guilty to this offence at the first reasonable opportunity and are entitled to receive credit for that plea. Normally I would have reduced your sentence by a full 1/3, but given the minimum sentence which I must impose, the sentence is one of 5 years' imprisonment.

Example 4: (drug trafficking: exceptional circumstances justify sentence below minimum term)

The minimum sentence which I am ordinarily permitted to pass for this offence is one of 7 years' imprisonment. There are no aggravating factors in this case but I am satisfied that the mitigating factors namely {here set out particular mitigating factors} are truly exceptional and justify my not imposing the minimum sentence. In these circumstances, the sentence which I would have imposed, after a trial, taking account of the seriousness of your offence and all of the mitigating factors is one of 4 years' imprisonment. I reduce that to take account of the fact that you have pleaded Guilty, not at the first reasonable opportunity but at today's hearing, which has been held in order for you to enter your plea and be sentenced and which is still 6 weeks before your case would have been listed for trial. I therefore allow a 25% reduction for your plea of guilty and sentence you to 3 years' imprisonment.

S4-7 Suspended Sentence Orders

CJA 2003 ss.189 – 193

ARCHBOLD 5-547; BLACKSTONE'S E6.1; SENTENCING REFERENCER 259

1. The power to order that a custodial sentence be suspended applies to sentences of imprisonment of not less than 14 days or more than 2 years and to sentences of detention in a Young Offender Institution of not less than 21 days or more than 2 years. Where consecutive suspended sentences are passed the aggregate sentence must not exceed 2 years.
2. Criteria for sentence
 - (1) The offence/s is/are so serious that neither a fine alone nor a community sentence can be justified: i.e. the sentence passes the “custody threshold”.
 - (2) The sentence is the least that can be imposed to mark the seriousness of the offence.
 - (3) Defendant aged 18 or over at sentence
3. Passing the sentence

The court must:

 - (1) Complete the steps set out in [chapter S3 above](#).
 - (2) State that:
 - (a) the seriousness of the offence is such that neither a fine alone nor a community order can be justified;
 - (b) the sentence of is the least that can be imposed to mark the seriousness of the offence/s.
 - (c) Direct that the sentence will be suspended (for a period of not less than 6 months or more than 2 years): the “operational period”.
 - (3) Consider whether any requirement(s) from the list specified in [CJA s.190](#) (identical to Community Order requirements: see [chapter S5-1 below](#)) should be attached to the order to be completed within, or complied with for, a period of not less than 6 months or more than 2 years: the “supervision period”. It is no longer mandatory to impose any requirement on a suspended sentence.
 - (4) Explain the consequences of any further offending and/or breach of a requirement if one or more have been imposed and at which court any breaches will be considered. (Usually breaches of suspended sentences are retained by the Crown Court.).
 - (5) If the court is ordering reviews, specify the date of the first review.

Example: with requirement for supervision (offence committed before 1st February 2015)

The sentence of months/weeks* will be suspended for 2 years. If in the next 2 years you commit any offence you will be brought back to court and it is likely that this sentence will be brought into operation.

Also, for the next 12 months, you will be supervised by a Probation Officer. That means you must meet him when and where he requires and cooperate fully with him. If you fail to comply with this requirement you will be in breach of this order, which means that you will be brought back to court and you will be liable to serve the sentence.

Example: with requirement for Rehabilitation Activity Requirement (offence committed on or after 1st February 2015)

The sentence of months/weeks* will be suspended for 2 years. If in the next 2 years you commit any offence you will be brought back to court and it is likely that this sentence will be brought into operation.

Also for the next 12 months you will be subject to a rehabilitation activity requirement. That means that you must meet with the office supervising this requirement as and when required and you must attend and co-operate fully with any activities arranged by him. If you fail to comply with this requirement you will be in breach of this order, which means that you will be brought back to court and you will be liable to serve the sentence.

[If reviews are ordered: ... and you must return to court at {specify} on {date} when your progress will be reviewed. At that review the court will have a short report on your progress from your supervising officer. If you are doing well the order will continue, but if you are failing to comply with it, you will be in breach of this order and liable to serve the sentence.]

Note:

1. The original stipulation that a suspended sentence had to be expressed only in weeks no longer applies.

The possible consequences of reoffending/breach are simplified in the above example with a view to D being able to understand them. The court's full powers are set out in [chapter S9-3](#).

S4-8 Determinate Custodial Sentence for those under 18

Detention under [PCC\(S\)A s.91](#)

ARCHBOLD 5-610; BLACKSTONE'S E7.9; SENTENCING REFERENCER 91

1. Introduction

- (1) Detention under [PCC\(S\)A s.91](#) is a custodial sentence for offenders aged under 18 at the date of conviction who have been convicted of "grave crime/s".
- (2) While there is no statutory minimum term, in practice the offence must merit a sentence of significantly more than 2 years. (If it merits detention of 2 years or less, a Detention and Training Order is appropriate.)
- (3) The maximum is the term available for the offence.
- (4) Where the offender is to be sentenced for one or more offences which qualify for a sentence under s.91 and others which do not, a term of detention commensurate with the seriousness of all of the offences should be passed under s.91 only on the/those offence/s which so qualify. The court should order "no separate penalty" on those which do not.
- (5) A Detention and Training Order and an order for detention under s. 91 cannot be ordered to run consecutively.
- (6) All offenders are released having served no more than half their sentence. This is the "requisite custodial period": see [CJA 2003 s.244\(3\)](#).
- (7) An offender sentenced to a term of 12 months or more will be subject to licence for the remainder of the sentence.
- (8) In the rare instance of an offender sentenced to a term of less than 12 months under s.91, on release the offender will be supervised for 3 months.

2. Criteria for sentence

- (1) The offence/s must be a "grave crime" viz:
 - (a) offences punishable, if 21 or over, with 14 years' imprisonment or more, not being a sentence fixed by law. This includes a common law offence where the sentence is at large; or
 - (b) offences under SOA [ss.3, 13, 25](#) or [26](#); or
 - (c) various offences under the Firearms Act 1968 if the firearm is of a type which attracts a minimum sentence and the offender is aged 16 or over at the time of the offence (minimum term for an offender under 18 at the time of conviction is 3 years, subject to exceptional circumstances); or
 - (d) an offence under [Violent Crime Reduction Act 2006 s.28](#) (using someone to mind a weapon) if the weapon is a firearm of a type which attracts a minimum sentence and the offender is aged 16 or over at the time of the offence (minimum term for an offender under 18 at the time of conviction is 3 years, subject to exceptional circumstances).

- (2) The court must have regard to the welfare of the offender and shall, in a proper case, take steps to remove him from undesirable surroundings and for securing proper provision for his education and training.
- (3) The court must have regard to the need to prevent offending by children and young persons.
- (4) The court must be of the opinion that no other form of sentence is suitable.

3. Passing the sentence

The court must:

- (1) Complete the steps set out in [chapter S3 above](#).
- (2) State that it has had regard to the welfare of the offender and the need to prevent him from further offending.
- (3) (In an appropriate case) state that it is taking steps to remove him from undesirable surroundings and/or secure proper provision for his education and training.
- (4) Also state that
 - (a) the seriousness of the offence is such that only a sentence under s.91 can be justified;
 - (b) the sentence is the least that can be passed to mark the seriousness of the offence/s.
- (5) Explain that up to one half of the sentence will be served in custody and on release D will be on licence/supervision (as appropriate) and if he reoffends or does not cooperate with the terms of licence/supervision he will be liable to be returned to custody.

Example

In deciding what is the right sentence in your case I have had regard to your welfare and the need to prevent you from committing any more offences and I am satisfied that the best way of achieving these things is to sentence you to a term of detention under section 91* and that despite your age your offence is so serious that nothing but a substantial custodial sentence can be justified. The least sentence that I can pass is one of 3 years' detention.

You will serve up to half this sentence in custody and then you will be released on licence. Your licence will be subject to a number of conditions and if you break any of those conditions your licence may be revoked and you will be liable to serve the rest of the sentence in custody.

*Reference to s.91 is not for the benefit of D (although he may already have had this possibility explained to him and understand what it means) but so that there is no ambiguity in the minds of all other parties, including the CACD, about the provision under which the sentence has been imposed.

4. Time spent on remand in custody or subject to a qualifying electronically monitored curfew

For a full explanation of the provisions relating to time on remand, as amended by LASPO see [chapter S4-9 below](#).

Detention and Training Orders: [PCC\(S\)A ss.100 - 107](#)

ARCHBOLD 5-597; BLACKSTONE'S E7.15; SENTENCING REFERENCER 93

5. Introduction

A Detention and Training Order is a custodial sentence available for those aged between 12 and 17 inclusive at the date of conviction.

- (1) The minimum sentence is 4 months. The maximum sentence is 24 months.
- (2) Only sentences of 4, 6, 8, 10, 12, 18 or 24 months may be imposed in respect of any one offence. The total of consecutive sentences does not have conform to these numbers although it must not exceed 24 months.
- (3) If the offender is under the age of 15 a sentence may only be imposed if he is a "persistent offender" within [PCCS\(A\) s.100\(2\)\(a\)](#).

6. Criteria for sentence

- (1) The offence by itself or in combination with other offences must be so serious that neither a fine alone nor a community sentence can be justified [[CJA 2003 s.152\(2\)](#)] **or** (though this is very rare in practice) the offender refuses to express his willingness to comply with a requirement of a Youth Rehabilitation Order for which his willingness to comply is necessary i.e. a drug treatment requirement, a drug testing requirement, an intoxicating substance treatment requirement or a mental health treatment requirement.
- (2) The sentence must be the shortest term that is commensurate with the seriousness of the offence, either by itself or in combination with others [[CJA 2003 s.153\(2\)](#)].
- (3) There is no power to give credit for time served on remand within the term of a sentence of Detention and Training, so the sentencer must "take account" of time served on remand when fixing the term.
- (4) In a case sent to the Crown Court as a "grave crime" it is permissible to impose a sentence of 2 years' Detention and Training on a plea of guilty entered at the first reasonable opportunity in a case in which, but for the plea of guilty, an order would have been made for detention under [PCC\(S\)A s.91](#). If this situation arises it must be explained clearly.

7. Passing the sentence

The court must:

- (1) Complete the steps set out in [chapter S3 above](#).
- (2) State that it has had regard to
 - (a) the welfare of the offender; and, if appropriate, that it is taking steps to remove him from undesirable surroundings and/or secure proper provision for his education and training;
 - (b) the need to prevent him from further offending.
- (3) Also state that
 - (a) the seriousness of the offence is such that a fine or a youth rehabilitation order cannot be justified; and that
 - (b) the sentence is the least that can be passed to mark the seriousness of the offence/s;
- (4) In relation to time spent on remand in custody/secure accommodation/qualifying curfew, as there is no power to order this to count towards the sentence, the court must take this into account when fixing the term. This has not been affected by the provisions of LASPO 2012.
- (5) Explain that up to one half of the sentence – the “detention” part of the sentence - will be served in custody and the remainder – the “training” part - will be served on supervision.
- (6) If the offence is committed on or after 1st February 2015 and the offender is aged 18 at the time of the expiry of half the sentence (the requisite custodial period) he will be subject to supervision for 12 months from the date of the end of the requisite custodial period.
- (7) Explain the consequences of
 - (a) Reoffending during the currency of the supervised term of the order – if the offence is punishable with imprisonment, he may be ordered to be detained for the period outstanding) and
 - (b) Failing to co-operate with supervision, he may be taken before the Youth Court and either fined or ordered to serve the remainder of the order or 3 months, whichever is less.
 - (c) Failing to co-operate with any further supervision period (age 18: see above) – a sentence of curfew, unpaid work or up to 14 days in a Young Offender Institution.

