

CROWN COURT BENCH BOOK

COMPANION

PART II - SENTENCING

JANUARY 2013

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1. INTRODUCTION

Over the years many judges have drawn great support and assistance from the Forms of Words in Sentencing which were first issued by the Judicial Studies Board in May 1999 and reissued in January 2006 having been prepared and revised by Mr. Justice Crane, Mr. Justice Maddison, Judge Gerald Clifton and Dr. David Thomas Q.C.

In the foreword of the latter edition, Lord Judge (then President of the Queen's Bench Division) said this:

“One of the most difficult and sensitive responsibilities of the judge in a criminal case is the sentencing decision. The individual circumstances of every offence and the unique characteristics and background of each offender have to be assessed, and the relevant aggravating and mitigating factors balanced against each other to achieve the appropriate sentence.

The decision must then be explained in open court – sometimes in circumstances of great tension – so that the defendant, the victim, the public generally (whether in the court itself or informed by the media) and the Court of Appeal Criminal Division can understand how and why the judge came to the conclusion that he or she did.”

Those words are as true now as they were then.

Having prepared the Companion to the Crown Court Bench Book as a concise guide for recorders and judges who are preparing to sum up, particularly in shorter cases, we were invited to prepare a similar guide to sentencing: thus the Bench Book Companion Part II – Sentencing. As with the first part of the Companion, the scope of this part is limited to describing in concise form the necessary criteria for each type of sentence. We have also provided some examples.

The following pages are our attempt to provide assistance to recorders and judges who have so much upon which to decide and so much that they have to say to ensure that sentences are lawful, just and understood. We have deliberately not provided comprehensive forms of words: every case is different and the sentencing remarks must be tailored to each individual case.

This, January 2013, version includes changes brought about by those provisions of the Legal Aid Sentencing and Punishment of Offenders Act 2012 which came into force on or before 3rd December 2012. References to Archbold, Blackstone and the Sentencing Referencer all relate to the 2013 editions.

Simon Tonking and John Wait
January 2013

2. STATUTORY PRINCIPLES OF SENTENCING

- Purposes (age 18 and over) [s.142 CJA 2003]:
 - Punishment
 - Crime reduction
 - Reform and rehabilitation
 - Public protection
 - Making of reparation
- Purposes (under age 18):
 - To have regard to 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 [s.44 CYPA 1933]
 - To have regard to the need to prevent offending by children and young persons [s.37 C+DA 1998]
- Determining seriousness [s.143 CJA 2003]: assess culpability and harm (actual, intended or foreseeable)
- Increase for aggravation in respect of hostility by reason of race or religion [s.145 CJA 2003] or disability, sexual orientation or *for offences committed on or after 3rd December 2012* transgender identity [s.146 CJA 2003 as amended by s.65 LASPO 2012]
- Reduction for plea of guilty [s.144 CJA 2003 and Guideline]
- Discretionary custodial sentences:
 - 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 [s.152(2) CJA 2003]
 - If not a minimum sentence, must be for the shortest term commensurate with the seriousness of the offence/combination of offences [s.153(2)]
- Community sentences: the offence/combination of offences must be serious enough to warrant such a sentence [s.148].

3. IN EVERY CASE

This note seeks to assist sentencers in following the process required by statute, the Guidelines of the Sentencing Council 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 [s.143 CJA 2003]. Individual Sentencing Guidelines explain how culpability and harm are to be assessed in respect of particular offences.
2. The sentencing judge must determine seriousness, whether that be as part of considering the category of offence within a “new style” Guideline or more generally as part of the statutory duty explained in **SGC Guideline: Overarching Principles: Seriousness**.
3. 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.
4. 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.
5. If the offence is a specified or serious specified offence to which Part V CJA 2003 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** and has a previous conviction for an offence falling within Schedule 15B of the Act or 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, the sentencer may pass a sentence within Part 12 Chapter 5 of the CJA 2003. If the offender is to be sentenced for an offence listed in Schedule 15B Part I of CJA 2003 [inserted by Schedule 18 LASPO], the sentencer must impose a life sentence unless it would be unjust to do so.
6. 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**.
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. Totality must be considered. This may relate to multiple offences to be sentenced and/or to a sentence the offender is already serving: the **SC Guideline: Offences Taken into Consideration and Totality** must be followed.
9. Appropriate ancillary orders must be considered e.g. statutory surcharge, forfeiture, compensation, disqualification, restraining order, costs etc.
10. An explanation must be given to the offender, in ordinary language, of the reasons for passing the sentence and its effect [s.174 CJA 2003].
11. In the event of a custodial sentence, whilst time spent on remand in custody will count towards the sentence automatically (without any direction), 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 s.109(3) LASPO 2012 [s.240ZA (as inserted) and s.240A (as amended) CJA 2003 – see ss.108 and 109 LASPO 2012].
12. In appropriate cases consideration must be given to the making of any order or giving of any directions under the Proceeds of Crime Act 2002.

A template is annexed to this Part of the Companion which may be of use in applying this process. In the electronic version of this Companion the template is expandable to accommodate multi-defendant and multi-count cases.

4. CUSTODIAL SENTENCES

(4-1) Mandatory life sentences - CJA 2003 s. 269 and Schedule 21

Archbold 5-399/425; Blackstone E3.1; Sentencing Referencer 166

See also IV.49 of the Consolidated Criminal Practice Direction: Archbold 5-431; Blackstone Supplement PD-55 page 191

Criteria for sentence

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

Nature of sentence – dependent on age of offender at the date of conviction

- Imprisonment for life (21 or over)
- Custody for life (18 to 20 inclusive)
- Order for Detention during Her Majesty’s pleasure (under 18)

Fixing the minimum term

- 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 Schedule 21 and follow any relevant guidelines which are not incompatible with the provisions of that schedule.
- Schedule 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).
- 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 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.
- 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

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.

- 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.
- In any other case, the court must order that the early release provisions are to apply when the offender has served the minimum term.

Passing the sentence

- State that the sentence is one of imprisonment for life/custody for life/detention during Her Majesty’s pleasure.
- **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 – “*life means life*”.
- **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.”*
- Credit should (almost invariably) be given, in this order, for:
 - 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; and*
 - 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.”*

- Explain the consequences:
 - The minimum term will be served in full before D is eligible to be considered for release by the Parole Board;
 - 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 the defendant causing further harm;
 - If D is released he will be on licence for the rest of his life;
 - 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.”*

(4-2) Sentences for dangerous offenders - CJA 2003 ss. 224 – 229 (original) and CJA 224A – 226B (LASPO)

Archbold 5-495; Blackstone E4.1; Sentencing Referencer 215 and 222

INTRODUCTION

The law relating to the sentencing of dangerous offenders has been substantially amended by sections 122 – 125 of LASPO 2012.

- In respect of offenders convicted on or after 3rd December 2012
 - IPP and DPP are abolished. An IPP or DPP may still be imposed on an offender who was convicted before 3rd December 2012.
 - The “old” Extended Sentence provisions [s.227 and s.228] are replaced by new Extended Sentence provisions [s.226A and s.226B, inserted by s.124 LASPO 2012]. The new Extended Sentence provisions come into force for anyone convicted on or after 3rd December 2012, whenever the offence was committed (provided that it was committed on or after 5th April 2005).
- In respect of offences committed on or after 3rd December 2012
 - A new life sentence for a second listed offence may be imposed [s.224A CJA 2003, inserted by s.122 LASPO]. The list is provided by Schedule 15B Part I of CJA 2003 [Schedule 18 LASPO].
 - There will be a limited number of serious offences committed before 3rd December where conviction is after 3rd December where neither IPP nor a new life sentence is available.
 - The provisions relating to discretionary life sentences, in respect of offences that carry a life sentence as a statutory maximum, remain unaffected.

CRITERIA FOR A FINDING OF DANGEROUSNESS

ORIGINAL and LASPO

- The offence must be a “specified” offence: a violent or sexual offence specified in Schedule 15 CJA 2003.
- The court must find that there is a significant risk that
 - the defendant will commit further specified offences; and
 - by doing so he will cause serious harm to one or more people.

I. AVAILABLE SENTENCES

ORIGINAL

- **Serious specified offences only**
 - Imprisonment [18 or over] or Detention for life [under 18]
 - Where the statutory maximum is life and the offence is of the utmost gravity
 - Imprisonment [18 or over] or Detention [under 18] for public protection
 - Either the offender has a previous conviction for an offence listed in Schedule 15A CJA 2003 (inserted by CJ and IA 2008) or the determinate sentence which the court would otherwise pass for the offence (and any other offences associated with it) would be at least 4 years
- **Any specified offence**
 - Extended sentence
 - Either the offender has a previous conviction for an offence listed in Schedule 15A CJA 2003 (inserted by CJ and IA 2008) or the determinate sentence which the court would otherwise pass for the offence (and any other offences associated with it) would be at least 4 years
 - Determinate sentence

LASPO

- **Serious specified offences only:**
 - Imprisonment [18 or over] or Detention for life [under 18]
 - Where the statutory maximum is life and the offence is of the utmost gravity
 - Life sentence for a second listed offence [18 or over only]
 - The offence is one listed in Schedule 15B Part I of CJA 2003 [Schedule 18 LASPO];
 - The defendant has a previous conviction listed in Schedule 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
 - The court would otherwise impose a determinate sentence of 10 years or more
except where the circumstances of the current and/or previous offences and/or the offender would make it unjust.
- **Any specified offence**
 - New extended sentence
 - Either the defendant has a previous conviction listed in Schedule 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.
 - Determinate sentence

II. SPECIFIC SENTENCES

1. Indeterminate sentences

- Imprisonment/detention for life [ORIGINAL and LASPO]
- IPP/DPP [ORIGINAL only]

If a sentence of imprisonment/detention for life or IPP/DPP is passed it is necessary to fix a minimum term to be served in custody before the Parole Board considers a release on licence.

Fixing the minimum term

- The court must consider the seriousness of the offence/s, following any applicable guidelines, to determine what would have been the commensurate determinate term (save in “whole life” cases).
- Credit should then (except in the most exceptional circumstances) be given for any guilty plea.
- This term should be halved to reflect the time that would have been served in custody on a determinate sentence.
- 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 (4-8) - Time spent on Remand, page 32*] should then (except in the most exceptional circumstances) be deducted. This remains the case notwithstanding that the requirement to certify days on remand and to direct them to be deducted, in respect of determinate sentences, has been abolished by s.108 LASPO.

Passing an indeterminate sentence

The court must:

- Set out findings in relation to those matters described in paragraphs 1 – 3 of the section “IN EVERY CASE” in this work.
- State that the sentence is one of imprisonment/detention for life/IPP/DPP.
- **Either** (life sentences only) 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 – “*life means life*”.

- **Or**, in any other case, state the minimum term, by explaining
 - what the determinate sentence would have been;
 - the reduction which would have been given for any guilty plea;
 - that the minimum term is one half of that notional sentence (being the custodial element of a determinate term); and
 - the deduction made for days spent on remand on qualifying electronically monitored curfew.
- If the offence was committed on or after 1st October 2012, order the defendant to pay the statutory surcharge: *[see (7-15) - Statutory Surcharge, page 69]*.
- Explain the consequences:
 - The minimum term will be served in full before D is eligible to be considered for release by the Parole Board.
 - The decision about whether or when he will be released will be taken by the Parole Board.
 - **Either (Life)** if D is released he will be on licence for the rest of his life **or (IPP/DPP)** if D is released he will be on licence for at least 10 years after which he may apply to the Parole Board for a direction that the licence will cease to have effect.
 - 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: see over >>>>>

Example: “.....As I have indicated to your advocate, I am satisfied that you present a significant risk of causing serious injury by committing further similar offences and, because on the information that I have I am unable to say when it may be safe for you to be released, whilst I am not satisfied that your offence is so serious that a sentence of life imprisonment is required, I am satisfied that I must pass a sentence of imprisonment for public protection.

