

## **1. CUSTODIAL SENTENCES**

*The Powers of Criminal Courts (Sentencing) Act 2000* states that a custodial sentence should not be passed, unless the court considers that the crime was so serious that only a prison sentence is justified, or the case involves a violent or sexual offence, and only a prison sentence would be adequate to protect the public.

- Prison sentences

For the crime of murder the only sentence the court can impose is life imprisonment. Where this happens the judge may recommend the minimum number of years the offender should serve, before he can be considered for parole and the Home Secretary will set the tariff. For other crimes, the length of the sentence will depend on several factors, incl. the maximum sentence available for the particular crime, the seriousness of the crime and the defendant's previous convictions.

Prisoners do not serve the whole of the sentence passed by the court.

- ▶ Anyone sent to prison for less than four years is automatically released after they have served half of the sentence.
- ▶ Long-term prisoners serving a sentence of four years or more will be automatically released after two-thirds of the time, but may be released on license after serving half the sentence.

The exact length of the time spent in prison is determined by their behaviour in prison.

- Home Detention Curfew

*The Crime and Disorder Act 1998* allows early release from prison on condition that a curfew condition is included.

- ▶ to encourage recently released prisoners to structure their lives more effectively as well as preventing re-offending.
- ▶ reduce the prison population.

- Extended Sentences

*Section 85 of the Powers Of Criminal Courts (Sentencing) Act 2000* gives the sentencing court power to pass an extended sentence for a sexual or violent offence. This means that the offender is given a custodial sentence plus a further period (the 'extension period') during which the offender is at liberty on license.

- ▶ to have greater control over sexual offenders when they leave prison. Such offenders are required to register with the police so that it is known where they live.

- Suspended Prison Sentences

An adult offender may be given a suspended prison sentence of up to two years (six months max. in the Magistrates' Court). This means that the sentence does not take effect immediately. The court will fix a time during which the sentence is suspended; this can be for any period of time of up to two years. If during this time, the offender does not commit any further offences, the prison sentence will not be served. However, if the offender does commit another offence within the period of suspension, then the prison sentence is 'activated' and the offender will serve the sentence together with any sentence for the new offence.

## **2. COMMUNITY SENTENCES**

- **Community Rehabilitation Orders**

This places the offender under the supervision of a probation officer for a period of between six months and three years. During this period the offender must keep in regular contact with the probation officer and must lead an 'industrious and honest' life. The main aim of a community rehabilitation order is to **rehabilitate** the offender.

- **Community Punishment Orders**

This requires the offender to work for between 40 and 240 hours on a suitable project organised by the probation service. The exact number of hours is fixed by the court. The type of work involved will vary and can range from painting school buildings to helping build a play centre or working on conservative projects.

- **Community Punishment and Rehabilitation Orders**

This is a combination of up to 100 hours of work on a Community Punishment and a Community Rehabilitation Order. The offender will have to complete the required number of hours of community work, and keep the terms of the rehabilitation order.

- **Curfew Orders**

Under these, an offender can be ordered to remain at a fixed address for between 2 and 12 hours in any 24 hour period. This order can last up to six months and can be enforced by electronic tagging. The cost of tagging is quite expensive, being estimated at 675 per offender per month. However, this does compare favourably with the cost of keeping an offender in prison as the estimated cost of this is 1,555 per month per offender.

- **Drug Treatment and Testing Orders**

Sections 61 to 64 of the *Crime and Disorder Act 1998* created a new community penalty of drug treatment and testing for offenders aged 16 and over. This is now set out in sections 52 to 58 of the *Powers of Criminal Courts (Sentencing) Act 2000*. Such an order can last between six months and three years. An order can only be made if the offender is willing to comply with it. The treatment can be residential or non-residential and the court must set the minimum number of tests required from the offender each month. The court must hold reviews in which the offender must attend court.

- **Exclusion Orders**

Offenders are ordered not to go to certain places. The order can specify different places for different periods or days. This is intended to keep offenders away from areas where they are more likely to commit crime. The order can be for up to two years for offenders 16 and over, and a maximum of three months for under 16s.

- **Drug Abstinence Orders**

These can be made where the offender is dependent on drugs or has the propensity to misuse them and the offence is a 'trigger offence' or was caused or contributed to by the misuse of drugs. It orders the offender to abstain from misusing specific Class A drugs.

It is enforced by drug-testing. An order can only be made for offenders aged 18 or over and it can last for a period between six months and three years.

### **3. FINES**

This is the most common way of disposing of a case in the Magistrates' Court where the maximum fine is 5k for an individual offender. The magistrate can impose a fine of up to 20k on businesses who have committed offences under various regulatory legislation, such as health and safety at work. In the Crown Court only a small percentage of offenders are dealt with by way of a fine.

- Unpaid fines

A major problem of using fines as a sentencing power is the high level of non-payment. This has two effects: it makes the punishment ineffective; and it leads to a large number of defendants being imprisoned for non-payment.

### **4. DISCHARGES**

These may be either a conditional discharge or an absolute discharge.

- A conditional discharge means that the court discharges an offender on the condition that no further offence is committed during a set period of up to three years. It is intended to be used where it is thought that punishment is not necessary. If an offender re-offends within the time limit, the court can then impose another sentence in place of the conditional discharge, as well as imposing a penalty for the new offence.
- An absolute discharge means that, effectively, no penalty is imposed. Such a penalty is likely to be used where an offender is technically guilty but morally blameless.

### **5. Disqualification from driving.**

Where a defendant is charged with a driving offence, the courts may have the power to disqualify that person from driving for a certain period of time. The length of the disqualification will depend on the seriousness of the driving offence. Usually the courts will impose a fine as well as a disqualification. For a first-time drink-driving offence the courts have to disqualify the defendant for a minimum of 12 months, unless there are very exceptional reasons not to disqualify. If an offender has a previous drink-drive conviction, then the minimum is usually three years' disqualification.

### **6. Other powers available to the courts.**

The courts have other powers which are aimed at compensating victims and/or making sure that the defendant does not benefit from his/her crimes.

- Compensation orders and restitution orders

Courts can make an order that the defendant pay a sum of money to his victim in compensation. In the Magistrates' Court the maximum amount of compensation is 5k. If

the defendant still has the property he obtained from the victim, then the courts can make an order that the property is returned. This is called a restitution order.

- Deprivation and forfeiture orders

A court can order an offender to be deprived of property he has used to commit an offence.

- Deferred sentences

Where the judge has good reason to believe that the offender's circumstances are about to change, the sentence may be deferred for up to six months. This is to see if the change makes a difference to the defendant's behaviour. A sentence should only be deferred where the change in circumstances is such that punishment will not be necessary, or a lesser penalty is more suitable as a result of the change. The offender has to consent to sentence being deferred.