Example

I have had regard to your welfare and to the need to provide for your education and training and I am satisfied that your offence is so serious that only a custodial sentence can be justified.

But for your plea of guilty and the fact that you have spent 76 days on remand in custody I would have sentenced you to a term of 2 years' Detention and Training, this being the least sentence which I could have imposed to mark the seriousness of your offence. Giving you full credit for your prompt plea of guilty and taking account of the time which you have spent on remand I reduce that term to one of 12 months' Detention and Training.

Either: Of this sentence you will spend up to one half in detention – that is custody – and then you will be released to serve the other half of the sentence – the training part – on supervision in the community.

Or – if the offender is 18 by the time that the requisite custodial period expires: Of this sentence you will spend up to one half in detention – that is custody – and then you will be released and then be supervised in the community for 12 months.

In any case: If, once you have been released and while you are on supervision, you commit any offence punishable with imprisonment or if you fail to co-operate with your supervising officer you will be liable to be returned to custody.

S4-9 Time spent on remand

Remand in Custody

[CJA 2003 s.240ZA](#)

ARCHBOLD 5-639; BLACKSTONE'S E2.12; SENTENCING REFERENCER 269

1. When passing a determinate custodial sentence (whether or not extended) other than a Detention and Training Order the time spent on remand in custody will, subject to certain qualifications, count automatically ([CJA 2003 s.240ZA](#)): see **Example 1**.
2. A suspended sentence is to be treated as: (a) a sentence of imprisonment when it takes effect and (b) as being imposed by the order under which it takes effect [CJA 2003 s.240ZA(7)]. Thus time spent on remand in custody before the sentence was imposed will not lead to any reduction in the length of that sentence, but will count when the sentence takes effect: see **Example 2**.
3. It is still necessary for the court to make a reduction for the number of days spend on remand in custody when setting a minimum term to be served on a life sentence: see the **Example** under the heading "passing a life sentence" in [chapter S4-2 above](#).

Example 1

The days which you have spent on remand in custody will automatically count towards your sentence.

Example 2: when suspended sentence brought into operation

The days which you spent on remand in custody before you were originally sentenced will automatically count towards the [part of the] sentence which I have now brought into operation.

Remand on Qualifying Electronically Monitored Curfew

[CJA 2003 s.240A](#)

ARCHBOLD 5-645; BLACKSTONE'S E2.16; SENTENCING REFERENCER 279

1. When passing a determinate custodial sentence (whether or not extended) the court must certify the number of days spent on remand under a curfew with relevant conditions i.e. (a) a curfew for 9 hours or more and (b) which is electronically monitored and must direct that the appropriate proportion of those days will count towards the sentence.
2. The same considerations apply when setting the minimum term to be served in relation to a life sentence.
3. The proportion of those days is to be calculated by reference to the 5 step test prescribed by [CJA 2003 s.240A\(3\) \[as substituted by LASPO s.109\(3\)\]](#). It is anticipated that this calculation will be done by the advocates and/or the clerk of the court but, since it is a judicial obligation to do so, the test is explained below.
4. The court should also direct that if the calculation of days is not correct, a correction will be made administratively without the need for a further hearing.
5. The 5 step test
 - (1) Calculate the days on bail with the relevant conditions (viz. (a) curfew for 9 hours or more and (b) electronic monitoring) beginning on the day on which the conditions were imposed and ending on the day before the day of sentence.
 - (2) Deduct any days where the offender has been subject, at the same time, to:
 - (a) a Community Order, Youth Rehabilitation Order or requirement of a suspended sentence with a similar qualifying curfew; or
 - (b) release on Home Detention Curfew or other temporary release with a similar qualifying curfew.
 - (3) Deduct any days on which he has been in breach of any part of the relevant conditions.
 - (4) Divide the resultant days by 2.
 - (5) Round up if there is a half day.

Example

I certify that you have spent 47 days on remand subject to a qualifying curfew and I direct that 24 days will count towards your sentence. If this calculation is later found to be wrong it will be put right by correcting the record administratively without any further hearing.

S5 NON-CUSTODIAL SENTENCES

S5-1 Community Orders

[CJA 2003 s.177 et seq.](#)

ARCHBOLD 5-253; BLACKSTONE'S E8; SENTENCING REFERENCER 44

1. A Community Order is a community sentence for offenders who are aged 18 or over on the date of conviction.
 - (1) The maximum length of a community order is 3 years.
 - (2) A community order must have at least one requirement (see below) and requirements must be compatible one with another.
 - (3) Requirement/s must avoid conflict with the offender's religious beliefs and/or interference with his times of work and/or education.
 - (4) The SGC guideline "New Sentences: Criminal Justice Act 2003" sets out a recommended approach to the nature and extent of requirements to be made.
 - (5) The court may have regard to any period spent on remand, or qualifying electronically monitored curfew, when determining the restrictions/s on liberty which such a sentence imposes.
2. Criteria for sentence
 - (1) The offence, or combination offences, is serious enough to warrant such a sentence.
 - (2) The requirement/s must be the most suitable for the offender.
 - (3) The restriction/s on liberty imposed by the requirement/s must be commensurate with the seriousness of the offence/s.
3. The Requirements [sections in CJA 2003]
 - an unpaid work requirement [s.199]
40 < 300 hours to be completed within 12 months
 - a rehabilitation activity requirement [s.200A]
this replaces supervision and activity requirements in respect of offences committed on and after 1st February 2015. The supervising officer (who may not be a probation officer) may require the offender to attend for appointments and for any appropriate activity.
 - an activity requirement [s.201]
only for offences committed before 1st February 2015. Up to 60 days; must be consultation with the Probation Service
 - a programme requirement [s.202]
must specify the number of days on which D must participate
 - a prohibited activity requirement [s.203]
can only be imposed after consultation with the Probation Service

- a curfew requirement [s.204]
2 < 16 hours in any 24 hours; maximum term 12 months; must consider those likely to be affected; must be electronically monitored unless a person whose cooperation is necessary does not consent or it is otherwise inappropriate
- an exclusion requirement [s.205]
from a specified place/places; maximum period 2 years: may be continuous or only during specified periods; must be electronically monitored unless a person whose cooperation is necessary does not consent or the court has not been notified that arrangements for electronic monitoring are available or it is otherwise inappropriate
- a residence requirement [s.206]
to reside at a place specified or as directed by the supervising officer

NOTE: in respect of offences committed on or after 1st February 2015, in the absence of a specific residence requirement, the offender must not change residence without the permission of the responsible officer or the court. This obligation is enforceable as if it were a requirement imposed by the order: ORA s.18

- a foreign travel prohibition requirement [s.206A]
not to exceed 12 months
- a mental health treatment requirement [s.207]
may be residential/non-residential; must be by/under the direction of a registered medical practitioner or chartered psychologist. The court must be satisfied:
 - (a) that the mental condition of the offender is such as requires and may be susceptible to treatment but it not such as to warrant the making of a hospital or guardianship order;
 - (b) that arrangements for treatment have been made;
 - (c) that the offender has expressed willingness to comply.
- a drug rehabilitation requirement [s.209]
the court must be satisfied that the offender is dependent on or has a propensity to misuse drugs which requires or is susceptible to treatment; residential or non-residential; must have offender's consent; reviews, which the offender must attend (subject to application for amendment) at intervals of not less than a month (discretionary on requirements of up to 12 months, mandatory on requirements of over 12 months)
- an alcohol treatment requirement [s.212]
residential or non-residential; must have offender's consent; court must be satisfied that the offender is dependent on alcohol and that the dependency is susceptible to treatment

- an alcohol abstinence and monitoring requirement [s.212A]
NOTE: this is subject to a pilot in the London Local Justice Areas for 12 months commencing 1st April 2016. It may only be imposed if (i) the consumption of alcohol is an element of the offence for which the offender was convicted or was a factor which contributed to its commission (ii) the offender is not dependent on alcohol and (iii) an alcohol treatment requirement is not imposed
- a supervision requirement [s.213]
only for offences committed before 1st February 2015. Maximum 3 years
- an attendance centre requirement [s.214]
only available for offenders under 25; 12 < 36 hours
- an electronic monitoring requirement [s.215]
consent of householder (if someone other than D) is required. Mandatory, unless inappropriate, for curfew and exclusion; discretionary for unpaid work, rehabilitation activity, activity, programme, prohibited activity, residence, foreign travel prohibition, mental health treatment, drug rehabilitation, alcohol treatment, supervision, attendance centre

4. Passing the sentence

The court must:

- (1) Complete the steps set out in [chapter S3 above](#).
- (2) State that
 - (a) the offence, or the combination offences, is serious enough to warrant such a sentence;
 - (b) the sentence is the least that is commensurate with the seriousness of the offence/s;
 - (c) (if it is the case) the court has had regard to time spent on remand in imposing the requirement/s attached to the order.
- (3) Specify and explain the requirement/s attached to the order including the requirement that the offender keep in touch with the responsible officer in accordance with such instructions as he may be given by that officer.
- (4) In the case of offences committed on or after 1st February 2015, specify that it is a requirement of the order that the offender obtains the consent of his supervising officer or the court before any change of residence.
- (5) Specify whether any breach of any requirement is to be dealt with in the Crown Court or the Magistrates Court and explain the court's powers in the event of any such breach or conviction of another offence (see [chapter S9-1 below](#)).

Example

Your offence is so serious that I must make a community order – and you will be subject to these requirements:

1. You will do 120 hours of unpaid work within the next 12 months which must be done when and where you are directed by your supervising officer;
2. You will be subject to - and cooperate with – supervision/a rehabilitation activity requirement for 12 months. That means you must meet your supervisor when and where you are told to and you must cooperate fully with any instructions that he gives you.

If you fail to complete the unpaid work or to do it properly, or fail to cooperate with supervision/the rehabilitation activity requirement you will be in breach of the order: that means you will be brought back before this court/the Magistrates' Court and may be given further requirements or resentenced or fined for this offence; and that may well mean custody.

S5-2 Youth Rehabilitation Orders

CJIA s.1

ARCHBOLD 5-314; BLACKSTONE'S E9; SENTENCING REFERENCER 280

1. A Youth Rehabilitation Order (YRO) is a community sentence available for offenders under the age of 18 at the date of conviction.
 - (1) The maximum length of a YRO is 3 years.
 - (2) A YRO must have at least one requirement and requirements must be compatible one with another.
 - (3) The court must obtain and consider information about the offender and his family and the effect that any requirement will have on the family, attendance at work, place of education and avoid conflicts with religious beliefs. [[CJIA Sch. 1](#)].
 - (4) The SGC guideline [Overarching Principles: Sentencing Youths](#) sets out a recommended approach to the nature and extent of requirements to be made.
 - (5) Requirements of intensive supervision and surveillance and fostering may only be made if the offence is punishable with imprisonment and the court is of the opinion that the offence is so serious that otherwise a custodial sentence would be appropriate and, if the offender is under 15, he is a persistent offender.
2. Criteria for Sentence
 - (1) The offence or combination of offences is serious enough to warrant such a sentence.
 - (2) The restrictions on liberty and/or requirements of the order must be commensurate with the seriousness of the offence.
 - (3) The order is the most appropriate to achieve the aims of the youth justice system i.e. of preventing further offending while having regard to the welfare of the young person.
3. The Requirements [paragraphs in [CJIA Sch.1](#)]

Full details of any proposed requirements will be in the report from the Youth Offending Service.