As to the minimum term which you must serve: if I had been sentencing you to a fixed term sentence, to mark the seriousness of your offence and taking account of all of the aggravating and mitigating factors, 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 still be subject to licence; and (because IPP) this will remain the case for at least 10 years from the date of your release, after which you may apply to the Parole Board for the licence to be removed. 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.*

2. Extended sentences

The court must pass the sentence, setting 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).

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 the defendant's commission of further specified offences.

Passing an extended sentence

The court must:

- Set out findings in relation to those matters described in paragraphs 1 – 3 of the section “IN EVERY CASE”.
- 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.
- 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.”*
- Deal with time spent on remand subject to a qualifying electronically monitored curfew: time spent on remand in custody now counts automatically. For a full explanation of the provisions relating to time on remand, as amended by LASPO 2012, [see (4-8) - *Time spent on Remand*, page 32].
- 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.
- If the offence was committed on or after 1st October 2012, order the defendant to pay the statutory surcharge: [see (7-15) - *Statutory Surcharge*, page 69].
- Explain the consequences:

ORIGINAL

- The defendant will serve up to one half of the custodial term in custody, less time spent on remand in custody (the amount of time not being specified by the court) or the appropriate proportion of the time served on qualifying curfew (which proportion the court must specify), and then be released on licence, which will last until the end of the custodial term.
- 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.
- When the defendant has been released on licence this 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 up to half of the custodial term of 4 years in custody and then you will be released on licence which will last until the end of the term of 4 years. After that you will remain on licence for the extended licence period of 2 years, making the total length of the sentence one of 6 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.”

LASPO

- Where the custodial term of the extended sentence is less than 10 years or has been imposed in respect of specified offence(s) that are not included in Schedule 15B CJA 2003 the defendant will serve two thirds of the custodial term in custody less time spent on remand in custody (the amount of time not being specified by the court) or less the appropriate proportion of the time served on qualifying curfew (which proportion the court must specify), and then he will be released on licence, which will last until the end of the custodial term.

- If either the custodial term is 10 years or more or the sentence is imposed for an offence listed in Schedule 15B, having served two thirds of the term, less time spent on remand in custody (the amount of time not being specified by the court) or the appropriate proportion of the time served on qualifying curfew (which proportion the court must specify) the case will be referred to the Parole Board for them to consider his release. The defendant will not serve more than the whole of the custodial term.
- On release the defendant 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.
- The defendant'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 10 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 from the custodial term of 10 years 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 10 year custodial term expires, you will be on licence which will continue until the end of the extended term (if you have been released before the expiry of the 10 year custodial term) and, in any event, will then continue until the end of the extended licence period of 4 years, making the total length of the sentence one of 14 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."

(4-3) Determinate sentences of imprisonment - PCC(S)A s.76 and CJA ss. 152 and 153

Archbold 5-457; Blackstone E2.1; Sentencing Referencer 90

1. All sentences in this category

The following are requirements for all sentences in this category:

- 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 [s.152(2) CJA 2003] *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.
- The sentence must be the shortest term that is commensurate with the seriousness of the offence, either by itself or in combination with others [s.153(2) CJA 2003].

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 12 months or more

- Offenders will serve up to one half of the sentence in custody before being released on licence.
- Many offenders are released before the halfway point of a sentence 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.
- 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 before you are released on licence; you must abide by the terms of the licence and commit no further offence or you will be liable to be recalled and you will then serve the remainder of the sentence in custody.”

3. Sentences of imprisonment of less than 12 months

- Offenders will serve up to one half on the sentence before being released.
- On release the offender will be “at risk” of recall to custody if convicted of a further offence in the remaining weeks or months of the sentence [s.116 PCC(S)A 2000].

Example: “.....You will serve up to half of your sentence in custody but if you commit a further offence in the remaining part of the sentence you will be liable to be recalled to serve the remainder of your sentence in custody.”

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 2012 [*see (4-8) - Time spent on Remand, page 32*].

Statutory Surcharge

If the offence was committed on or after 1st October 2012, the defendant must be ordered to pay the statutory surcharge: [*see (7-15) - Statutory Surcharge, page 69*].

(4-4)Detention in a Young Offender Institution - PCC(S)A 2000 s.96

Archbold 5-594; Blackstone E7.4; Sentencing Referencer 103

Detention in a Young Offender Institution is the custodial sentence for offenders between the ages of 18 and 21 at the date of conviction.

- The minimum sentence is 21 days.
- The maximum is the term available for the offence.
- Offenders serve up to one half of the term in custody and, on release, 3 months on supervision (whatever the length of the sentence).

Criteria for sentence

- The offence/s is/are so serious that neither a fine alone nor a community sentence can be justified.
- The sentence is the least that can be imposed having regard to the seriousness of the offence.

Passing the sentence

The court must:

- Complete the steps set out in the section “IN EVERY CASE”;
- State that
 - the seriousness of the offence is such that neither a fine alone nor a community order can be justified;
 - the sentence is the least that can be imposed having regard to the seriousness of the offence.
- Explain that up to one half of the sentence will be served in custody and, on release, 3 months will be served subject to supervision; and in the event of breach of the terms of supervision the offender may be fined or recalled to custody for up to 30 days.

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 2012, [see (4-8) - *Time spent on Remand*, page 32].

Statutory Surcharge

If the offence was committed on or after 1st October 2012, the defendant must be ordered to pay the statutory surcharge: *[see (7-15) - Statutory Surcharge, page 69]*.

(4-5) Minimum custodial sentences – PCC(S)A 2000 ss.110 and 111 and Firearms Act 1968 s. 51A

Archbold 5-443; Blackstone E5.1; Sentencing Referencer 174, 176 and 197

Minimum sentences are attracted by:

- A third class A drug trafficking offence (all committed after 30.9.97) [s.110 PCC(S)A 2000] unless there are circumstances relating to the offence or to the offender which would make it unjust to do so (defendant aged 18 or over at the time of offence);
- A third domestic burglary (all committed after 30.11.99) [s.111 PCC(S)A 2000] unless there are circumstances relating to the offence or to the offender which would make it unjust to do so (defendant aged 18 or over at the time of offence);
- Certain firearms offences (committed on/after 22.1.04) [s.51A Firearms Act 1968] unless there are exceptional circumstances relating to the offence or to the offender which justify the court in not doing so (defendant aged 16 or over at the time of offence).

Where a minimum sentence must be passed this must be stated and, if the defendant has pleaded guilty, it must be made clear what, if any, credit has been given.

Minimum sentences and maximum credit for plea of guilty			
<i>Offence</i>	<i>Age at offence</i>	<i>Minimum</i>	<i>Maximum credit for plea when passing minimum sentence</i>
Class A drug trafficking	18 or over	7 years	20%
Domestic burglary	18 or over	3 years	20%
Firearms	18 or over	5 years	None
	16 or 17	3 years	None

Where a sentence of more than the minimum is passed, credit is to be given for plea following the 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).

Example 1 (dwelling house burglary) “..... 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 that 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) “... 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 that 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) “... 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) “..... 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 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.”

(4-6) Suspended sentence orders - CJA s. 189 – 193

Archbold 5-547; Blackstone E6.1; Sentencing Referencer 238

NOTE - this section relates to all sentences passed on or after 3rd December 2012 in respect of offences committed on or after 4th April 2005: s.68 LASPO. For offences committed before 4th April 2005, pre-CJA provisions continue to apply.

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.

Criteria for sentence

- 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”.
- The sentence is the least that can be imposed to mark the seriousness of the offence.

Passing the sentence

The court must:

- Complete the steps set out in the section “IN EVERY CASE”.
- State that
 - the seriousness of the offence is such that neither a fine alone nor a community order can be justified;
 - the sentence of is the least that can be imposed to mark the seriousness of the offence/s.
- Direct that the sentence will be suspended (for a period of not less than 6 months or more than 2 years): the “operational period”.
- Consider whether any requirement(s) from the list specified in s.190 CJA (identical to Community Order requirements) 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.

- 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.).
- If the court is ordering reviews, specify the date of the first review.

Example:

- *“The sentence of months/weeks* will be suspended for 2 years. This is the operational period of the sentence and if in the next 2 years you commit any offence you will be brought back to court and you will be liable to serve the sentence.*
- *And 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 breached, 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 onwhen 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 breached and liable to serve the sentence.*

Notes:

1. *The original stipulation that a suspended sentence had to be expressed only in weeks no longer applies.*
2. *The possible consequences of reoffending/breach are simplified in the above example with a view to the defendant being able to understand them. The court’s full powers are set out below: [see (5-2) - Breach or amendment of suspended sentences, page 78].*

(4-7) Determinate custodial sentences for those under 18

1. Detention under section 91 PCC(S)A 2000

Archbold 5-610; Blackstone E7.14; Sentencing Referencer 99

Detention under s. 91 PCC(S)A 2000 is a custodial sentence for offenders aged under 18 at the date of conviction who have been convicted of “grave crime/s”.

- 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.)
- The maximum is the term available for the offence.
- 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.
- A Detention and Training Order and an order for detention under s. 91 cannot be ordered to run consecutively.
- Offenders serve up to one half of the term in custody and the remainder on licence.

Criteria for sentence

- The offence/s must be a “grave crime” viz:
 - 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
 - offences under s. 3, 13, 25 or 26 Sexual Offences Act 2003; or
 - 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
 - an offence under s. 28 Violent Crime Reduction Act 2006 (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).

- 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.
- The court must have regard to the need to prevent offending by children and young persons.
- The court must be of the opinion that neither a [fine alone nor a] Youth Rehabilitation Order nor a Detention and Training Order is suitable.

Passing the sentence

The court must:

- Complete the steps set out in the section “IN EVERY CASE”.
- State that it has had regard to the welfare of the offender and the need to prevent him from further offending.
- (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.
- Also state that
 - the seriousness of the offence is such that only a sentence under section 91 can be justified;
 - the sentence is the least that can be passed to mark the seriousness of the offence/s.
- Explain that up to one half of the sentence will be served in custody and the remainder will be served on licence but that the offender will be liable to be recalled to serve the remainder of the sentence in custody in the event of breach of any term of the licence.

Example: “....In deciding what is the right sentence in your case I have had regard to the need to look after your welfare and 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 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 one of those conditions your licence may be revoked and you will be liable to serve the rest of the sentence in custody.

**Reference to section 91 is not for the benefit of the defendant (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 about the provision under which the sentence has been imposed.*

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 2012, [see (4-8) - *Time spent on Remand*, page 32].

Statutory Surcharge

If the offence was committed on or after 1st October 2012, the defendant must be ordered to pay the statutory surcharge: [see (7-15) - *Statutory Surcharge*, page 69].

2. Detention and Training Orders - PCC(S)A 2000 ss.100-107

Archbold 5-597; Blackstone E7.15; Sentencing Referencer 101

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

- The minimum sentence is 4 months. The maximum sentence is 24 months.
- Only sentences of 4, 6, 8, 10, 12, 18 or 24 months may be imposed in respect of any one offence, but consecutive sentences do not have to conform to these numbers although they must not exceed 24 months.
- If the offender is under the age of 15 a sentence may only be imposed if he is a “persistent offender” within s. 100(2)(a) PCCS(A) 2000.