 - an activity requirement [6 – 8]
residential or non-residential for up to 90 days
 - a supervision requirement [9]
maximum 3 year
 - an unpaid work requirement [10]
offender must be 16 or 17 at the date of conviction; 40 < 240 hours; to be completed within 12 months
 - a programme requirement [11]
only if recommended by the Youth Offending Team or a Probation Officer

- an attendance centre requirement [12]
age 14 or over - 12 < 24 hours; age 16 or over – 12 < 36 hours
- a prohibited activity requirement [13]
court must consult member of the Youth Offending Team or Probation Officer
- a curfew requirement [14]
2 < 16 hours in any 24 hours; maximum term 12 months; must be electronically monitored unless the householder does not consent or the court considers it inappropriate
- an exclusion requirement [15]
from a specified place or area; maximum period 3 months: must be electronically monitored unless a person whose cooperation is necessary does not consent or the court has not been notified that arrangements for electronic monitoring are available or it is otherwise inappropriate
- a residence requirement [16]
to reside with a specified individual or, if 16 or over, to reside at a place specified or at a place approved by the supervising officer
- a local authority residence requirement [17]
maximum period 6 months; not to extend beyond 18th birthday; must consult local authority and parent/guardian
- a mental health treatment requirement [20]
may be residential/non-residential; must be by/under the direction of a registered medical practitioner or chartered psychologist. The court must be satisfied
 - (a) that the mental condition of the offender is such as requires and may be susceptible to treatment but it not such as to warrant the making of a hospital or guardianship order;
 - (b) that arrangements for treatment have been made;
 - (c) that the offender has expressed willingness to comply.
- a drug treatment requirement [22]
residential or non-residential; must be recommended; must have offender's consent
- a drug testing requirement [23]
only available within a drug treatment requirement; must have offender's consent
- an intoxicating substance treatment requirement [24]
must be recommended; must have offender's consent; cannot be imposed unless the court is satisfied that the offender is dependent on, or has a propensity to misuse, intoxicating substances
- an education requirement [25]
must consult local education authority; not to extend beyond compulsory school age

- an electronic monitoring requirement [26] to secure compliance with other requirements
- A YRO may also be made with an intensive supervision and surveillance requirement [3] and/or a fostering requirement [4] but only if
 - (a) the offence is punishable with imprisonment; and
 - (b) the court is of the opinion that the offence is so serious that otherwise a custodial sentence would be appropriate; and
 - (c) if the offender is under 15 he is a persistent offender.

The full conditions for and detail of each requirement are set out in [CJIA Sch.1](#) and summarised in the Sentencing Referencer.

4. Passing the sentence

The court must:

- (1) Complete the steps set out in [chapter S3 above](#).
- (2) State that
 - (a) the offence, or the combination offences, is serious enough to warrant such a sentence;
 - (b) the sentence is the least that is commensurate with the seriousness of the offence/s;
 - (c) (if it is the case) the court has had regard to time spent on remand/in secure accommodation in imposing the requirement/s attached to the order.
- (3) Specify and explain the requirement/s attached to the order including the requirement that the offender keep in touch with the responsible officer in accordance with such instructions as he may be given by that officer.

Specify whether any breach of any requirement is to be dealt with in the Crown Court or the Youth Court and explain the court's powers in the event of any such breach or conviction of another offence.

NOTE: the example given for a Community Order in [chapter S5-1](#) above may easily be adapted for a YRO.

S5-3 Fines

[CJA 2003 ss.163 - 165](#)

ARCHBOLD 5-671; BLACKSTONE'S E15; SENTENCING REFERENCER 130

1. A fine may be imposed instead of, or as well as, dealing in another way with a D who is:
 - (1) convicted of any offence, other than one for which the sentence is fixed by law; or
 - (2) proved to be in breach of a requirement of a suspended sentence or community order.
2. A fine must reflect the seriousness of the offence/s and account must be taken of D's financial circumstances.
3. Time may be given for payment either by allowing a fixed term for payment of the full amount or by setting instalments, with a date for the first payment. Payments are made through the Magistrates' Court.
4. A period of custody must be set in default of payment, except in the case of a limited company, which must not exceed the maximum period set out in [PCC\(S\)A s.139\(4\)](#) (see table below). Consecutive terms may be set when more than one fine is imposed.

Example 1: D is a limited company

For this offence the company will be fined the sum of £250,000. This will be paid through the Magistrates' Court and must be paid within 28 days.

Example 2: D is an individual

For this offence you will be fined the sum of £250. This will be paid through the Magistrates' Court and you will receive a notice telling you where and how to make payment. The first instalment will be paid by {date}. If you fail to pay the fine, or any instalment of it, you will go to prison for 10 days.

5. Maximum periods in default

Amount	Period
Not exceeding £200	7 days
Exceeding £200 but not exceeding £500	14 days
Exceeding £500 but not exceeding £1000	28 days
Exceeding £1000 but not exceeding £2500	45 days
Exceeding £2500 but not exceeding £5000	3 months
Exceeding £5000 but not exceeding £10,000	6 months
Exceeding £10,000 but not exceeding £20,000	12 months
Exceeding £20,000 but not exceeding £50,000	18 months
Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1,000,000	5 years
Exceeding £1,000,000	10 years

S6 OTHER ORDERS

S6-1 Absolute Discharge

PCC(S)A s.12

ARCHBOLD 5-169; BLACKSTONE'S E12; SENTENCING REFERENCER 67

1. An absolute discharge may be imposed in a case in which the court "is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender that it is inexpedient to inflict punishment".
2. An absolute discharge may be combined with the following orders, but no others:
 - (1) Compensation
 - (2) Deprivation
 - (3) Restitution
 - (4) any disqualification
 - (5) recommendation for deportation
 - (6) costs
 - (7) confiscation order
 - (8) exclusion order under LP(ECP)A 1980
 - (9) unlawful profit order

Example

You have pleaded guilty to/been convicted of the offence of {specify} but it is neither necessary nor appropriate to impose any punishment because {reason/s}. You will therefore be absolutely discharged. This means that you will hear no more about this: this case is at an end.

S6-2 Conditional Discharge

PCC(S)A s.12

ARCHBOLD 5-169; BLACKSTONE'S E12; SENTENCING REFERENCER 67

1. A conditional discharge may be imposed in a case in which the court "is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender that it is inexpedient to inflict punishment". but wishes to reserve the power to do so, for a fixed period, if there is any further offending of any kind.
2. The maximum period for a conditional discharge is 3 years.
3. A conditional discharge may be combined with the following orders:
 - (1) Compensation
 - (2) Deprivation
 - (3) Restitution
 - (4) any disqualification
 - (5) recommendation for deportation
 - (6) a football banning order
 - (7) an anti-social behaviour order/criminal behaviour order (for proceedings commenced after 20 October 2014)
 - (8) costs
 - (9) confiscation order
 - (10) exclusion order under LP(ECP)A
 - (11) unlawful profit order
 - (12) serious crime prevention order (see SCA 2007 ss.19(7) and 6)
4. If the person discharged commits a further offence during the period of the discharge he may be brought back before the court and sentenced for the original offence in any way that would have been possible if he had just been just convicted of it.

Example

You have pleaded guilty to/been convicted of the offence of {specify} but it is neither necessary nor appropriate to impose an immediate punishment and so I propose to discharge you conditionally for a period ofmonths/years. That means that so long as you commit no further offence there will be no punishment, but if you commit a further offence in that period of months/years you will be brought back to court and sentenced in respect of this offence and the further offence.

S6-3 Binding Over

ARCHBOLD 5-177; BLACKSTONE'S E13.8; SENTENCING REFERENCER 34

To come up for judgment

1. The Crown Court has power on conviction to bind D over to come up for judgment. It is most used when a D from another jurisdiction has committed an offence, which is not the most serious, and he expresses a firm intent to return to his own country in the immediate future.
 - (1) It is a common law power.
 - (2) It is an alternative to a sentence.
 - (3) The effect is to bind over D on a recognisance to come up for judgment and sentence in the event of breach of the condition specified in the order (usually to leave the country by a specified date)..
 - (4) D's consent must be obtained.

Example

I have been told that you intend to leave this country on {date} and return to {place} and have been shown confirmation of your booking. In these circumstances, as an alternative to sentencing you for this offence, I am going to bind you over to come up for judgment.

This means that so long as you leave this country on {date} you will receive no punishment. But if you do not leave you will be brought back before the court for sentence. Do you understand? [Answer] Do you consent? [Answer]

To refrain from specific conduct or activity

2. Where it appears that there is a real risk of harassment or causing fear of violence to another, the court is likely to consider its powers to make a restraining order rather than a bind over: see [chapter S7-11 below](#).
3. A power to bind over to keep the peace and be of good behaviour derives from the Justices of the Peace Acts 1361 and 1968. However, in light of the judgment of the ECHR in [Hashman and Harrup v. U.K.](#)¹, a binding-over order in such terms is too vague to comply with the requirement set out in the Convention that it should be "prescribed by law" (violation of Article 10). The court should therefore, rather than bind a person over to keep the peace and/or be of good behaviour, identify the specific conduct or activity from which that person must refrain.²

¹ [2011] ECHR 1658

² [CPD VII Sentencing J.2 and 3](#)

4. This power does not depend on a conviction. It is a power that may be used against Ds, whether convicted or acquitted, or witnesses, but it is rarely used against anyone who is not convicted. In the absence of a conviction the court must be satisfied that a breach of the peace involving violence or an imminent threat of violence has occurred, or that there is a real risk of violence in the future.
5. On conviction, it can be used as an alternative to sentence.
6. In the absence of conviction, either D's consent must be obtained or the violence, imminent threat of violence, or real risk of violence in the future must be proved. This power is very rarely used in the absence of a conviction or consent.
7. The effect is to bind over D in a sum of money, to be set according to his means, to refrain from specific conduct or activity for a set period.
8. D must be told that if he is proved to have been in breach of the bind over he is liable to forfeit all or part of the sum in which is to be bound.
9. A witness who has given evidence may be bound over.

Example

I have been told that you are prepared to be bound over to/not to {specify}. Is that right? [Answer]

In view of what I have been told about your means, I am going to bind you over to/not to {specify} for (period) in the sum of £.....

This means that so long as you {specify} you will hear no more about this. But if in the next (period) it is proved to the court that you have {specify}, you will be liable to pay all or part of the sum of £..... Do you agree to be bound over on these terms? [Answer]

S6-4 Deferring Sentence

[CJA 2003 s.278](#) and [Sch.23](#)

ARCHBOLD 5-45; BLACKSTONE'S D20.103; SENTENCING REFERENCER 86

1. The purpose of deferring sentence is to enable the court to have regard to D's conduct after conviction; in particular to see whether any positive change of circumstances is maintained and, if appropriate, any reparation is made. The circumstances in which such an order will be appropriate are relatively rare.
2. The court must identify the need for, and the purpose of, a deferment of sentence.
3. Deferment cannot be ordered without D's consent. Before seeking D's consent the court must explain to D the purpose of deferment and any requirements that are to be made of him in the intervening period.
4. The requirements that may be made of D may include residence in a particular place and the making of reparation.
5. The court may also impose conditions of residence and co-operation with the person appointed to supervise D.
6. D must consent to deferment and undertake to comply with any requirements in the intervening period.
7. Sentence should not be deferred unless the sentencer is prepared to pass a sentence that does not involve immediate custody if D complies with the requirements of deferment.
8. The date to which sentence is deferred must be specified and be within 6 months of the order for deferment.
9. The court may appoint a probation officer or any other person the court thinks appropriate to supervise D during the period of deferment.
10. If D fails to adhere to the requirements or commits a further offence he may be brought back before the court and sentenced on a date before that originally fixed.
11. A transcript must be ordered of the reasons given for, and the terms of, deferment; copies to be provided to D and the supervising officer.
12. The court should order a report upon D from the supervising officer or in the absence of supervision the probation service for the date of sentence.
13. The judge or recorder who defers sentence must make arrangements to hear the case on the date set for sentence; it is wrong for a sentencer to "release" such a case.