Criteria for sentence

- 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 [s152(2) CJA 2003] *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.
- The sentence must be the shortest term that is commensurate with the seriousness of the offence, either by itself or in combination with others (*s153(2) CJA 2003*).
- 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.
- 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 under s. 91 PCC(S)A 2000. If this situation arises it must be explained clearly.

Passing the sentence

The court must:

- Complete the steps set out in the section “IN EVERY CASE”.
- State that it has had regard to
 - 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;
 - the need to prevent him from further offending.
- Also state that
 - the seriousness of the offence is such that a fine or a youth rehabilitation order cannot be justified; and that
 - the sentence is the least that can be passed to mark the seriousness of the offence/s;
- 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.

- 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.
- 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.
- If the offence was committed on or after 1st October 2012, order the defendant to pay the statutory surcharge: [see (7-15) - Statutory Surcharge, page 69].

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.

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.

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 returned to custody.

(4-8) Time spent on remand – custody and qualifying electronically monitored curfew

REMAND IN CUSTODY - CJA 2003 s. 240 abolished; s.240ZA substituted by LASPO 2012 s.108

- When passing a determinate custodial sentence (whether or not extended) the court no longer certifies the number of days spent on remand in custody or makes any direction regarding whether or not those days will count towards the sentence. By s.240ZA CJA 2003 time spent on remand in custody will, subject to certain qualifications, count automatically. This may be explained as follows:

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

- Note that a suspended sentence (a) is to be treated as a sentence of imprisonment when it takes effect and (b) is to be treated as being imposed by the order under which it takes effect [s.240ZA(7) CJA]. Thus time spent on remand in custody before the sentence was imposed will count when the sentence takes effect. This may be explained as follows:

Example: “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.”

- It is still necessary for the court to make a reduction for the number of days spent on remand in custody when setting a minimum term to be served on an indeterminate sentence (Life/IPP/DPP if conviction before 3rd December 2012; Life if conviction on or after 3rd December 2012).

REMAND ON QUALIFYING ELECTRONICALLY MONITORED CURFEW – CJA 2003 s.240A as amended by LASPO 2012 s.109

- 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 either direct that a proportion of those days will count towards the sentence or give reasons why it would be unjust to give such credit. The occasions on which the court will not credit time on remand will be very rare.

- The proportion of those days is to be calculated by reference to the 5 step test prescribed by s.240A(3) CJA [as substituted by s.109(3) LASPO]. 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.
- 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.

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.”

- Explanation of 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.

5. NON-CUSTODIAL SENTENCES

(5-1) Community Orders - CJA 2003 s. 177 et seq.

Archbold 5-253; Blackstone E8.1; Sentencing Referencer 41

A Community Order is a community sentence for offenders who are aged 18 or over on the date of conviction.

- The maximum length of a community order is 3 years.
- A community order must have at least one requirement (see below) and requirements must be compatible one with another.
- Requirement/s must avoid conflict with the offender's religious beliefs and/or interference with his times of work and/or education.
- The sentencing guideline "New Sentences: Criminal Justice Act 2003" sets out a recommended approach to the nature and extent of requirements to be made.
- The court may have regard to any period spent on remand, or qualifying electrically monitored curfew, when determining the restrictions/s on liberty which such a sentence imposes.

Criteria for sentence

- The offence, or combination offences, is serious enough to warrant such a sentence.
- The requirement/s must be the most suitable for the offender.
- The restriction/s on liberty imposed by the requirement/s must be commensurate with the seriousness of the offence/s.

The Requirements

See over >>>>>>

The Requirements – s.177 CJA 2003 as amended by ss.70 – 75 LASPO 2012

- **an unpaid work requirement**
40 < 300 hours to be completed within 12 months
- **an activity requirement**
Up to 60 days; must be consultation with the Probation Service
- **a programme requirement**
must specify the number of days on which the defendant must participate
- **a prohibited activity requirement**
must be consultation with the Probation Service
- **a curfew requirement**
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**
from a specified place/places; maximum period 2 years: may be continuous or only during specified periods; must be electronically monitored unless inappropriate
- **a residence requirement**
to reside at a place specified or at another place directed by the supervising officer
- **a foreign travel prohibition requirement**
not to exceed 12 months
- **a mental health treatment requirement**
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 have been made;
 - (c) that the offender has expressed willingness to comply.

- **a drug rehabilitation requirement**
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**
residential or non-residential; must have offender's consent
- **a supervision requirement**
- **an attendance centre requirement**
only available for offenders under 25; 12 < 36 hours
- **an electronic monitoring requirement**
(mandatory, unless inappropriate, for curfew and exclusion; discretionary for unpaid work, activity, programme, prohibited activity, residence, foreign travel prohibition, mental health treatment, drug rehabilitation, alcohol treatment, supervision, attendance centre)

Passing the sentence

The court must:

- Complete the steps set out in the section "IN EVERY CASE".
- State that
 - the offence, or the combination offences, is serious enough to warrant such a sentence;
 - the sentence is the least that is commensurate with the seriousness of the offence/s;
 - (if it is the case) the court has had regard to time spent on remand in imposing the requirement/s attached to the order.
- 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 Magistrates Court and explain the court's powers in the event of any such breach or conviction of another offence (see "Breach, revocation or amendment of Community Orders" below).
- If the offence was committed on or after 1st October 2012, order the defendant to pay the statutory surcharge: *[see (7-15) - Statutory Surcharge, page 69]*.

Example:

“.....The offence you have committed is sufficiently serious to warrant a community order which will have attached to it the following requirements:

- 1. You will do hours of unpaid work which must be carried out when and where you are directed by your supervising officer and in any event within 12 months;*
- 2. You will be subject to and cooperate with supervision by a probation officer for and that means meeting him as and when he asks and cooperating fully with any instructions which he gives you.*

If you fail to complete the unpaid work or do it properly, or fail to cooperate with supervision, you will be breached – that means you will be brought back before this court/the Magistrates’ Court and may be made subject to further requirements or resentenced for this offence; and that may well result in custody.”

(5-2) Youth Rehabilitation Orders - CJIA 2008 s.1

Archbold 5-314; Blackstone E9.1; Sentencing Referencer 252

A Youth Rehabilitation Order (YRO) is a community sentence available for offenders under the age of 18 at the date of conviction.

- The maximum length of a YRO is 3 years.
- A YRO must have at least one requirement and requirements must be compatible one with another.
- 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 Schedule 1].
- The sentencing guideline “Overarching Principles: Sentencing Youths” sets out a recommended approach to the nature and extent of requirements to be made.
- 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 is a persistent offender.

Criteria for Sentence

- The offence was committed on or after 30th November 2009.
- The offence or combination of offences is serious enough to warrant such a sentence.
- The restrictions on liberty and/or requirements of the order must be commensurate with the seriousness of the offence.
- 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.

The Requirements – s.1 CJIA 2008 as amended by ss.81 and 82 LASPO 2012

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

- **an activity requirement**
residential or non-residential for up to 90 days
- **a supervision requirement**
maximum 3 years
- **an unpaid work requirement**
offender must be 16 or 17 at the date of conviction; 40 < 240 hours; to be completed within 12 months
- **a programme requirement**
a specified programme which must be recommended
- **an attendance centre requirement**
age 14 or over - 12 < 24 hours; age 16 or over – 12 < 36 hours
- **a prohibited activity requirement**
court must consult member of Youth Offending Service or Probation Officer
- **a curfew requirement**
2 < 16 hours in any 24 hours; maximum term 12 months; be electronically monitored unless the householder does not consent
- **an exclusion requirement**
from a specified place or area; maximum period 3 months: must be electronically monitored unless inappropriate or impractical
- **a residence requirement**
to reside with a specified individual; if 16 or over, to reside at a place specified or at a place approved by the supervising officer
- **a local authority residence requirement**
maximum period 6 months; not to extend beyond 18th birthday; must consult local authority and parent/guardian

- **a mental health treatment requirement**
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 have been made;
 - (c) that the offender has expressed willingness to comply.
- **a drug treatment requirement**
residential or non-residential; must be recommended; must have offender's consent
- **a drug testing requirement**
only available within a drug treatment requirement; must have offender's consent
- **an intoxicating substance requirement**
must be recommended, must have offender's consent
- **an education requirement**
must consult local education authority; not to extend beyond compulsory school age
- **an electronic monitoring requirement** (to secure compliance with other requirements).
- A YRO may also be made with **an intensive supervision and surveillance requirement** and/or **a fostering requirement** but only 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.
- The full conditions for and detail of each requirement are set out in Schedule 1 of CJIA and summarised in *The Sentencing Referencer*.

Passing the sentence

The court must:

- Complete the steps set out in the section “In every case” in this work;
- State that
 - the offence, or the combination offences, is serious enough to warrant such a sentence;
 - the sentence is the least that is commensurate with the seriousness of the offence/s;
 - (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.
- 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.
- If the offence was committed on or after 1st October 2012, order the defendant to pay the statutory surcharge: see (7-15) Statutory Surcharge page 69 below.

The example given for Community Orders can easily be adapted for YROs.

(5-3) Fines - CJA 2003 s. 163 – 165

Archbold 5-671; Blackstone E15.1; Sentencing Referencer 138

A fine may be imposed instead of, or as well as, dealing in another way with a defendant who is;

- convicted of any offence, other than one for which the sentence is fixed by law; or
- proved to be in breach of a requirement of a suspended sentence or community order.

A fine must reflect the seriousness of the offence/s and account must be taken of the defendant's financial circumstances.

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.

A period of custody must be set in default of payment, which must not exceed the maximum period set out in s. 139(4) PCC(S)A 2000. Consecutive terms may be set when more than one fine is imposed.

A statutory surcharge must be imposed when any fine/s is/are imposed. In respect of offences committed prior to the 1st October 2012, the surcharge is £15. In respect of offences committed on or after 1st October 2012 the surcharge is on sliding scales for youth and adult offenders as set out in the Schedule to the Criminal Justice Act 2003 (Surcharge) Order 2012: [see (7-15) - *Statutory Surcharge*, page 69].

Example (offence on/after 1st October 2012 based on £250 fine) “..... For this offence ofyou will be fined the sum of £250. You will also pay the statutory surcharge {of £25}. These sums 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.”

6. OTHER ORDERS

(6-1) Conditional Discharge - PCC(S)A 2000 s.12

Archbold 5-169; Blackstone E12.1; Sentencing Referencer 68

A conditional discharge may be imposed in cases where the court considers it is unnecessary or inappropriate to impose any immediate form of punishment upon a defendant but wishes to reserve the power to do so if there is any further offending of any kind.

- The maximum period for a conditional discharge is 3 years.
- A conditional discharge may be combined with the following orders:
 - compensation
 - deprivation
 - restitution
 - any disqualification
 - recommendation for deportation
 - a football banning order
 - an anti-social behaviour order
 - costs
- 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.
- If the offence was committed on or after 1st October 2012, the defendant must be ordered to pay the statutory surcharge: [see (7-15) - Statutory Surcharge, page 69].

Example “.....You have pleaded guilty to/been convicted of the offence of..... 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 can be brought back before this court and sentenced in any way that was open to me today; and that may include a custodial/community sentence.”

(6-2) Absolute Discharge - PCC(S)A 2000 s.12

Archbold 5-169; Blackstone E12.1; Sentencing Referencer 68

An absolute discharge may be imposed in a case in which the court considers that it is either unnecessary or inappropriate to make any other order against a defendant.

- An absolute discharge may be combined with the following orders (only):
 - compensation
 - deprivation
 - restitution
 - any disqualification
 - recommendation for deportation
 - costs

*Example: “.....You have pleaded guilty to/been convicted of the offence of.....
but it is nether necessary or appropriate to impose any punishment
because..... and I direct that you be absolutely discharged. This
means that you will hear no more about this: this case is at an end.”*

(6-3) Binding Over

Archbold 5-177; Blackstone E13.1; Sentencing Referencer 30

1. To come up for judgment

The Crown Court has power on conviction to bind the defendant over to come up for judgment. It is most used when a defendant 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.

- It is a common law power.
- It is an alternative to a sentence.
- The effect is to bind over the defendant on a recognisance to come up for judgment and sentence in the event of breach of the condition.
- The defendant's consent must be obtained.

Example: “.....Having regard to the seriousness of the offence and what I have been told about your settled intention to leave this country on {date} and return to, as an alternative to sentencing you for this offence I propose 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 fail to leave you will be brought back before the court for sentence. Do you understand? Do you consent?”

2. To keep the peace and be of good behaviour

This power derives from the Justice of the Peace Act 1361. It does not depend on a conviction. It is a power that may be used against defendants, 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 has occurred or was imminent and that there is a risk that the defendant will become involved in a further breach of the peace.

- On conviction, it can be used as an alternative to sentence.
- In the absence of conviction, either the defendant's consent must be obtained or the breach of the peace and risk of further involvement must be proved. This power is very rarely used in the absence of a conviction or consent.
- The effect is to bind over the defendant in a sum of money, to be set according to his means, to keep the peace and be of good behaviour for a set period.
- The defendant must be told that if he fails to keep the peace and be of good behaviour he is liable to forfeit all or part of the sum in which is to be bound.

Example ".....I have been told that you are prepared to be bound over to keep the peace and be of good behaviour and, in view of what I have been told about your means, I propose to bind you over to keep the peace and be of good behaviour for (period) in the sum of £....."

This means that so long as you keep the peace, behave yourself and get into no trouble, you will hear no more of this matter. But if in the next (period) it is proved to the court that you have not done so you will be liable to pay all or part of the sum of £..... Do you agree to be bound over on these terms?"

(6-4) Deferring Sentence - CJA 2003 s.278 and Schedule 23

Archbold 5-45; Blackstone D20.103; Sentencing Referencer 96

The purpose of deferring sentence is to enable the court to have regard to the defendant's conduct after conviction; in particular to see whether reparation is made or any change of circumstances is maintained. The circumstances in which such an order will be appropriate are relatively rare.

- The court must identify the need for, and the purpose of, a deferment of sentence.
- The court must identify to the defendant the purpose of deferment and any requirements that are to be made of him (by way of his undertaking) in the intervening period.
- The requirements that may be made of a defendant may include residence in a particular place and the making of reparation.
- The court may appoint a probation officer *or any other person the court thinks appropriate* to supervise the defendant during the period of deferment.
- The court may also impose conditions of residence and co-operation with the person appointed to supervise the defendant.
- The defendant must consent to deferment **and** undertake to comply with any requirements in the intervening period.
- Sentence should not be deferred unless the sentencer is prepared to pass a sentence that does not involve immediate custody if the defendant complies with the requirements of deferment.
- The date to which sentence is deferred must be specified and be within 6 months of the order for deferment.
- If the defendant 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.
- A transcript must be ordered of the reasons given for, and the terms of, deferment; copies to be provided to the defendant and supervising officer.
- The court should order a report upon the defendant from the supervising officer or in the absence of supervision the probation service for the date of sentence.
- 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.

Deferring sentence

The court must:

- Explain the reasons for deferment.
- Identify clearly the undertakings which the defendant is being asked to give;
- Obtain undertakings and consent from the defendant personally;
- Set the date for the deferred sentence;
- Direct that a [short] progress report should be written by the person supervising the defendant;
- Explain the consequences of compliance with or failure to comply with the undertakings given;
- Direct that a transcript of the court's remarks must be prepared [within 14 days] and be served on the defendant [via solicitor], court and person supervising the defendant.

Example: "As you have heard me discussing with your advocate I am thinking about deferring sentence; that means putting it off for a period and the period I have in mind is 6 months. The reason why I think that this is appropriate is because I have been told, and have read in the Pre-sentence Report, that since the commission of these offences, which would ordinarily justify a sentence of immediate imprisonment, you have moved away from the area where these offences were committed, you have ceased to associate with the people who drew you into committing these offences, your relationship with your father (with whom you are now living) is gradually being restored, you now have what appears to be a secure job and you are making very good progress on the community order which was made by the magistrates just over 3 months ago.

For these reasons I am proposing to put you to the test, to see whether you can maintain this way of life, and commit no more crime. But if I am to defer sentence I need you to agree and undertake to do these things;

1. *To stay away from the area of, which means not going within the area on the map which both you and I have seen;*
2. *To do your best to keep your job at*

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 these 2 things? [Answer]

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

Do you consent to sentence being deferred on these terms? [Answer]

{Assuming the defendant's consent!} I will defer sentence for 6 months: that is until ...{date} ... and on that date you will come back either to this court or to another court where I shall be sitting and appear before me for sentence. In the meantime you must do both of the things which you have undertaken to do and comply with the two conditions which I have imposed. If you succeed then I will not sentence you to an immediate term of imprisonment. If you do not, or if you commit any further offence, then you will be brought back to court and appear before me before the 6 months has expired and I will have no alternative but to send you to prison.

Your supervising officer must prepare a short report about your progress, in readiness for the next time that you appear before me – and I also direct that a transcript of what I have just said to you must be prepared by and then served on you (through your solicitors) and on your supervising officer.”

(6-5) Hospital and Guardianship Orders - MHA 1983 s. 37 – 41 and 45A and B

Archbold 5-1229; Blackstone E.22.1; Sentencing Referencer 147, 144

1. Section 37

Criteria for making the order

Section 37 of the Mental Health Act 1983 provides the court with power, where a mentally disordered defendant is convicted (which includes a finding in respect of a defendant who is unfit to plead or stand trial, that he did an act/made an omission, and a verdict of Not Guilty by reason of insanity)

- either to make an order for him to be admitted to and detained at a specified hospital;
- or, in the case of a defendant 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).

The court must be satisfied as follows:

- that, on the written or oral evidence of 2 registered medical practitioners, at least one of which must be approved under s.12(2) of the Act:
 - the defendant is suffering from mental disorder;
 - and
 - 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;
 - or, if the defendant is aged 16 or over, that the mental disorder is of a nature or degree which warrants him being received into guardianship;
- that, having regard to all the circumstances (including the nature of the offence, the defendant'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.

When making a hospital order the court must also be satisfied that arrangements have been made for the defendant's admission to a specified hospital within 28 days of the date of the making of the order.

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 the defendant into guardianship.

Making the order – s.37

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

I am satisfied that

- *You are suffering from mental disorder, namely*
- *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*

I am of the opinion that

- *because of all the circumstances of your case including*
 - *the nature of {the 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} which is one of; and*
 - *your character and your [antecedents] past, 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 means of 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 I am satisfied that arrangements have been made for you to be {re-} admitted to this hospital {where you have already been for many months. This means that you will be staying at}.

{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 well being and that of the public.”}

2. Section 41

Criteria for making the order

Section 41 of the Act provides the court with power, on making a hospital order, to order that a defendant is subject to special restrictions (a restriction order) if it appears to the court, having regard to the nature of the offence, the defendant'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.

At least one of the registered medical practitioners, whose evidence is taken into account, must have given evidence orally.

Making the order – s.41

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 which is one of, 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.

Accordingly I order that you will be subject to the special restrictions set out in s.41 of the Mental Health Act 1983."

3. Section 45A

Section 45A of the Act provides the court with power to make a hospital direction and a limitation direction in relation to a defendant who is also to be sentenced to imprisonment, so that on completion of treatment the defendant will be transferred to prison for the remainder of his sentence instead of being released from hospital.

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.

The criteria for making the hospital direction are the same as those for making a hospital order under s.37 and the words to be used can conveniently be adapted from the example given above.

7. ANCILLARY ORDERS

(7-1) Compensation orders - PCC(S)A 2000 s.130 and LASPO s.63

Archbold 5-691; Blackstone E16.1; Sentencing Referencer 64

The court must consider making a Compensation Order in every case where it is empowered to do so: this includes most cases where 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.

- If no order is made the court must give reasons.
- The prosecution and defence should be invited to make submissions as to the appropriateness and quantum of the proposed order.
- The court must consider the means of the offender to ensure that payment of the order may be completed within a reasonable time.
- 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.
- Enforcement is through the Magistrates' Court.
- A useful guide to quantum for personal injury awards may be found in the *Magistrates' Court Sentencing Guideline*.

Example: (Compensation and no separate penalty) "....For this offence of common assault you will pay £500 compensation to your victim, Mr. Thomas Boswell. This is not a full measure of the injury you caused, but it is the most that you can afford to pay within a reasonable time, and 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} .."

(7-2) Confiscation orders – various statutes as per table

Archbold 5-736 Blackstone E19.1 Referencer 70 - 85

Confiscation orders may be made under the provisions of a number of statutes, depending on the date and type of offence, as shown on the table below.

The procedures and timetables to be followed under each Act are mandatory: it is essential to know and to follow the statutory framework in each case.

Offence	Statute
Any offence committed before 1 st November 1995	Criminal Justice Act 1988
Any offence committed on/after 1 st November 1995 but before 24 th March 2003 - except DT in circumstances below	Criminal Justice Act 1988 as amended by the Proceeds of Crime Act 1995
DT: where every offence was committed on/after 3 rd February 1995 but before 24 th March 2003	Drug Trafficking Act 1994
Any offence committed on/after 24 th March 2003	Proceeds of Crime Act 2002

(7-3) Deprivation orders - PCC(S)A s.143

Archbold 5-726; Blackstone E18.1; Sentencing Referencer 97

The power to make an order arises where property, which was in the defendant'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.

- 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.
- The prosecution and defence should be invited to make submissions as to the appropriateness of the proposed order.

(7-4) Disqualification from acting as a Director of a Company - Company Directors Disqualification Act 1986 s.1

Archbold 5-1116; Blackstone E21.8; Sentencing Referencer 108

This is an order which may, and in cases involving the dishonest operation and/or management of a company should, be made when the defendant has been convicted of an indictable offence in connection with the promotion, formation, management or liquidation of a company.

- It is not necessary that the defendant was a director of any company involved in the offence(s)
- It has the effect that the defendant must not act as an insolvency practitioner nor without leave of the court be a company director or act in the promotion, formation or management or liquidation of a company.
- The maximum period for which disqualification may be imposed is 15 years.

(7-5) Disqualification from driving and endorsement of driving licence

1. Road Traffic Acts - Road Traffic Acts and Road Traffic Offender Act 1988

Archbold 32-168; Blackstone C7.8; Sentencing Referencer 109, 111, 114

An order for disqualification “for holding or obtaining a driving licence” is compulsory in the case of some offences and situations and discretionary in others.

Compulsory disqualification

- Disqualification is compulsory for some more serious motoring offences. The full list of offences which attract compulsory disqualification appears in s.34 Road Traffic Offenders Act. There are a variety of minimum periods: e.g. causing death by dangerous driving or causing death by careless driving while under the influence of drink or drugs = 2 years disqualification.
- Certain repeat offences carry longer minimum disqualifications e.g. a second offence of driving with excess alcohol within 10 years = 3 years disqualification.
- 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 be disqualified from driving for a period of two years and until you have passed the extended driving test. That means when the two years have passed you may apply for a driving licence but the licence you obtain will be provisional until after you have passed the extended test.