14. Imposing the deferment

The court must

- (1) Explain the reasons for deferment.
- (2) Identify clearly the requirements with which D would be expected to comply.
- (3) Obtain undertakings and consent from D personally.
- (4) Set the date for the deferred sentence.
- (5) Direct that a short progress report should be written by the person supervising D.
- (6) Explain the consequences of compliance with or failure to comply with the undertakings given.
- (7) Direct that a transcript of the court's remarks must be prepared [within 14 days] and be served on D [via solicitor], on the court and on any person supervising him.

Example

As you have heard, I am thinking about deferring sentence: that means, in this case, putting it off for a period of 4 months. The reason I would do so is that {e.g. although your offence qualifies for a custodial sentence you have e.g. moved away from the area where these offences were committed/ ceased to associate with the people you committed this offence with/renewed your relationship with your father/got a job/agreed to take part in the restorative justice programme with your victim/s}.

Because of this I am thinking of putting you to the test. But if I am to defer sentence I need you to agree and undertake to do these things;

1. To stay away from {place – e.g. as shown on a map};
2. To do your best to keep your job at {employer};
3. To take part in the restorative justice programme.

I know that your advocate has said that you would agree to this but I need to hear this from you. Do you undertake to do all of these things? [Answer]

In addition, I would make it a condition firstly that you continue to live with your father at {place} and secondly that you co-operate fully with your supervising probation officer.

Do you agree to sentence being deferred – that is put off - on these terms? [Answer]

[Assuming D's consent] I will defer sentence for 4 months: that is until {date} and on that date you will either come back to this court or to another court where I shall be and I shall sentence you. In the meantime you must do all of the things which you have agreed to do and comply with the conditions which I have imposed. If you have succeeded, then I will not sentence you to an immediate term of imprisonment. If you have not succeeded, or if you have been convicted of any further offence, I will have no alternative but to send you to prison.

Your supervising officer will prepare a short report about your progress before we meet again; and I also direct that a transcript of what I have just said to you must be prepared by {date} and provided to you (through your solicitors), to your supervising officer and to the court.

S6-5 Hospital, Guardianship and Section 45A MHA Orders

[MHA ss.37 – 41](#) and [45A and 45B](#)

ARCHBOLD 5-1229 and 5-1236; BLACKSTONE'S E22.1 and E22.5;

SENTENCING REFERENCER 152, 155, 157 159 and 233

Criteria for making a s.37 order

1. [MHA s.37](#) provides the court with power
 - (1) where a mentally disordered D is convicted:
 - (a) **either** to make an order for him to be admitted to and detained at a specified hospital;
 - (b) **or**, in the case of a D who is aged 16 or over whose disorder can be managed without admission to hospital, to make an order placing him under guardianship of the local social services authority (or person approved by that authority);
 - (2) where a mentally disordered D (a) having been found unfit to plead or stand trial, is found to have done an act/made an omission, or (b) is found not guilty by reason of insanity, to make an order for him to be admitted to and detained at a specified hospital.
2. The court must be satisfied as follows:
 - (1) that, on the written or oral evidence of 2 registered medical practitioners, at least one of whom must be approved under [MHA s.12\(2\)](#)
 - (a) D is suffering from mental disorder; and
 - (b) **either** that the mental disorder is of a nature or degree which makes it appropriate for him to be detained in hospital for medical treatment **and** treatment is available;
 - (c) **or**, if a convicted D is aged 16 or over, that the mental disorder is of a nature or degree which warrants him being received into guardianship; and
 - (2) that, having regard to all the circumstances (including the nature of the offence, D's character and antecedents and the other ways of dealing with him), an order under s.37 is the most suitable way of doing so.
3. When making a hospital order the court must also be satisfied that arrangements have been made for D's admission to a specified hospital within 28 days of the date of the making of the order.
4. When making a guardianship order there is no requirement that the mental disorder is treatable but the court must be satisfied that the authority or approved person is willing to receive D into guardianship.
5. When making such orders it is important to demonstrate that all the statutory criteria have been met.

Example

[Having set out the facts of the case] Having heard the medical evidence which has been given in court today by Dr. and having read the reports prepared by Dr. and Dr. all of whom are approved by the Secretary of State under section 12(2) of the Mental Health Act 1983:

I am satisfied that

- You are suffering from a mental disorder, namely {disorder}
- This disorder is of a nature which makes it appropriate for you to be detained in a hospital for medical treatment; and
- Appropriate medical treatment is available for you at {place}.

I am of the opinion that

- because of all the circumstances of your case including
 - the nature of the offence of {offence} to which you have pleaded guilty/of which you have been convicted/of which you have been found not guilty by reason of insanity/the act which you are found to have done}; and
 - your character and your past [antecedents], which includes a longstanding and complicated history of mental illness;
- and having considered all the other available ways in which I might deal with you

the most suitable method of dealing with your case is by making an order under section 37 of the Mental Health Act 1983.

I therefore make an order that you will be {re-} admitted to and detained at {place}. I am satisfied that arrangements have been made for you to be {re-} admitted within 28 days to this hospital {where you have already been for many months}.

[In some cases it may be appropriate to add: I make it clear that the order which I have made is not a punishment but is for your own wellbeing and that of the public.]

Criteria for making a s.41 restriction order

6. MHA s.41 provides the court with power, on making a hospital order, to order that D is subject to special restrictions (a restriction order) if it appears to the court, having regard to the nature of the offence, D's antecedents and the risk of his committing further offences if at large, that it is necessary to do so in order to protect the public from serious harm.
7. At least one of the registered medical practitioners whose evidence is taken into account must have given evidence orally.
8. The court must make a restriction order when it makes a hospital order under s. 37 in cases where the sentence is fixed by law (murder) and D (a) having been found unfit to plead or stand trial, is found to have done an act/made an omission, or (b) is found not guilty by reason of insanity.

Example

I have also considered whether this order should be subject to special restrictions {which are specified in section 41 of the Act}. Having heard the evidence of Dr. I am satisfied that because of the nature of your offence/act and also having regard to your past (including your history of mental illness) and to the risk that you will commit further offences if you are not detained, it is necessary to protect the public from serious harm and it is not possible to say for how long that will be so.

Accordingly I order that you will be subject to the special restrictions set out in section 41 of the Mental Health Act 1983 without limit of time.

9. [MHA s.45A](#)

MHA s.45A provides the court with power to make a hospital direction and a limitation direction in relation to a D who is also sentenced to imprisonment (i.e. D must be aged 21 or over) so that on completion of treatment D will be transferred to prison for the remainder of his sentence instead of being released from hospital.

Orders under this provision are usually made in conjunction with very long or life sentences. The CACD has given guidance on the order in which the criteria for the imposition of such orders should be addressed in the case of *R. v. Vowles*³ as follows [para 54]:

“i) As the terms of s.45A (1) of the MHA require, before a hospital order is made under s.37/41, whether or not with a restriction order, a judge should consider whether the mental disorder can appropriately be dealt with by a hospital and limitation direction under s.45A.

ii) If it can, then the judge should make such a direction under s.45A(1). This consideration will not apply to a person under the age of 21 at the time of conviction as there is no power to make such an order in the case of such a person as we have set out at paragraph 19 above.

iii) If such a direction is not appropriate the court must then consider, before going further, whether, if the medical evidence satisfies the condition in s.37(2)(a) (that the mental disorder is such that it would be appropriate for the offender to be detained in a hospital and treatment is available), the conditions set out in s.37(2)(b) would make that the most suitable method of disposal. It is essential that a judge gives detailed consideration to all the factors encompassed within s.37(2)(b). For example, in a case where the court is considering a life sentence under the Criminal Justice Act 2003 as amended in 2012 (following the guidance given in in Attorney General's Reference (No.27 of 2013), *R v Burinskas* [\[2014\] 1 WLR 4209](#)), if (1) the mental disorder is treatable, (2) once treated there is no evidence he would be in any way dangerous, and (3) the offending is entirely due to that mental disorder, a hospital order under s.37/41 is likely to be the correct disposal.

³ [2015] EWCA Civ 56

iv) We have set out the general circumstances to which a court should have regard but, as the language of s.37(2)(b) makes clear, the court must also have regard to the question of whether other methods of dealing with him are available. This includes consideration of whether the powers under s.47 for transfer to prison for treatment would, taking into account all the other circumstances, be appropriate.”

10. Because directions under this section are made in conjunction with a sentence of imprisonment, if a hospital direction is made, a limitation direction must also be made.

Example

For the offence of {specify} I sentence you to {specify term} imprisonment and I direct, under the provisions of section 45A of the Mental Health Act 1983, that in the light of the psychiatric evidence namely {specify} the criteria for a hospital order are met; and so instead of being removed to and detained in a prison, you will be removed to and detained in {specify hospital}. You will be subject to the special restrictions set out in section 41 of the Mental Health Act 1983 without limit of time.

What this means is that you will be detained in hospital for as long as necessary. If and when it is no longer necessary and if your sentence has not expired you will be transferred to prison. Once in prison you will serve the remainder of the sentence which I have imposed.

[Here explain the prison sentence and release provisions as appropriate, but add: On release from prison, in addition to the conditions on your licence you will also be subject to the conditions of your release from hospital.]

S7 ANCILLARY ORDERS

S7-1 Compensation Orders

[PCC\(S\)A s.130](#) and [LASPO s.63](#)

ARCHBOLD 5-691; BLACKSTONE'S E16; SENTENCING REFERENCER 60

1. The court must consider making a Compensation Order in every case where it is empowered to do so: this includes most cases in which personal injury, loss or damage has been caused. There are restrictions on the circumstances in which compensation may be awarded in road traffic accident cases and it is essential to consider with care the provisions of [PCC\(S\)A s.130\(6\)](#).
2. If no order is made the court must give reasons.
3. The prosecution and defence should be invited to make submissions as to the appropriateness and amount of the proposed order.
4. The court must consider the means of the offender to ensure that payment of the order may be completed within a reasonable time.
5. In making the order the full name of the recipient should be specified.
6. Time must be set for the payment of instalments but no sentence in default can be imposed unless the order is for £20000 or more, in which case it is enforceable as a fine of such an amount.
7. Enforcement is through the Magistrates' Court. If the amount of the order exceeds £20000 the Crown Court has power to enlarge the powers of the Magistrates' Court if it considers that the maximum term of 12 months is inadequate, as follows:

Amount	Maximum term
Not exceeding £50,000	18 months
Not exceeding £100,000	24 months
Not exceeding £250,000	36 months
Not exceeding £1,000,000	60 months
Over £1,000,000	120 months

A useful guide to quantum for personal injury awards may be found in the Magistrates' Court Sentencing Guideline: see Blackstone's supplement 1 SG-225.

Example: compensation and no separate penalty

For this offence of common assault you will pay £500 compensation to your victim {name}. This is not intended to be full compensation for the injury you caused, but it is the most that you can afford to pay within a reasonable time. Because of that I do not order any separate penalty, nor do I order you to pay any costs or statutory surcharge. The compensation must be paid at the rate of £10 per week. This will be paid through the Magistrates' Court and you will receive a notice telling you where to make payment. The first instalment will be paid by {date}.