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 Schedule 2 Road Traffic Offenders Act: see Archbold 32-222 and Blackstone C8.1.

Interim disqualification

The court has power to order an interim disqualification when adjourning or deferring sentence after conviction: s. 26 Road Traffic Offenders Act.

Licence endorsement and totting up

- A wide variety of motoring offences require the sentencer to endorse any driving licence the defendant 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: s. 35 Road Traffic Offenders Act.
- The list of offences where a licence must be endorsed with penalty points is set out in Schedule 2 Road Traffic Offenders Act 1988.

2. General powers of disqualification from driving - PCC(S)A ss.146 and 147

Archbold 5-1106; Blackstone E21.11; Sentencing Referencer 110 and 116

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].

(7-6) Disqualification from working with children - Criminal Justice and Courts Services Act 2000 s.26

Archbold 5-1119; Blackstone E21.17; Sentencing Referencer 117

The CJCSA 2000 introduced a regime of disqualification from working with children in respect of offences against a child, which appear in the schedules to the Act.

The Safeguarding Vulnerable Groups Act 2006 created the Independent Barring Board (since renamed Independent Barring Authority but to be replaced by the Disclosure and Barring Service) and it was intended that the earlier statutory provisions should be completely repealed.

At present the legislation is such that absent an order from the court under the CJCSA a convicted person would be subject to barring only from the date of an order from the Independent Barring Authority/Disclosure and Barring Service. Until the legislation is clarified it remains important for courts to continue to make orders under the CJCSA. See *R. v. C* [2012] 1 Cr.App.R.(S.) 89.

- Disqualification is compulsory for adults, age 18 or over, where a sentence of 12 months custody is imposed unless the court is satisfied further offences are “unlikely” and the court must so state.
- Where offenders are under 18 or the sentence is less than 12 months the court may impose a disqualification if it is satisfied it is likely the defendant will commit a further offence against a child.
- Any disqualification imposed is for life.
- Application may be made to lift the disqualification.

For Barring Requirements see (8-2) page 73.

**(7-7) Exclusion from Licensed Premises - Licensed Premises
(Exclusion of Certain Persons) Act 1980**

Archbold 5-1090; Blackstone E21.1; Sentencing Referencer 132

- Orders may only be made where an offence has been committed on licensed premises.
- An order may be for no less than 3 months nor more than 2 years.
- The breach of an order is a summary offence punishable by a fine up to level 3 or one month's imprisonment.

(7-8) Football banning orders - Football Spectators Act 1989

Archbold 5-1067; Blackstone E21.3; Sentencing Referencer 26

A football banning order operates to prohibit a defendant who has been convicted of a relevant offence from attending regulated football matches in England and Wales **and**, 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, requires him to surrender his passport from a time 5 days before the game until after it has been concluded,

- When a defendant 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.
- If the court does not make an order it must state the fact in open court and give reasons.
- 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.
- If the offender is not sentenced to custody the banning order must be for not less than 3 nor more than 5 years.
- A relevant offence is one listed in Schedule 1 of the Act.
- The breach of an order is a summary offence punishable with a fine up to level 5 or 6 months' imprisonment.

(7-9) Forfeiture orders - Misuse of Drugs Act 1971 s.27

Archbold 27-118; Blackstone E18.7; Sentencing Referencer 140

Where a defendant is convicted of an offence under the Misuse of Drugs Act the court may order that anything (drugs, money, mobile phones etc.) that it is satisfied relate to the offence be forfeit and either destroyed or dealt with in such manner as the court may order.

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 in the “fight against crime”.

(7-10) Parenting orders - Crime and Disorder Act 1998 ss.8 - 10

Archbold 5-1282; Blackstone E 14.1; Sentencing Referencer 171

An order requiring the parent of a young defendant convicted of an offence to comply with requirements set out in the order, which may include an order to attend for counselling.

A parenting order, while required by statute, subject to the discretion of the court, will normally only be made when specifically recommended by the Youth Offending Service in a PSR.

(7-11) Restitution orders - PCC(S)A s.148

Archbold 5-711; Blackstone E17.1; Sentencing Referencer 199

A restitution order may be made for the return of goods that have been stolen, or the proceeds of their sale, to the person lawfully entitled to them.

- 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.
- Because the order is for the return of goods no issue arises as to the means of the defendant *c.f.* compensation orders.
- Orders may be made before completion of PoCA proceedings.

(7-12) Restraining orders - Protection from Harassment Act 1997 ss.5 and 5A

Archbold 19-350; Blackstone E21.28; Sentencing Referencer 200

A restraining order may be made following the defendant'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.

- 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.
- Any order should be in precise terms.
- An order is usually made for a fixed period but may be "until further order".
- A person affected by the order, including the defendant and/or the person to be protected, may apply for the order to be varied or removed.

(7-13) Serious crime prevention orders - Serious Crime Act 2007

Archbold 5-1151; Blackstone D25.67; Sentencing Referencer 207

Serious crime prevention orders may only be made in the High Court on the application of the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office.

- An order may only be made against a person who has been involved in serious crime.
- Serious crime is defined by reference to the s.2 and Schedule 1 of the Act and involvement is defined in s.4 of the Act.
- An order may only be made against a person who is over 18.
- An order may last for up to 5 years.

(7-14) Sexual offences prevention orders – Sexual Offences Act 2005 ss. 104 – 113

Archbold 20-324; Blackstone E21.24; Sentencing Referencer 211

This order may be made on the defendant's conviction of a relevant sexual offence i.e. one listed in Schedule 3 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 serious sexual harm.

- Any order must be:
 - tailored to meet the harm the defendant represents;
 - proportionate and limited to that which is necessary;
 - made in terms that are enforceable.
- A draft of the order should be supplied to the court and to the defendant by the prosecution not less than 2 days before the hearing.
- Orders must be in clear terms and capable of being understood by the defendant without recourse to legal advice.
- Orders may be for a fixed period of not less than 5 years or without limit of time.
- The existence of a SOPO will operate to extend the notification requirements [see 7-15A below] until the expiry of the order [s.107(4)].
- Orders may be varied on application to the court by the defendant or an interested chief officer of police.

Examples: based on those approved by the CACD in R v Smith and others [2011] EWCA Crim 1772:

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,*
 - and*
 - (ii) 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/indefinitely.”*

Contact with children

“The defendant is prohibited from having any unsupervised contact of any kind with any [male/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.
This order will last until/indefinitely.”

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 with the express approval of the Social Services department for that area.”
This order will last until/indefinitely.”

(7-15) Statutory Surcharge - Criminal Justice Act 2003 (Surcharge) Order 2012

Archbold 5-1299; Blackstone E15.25; Sentencing Referencer 230

In respect of offences committed on or after 1st October 2012 a surcharge is payable on every sentence passed by every court, on sliding scales for youth and adult offenders.

The surcharge amounts are set out in the Schedule to the Criminal Justice Act 2003 (Surcharge) Order 2012, a summary of which appears below.

The surcharge is enforceable as though it were a sum adjudged to be paid on summary conviction: s.41 and para. 13 Schedule 9 AJA 1970.

There is no statutory requirement to specify the amount of the surcharge. The following wording has been approved as being appropriate by the Senior Presiding Judge: ***“The surcharge provisions apply to this case and the order will be drawn up accordingly”.***

In cases in which an immediate custodial sentence is imposed, the sum payable will be deducted from prison earnings and if there are any outstanding sums the governor has power to deal with them by remittal or by ordering that days be served in default.

In cases in which a sentence is imposed which does not involve an immediate loss of liberty and the surcharge has to be paid, either by itself or as part of other financial orders, the total amount payable should be explained and the terms of payment set. If no terms of, or time for, payment is set the whole sum will be treated as being payable forthwith and the defendant will immediately be liable to enforcement proceedings in the Magistrates Court.

Where the court proposes to fine a defendant but he has insufficient means to pay an appropriate fine **and** the surcharge, the fine should be reduced. Where the court proposes to order the defendant to pay compensation but he has insufficient means to pay appropriate compensation **and** the surcharge, the surcharge may be reduced (even to nil).

In reality if the defendant is of limited means, where a compensation order is appropriate, this must take priority, sometimes even (albeit rarely) to the extent of marking the offence with no separate penalty and making no order for costs. In such cases, because no sentence is ordered, no surcharge is payable.

Whilst the surcharge is generally described as “the victim surcharge”, it is suggested that it is no longer appropriate to use this term since to do so could risk causing grave upset in very serious cases where victims or their families might regard the sum payable as a measure of the harm caused.

Amount of surcharge:**Offenders under 18**

Conditional discharge	£10
A fine, youth rehabilitation order, Referral order or community order (pre 2009)	£15
A custodial sentence	£20

Offenders over 18

Conditional Discharge	£15
A fine	10% of the value of the fine to the nearest pound but no less than £20 nor more than £120
A community order	£60
A custodial sentence of up to 6 months whether suspended or not	£80
A custodial sentence of up to 24 months or a suspended sentence of 6 months – 12 months	£100
Any custodial sentence in excess of 24 months.	£120

Surcharges for those who are not individuals (companies etc.)

Conditional discharge £15, a fine 10% of the total but no less than £20 nor more than £120.

(7-16) Travel restriction orders - Criminal Justice and Police Act 2001 s.33

Archbold 5-1141; Blackstone E21.30; Sentencing Referencer 248

A travel restriction order may be made on conviction of a drug trafficking offence. Drug trafficking is defined in s.34 of the CJA: this definition is not the same as that found in PoCA 2002.

The effect of an order is to prohibit the defendant from leaving the UK for the period of the order commencing on the date of his release from custody. The defendant may be required to deliver up his passport.

- The court has a power to make orders in all such cases.
- Where a defendant 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.
- Cases where it is appropriate to make orders are those in which there is reason to believe the order will reduce the risk of re-offending on release from prison.
- The minimum length of an order is 2 years from the date of the defendant's release from custody.

8. REQUIREMENTS and RECOMMENDATIONS

(8-1) Sexual offences notification requirement – Sexual Offences Act 2005 ss. 80 - 91

Archbold 20-265; Blackstone E23.1; Sentencing Referencer 212

A defendant is subject to the notification requirements of the Act if he is convicted of an offence within Schedule 3 of the Act.

- The notification provisions are automatic.
- 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 of various personal particulars, including where he is living.

Example: “.....and I certify that you have been convicted of a sexual offence so that you must, for a period ofyears 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.”

(8-2) Barring requirements – schedule 3, paragraph 25 Safeguarding Vulnerable Groups Act 2006 as amended by part 5, chapter 1 Protection of Freedoms Act 2012.

Archbold 5-1123; Blackstone E21.21; Sentencing Referencer 20

Paragraph 25 of Schedule 3 of the Safeguarding Vulnerable Groups Act 2006 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 IBB will include him in the barred list concerned”.

The Safeguarding Vulnerable Groups Act 2006 is amended by Part 5, Chapter 1 of the Protection of Freedoms Act 2012 (sections 64 – 78). At the time of writing not all of these provisions are in force.

The combined effect of these provisions (as in force at the time of writing) is to impose upon the court the obligation to inform (not “order”) a defendant that he will or may be barred by the Independent Safeguarding Authority from regulated activity with children and/or adults (although this body is to be replaced by the Disclosure and Barring Service).