S7-2 Confiscation Orders

Various statutes – see below

ARCHBOLD 5-736, 755 and 785; BLACKSTONE'S E19;

SENTENCING REFERENCER 70

1. Confiscation orders may be made under the provisions of a number of statutes, depending on the date and type of offence, as shown in the table below. The procedures and timetables to be followed under each Act are mandatory and it is essential to know and to follow the statutory framework in each case.

Offence	Statute
Any offence committed before 1st November 1995	Criminal Justice Act 1988
Any offence committed on/after 1st November 1995 but before 24th March 2003 – except DT in circumstances below	Criminal Justice Act 1988 as amended by the Proceeds of Crime Act 1995
Drug Trafficking: where every offence was committed on/after 3rd February 1995 but before 24th March 2003	Drug Trafficking Act 1994
Any offence committed on/after 24th March 2003	Proceeds of Crime Act 2002
Any offence committed on/after 24th March 2003, where the order is made after 1st June 2015	Proceeds of Crime Act 2002 as amended by the Policing and Crime Act 2009, the Crime and Courts Act 2013 and the Serious Crime Act 2015 – see Home Office Circular issued 22.05.15

2. Although often the parties agree some or all of the figures in such cases, ultimately it is for the Judge to make a proportionate order following his assessment of the facts.
3. Where an order is made following an agreement by the parties this should be recorded in the order and it is prudent to ensure that D signs the schedule of available or realisable assets (form 5050A). Where an order is made after a contested hearing, it will follow the court's findings of fact.
4. The full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made unless the court is satisfied that D is unable to pay the full amount on that day in which case the court may make an order requiring whatever cannot be paid on that day to be paid in a specified period, or specified periods each of which relates to a specified amount. Any specified period must not exceed 3 months from the date of the order. If within any specified period D applies to the court for that period to be extended the court may, on being satisfied that D has made all reasonable efforts to comply, make an order extending the period for up to 6 months from the date of the order.

5. Sentences in default:

- (1) In respect of orders made before 1st June 2015 the maximum period to be served in default is the same as for non-payment of fines: see the table in Chapter 5-3.
- (2) In respect of orders made on or after 1st June 2015 the following maxima apply (s. 10 Serious Crime Act 2015):

Amount	Period
£10,000 or less	6 months
More than £10,000 but no more than £500,000	5 years
More than £500,000 but no more than £1,000,000	7 years
More than £1,000,000	14 years

Example

I find that:

- the benefit from your offending/criminal conduct is £ {amount};
- the available amount (that is the value of your realisable assets) is £ {amount}

I therefore make a confiscation order in the sum of £ {the available amount}.

Either: I direct that the full amount must be paid today.

Or: I am satisfied that you are not able to pay the full amount of this sum today and so I direct that the sum of £x must be paid today and the balance, namely £y, must be paid on or before {specify date, not to be more than 3 months from the date of the order}.

In default of payment of the total sum of £ {full available amount} you will serve a sentence of {duration} [If appropriate: this will be served consecutively to the sentence for the offence/s {which you are already serving}].

S7-3 Deprivation Orders

[PCC\(S\)A s.143](#)

ARCHBOLD 5-726; BLACKSTONE'S E18; SENTENCING REFERENCER 88

1. The power to make a deprivation order arises where property, which was in D's possession at the time of committing an offence or has been seized from him, was used for the purpose of committing or facilitating any offence.
2. When considering an order the court must have regard to the value of the property and the likely financial and other effects of the making of an order on the defendant.
3. The prosecution and defence should be invited to make submissions as to the appropriateness of the proposed order.

Example

At the time you were arrested you were in possession of a {item} which you had used for the purpose of committing your offence/s. I direct that you be deprived of this property under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000.

***NOTE:** see also forfeiture orders in [chapter S7-8](#) below.

S7-4 Disqualification from acting as a Director of a Company etc.**CDDA s.1**

ARCHBOLD 5-1116; BLACKSTONE'S E21.8; SENTENCING REFERENCER 100

1. Under CDDA ss.1 and 2 the court may make a disqualification order when D has been convicted of an indictable offence in connection with the promotion, formation, management, liquidation or striking off of a company or in connection with the receivership or management of a company's property.
2. It is not necessary that D was a director of any company involved in the offence(s).
3. Disqualification has the effect that D must not act as an insolvency practitioner or, without leave of the court, be a company director or act in the promotion, formation or management or liquidation of a company.
4. The maximum period for which disqualification may be imposed is 15 years. There is no minimum period.

Example

The offences of which you have been convicted were committed while you were dishonestly involved in the management of {company}. I direct that you be disqualified from acting as a director of any company for a period of {number} years. This means that you must not, without the court's permission, be a company director or act in the promotion, formation, management or liquidation of any company during this period.

NOTE: On application to the court where D has been a director of a company which has become insolvent, where D's conduct makes him unfit to be concerned in the management of a company the court must make a disqualification order (CDDA s.6).

S7-5 Disqualification from driving and endorsement of driving licence

NOTE: In respect of any offences committed on or after 13th April 2015, where a court imposes a custodial sentence the court must impose an extension period on any disqualification, whether under RTOA or PCC(S)A, in respect of the time that D is or is to be in custody (usually one half of the sentence): RTOA ss.35A and 35B and PCC(S)A ss.147A and 147B (inserted by [CAJA s.137](#) and [Sch.16](#) and amended by [CJCA s.30](#)).

Example: where the length of disqualification is extended because D will be serving a sentence of imprisonment

But for the fact that you are to serve a sentence of four years' imprisonment for this offence, I would have ordered you to be disqualified from driving for a period of two years. Because you will serve up to half the sentence of imprisonment in custody, I extend the period for which you will be disqualified from driving from two years to a total of four years. You must then pass an extended driving test. This means that when your disqualification of four years has expired you can apply for a driving licence but the licence you get will be provisional until you have passed the extended test.

Road Traffic Acts – Road Traffic Act 1988 and Road Traffic Offenders Act 1988

ARCHBOLD 5-1106 and 32-228; BLACKSTONE'S C7.8 and E21.11;

SENTENCING REFERENCER 102, 107 and 111

1. An order of disqualification "for holding or obtaining a driving licence" is compulsory in the case of some offences and discretionary in others.
2. **Compulsory disqualification**
 - (1) Disqualification is compulsory for some more serious motoring offences. The full list of offences which attract compulsory disqualification appears in [RTOA s.34](#). There are a variety of minimum periods: e.g. for causing death by dangerous driving or causing death by careless driving while under the influence of drink or drugs the minimum period is 2 years' disqualification.
 - (2) Certain repeat offences carry longer minimum disqualifications: e.g. for a second offence of driving with excess alcohol within 10 years the minimum period is 3 years' disqualification.
 - (3) In the case of certain serious offences, e.g. dangerous driving, the disqualification must be accompanied by an order that upon completion of the disqualification the offender pass the extended driving test.

Example

You will also be disqualified from driving for a period of two years **and** until you have passed an extended driving test. That means that when your disqualification of two years has expired you can apply for a driving licence but the licence you get will be provisional until you have passed the extended test.

3. Discretionary disqualification

A number of less serious road traffic offences, whilst they do not attract compulsory disqualification may be met with discretionary disqualification. These are identified in [RTOA Sch. 2](#): see Archbold 32-312 and Blackstone's C8.1.

4. Interim disqualification

The court has power to order an interim disqualification when adjourning or deferring sentence after conviction: [RTOA s.26](#).

5. Licence endorsement and totting up

(1) A wide variety of motoring offences require the sentencer to endorse any driving licence D has or may come to have with "penalty points".

Disqualification is compulsory (subject to special reasons or mitigating circumstances) where 12 points have been accumulated within 3 years: [RTOA s.35](#).

(2) The list of offences where a licence must be endorsed with penalty points is set out in [RTOA Sch. 2](#).

General Powers of Disqualification from Driving – PCC(S)A sections 146 and 147

ARCHBOLD 5-1106 and 5-1107; BLACKSTONE'S E21.11 and E21.14;
SENTENCING REFERENCER 105

6. The court has a general power to disqualify from driving as a penalty instead of or in addition to any other penalty [\[s.146\]](#) and also on commission of a crime involving the use of a motor car [\[s.147\]](#).

S7-6 Exclusion from licensed premises**LICENSED PREMISES (EXCLUSION OF CERTAIN PERSONS) ACT 1980**

ARCHBOLD 5-1090; BLACKSTONE'S E21.1; SENTENCING REFERENCER 119

1. Orders may only be made where D committed an offence in which violence was used or threatened on licensed premises.
2. An order may not be made as the only sentence or order for the offence.
3. Orders exclude D from entering specified licensed premises (by reference to named premises or premises otherwise specified, e.g. by area).
4. An order may be for no less than 3 months or more than 2 years.
5. The breach of an order is a summary offence punishable by a fine up to level 3 or one month's imprisonment.

Example

In addition to the sentence of {specify} for the offence of {specify} I make an Exclusion from Licensed Premises Order, which means that you must not go into {specify public houses}. This order will last for {period} from today.

If you disobey this order you will be committing a further offence, which is punishable with a fine or imprisonment.

S7-7 Football Banning Orders

Football Spectators Act 1989

ARCHBOLD 5-1067; BLACKSTONE'S E21.3; SENTENCING REFERENCER 133

1. A Football Banning Order operates:
 - (1) to prohibit a D who has been convicted of a relevant offence from attending regulated football matches in England and Wales **and**
 - (2) when a representative team from England or Wales or a Premier or Football League team from England, Wales or Scotland is playing a match outside the UK, to require him to surrender his passport from 5 days before the game until after it has been concluded.
2. When D is convicted of a relevant offence and the court is satisfied there are reasonable grounds to believe an order would help prevent violence or disorder at regulated football matches the court **must** make an order.
3. An order may only be imposed in addition to another sentence or a conditional discharge.
4. If the court does not make an order it must state the fact in open court and give reasons as to why the grounds are not made out.
5. If the offender is sentenced to custody on conviction of a relevant offence the banning order must be for not less than 6 nor more than 10 years.
6. If the offender is not sentenced to custody the banning order must be for not less than 3 nor more than 5 years.
7. A relevant offence is one listed in [Schedule 1](#) of the Act.
8. The breach of an order is a summary offence punishable with a fine up to level 5 or 6 months' imprisonment.

Example

In addition to the sentence of {specify} for the offence of {specify}, because that offence was committed at the ground of {specify} you will be banned from attending any match at {specify ground} or any other football league ground as explained in the order for a period of {number} years. If you do not obey the order you will be committing another offence and may be fined or sent to prison.

S7-8 Forfeiture Orders *

***NOTE:** see also deprivation orders in [chapter S7-3](#) above.

MDA 1971 section 27

ARCHBOLD 27-118; BLACKSTONE'S E18.7; SENTENCING REFERENCER 139

1. Where D is convicted of an offence under MDA or a drug trafficking offence as defined by PoCA the court may order forfeiture of anything (drugs, money, equipment, mobile phones etc.) that it is satisfied relate to the offence, and that it/they is/are to be destroyed or dealt with in such manner as the court may order.
2. A forfeiture order must not be made when the court postpones PoCA confiscation proceedings.
3. The usual order in respect of money forfeit under this provision is that it be forfeit and used by the police force conducting the investigation.
4. Where items have been exhibited in the case it is helpful to the court administration and the police to identify them by reference to their exhibit numbers.

Example

I order that the {item e.g. drugs, electronic scales, hydroponic equipment, money} seized by the police, exhibit numbers {specify} are forfeit under section 27 of the Misuse of Drugs Act 1971.

[As appropriate:

- The drugs will be destroyed
- The money recovered from D will be used by the {name of investigating Police Force}.
- The equipment will be sold and the proceeds used by the {name of investigating Police Force}.]

Other Forfeiture Orders

5. Other statutes give the court power to order forfeiture of items connected with crime. For example:
 - (1) Firearms: [Firearms Act 1968 s.52](#).
 - (2) Offensive weapons: [Prevention of Crime Act 1953 s.1\(2\)](#).
 - (3) Terrorism: [Terrorism Act 2000](#) ss.17, 23, 23A, 23B and 120A; [Terrorism Act 2006](#) ss.2 – 11A.
 - (4) Crossbows: [Crossbows Act 1987 s.6\(3\)](#).
 - (5) Knives: [Knives Act 1997 s.6](#).
 - (6) Obscene publications: [OPA 1959 s.3](#) / [OPA 1964 s.1\(4\)](#).

- (7) Forged/Counterfeited items: [FCA 1981 ss.7](#) and 24.
- (8) Written material (racial hatred): [POA 1986 ss.25](#).
- (9) Magazines etc. likely to fall into the hands of children: [CYP\(Harmful Publications\) A 1955 s.3](#).
- (10) Vehicle, ship, aircraft (immigration offences): [IA 1971 s.25C](#).
- (11) Documents (incitement to disaffection offences): [IDA 1934 s.3](#).

S7-9 Parenting Orders

CDA 1998 sections 8 – 10

ARCHBOLD 5-1282; BLACKSTONE'S E14; SENTENCING REFERENCER 185

1. An order requiring the parent of a young D convicted of an offence to comply with requirements set out in the order, which may include an order to attend for counselling.
2. A parenting order, while required by statute when the relevant condition is met, will normally be made only when specifically recommended by the Youth Offending Service in a PSR.

NOTE: No example is given for this order. If such an order is appropriate, its terms will be set out in the report from the Youth Offending Service.

S7-10 Restitution Orders**[PCC\(S\)A 2000 section 148](#)**

ARCHBOLD 5-711; BLACKSTONE'S E17; SENTENCING REFERENCER 229

1. A restitution order may be made for the return of goods that have been stolen or otherwise unlawfully removed, or the proceeds of their sale, to the person lawfully entitled to them.
2. The order should be made only where the evidence identifying the goods or the proceeds of their sale is clear and there is no issue as to title.
3. Because the order is for the return of goods no issue arises as to the means of the defendant: c.f. compensation orders.
4. Orders may be made before completion of PoCA proceedings.

Example

I make a restitution order in respect of {property} the subject of count 1 of the indictment and direct that it be returned to its owner {specify name} forthwith.

S7-11 Restraining Orders

PROTECTION FROM HARASSMENT ACT 1997 sections 5 and 5A

ARCHBOLD 19-353; BLACKSTONE'S E21.34; SENTENCING REFERENCER 230

1. A restraining order may be made following D's conviction or, if the court considers it necessary, on acquittal of a person for any offence, for the purpose of protecting a person from harassment or fear of violence.
2. If made on acquittal the court must be satisfied on the civil standard of proof of the facts that give rise to the necessity for an order.
3. A finding that a person has done the acts charged against him in proceedings under the Criminal Procedure (Insanity) Act 1964 is not an "acquittal" and therefore there is no power to make a restraining order.
4. Any order should be in precise terms.
5. An order is usually made for a fixed period but may be "until further order".
6. Although not prevented by the statute, an order should not be made if it is opposed by the person whom the court might otherwise seek to protect.
7. A person affected by the order, including D and/or the person to be protected, may apply for the order to be varied or removed.

Example

In order to protect {name of victim} from further assaults you will be subject to a Restraining Order. This means that you must have absolutely no contact with {name of victim} whatsoever: for example, you must not speak to her if you see her in town and there must be no phone calls, no face book messages (either from you or anyone passing on messages from you) and you must not go to her home.

This order will last for 5 years from today.

You will be given full details of the order before you leave court and I must warn you that if you were to disobey the order you would be committing a further offence, punishable with up to 5 years in prison.

S7-12 Serious Crime Prevention Orders

SERIOUS CRIME ACT 2007

ARCHBOLD 5-1148; BLACKSTONE'S D21.42; SENTENCING REFERENCER 239

1. Serious Crime Prevention Orders may only be made in the Crown Court¹, on conviction of an offender for a “serious offence”, or in the High Court² on application. In every case such orders may only be made on the application of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office.
2. In the Crown Court an order may only be made against a person who has been convicted of a “serious offence”, listed in [Part 1 of Schedule 1](#) of the Act, as amended by [s.47 Serious Crime Act 2015](#).
3. In the High Court an order may be made against a person who has been involved in “serious crime”, as defined by ss. 2 and 4 and Schedule 1 of the Act.
4. An order may only be made against a person who is over 18.
5. An order may last for up to 5 years; but with effect from 3rd May 2015 may be extended in the effect of (a) breach or (b) charge with a further serious offence during the term of the order.
6. Any judge who is considering making such an order must refer to the legislation.

NOTE: No example is provided because these orders may only be made on the application of those named above and a draft order, which will reflect the particular circumstances of the case, will always be attached to the application. While the draft will be subject to amendment after representations are made on behalf of the offender, it will always provide the basis for the making of the order if one is made.

¹ [S.19, Serious Crime Act 2007](#)

² [S.1, Serious Crime Act 2007](#)

S7-13 Sexual Harm Prevention Orders

SEXUAL OFFENCES ACT 2003 sections 103A – 103K, inserted by ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 section 113 and [Schedule 5](#)

ARCHBOLD 20-323; BLACKSTONE'S E21.24; SENTENCING REFERENCER 243

1. This order, which has superseded the Sexual Offences Prevention Order, may be made on D's conviction of a relevant sexual offence i.e. one listed in [Schedule 3](#) or [Schedule 5](#) of the Act, where the court is satisfied that it is necessary to make an order for the purpose of protecting the public or a member of the public from sexual harm.
2. Any order must be:
 - (1) tailored to meet the harm D represents;
 - (2) proportionate and limited to that which is necessary;
 - (3) made in terms that are enforceable.
3. A draft of the order should be supplied to the court and to D by the prosecution not less than 2 days before the hearing.
4. Orders must be in clear terms and capable of being understood by D without recourse to legal advice.
5. Orders may be for a fixed period of not less than 5 years or without limit of time.
6. The existence of an SHPO will operate to extend the notification requirements [see [chapter S8-1](#) below] until the expiry of the order: [SOA 2003 s.107\(4\)](#).
7. Orders may be renewed or varied on application to the court by D or an interested chief officer of police.
8. The **Examples** on the next page are based on those approved by the CACD in [R v Smith and others](#) [2011] EWCA Crim 1772.

Example 1: Computer use

The defendant is prohibited from:

1. using any device capable of accessing the internet unless
 - (i) it has the capacity to retain and display the history of internet use;
 - (ii) that capacity is and remains activated at all times; and
 - (iii) he makes the device available on request for inspection by a police officer;
2. deleting any history of internet use;
3. using the internet to contact or to attempt to contact any female whom he knows or believes to be under the age of 16;
4. possessing any device capable of storing digital images unless he makes it available on request for inspection by a police officer.

This order will last until {specify}/indefinitely.

Example 2: Contact with children

The defendant is prohibited from having any unsupervised contact of any kind with any {male and/or female} under the age of 16, other than

- (i) such as is inadvertent and not reasonably avoidable in the course of lawful daily life, or
- (ii) with the consent of the child's parent or guardian, provided that the parent or guardian has full knowledge of the defendant's convictions and has been provided with a copy of this order.

This order will last until {specify}/indefinitely.

Example 3: Living with children

The defendant is prohibited from:

1. living in the same household as any [male/female] under the age of 18 unless with the express approval of the Social Services department for that area;
2. having any unsupervised contact or communication of any kind with any [male/female under the age of 18, other than
 - (i) such as is inadvertent and not reasonably avoidable in the course of lawful daily life, or
 - (ii) with the consent of the child's parent or guardian, provided that the parent or guardian has full knowledge of the defendant's convictions and has been provided with a copy of this order, and with the express approval of the Social Services department for that area."

This order will last until {specify}/indefinitely.

S7-14 Travel Restriction Orders

CRIMINAL JUSTICE AND POLICE ACT 2001 section 33

ARCHBOLD 5-1141; BLACKSTONE'S E21.40; SENTENCING REFERENCER 274

1. A travel restriction order may be made on conviction of a drug trafficking offence as defined in [CJPA s.34](#).

NOTE: this definition is not the same as that in PoCA 2002.

2. The effect of an order is to prohibit D from leaving the UK for the period of the order, commencing on the date of his release from custody. D may be required to deliver up his passport, which is a natural pre-requisite to enforcing such an order.
3. The court has a power to make orders in all such cases. In particular
 - (1) Where D is sentenced to 4 years or more the court must consider making an order and make one if appropriate; and if it does not make an order the court must give reasons.
 - (2) It is appropriate to make an order where there is reason to believe that it will reduce the risk of re-offending on release from prison.
4. The minimum length of an order is 2 years from the date of D's release from custody.

Example

You will be subject to a Travel Restriction Order. This means that (if it is not already in the possession of the Police) you must arrange for the surrender of your passport to {specify} Police Station within 14 days; and for the period of {number} years following your release from custody you will not be allowed to leave the United Kingdom.

S8 REQUIREMENTS AND RECOMMENDATIONS

S8-1 Sexual offences notification requirement

[SEXUAL OFFENCES ACT 2003 sections 80 – 91](#)

ARCHBOLD 20-263; BLACKSTONE'S E23; SENTENCING REFERENCER 247

1. A defendant is subject to the notification requirements of the Act if he is convicted of an offence within [Schedule 3](#) of the Act.
2. The notification provisions are automatic.
3. The court is not required, and should not purport, to “order” a defendant to be “registered”. The duty on the court is to certify that the defendant has been convicted of a relevant offence and tell the defendant of his obligation to notify the police within 3 days of his conviction, if at liberty, or within 3 days of his release from custody of various personal particulars, including where he is living. See also [CrimPR 28.3](#).

Example

I certify that you have been convicted of a sexual offence so that you must, for a period of {number} years from the date of your conviction/for the rest of your life, keep the police informed at all times of your personal particulars, the address at which you are living and any alteration in the name you are using. You will be given full details of these requirements on a form at the end of this hearing.

4. Notification periods:

Disposal	Period
30 months' or more custody or Hospital order with restriction	Indefinite
More than 6 but less than 30 months' custody	10 years
Up to 6 months' custody or Hospital order (without restriction)	7 years
Caution	2 years
Conditional discharge	The period of the discharge
Any other disposal (including all community orders, fines, a verdict of Not Guilty by reason of insanity or a finding of being unfit to plead or tried but to have done the act charged)	5 years

NOTE:

- (1) Custody includes imprisonment, detention in YOI, D+TO and custody under s.91 PCC(S)A.
- (2) When a sentence of custody is suspended, the notification period is determined by the length of the term of custody. The fact that the sentence is suspended, or whether or not the sentence is ultimately served, does not affect this.
- (3) When an extended sentence is imposed, the length of the sentence for notification purposes is the full length of the sentence and not only the custodial term.
- (4) Periods must be halved for offenders under the age of 18 at the date of the conviction/caution/finding.
- (5) When a D+TO is imposed, the notification period is determined by the custodial element of the sentence. For example, the custodial element of a D+TO of 12 months being 6 months, the notification period would normally be 7 years but, as the offender will be under 18 at the date of conviction, the notification period is 3½ years.