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. The lists of offences and types of barring are to be found at Appendix IV below.

(8-3) Deportation (recommendation) - Immigration Act 1971 s.6

Archbold 5-1256; Blackstone E20.1; Sentencing reference 188

- Available in respect of offenders age 17 or over convicted of an offence punishable with imprisonment.
- 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.
- The criteria for making the recommendation is whether the defendant’s continued presence in this country is to its detriment.
- The consideration of the court should be restricted to the criminal conduct of the defendant while in this country; matters relating to conditions in his country of origin are for the Home Secretary.

9. BREACHES etc. of COMMUNITY ORDERS and SUSPENDED SENTENCES

(9-1) Breach, revocation or amendment of Community Orders and effect of further conviction - CJA 2003 s. 179 and Schedule 8

NB

- 1. The following applies to offences committed on or after 4th April 2005.**
- 2. LASPO has made changes to the power of the court on breach of Community Orders. The changes relate to a failure in compliance with an order occurring on or after 3rd December 2012.**

Archbold 5-339; Blackstone E8.28; Sentencing Referencer 31

Breach of requirement – Schedule 8 paragraph 10 (and 11)

The offender will be brought before the court on summons or warrant.

ORIGINAL AND LASPO

- The court must take into account the extent to which the offender has complied with the requirements of the order [para 10(2)].
- The court should have as its primary objective ensuring that the requirement/s of the order is/are completed, if there is a realistic prospect of this being achieved [précis of Guideline “*New Sentences: CJA 2003*”].

ORIGINAL

- If the offender has failed, without reasonable excuse, to comply with any requirement of the order the court **must** deal with him in one of 3 ways [para. 10(1)]:
 - by imposing more onerous requirements which may include:
 - in the case of an order without an unpaid work requirement 20 or more hours of unpaid work; or
 - extending the duration of the requirement/s (though not beyond 3 years);
 - by revoking the order and dealing with him for the offence in any way in which he could have been dealt with by the court that made the order;
 - in the case of an offence not punishable by imprisonment, if the offender has wilfully and persistently failed to comply with the requirement/s, revoke the order and impose a sentence of imprisonment/YOI for up to 6 months.

LASPO

- The court has the powers set out above and the additional/alternative power to:
 - Impose a fine not exceeding £2500.
 - Make no order on the breach.

Revocation – Schedule 8 paragraph 14

The offender or the responsible officer may apply to the court.

- 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 [para 14(5)].
- 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 [para. 14(2)].
- Such circumstances include good progress or a satisfactory response to supervision or treatment [para. 14(3)].
- If the court resents it must take into account the extent to which the offender has complied with the requirements of the order [para 14(4)].

Amendment – Schedule 8 paragraphs 16 to 20

The offender or the responsible officer may apply to the court.

- Amendment may be ordered
 - because of any change, or proposed change, of the offender's residence;
 - 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, 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;
 - to vary or cancel a treatment requirement (mental health, drug rehabilitation, alcohol) on the report of a medical practitioner;
 - for drug rehabilitation reviews to take place without/with a hearing;
 - to extend, beyond 12 months, the period for completion of unpaid work.

Subsequent conviction of an offence – Schedule 8 paragraph 23

- A subsequent conviction of an offence is not of itself a breach of an order.
- 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.
- If the court resents it must take into account the extent to which the offender has complied with the requirements of the order [para 23(3)].

(9-2) Breach, revocation or amendment of Suspended Sentences and effect of further conviction – CJA 2003 s. 193 and Schedule 12

Archbold 5-565; Blackstone E6.11; Sentencing Referencer 239

NB

1. The following applies to offences committed on or after 4th April 2005.
2. **LASPO has made changes to the power of the court on breach of Suspended Sentence Orders. The changes relate to a further offence or a failure in compliance with an order occurring on or after 3rd December 2012.**

Breach of requirement or conviction of offence during operational period – Schedule 12 paragraph 8

The offender will be brought before the court on summons or warrant.

ORIGINAL

- If the offender has failed, without reasonable excuse, to comply with any community requirement **or** is convicted of an offence within the operational period
 - unless it would be unjust to do so, the court must order the sentence to take effect either in full [para. 8(2)(a)] or with a lesser term [para. 8(2)(b) as modified];
 - if it would be unjust to order the sentence to take effect either in full or in part the court must amend the order by imposing more onerous community requirements or by extending the supervision or operational period [para. 8(2)(c)].

LASPO

- If the offender has failed, without reasonable excuse, to comply with any community requirement **or** is convicted of an offence within the operational period
 - unless it would be unjust to do so, the court must order the sentence to take effect either in full [para. 8(2)(a)] or with a lesser term [para. 8(2)(b) as modified];
 - 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.
 - 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 [para. 8(2)(c)].

NB

- 1. *The court has no power to add requirements to a suspended sentence imposed without requirements.***
- 2. *There is no power to make “no order” on the breach of a suspended sentence.***

ORIGINAL AND LASPO

- 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 [para. 8(3) and (4)]. If the court finds it would be unjust, reasons must be given.
- A mental health treatment, drug rehabilitation or alcohol treatment requirement may not be amended without the offender’s consent.

Amendment – Schedule 12 paragraphs 13 to 22

The offender or the responsible officer may apply to the court.

- Amendment may be ordered
 - to cancel the community requirements if it is in the interests of justice;
 - because of any change or proposed change of the offender’s residence;
 - 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);
 - to change a treatment requirement (mental health, drug rehabilitation, alcohol) on the report of a medical practitioner;
 - for drug rehabilitation reviews to take place without/with a hearing;
 - to extend, beyond 12 months, the period for completion of unpaid work.

10. COSTS

Prosecution of Offences Act 1985
CPR Part 76
Practice Direction (Costs in Criminal Proceedings) 2011

Archbold Chapter 6; Blackstone Chapter D33

NB - LASPO (Schedule 7) makes changes to what may be included in a defendants' costs order by inserting a new s.16A into the POA 1985 in respect of proceedings commenced on or after 1st October 2012.

Issues of costs will have to be considered in many cases.

- 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].
- 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].

Proceedings commenced before 1st October 2012

- Where a defendant 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.
- Where a defendant has been represented under the terms of a representation order the order will be limited to the defendant'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.

Proceedings commenced on or after 1st October 2012

- Where an individual 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.
- An accused who is **not** an individual may not recover legal costs on a successful appeal from the Magistrates Court as part of a DCO.
- No legal costs are recoverable as part of a DCO in respect of proceedings on indictment whether the accused is an individual or not.

- A DCO for a defendant represented under the terms of a representation order or who is otherwise unable to claim costs of legal representation will be limited to reasonable out of pocket expenses. 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.

All proceedings, whether before or after 1st October 2012

- Where a defendant is acquitted on some charges but convicted on others the court has a discretion to order that part of his expenses be met from central funds.
- Where a court considers a legal representative has acted in an improper, unreasonable or negligent manner it may be necessary to order:
 - The party to show cause why they should not pay the costs of other parties ascertained to have been wasted by their conduct and
 - 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*)].
- Where a 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:
 - 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
 - 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].

Such orders require very careful consideration and are, in practice, very rarely made.

APPENDIX I – Sentencing Guidelines

All guidelines are available to download from:

www.sentencingcouncil.org.uk

Offence Guidelines

Anti Social behaviour Orders (breach)
Assault (new format)
Assaults on children and cruelty to a child
Attempted murder
Bail Act Offences
Burglary Offences (new format)
Corporate Manslaughter and Health and Safety Offences Causing Death
Dangerous Dog Offences
Death by Driving
Drug Offences (new format)
Fraud
Manslaughter by reason of provocation (loss of control)
Protective Order (e.g. restraining order) – breach of
Robbery
Sexual Offences
Theft (non domestic burglary is now within the burglary guideline)

Overarching principles and general guidance

Allocation
Domestic Violence
Guilty plea –reduction for
New Sentences under the CJA 2003
Seriousness
Totality and TICs
Youth Sentencing

APPENDIX II – Worksheet for sentence

R. v.

Age:

Antecedents:

Charge:

Maximum:

Pros 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:

APPENDIX III - Indications of Sentence – *R v Goodyear*

Archbold 5-110

Blackstone D12.61

Following the case of *Goodyear* 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 the Consolidated Practice Direction: Part IV paras 45.16 to 45.33.

The principal matters to note are:

- The defendant must give written authority to his advocate to seek an indication of sentence.
- The defence advocate must notify the prosecution of any application for an indication.
- An indication may be sought only when:
 1. the plea is entered on the full facts of the prosecution case; or
 2. a written basis of plea is agreed by the prosecution; or
 3. 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.

In a case of any complication it will not be possible to meet these conditions unless the prosecution and the judge have been given adequate notice of the application.

- 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.
- The judge should receive submissions from counsel as to the appropriate level of sentence within any relevant Sentencing Council Guideline or guideline case.
- It will not be appropriate to give an indication where:
 1. there are co-accused pleading not guilty;
 2. the offence is one where the issue of dangerousness arises;
 3. medical or other reports are outstanding and the proper sentence may depend upon the content of such reports.
- Any indication must be given in open court and in precise terms.
- 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.
- An indication is binding on the judge for the period expressed.
- 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.
- Reporting restrictions should normally be imposed upon any *Goodyear* application: these may be lifted if the defendant pleads or is found guilty.

APPENDIX IV - Offences which lead to barring from regulated activity with children and/or adults: as from 10 September 2012

These lists contain some old and/or repealed offences - in case there are convictions under old legislation for behaviour predating the repeal and in case old convictions come to the attention of the Independent Safeguarding Authority.

In some cases an offence will or may lead to barring only in certain circumstances - for example if the victim was a child. These are shown in square brackets after the description of the offence.

Children's Automatic Barring Offences – with no right to representations. A person who commits one of these offences, subject to any qualifications set out, <u>will</u> be barred from working in regulated activity relating to children.		
Act	Section	Offence
Criminal Law Amendment Act 1885	4	Defilement of girl under 14 years of age
Sexual Offences Act 1956	1	Rape [where the victim was a child]
Sexual Offences Act 1956	5	Sexual intercourse with a girl under the age of thirteen
Mental Health Act 1959	128	Sexual intercourse with patients [where the victim was a child]
Sexual Offences Act 2003	1	Rape [where the victim was a child]
Sexual Offences Act 2003	2	Assault by penetration [where the victim was a child]
Sexual Offences Act 2003	5	Rape of a child under 13
Sexual Offences Act 2003	6	Assault of a child under 13 by penetration
Sexual Offences Act 2003	7	Sexual assault of a child under 13 [<i>Intentionally touched a girl/boy and the touching was sexual</i>]
Sexual Offences Act 2003	8	Causing or inciting a child under 13 to engage in sexual activity
Sexual Offences Act 2003	30	Sexual activity with a person with a mental disorder impeding choice [where the victim was a child]
Sexual Offences Act 2003	31	Causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity [where the victim was a child]
Sexual Offences Act 2003	32	Engaging in sexual activity in the presence of a person with a mental disorder impeding choice [where the victim was a child]
Sexual Offences Act 2003	33	Causing a person, with a mental disorder impeding choice, to watch a sexual act [where the victim was a child]
Sexual Offences Act 2003	34	Inducement, threat or deception to procure sexual activity with a person with a mental disorder [where the victim was a child]