S8-2 Barring Requirements

SAFEGUARDING VULNERABLE GROUPS ACT 2006 Schedule 3 paragraph 25 as amended by PROTECTION OF FREEDOMS ACT 2012 Part 5 Chapter 1

ARCHBOLD 5-1119; BLACKSTONE'S E21.19; SENTENCING REFERENCER 28

1. Paragraph 25 of Schedule 3 of the Safeguarding Vulnerable Groups Act 2006, as amended by [Part 6 of Schedule 9 of the Protection of Freedoms Act 2012](#), provides as follows: "A court by or before which a person is convicted of an offence of a description specified for the purposes of paragraph 24(1)(a), or which makes an order of a description specified for the purposes of paragraph 24(1)(b), must inform the person at the time he is convicted, or the order is made, that that IBB [now the Disclosure and Barring Service] will, or (as the case may be) may, include him in the Barred list concerned".
2. [CrimPR 28.3](#) states that the court "must tell the defendant that the notification requirements apply, and under what legislation".
3. The combined effect of these provisions is to impose upon the court the obligation to inform (not "order") a defendant that he will or may be barred by the Disclosure and Barring Service from regulated activity with children and/or adults.
4. Whether a defendant must be barred or may, subject to making representations, be barred and whether the barring is from working in regulated activity with children or adults will depend on the type of offence and order/s made, subject in the case of some offences, to qualifications. This is a matter for the Disclosure and Barring Service and not for the Court.

Example

The offence of which you have been convicted is one which will (or may) make you subject to barring from working with children or others. You will be told of the restrictions under the Safeguarding Vulnerable Groups Act 2006 by the Disclosure and Barring Service.

S8-3 Deportation Recommendation

IMMIGRATION ACT 1971 section 6

ARCHBOLD 5-1256; BLACKSTONE'S E20; SENTENCING REFERENCER 218

1. No recommendation for deportation may be made unless D has been given at least 7 days' notice in writing.
2. A recommendation may be made if D is aged 17 or over and has been convicted of an offence punishable with imprisonment.
3. The criteria for making the recommendation is whether the defendant's continued presence in this country is to the detriment of the community.
4. Full reasons must be given if a recommendation is made.
5. The court should consider only the criminal conduct of the defendant while in this country; matters relating to conditions in his country of origin and/or his Convention rights are for the Home Secretary.
6. No recommendation should be made where the offender is sentenced to 12 months' imprisonment or more in respect of a single offence and is subject to the "automatic deportation" provisions of [ss. 32 - 39 UK Borders Act 2007](#).

Example

You have committed an offence of {specify}. I am satisfied that your continued presence in this country is to the detriment of the community for these reasons {specify}.

I therefore recommend to the Secretary of State that you should be deported.

S9 BREACHES ETC. OF SUSPENDED SENTENCES AND COMMUNITY ORDERS

S9-1 Breach, Revocation or Amendment of Suspended Sentences and Effect of Further Conviction

[CJA 2003 section 193](#) and [Schedule 12](#)

ARCHBOLD 5-547; BLACKSTONE'S E6.11; SENTENCING REFERENCER 261

Breach of requirement or conviction of an offence committed during the operational period: Sch. 12 para. 8

1. The offender will be brought before the court on summons or warrant.
2. If the offender has failed, without reasonable excuse, to comply with any community requirement or is convicted of an offence committed within the operational period:
 - (1) Unless it would be unjust to do so, the court must order the sentence to be brought into operation either in full or in part.
 - (2) If the sentence is brought into operation it may be ordered to run consecutively to or concurrently with any sentence imposed for any offence of which the offender has been convicted during the operational period.
 - (3) If the suspended sentence order had community requirements and it would be unjust to order the sentence to take effect or order the offender to pay a fine the court may amend the order by imposing more onerous community requirements or by extending the supervision or operational period
 - (4) If it would be unjust to order the sentence to take effect either in full or in part, the court may order the offender to pay a fine not exceeding £2500.
3. The question of whether it would be unjust to order the sentence to take effect is to be addressed by looking at all the circumstances including the extent to which the offender has complied with the community requirements and the facts of any further offence. If the court finds it would be unjust, reasons must be given.
4. A mental health treatment, drug rehabilitation or alcohol treatment requirement may not be amended without the offender's consent.

NOTE: The court has no power (a) to add requirements to a suspended sentence imposed without requirements or (b) to make "no order" on the breach of a suspended sentence.

Example 1: where suspended sentence brought into operation following breach of requirement, with the term not reduced

It is clear that you have not cooperated with the {specify requirement} at all since the sentence of {specify terms of the suspended sentence} was passed and that you are unable or unwilling to do so. Because of this the suspended sentence will be brought into operation in full: you will serve the sentence of {length of sentence}.

Example 2: where suspended sentence brought into operation following breach of requirement, with the term reduced because of some progress

Although you are in breach of the {specify} requirement of the suspended sentence imposed on {date} and it is not unjust to bring the sentence into operation, I give you credit for the fact that {e.g. initially you cooperated with the curfew requirement/you have performed some unpaid work} by reducing the length of the sentence. The sentence you will now serve is one of {specify}.

Example 3: where suspended sentence brought into operation following commission of a further offence, with the term reduced

The suspended sentence to which you were subject when you committed the offence of {specify} will be brought into operation but I take account of {e.g. your cooperation with the curfew requirement/the hours of unpaid work which you performed} by reducing the length of that sentence to {specify reduced term}. This will be served consecutively to the sentence of {specify} which you are to serve for {specify new offence/s}.

Example 4: where suspended sentence not brought into operation because it would be unjust to do so

Although you are in breach of the {specify requirement} of the suspended sentence passed on {date} I am satisfied that it would be unjust to bring the sentence into operation because {state reasons e.g. you only failed to do unpaid work on two occasions and you have since nearly completed all of the hours which were ordered}. In these circumstances instead of serving the sentence you will {specify e.g. do 20 extra hours of unpaid work/be fined £{amount}}.

[The effect of the order should then be explained as per examples given earlier in this work.]

Amendment: Schedule 12 paragraphs 13 to 22

5. The offender or the responsible officer may apply to the court.
6. Amendment may be ordered
 - (1) to cancel the community requirements if it is in the interests of justice;
 - (2) because of any change or proposed change of the offender's residence;
 - (3) to amend any community requirement, by cancelling or replacing it with another requirement listed in s.190(1) (though, as above, a mental health treatment, drug rehabilitation or alcohol treatment requirement may not be amended without the offender's consent);

- (4) to change a treatment requirement (mental health, drug rehabilitation, alcohol) on the report of a medical practitioner;
- (5) for drug rehabilitation reviews to take place without/with a hearing;
- (6) to extend, beyond 12 months, the period for completion of unpaid work.

S9-2 Breach, Revocation or Amendment of Community Order and Effect of Further Conviction

CJA 2003 section 79 and Schedule 8

ARCHBOLD 5-339; BLACKSTONE'S E8.30; SENTENCING REFERENCER 56

Breach of requirement: CJA 2013 Schedule 8 paragraph 10

1. The offender will be before the court on summons or warrant.
2. The court must take into account the extent to which the offender has complied with the order.
3. The court should have as its primary objective ensuring that the requirements of the order are completed if there is a realistic prospect of this being achieved.
4. On proof or admission that the offender has failed without reasonable excuse to comply with any requirement of the order the court must deal with him in one of the following ways:
 - (1) By making the requirements of the order more onerous. If the original order did not contain an unpaid work requirement one may be imposed and the minimum number of hours may be 20 rather than 40.
 - (2) By revoking the order and sentencing him for the offence in any way he could have been sentenced by the court that made the order. This applies to the breach of any original order, regardless of whether the offence giving rise to the original order carried a custodial sentence or not.
 - (3) Where the offender has wilfully and persistently failed to comply with an order which was made in respect of an offence which was **not** an offence punishable with imprisonment, by imposing a custodial sentence not exceeding 6 months.
 - (4) By ordering him to pay a fine of up to £2,500.

NOTE: the power to take no action on the breach, provided by s. 67 LASPO 2012 has been repealed by [Sch. 16 para. 22 CCA 2015](#).

Revocation: CJA 2003 Schedule 8 paragraph 14

5. The offender or the responsible officer may apply to the court for one or more requirements to be revoked. The circumstances in which such applications are made may include good progress or a satisfactory response to the requirements of the order.
6. If the court is to exercise its powers on the application of the responsible officer, the offender is summoned to appear and, if he fails to do so, the court may issue a warrant.
7. The court may either revoke the order or revoke the order and deal with the offender in some other way for the offence which gave rise to the order if it is in the interests of justice to do so having regard to circumstances which have arisen since the order was made.

8. If the court re-sentences it must take into account the extent to which the offender has complied with the requirements of the order.

Amendment: CJA 2003 Schedule 8 paragraphs 16 to 20

9. The offender or the responsible officer may apply to the court.
10. Amendment may be ordered :
 - (1) because of any change, or proposed change, of the offender's residence;
 - (2) to cancel or replace any requirements. A mental health treatment, drug rehabilitation or alcohol treatment requirement may not be amended without the offender's consent but, if the offender does not express his willingness, the court may revoke the order and deal with him for the offence in any way in which it could have done originally;
 - (3) to vary or cancel a treatment requirement (mental health, drug rehabilitation, alcohol) on the report of a medical practitioner;
 - (4) for drug rehabilitation reviews to take place without/with a hearing;
 - (5) to extend, beyond 12 months, the period for completion of unpaid work.

Subsequent conviction of an offence: CJA 2003 Schedule 8 paragraph 23

11. A subsequent conviction of an offence is not of itself a breach of an order.
12. Where an offender is convicted by the Crown Court or committed for sentence and it is in the interests of justice having regard to the circumstances which have arisen since the order was made, the Crown Court may (in respect of any community order still in force) either revoke the order or revoke the order and deal with the offender for the offence in respect of which the order was made in any way in which he could have been dealt with by the court which made the order.
13. If the court re-sentences it must take into account the extent to which the offender has complied with the requirements of the order.

NOTE: No examples are provided in this chapter because the consequences of breach etc. will be the imposition of orders of which examples have already been given.

S9-3 Breach, Revocation or Amendment of Youth Rehabilitation Orders and Effect of Further Conviction

CJIA 2008 Schedule 2

ARCHBOLD 5-380; BLACKSTONE'S E9.24; SENTENCING REFERENCER 292

Breach of requirement: CJIA 2008 Schedule 2 part 2 paragraph 8

1. The offender will be before the court on summons or warrant.
2. The court must take into account the extent to which the offender has complied with the order.
3. The court should have as its primary objective ensuring that the requirements of the order are completed if there is a realistic prospect of this being achieved.
4. On proof or admission that the offender has failed without reasonable excuse to comply with any requirement of the order the court may deal with him in one of the following ways:
 - (1) By allowing the order to continue as imposed.
 - (2) By imposing a fine of up to £2,500 (up to £250 if D is aged under 14)
 - (3) By amending the terms of the order to impose any requirement that could have been imposed in addition to or in substitution for any requirement(s) already imposed (save that a fostering requirement or extended activity requirement may not be imposed if there was no such requirement in the original order).
 - (4) By revoking the order and sentencing the offender in any way in which the court could originally have sentenced him for the offence.
 - (5) By imposing a YRO with intensive supervision and surveillance (Sch.8 para.12)
 - (6) By imposing a custodial sentence, where the YRO had a requirement of intensive supervision and surveillance and the offence in respect of which the order was made is punishable with imprisonment.
 - (7) By imposing 4 months' D+TO, where the YRO had a requirement of intensive supervision and surveillance and the offence in respect of which the order was made is not punishable with imprisonment.