Sexual Offences Act 2003	35	Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception [where the victim was a child]
Sexual Offences Act 2003	36	Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder [where the victim was a child]
Sexual Offences Act 2003	37	Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception [where the victim was a child]
Sexual Offences Act 2003	38	Care workers: sexual activity with a person with a mental disorder [where the victim was a child]
Sexual Offences Act 2003	39	Care workers: causing or inciting sexual activity [where the victim was a child]
Sexual Offences Act 2003	40	Care workers: sexual activity in the presence of a person with a mental disorder [where the victim was a child]
Sexual Offences Act 2003	41	Care workers: causing a person with a mental disorder to watch a sexual act [where the victim was a child]
<p>Children's Automatic Barring Offences – with right to make representations. A person who commits one of these offences, subject to any qualifications set out, <u>may</u> be barred from working in regulated activity relating to children.</p>		
Act	Section	Offence
<i>Common law</i>		Murder
<i>Common law</i>		Kidnapping
<i>Common law</i>		Infanticide
Offences Against the Person Act 1861	21	Attempt to choke & c. in order to commit or assist in the committing of any indictable offence
Offences Against the Person Act 1861	52	Indecent assault upon a female
Offences Against the Person Act 1861	53	Fraudulent abduction of a girl under age against the will of her father & c.
Offences Against the Person Act 1861	54	Forcible abduction of any woman with intent to marry or carnally know her & c.
Offences Against the Person Act 1861	55	Abduction of a girl under 16 years of age
Offences Against the Person Act 1861	61	Buggery [where the victim was under 16 or did not consent]
Offences Against the Person Act 1861	62	Indecent assault upon a male, attempt to commit buggery, assault with intent to commit buggery [where the victim was under 16 or did not consent]
Criminal Law Amendment Act 1885	2	[Procuration]
Criminal Law Amendment Act 1885	3	Procuring defilement of woman by threats or fraud or administering drugs
Criminal Law Amendment Act 1885	4	Defilement of a girl under 14 years of age

Criminal Law Amendment Act 1885	5	Defilement of a girl under 17 years of age
Criminal Law Amendment Act 1885	6	Householder & c. permitting defilement of young girl on his premises
Criminal Law Amendment Act 1885	7	Abduction of a girl under 18 with intent to have carnal knowledge
Criminal Law Amendment Act 1885	8	Unlawful detention with intent to have carnal knowledge
Criminal Law Amendment Act 1885	11	Outrages on decency [where the victim was under 16 or did not consent, and the conviction has not been disregarded under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012]
Vagrancy Act 1898	1	Trading in prostitution
Punishment of Incest Act 1908	1	Incest by males [where the victim was a child]
Punishment of Incest Act 1908	2	Incest by females aged 16 or over [where the victim was a child]
Children and Young Persons Act 1933	1	Cruelty to children [<i>Being a person 16 years or over having responsibility for a child under 14/young person under 16 wilfully assaulted/ill treated/neglected/abandoned/exposed the child/young person in manner likely to cause unnecessary suffering/injury to health</i>]
Infanticide Act 1938	1	Infanticide [<i>Caused the death of own child under age 12 months by wilful act/omission whilst balance of mind disturbed by offender not having recovered from giving birth to the child/effect of lactation consequent upon birth of the child</i>]
Sexual Offences Act 1956	1	Rape [where the victim was an adult]
Sexual Offences Act 1956	2	Procurement of a woman by threats [<i>By threats or intimidation procured a woman/child to have unlawful sexual intercourse</i>]
Sexual Offences Act 1956	3	Procurement of a woman by false pretences [<i>Procured a woman/child to have unlawful sexual intercourse</i>]
Sexual Offences Act 1956	4	Administering drugs to obtain or facilitate intercourse
Sexual Offences Act 1956	6	Sexual intercourse with a girl under the age of sixteen
Sexual Offences Act 1956	7	Intercourse with defective*
Sexual Offences Act 1956	9	Procurement of defective*
Sexual Offences Act 1956	10	Incest by a man [<i>Being man/boy had sexual intercourse with woman/girl he knew to be granddaughter/mother/sister/half-sister/daughter</i>] [where the victim was a child]
Sexual Offences Act 1956	11	Incest by a woman [<i>Being a woman with consent permitted a man you knew to be your grandfather/father/ brother/half-brother/son to have sexual intercourse with you</i>] [where the victim was a child]
Sexual Offences Act 1956	12	Buggery [where the victim was under 16 or did not consent, and the conviction has not been disregarded under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012]
Sexual Offences Act 1956	13	Indecency between men [<i>man aged 18/19/20 years or man over 21 years committed gross indecency with man under 16 years</i>] [where the victim was under 16 or did not consent, and the conviction has not been disregarded under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012]

Sexual Offences Act 1956	14	Indecent assault on a woman
Sexual Offences Act 1956	15	Indecent assault on a man
Sexual Offences Act 1956	16	Assault with intent to commit buggery
Sexual Offences Act 1956	17	Abduction of a woman by force or for the sake of her property
Sexual Offences Act 1956	19	Abduction of unmarried girl under 18
Sexual Offences Act 1956	20	Abduction of unmarried girl under 16
Sexual Offences Act 1956	21	Abduction of defective* from parent or guardian
Sexual Offences Act 1956	22	Causing prostitution of women
Sexual Offences Act 1956	23	Procuration of girl under 21
Sexual Offences Act 1956	24	Detention of a woman in a brothel or other premises
Sexual Offences Act 1956	25 and 26	Permitting girl, under 13, or between 13 and 16, to use premises for intercourse
Sexual Offences Act 1956	27	Permitting defective* to use premises for intercourse
Sexual Offences Act 1956	28	Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16
Sexual Offences Act 1956	29	Causing or encouraging prostitution of defective
Sexual Offences Act 1956	30	Man living on earnings of prostitution
Sexual Offences Act 1956	31	Woman exercising control over prostitute
Mental Health Act 1959	128	Sexual intercourse with patients
Indecency with Children Act 1960	1	Indecency with children under the age of sixteen
Sexual Offences Act 1967	4	Procuring others to commit homosexual acts
Sexual Offences Act 1967	5	Living on the earnings of male prostitution
Theft Act 1968	9(1)(a)	Burglary [with intent to commit rape]
Misuse of Drugs Act 1971	4(3)	Production or supply of controlled drugs [where the victim was a child]
Criminal Law Act 1977	54	Inciting a girl under the age of sixteen to have incestuous sexual intercourse
Protection of Children Act 1978	1	Take, or permit to be taken, or to make any indecent photograph or pseudo-photograph of a child; distribution or possession of indecent photograph of a child
Customs and Excise Management Act 1979	170	[Importation of prohibited obscene material]
Mental Health Act 1983	127	Ill-treatment or wilful neglect of a patient with a mental disorder
Child Abduction Act 1984	1	Abduction of a child by parent
Child Abduction Act 1984	2	Abduction of child by other persons
Criminal Justice Act	160	Possession of indecent photographs of children

1988		
Sexual Offences (Amendment) Act 2000	3	Abuse of trust [<i>Being a person aged eighteen years or over in a position of trust has sexual intercourse/engage in sexual activity with a person under 18</i>]
Nationality, Immigration and Asylum Act 2002	145	Traffic in prostitution
Female Genital Mutilation Act 2003	1	Carrying out female genital mutilation [where the victim was a child]
Female Genital Mutilation Act 2003	2	Aiding, abetting, counselling or procuring a girl to mutilate her own genitals [where the victim was a child]
Female Genital Mutilation Act 2003	3	Aiding, abetting, counselling or procuring a non-UK person to mutilate overseas a girl's genitals [where the victim was a child]
Sexual Offences Act 2003	1	Rape [where the victim was an adult]
Sexual Offences Act 2003	2	Assault by penetration [where the victim was an adult]
Sexual Offences Act 2003	3	Sexual assault
Sexual Offences Act 2003	4	Causing a person to engage in sexual activity without consent
Sexual Offences Act 2003	4(1A)	Trafficking people for labour and other exploitation
Sexual Offences Act 2003	9	Sexual activity with a child
Sexual Offences Act 2003	10	Causing or inciting a child to engage in sexual activity
Sexual Offences Act 2003	11	Engaging in sexual activity in the presence of a child [<i>being a person aged eighteen years or over for the purpose of obtaining sexual gratification intentionally engaged in sexual activity in the presence of / a place where you could be observed by a child under 13 OR 13/14/15 years knowing / believing that the child was or intending that the child should be aware that you were engaging in that activity</i>]
Sexual Offences Act 2003	12	Causing a child to watch a sexual act [<i>being a person aged eighteen years or over for the purpose of obtaining sexual gratification intentionally caused a child under 13 OR 13/14/15 years whom you did not reasonably believe was aged 16 years or over to watch a third person/look at an image of any person engaging in a sexual activity</i>]
Sexual Offences Act 2003	14	Arranging or facilitating commission of a child sex offence
Sexual Offences Act 2003	15	Meeting a child following sexual grooming [<i>Being a person 18 or over having on at least two earlier occasions met/communicated with a girl/boy under 16 and who you did not reasonably believe was 16 or over intentionally met/travelled with the intention of meeting that girl/boy and at the time you intended to do anything to / in respect of her/him during/after the meeting and in any part of the world which if done would have involved the commission by you of a relevant offence</i>]
Sexual Offences Act 2003	16	Abuse of position of trust: sexual activity with a child
Sexual Offences Act 2003	17	Abuse of position of trust: causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003	18	Abuse of position of trust: sexual activity in the presence of a child <i>[Being a person 18 or over in a position of trust in relation to a child under 13 for the purpose of obtaining sexual gratification intentionally engaged in sexual activity the presence of/where you could be observed by that child knowing or believing that the child was / intending that the child should be aware that you were engaging in that activity or caused that child to watch a third person / look at an image of any person engaging in a sexual activity]</i>
Sexual Offences Act 2003	19	Abuse of position of trust: causing a child to watch a sexual act <i>[Being a person 18 or over in a position of trust in relation to a child aged 13/14/15/16/17 whom you did not reasonably believe was aged 18 or over or the purpose of obtaining sexual gratification intentionally caused that child to watch a third person / look at an image of a person engaging in sexual activity]</i>
Sexual Offences Act 2003	25	Sexual activity with a child family member
Sexual Offences Act 2003	26	Inciting a child family member to engage in sexual activity
Sexual Offences Act 2003	30	Sexual activity with a person with a mental disorder impeding choice [where the victim was an adult]
Sexual Offences Act 2003	31	Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity [where the victim was an adult]
Sexual Offences Act 2003	32	Engaging in sexual activity in the presence of a person with a mental disorder impeding choice [where the victim was an adult]
Sexual Offences Act 2003	33	Causing a person, with a mental disorder impeding choice, to watch a sexual act [where the victim was an adult]
Sexual Offences Act 2003	34	Inducement, threat or deception to procure sexual activity with a person with a mental disorder [where the victim was an adult]
Sexual Offences Act 2003	35	Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception [where the victim was an adult]
Sexual Offences Act 2003	36	Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder [where the victim was an adult]
Sexual Offences Act 2003	37	Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception [where the victim was an adult]
Sexual Offences Act 2003	38	Care workers: sexual activity with a person with a mental disorder [where the victim was an adult]
Sexual Offences Act 2003	39	Care workers: causing or inciting sexual activity [where the victim was an adult]

Sexual Offences Act 2003	40	Care workers: sexual activity in the presence of a person with a mental disorder [<i>Being a care worker involved in the care of a person who could reasonably be expected to have known had such a disorder intentionally engaged in an activity for the purpose of obtaining sexual gratification in the presence of/a place where you could be observed by that person knowing/believing that she/he was aware/intending that she/he should be aware that you were engaging in it</i>] [where the victim was an adult]
Sexual Offences Act 2003	41	Care workers: causing a person with a mental disorder to watch a sexual act [<i>Being a care worker involved in the care of a person in a way which falls within s.42 of the SOA 2003 who had a mental disorder and who you knew/could reasonably be expected to have known had such a disorder intentionally caused him/her to watch a third person/look at an image of a person engaging in a sexual activity</i>] [where the victim was an adult]
Sexual Offences Act 2003	47	Paying for sexual services of a child
Sexual Offences Act 2003	48	Causing or inciting child prostitution or pornography
Sexual Offences Act 2003	49	Controlling a child prostitute or a child involved in pornography
Sexual Offences Act 2003	50	Arranging or facilitating child prostitution or pornography
Sexual Offences Act 2003	52	Causing or inciting prostitution for gain
Sexual Offences Act 2003	53	Controlling prostitution for gain
Sexual Offences Act 2003	57	Trafficking into the UK for sexual exploitation
Sexual Offences Act 2003	58	Trafficking within the UK for sexual exploitation
Sexual Offences Act 2003	59	Trafficking out of the UK for sexual exploitation
Sexual Offences Act 2003	59A	Trafficking people for sexual exploitation
Sexual Offences Act 2003	61	Administering a substance with intent [<i>administered a substance to OR caused a substance to be taken by another person knowing he/she did not consent and with the intention of stupefying/overpowering him/her so as to enable any person to engage in a sexual activity involving him/her</i>]
Sexual Offences Act 2003	62 and 63	Committing an offence or trespassing with intent to commit a sexual offence [where that offence leads to automatic barring]
Sexual Offences Act 2003	66	Exposure [<i>Intentionally exposed genitals intending someone would see them causing alarm/distress</i>] [where the victim was under 16]
Sexual Offences Act 2003	67	Voyeurism [<i>For the purpose of obtaining sexual gratification observed/operated equipment/recorded/installed equipment OR constructed/adapted a structure /part of a structure (to observe) – another person doing a private act knowing that the person did not consent to being observed</i>] [where the victim was under 16]
Sexual Offences Act 2003	72	Sexual offences committed outside the UK [corresponding to an offence which leads to automatic barring from work with children with the right to make representations]
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004	4	Trafficking people for exploitation

Domestic Violence, Crime and Victims Act 2004	5	Causing or allowing the death of a child or vulnerable adult
Mental Capacity Act 2005	44	Ill-treatment or wilful neglect
Criminal Justice and Immigration Act 2008	63	Possession of extreme pornographic images
Coroners and Justice Act 2009	62	Possession of prohibited images of children

Adults Barring Offences – with no right to make representations A person who commits one of these offences, subject to any qualifications set out, will be barred from working in regulated activity relating to adults.

Act	Section	Offence
Sexual Offences Act 2003	30	Sexual activity with a person with a mental disorder impeding choice
Sexual Offences Act 2003	31	Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
Sexual Offences Act 2003	32	Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
Sexual Offences Act 2003	33	Causing a person, with a mental disorder impeding choice, to watch a sexual act
Sexual Offences Act 2003	34	Inducement, threat or deception to procure sexual activity with a person with a mental disorder
Sexual Offences Act 2003	35	Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
Sexual Offences Act 2003	36	Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
Sexual Offences Act 2003	37	Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception
Sexual Offences Act 2003	38	Care workers: sexual activity with a person with a mental disorder
Sexual Offences Act 2003	39	Care workers: causing or inciting sexual activity
Sexual Offences Act 2003	40	Care workers: sexual activity in the presence of a person with a mental disorder
Sexual Offences Act 2003	41	Care workers: causing a person with a mental disorder to watch a sexual act

Adults Barring Offences – with right to make representations. A person who commits one of these offences, subject to any qualifications set out, may be barred from working in regulated activity relating to adults.

Act	Section	Offence
<i>Common law</i>		Murder
<i>Common law</i>		Kidnapping

<i>Common law</i>		Infanticide
Offences Against the Person Act 1861	21	Attempting to choke & c. in order to commit or assist in committing an indictable offence
Offences Against the Person Act 1861	52	Indecent assault upon a female
Offences Against the Person Act 1861	53	Fraudulent abduction of a girl under age against the will of her father & c.
Offences Against the Person Act 1861	54	Forcible abduction of any woman with intent to marry or carnally know her & c.
Offences Against the Person Act 1861	55	Abduction of a girl under 16 years of age
Offences Against the Person Act 1861	61	Buggery [where the victim was under 16 or did not consent]
Offences Against the Person Act 1861	62	Indecent assault upon a male, attempt to commit buggery, assault with intent to commit buggery [where the victim was under 16 or did not consent]
Criminal Law Amendment Act 1885	2	[Procuration]
Criminal Law Amendment Act 1885	3	Procuring defilement of woman by threats or fraud or administering drugs
Criminal Law Amendment Act 1885	4	Defilement of a girl under 14 years of age
Criminal Law Amendment Act 1885	5	Defilement of a girl under 17 years of age
Criminal Law Amendment Act 1885	6	Householder & c. permitting defilement of young girl on his premises
Criminal Law Amendment Act 1885	7	Abduction of girl under 18 with intent to have carnal knowledge
Criminal Law Amendment Act 1885	8	Unlawful detention with intent to have carnal knowledge
Criminal Law Amendment Act 1885	11	Outrages on decency [where the victim was under 16 or did not consent, and the conviction has not been disregarded under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012]
Vagrancy Act 1898	1	Trading in prostitution
Punishment of Incest Act 1908	1	Incest by males [where the victim was a child or did not consent]
Punishment of Incest Act 1908	2	Incest by females aged 16 or over [where the victim was a child or did not consent]
Children and Young Persons Act 1933	1	Cruelty to children
Infanticide Act 1938	1	Infanticide
Sexual Offences Act 1956	1	Rape
Sexual Offences Act 1956	2	Procurement of a woman by threats

Sexual Offences Act 1956	3	Procurement of a woman by false pretences
Sexual Offences Act 1956	4	Administering drugs to obtain or facilitate intercourse
Sexual Offences Act 1956	5	Sexual intercourse with a girl under the age of 13
Sexual Offences Act 1956	6	Sexual intercourse with a girl under the age of sixteen
Sexual Offences Act 1956	7	Intercourse with defective*
Sexual Offences Act 1956	9	Procurement of defective*
Sexual Offences Act 1956	10	Incest by a man [where the victim was a child or did not consent]
Sexual Offences Act 1956	11	Incest by a woman [where the victim was a child or did not consent]
Sexual Offences Act 1956	12	Buggery [where the victim was under 16 or did not consent, and the conviction has not been disregarded under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012]
Sexual Offences Act 1956	13	Indecency between men [<i>man aged 18/19/20 years or man over 21 years committed gross indecency with man under 16 years</i>] [where the victim was under 16 or did not consent, and the conviction has not been disregarded under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012]]
Sexual Offences Act 1956	14	Indecent assault on a woman
Sexual Offences Act 1956	15	Indecent assault on a man
Sexual Offences Act 1956	16	Assault with intent to commit buggery
Sexual Offences Act 1956	17	Abduction of a woman by force or for the sake of her property [<i>took away/detained a woman against her will and by force with intention she should marry/ have unlawful sexual intercourse with self/another person</i>]
Sexual Offences Act 1956	19	Abduction of unmarried girl under 18
Sexual Offences Act 1956	20	Abduction of unmarried girl under 16
Sexual Offences Act 1956	21	Abduction of defective* from parent or guardian
Sexual Offences Act 1956	22	Causing prostitution of women
Sexual Offences Act 1956	23	Procuration of girl under 21
Sexual Offences Act 1956	24	Detention of a woman in a brothel or other premises
Sexual Offences Act 1956	25 and 26	Permitting girl, under 13, or between 13 and 16, to use premises for intercourse
Sexual Offences Act 1956	27	Permitting defective* to use premises for intercourse
Sexual Offences Act 1956	28	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16
Sexual Offences Act 1956	29	Causing or encouraging prostitution of defective*
Sexual Offences Act 1956	30	Man living on earnings of prostitution

Sexual Offences Act 1956	31	Woman exercising control over prostitute
Mental Health Act 1959	128	Sexual intercourse with patients
Indecency with Children Act 1960	1	Indecency with children under the age of sixteen
Sexual Offences Act 1967	4	Procuring others to commit homosexual acts
Sexual Offences Act 1967	5	Living on the earnings of male prostitution
Theft Act 1968	9(1)(a)	Burglary [with intent to commit rape]
Misuse of Drugs Act 1971	4(3)	Production or supply of controlled drugs [where the victim was a child]
Criminal Law Act 1977	54	Inciting a girl under the age of sixteen to have incestuous sexual intercourse
Protection of Children Act 1978	1	Take, or permit to be taken, or to make any indecent photograph or pseudo-photograph of a child; distribution or possession of indecent photograph of a child
Customs and Excise Management Act 1979	170	[Importation of prohibited obscene material]
Mental Health Act 1983	127	Ill-treatment or wilful neglect of a patient with a mental disorder
Child Abduction Act 1984	1	Abduction of a child by parent
Child Abduction Act 1984	2	Abduction of a child by other persons
Criminal Justice Act 1988	160	Possession of indecent photographs of children
Sexual Offences (Amendment) Act 2000	3	Abuse of trust
Nationality, Immigration and Asylum Act 2002	145	Traffic in prostitution
Female Genital Mutilation Act 2003	1	Carrying out female genital mutilation [where the victim was a child]
Female Genital Mutilation Act 2003	2	Aiding, abetting, counselling or procuring a girl to mutilate her own genitals [where the victim was a child]
Female Genital Mutilation Act 2003	3	Aiding, abetting, counselling or procuring a non-UK person to mutilate overseas a girl's genitals [where the victim was a child]

Sexual Offences Act 2003	1	Rape
Sexual Offences Act 2003	2	Assault by penetration
Sexual Offences Act 2003	3	Sexual assault
Sexual Offences Act 2003	4	Causing a person to engage in sexual activity without consent
Sexual Offences Act 2003	4(1A)	Trafficking people for labour and other exploitation
Sexual Offences Act 2003	5	Rape of a child under 13
Sexual Offences Act 2003	6	Assault of a child under 13 by penetration
Sexual Offences Act 2003	7	Sexual assault of a child under 13
Sexual Offences Act 2003	8	Causing or inciting a child under 13 to engage in sexual activity
Sexual Offences Act 2003	9	Sexual activity with a child
Sexual Offences Act 2003	10	Causing or inciting a child to engage in sexual activity
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Sexual Offences Act 2003	19	Abuse of position of trust: causing a child to watch a sexual act
Sexual Offences Act 2003	25	Sexual activity with a child family member
Sexual Offences Act 2003	26	Inciting a child family member to engage in sexual activity
Sexual Offences Act 2003	47	Paying for sexual services of a child
Sexual Offences Act 2003	48	Causing or inciting child prostitution or pornography

Sexual Offences Act 2003	49	Controlling a child prostitute or a child involved in pornography
Sexual Offences Act 2003	50	Arranging or facilitating child prostitution or pornography
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Sexual Offences Act 2003	61	Administering a substance with intent
Sexual Offences Act 2003	62 and 63	Committing an offence or trespassing with intent to commit a sexual offence
Sexual Offences Act 2003	66	Exposure [where the victim was under 16]
Sexual Offences Act 2003	67	Voyeurism [where the victim was under 16]
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** ‘Defective’ means a person suffering from a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.*