Revocation: CJIA 2008 Schedule 2 part 3 paragraph 12

5. The offender or the responsible officer may apply to the court for one or more requirements to be revoked. The circumstances in which such applications are made may include good progress or a satisfactory response to the requirements of the order.
6. If the court is to exercise its powers on the application of the responsible officer, the offender is summoned to appear and, if he fails to do so, the court may issue a warrant.

7. The court may either revoke the order or revoke the order and deal with the offender in some other way for the offence which gave rise to the order if it is in the interests of justice to do so having regard to circumstances which have arisen since the order was made.
8. If the court re-sentences it must take into account the extent to which the offender has complied with the requirements of the order.

Amendment: CJIA 2008 Schedule 2 part 4 paragraph 13

9. The offender or the responsible officer may apply to the court.
10. Amendment may be ordered
 - (1) because of any change, or proposed change, of the offender's residence;
 - (2) to cancel or replace any requirements. A mental health treatment, drug treatment or drug testing requirement may not be imposed unless the offender has expressed willingness to comply with the requirement, though if the offender does not express his willingness the court may revoke the order and deal with him for the offence in any way in which it could have done originally;
 - (3) to extend, for up to 6 months after the original expiry date of the order, the period for completion of any requirement.

Subsequent conviction of an offence: CJIA 2008 Schedule 2 part 5 para. 19

11. A subsequent conviction of an offence is not of itself a breach of an order.
12. Where an offender is convicted by the Crown Court or committed for sentence and it is in the interests of justice having regard to the circumstances which have arisen since the order was made, the Crown Court may (in respect of any youth rehabilitation still in force) either revoke the order or revoke the order and deal with the offender for the offence in respect of which the order was made in any way in which he could have been dealt with by the court which made the order.
13. If the court re-sentences it must take into account the extent to which the offender has complied with the requirements of the order.

S10 COSTS

PROSECUTION OF OFFENCES ACT 1985 Part II as amended by LASPO 2012 Schedule 7; CPR PART 45; PRACTICE DIRECTION (COSTS IN CRIMINAL PROCEEDINGS) 2015

ARCHBOLD 6-1; BLACKSTONE'S D33; SENTENCING REFERENCER 203

1. Issues of costs will have to be considered in many cases.
2. Where a defendant is found guilty the prosecution will commonly ask for costs and an order may be made for the payment of all or part of the sum sought either by an order for payment forthwith or within a fixed period or by instalments subject to the ability of the defendant to pay: [POA s.18](#).
3. Where a defendant is acquitted or successfully appeals conviction or sentence from the Magistrates' Court, the defence will commonly apply for an order for payment of the defendant's costs from central funds (a DCO): [POA s.16](#).
4. In proceedings commenced before 1st October 2012:
 - (1) Where D has paid for his own legal representation he will be entitled to recover his reasonable costs incurred in the Crown Court and the Magistrates' Court, which will be subject to taxation.
 - (2) Where D has been represented under the terms of a representation order the order will be limited to D's out of pocket expenses. In such cases the court should order assessment of the claim at the same time as assessment of his solicitor's claim and the solicitor should ensure the two claims are submitted together.
5. In proceedings commenced on or after 1st October 2012, LASPO Sch. 7 made changes to what costs may be included in a DCO by inserting a new [s.16A](#) into POA:
 - (1) Where D is an individual and has paid for his own legal representation and appeals successfully against conviction or sentence in the Magistrates Court he will be entitled to recover his reasonable legal costs incurred in the Magistrates Court and the Crown Court.
 - (2) Where D is not an individual, it may not recover legal costs on a successful appeal from the Magistrates Court as part of a DCO.
6. Section 16A POA has been amended by paragraph 2 of [The Costs in Criminal Cases \(Legal Costs\) \(Exceptions\) Regulations 2014](#). This provides that if a defendant, who is an individual who has applied for representation on or after 27th January 2014 and has been determined to be financially ineligible (i.e. has been refused legal aid on grounds of means), the court may extend the DCO to cover his legal costs of the proceedings. Proceedings are defined in the Regulations as being any of the following:
 - (1) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates' court to the Crown Court for trial;

- (2) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;
- (3) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.

See also Practice Direction (Costs in Criminal Proceedings) 2015 para. 2.2.4.

7. Unless the criteria of s.16A POA as amended (as detailed in paragraph 6 above) are fulfilled no legal costs are recoverable as part of a DCO in respect of proceedings on indictment whether D is an individual or not.
8. Where D is acquitted on some charges but convicted on others the court has discretion to order that part of his expenses be met from central funds.
9. When making an order for costs, whether for the prosecution or defence, the court may either make a summary order for a fixed amount or order that the costs are to be determined by the appropriate authority in accordance with the Costs Regulations.
10. If the court decides to do the former, the amount of any defence costs in proceedings commencing after 1st October 2012 must be in accordance with the rates and scales issued by the Lord Chancellor.
11. Where the court considers a legal representative has acted in an improper, unreasonable or negligent manner it may be necessary to order:
 - (1) The party to show cause why they should not pay the costs of other parties ascertained to have been wasted by their conduct and
 - (2) If satisfied after giving all parties an opportunity to make representations that there was improper, unreasonable or negligent conduct order the costs to be paid: [POA s.19A](#) (wasted costs order).
12. Wasted costs orders require very careful consideration and are very rarely made in practice.
13. Where the court considers a third party (e.g. police, witness, probation service) has acted in an improper, unreasonable or negligent manner it may be necessary to order:
 - (1) The party to show cause why he/she should not pay the costs of other parties ascertained to have been wasted by the conduct and
 - (2) If satisfied after giving all parties an opportunity to make representations that there was improper, unreasonable or negligent conduct, order the costs to be paid: [POA s.19B](#).

NOTE: Further information on costs regulation can be obtained from members of the National Taxing Team:

Mr. Peter FitzGerald-Morris 01622 680088 (National Taxing Office Maidstone)

Mr. Roger Pendleton 07717 851815 (Doncaster Office direct telephone)

Or at <https://www.gov.uk/guidance/claim-back-costs-from-cases-in-the-criminal-courts>

S11 APPENDIX S I SENTENCING GUIDELINES

Offence Guidelines

[Assault](#) (second guideline: effective from 13th June 2011)

[Assaults on children and cruelty to a child](#) (Overarching principles)

[Attempted murder](#)

[Breach of an Anti-social Behaviour Order](#)

[Breach of a Protective Order](#) (e.g. restraining order)

[Burglary Offences](#) (second guideline: effective from 16th January 2012)

[Causing death by driving](#)

[Dangerous Dog Offences](#) (second guideline: effective from 1st July 2016)

[Drug Offences](#) (second guideline: effective from 27th February 2012)

[Environmental Offences](#)

[Fail to surrender to bail](#)

[Fraud, bribery and money laundering](#) (second guideline: effective from 1st October 2014)

[Health and safety offences, corporate manslaughter and food safety and hygiene offences](#)

[Magistrates' Court Sentencing Guidelines](#)

[Additional note to Magistrates' Court Sentencing Guidelines: Knife crime](#)

[Manslaughter by reason of Provocation](#)

[Robbery](#) (second guideline: effective from 1st April 2016)

[Sexual Offences](#) (second guideline: effective from 1st April 2014)

[Sexual Offences – offenders under 18: explanatory note](#)

[Sexual Offences – Part 7: sentencing young offenders - offences with a lower statutory maximum](#)

[Theft and Burglary in a building other than a dwelling](#)

NOTE: guidelines for burglary in a building other than a dwelling are now contained in the burglary guideline.

Overarching principles and general guidance

[Allocation](#)

[Assaults on children and cruelty to a child](#)

[Domestic Violence](#)

[Imposition of community and custodial sentences](#) (effective from 1st February 2017)

[Reduction in sentence for a Guilty plea](#)

[New Sentences – Criminal Justice Act 2003](#)

[Seriousness](#)

[Offences taken into consideration and totality](#)

[Sentencing youths](#)

S12 APPENDIX S II TEMPLATE FOR SENTENCE

R. v.

Age at conviction:

Antecedents:

Charge/s:

Maximum:

Prosecution outline:

Culpability: (s.143 CJA and Guidelines)

Harm and potential harm: (s.143 CJA and Guidelines)

Category of offence:

Factors increasing seriousness: (not exclusive)

Factors reducing seriousness: (not exclusive)

Personal mitigation: (and/or assistance to Prosecution)

Dangerousness: (if specified offence)

Credit for Guilty Plea:

Sentence: (including reasons – s.174 CJA)

Time on remand in custody (automatic)/qualifying electronically monitored curfew (appropriate number of days to be stated):

Statutory Surcharge:

Ancillary orders:

PoCA Timetable:

S13 APPENDIX S III INDICATIONS OF SENTENCE

R. v. Goodyear

ARCHBOLD 5-110; BLACKSTONE'S D12.60; CrimPD VII SENTENCING C; SENTENCING REFERENCER 147

1. Following the case of *Goodyear*¹ a court may, subject to strict conditions, give an indication of the sentence that would be imposed a court may, subject to strict conditions, give an indication of the sentence that would be imposed on that day if the defendant were to plead guilty. The conditions and procedure are set out in CrimPD VII Sentencing C.
2. Principal matters to note are:
 - (a) D must give written authority to his advocate to seek an indication of sentence.
 - (b) The defence must notify the prosecution and the court of any such application in advance of the hearing.
 - (c) An indication may be sought only when:
 - (i) the plea is entered on the full facts of the prosecution case; or
 - (ii) a written basis of plea is agreed by the prosecution; or
 - (iii) if there is an issue between the prosecution and the defence, this is properly identified and the judge is satisfied that the issue is not of significance and does not require a *Newton* hearing to resolve.
 - (d) The judge must obtain the confirmation of prosecution and defence that the court has all relevant information including up to date antecedents, information as to whether the defendant is facing any other proceedings and all additional evidence.
 - (e) The judge should receive submissions from counsel as to the appropriate level of sentence within any relevant Sentencing Guideline or guideline case.
 - (f) It will not normally be appropriate to give an indication where:
 - (i) there are co-accused pleading not guilty;
 - (ii) the offence is one where the issue of dangerousness arises;
 - (iii) medical or other reports are outstanding and the proper sentence may depend upon the content of such reports.

¹ [2005] EWCA Crim. 888

- (g) Any indication must be given in open court and in precise terms: it should reflect the maximum sentence if a guilty plea were to be tendered at that stage of the proceedings only: not the maximum possible sentence following conviction by a jury after trial.
- (h) Any indication will be valid only for the day it is given or, in a complex case where it is appropriate to give more time to a defendant to consider the implications of the indication, for so long as the judge indicates it is valid.
- (i) An indication is binding on the judge for the period expressed.
- (j) An indication expires at the conclusion of the period expressed but the fact of and, if given, the terms of an indication should remain on the court file in case there is a subsequent application for an indication.
- (k) In an appropriate case the judge may remind the defence advocate of D's entitlement to seek an indication of sentence.
- (l) Reporting restrictions should normally be imposed upon any Goodyear application: these may be lifted if the defendant pleads or is found guilty.