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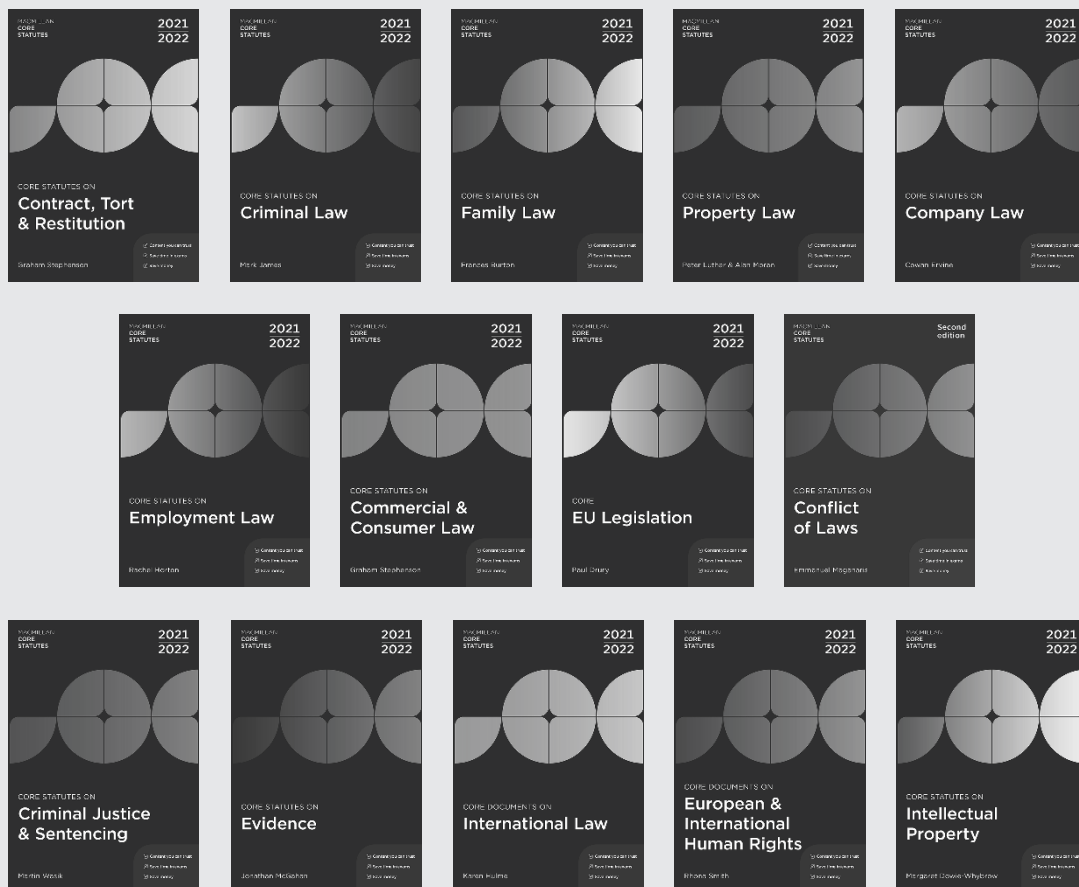
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PREFACE

Dear Reader,

This volume of *Core Statutes on Criminal Justice & Sentencing* is designed to provide students with ready access, in one place, to the key statutory provisions which those studying criminal justice are likely to encounter. Traditionally, criminal justice statutes have been amended by new legislation which has inserted new sections and subsections into earlier law. This method of legislating has generated confusion, and has led to mistakes being made by practitioners in the correct application of the law. Sentencing has been a particular problem. The Court of Appeal has complained about the poor state of criminal justice legislation, and the costs involved in hearing appeals to correct errors made in applying the law. Following years of work by the Law Commission, and with the backing of the senior judiciary and the Sentencing Council, the Sentencing Act 2020 has collected together and codified many of the sentencing provisions into one statute, which is referred to as the 'Sentencing Code'. The Code is very large (420 sections and 27 schedules), and its key provisions are included in this volume. In consequence much of the Powers of Criminal Courts (Sentencing) Act 2000 and many of the sentencing provisions of the Criminal Justice Act 2003 have been repealed. That has meant that about one third of the material in *Core Statutes on Criminal Justice & Sentencing* has been removed and replaced since the last edition. Not everything has been included in the Code. It is still necessary to refer to the Proceeds of Crime Act 2002 on forfeiture of the proceeds of crime, the Criminal Justice Act 2003 for the (increasingly convoluted) rules on the early release of prisoners, and to several other statutes for various kinds of ancillary order which are not in the 2020 Act. Those statutory rules have all been retained in this book, together with the most recent addition – the domestic abuse protection order introduced by the Domestic Abuse Act 2021. Apart from the changes to sentencing, statutory provisions on police powers and criminal evidence (including the PACE Codes of Practice) are little changed from last year, but the Criminal Procedure Rules have been updated.

The book is up to date to June 2021.

Professor Martin Wasik CBE
June 2021

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014
(2014, c. 12)

34. Authorisations to use powers under section 35

- (1) A police officer of at least the rank of inspector may authorise the use in a specified locality, during a specified period of not more than 48 hours, of the powers given by section 35.
‘Specified’ means specified in the authorisation.
- (2) An officer may give such an authorisation only if satisfied on reasonable grounds that the use of those powers in the locality during that period may be necessary for the purpose of removing or reducing the likelihood of—
 - (a) members of the public in the locality being harassed, alarmed or distressed, or
 - (b) the occurrence in the locality of crime or disorder.
- (3) In deciding whether to give such an authorisation an officer must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.
‘Convention’ has the meaning given by section 21(1) of the Human Rights Act 1998.
- (4) An authorisation under this section—
 - (a) must be in writing,
 - (b) must be signed by the officer giving it, and
 - (c) must specify the grounds on which it is given.

35. Directions excluding a person from an area

- (1) If the conditions in subsections (2) and (3) are met and an authorisation is in force under section 34, a constable in uniform may direct a person who is in a public place in the locality specified in the authorisation—
 - (a) to leave the locality (or part of the locality), and
 - (b) not to return to the locality (or part of the locality) for the period specified in the direction (‘the exclusion period’).
- (2) The first condition is that the constable has reasonable grounds to suspect that the behaviour of the person in the locality has contributed or is likely to contribute to—
 - (a) members of the public in the locality being harassed, alarmed or distressed, or
 - (b) the occurrence in the locality of crime or disorder.
- (3) The second condition is that the constable considers that giving a direction to the person is necessary for the purpose of removing or reducing the likelihood of the events mentioned in subsection (2)(a) or (b).
- (4) The exclusion period may not exceed 48 hours.
The period may expire after (as long as it begins during) the period specified in the authorisation under section 34.
- (5) A direction under this section—
 - (a) must be given in writing, unless that is not reasonably practicable;
 - (b) must specify the area to which it relates;
 - (c) may impose requirements as to the time by which the person must leave the area and the manner in which the person must do so (including the route).
- (6) The constable must (unless it is not reasonably practicable) tell the person to whom the direction is given that failing without reasonable excuse to comply with the direction is an offence.
- (7) If the constable reasonably believes that the person to whom the direction is given is under the age of 16, the constable may remove the person to a place where the person lives or a place of safety.
- (8) Any constable may withdraw or vary a direction under this section; but a variation must not extend the duration of a direction beyond 48 hours from when it was first given.
- (9) Notice of a withdrawal or variation of a direction—
 - (a) must be given to the person to whom the direction was given, unless that is not reasonably practicable, and
 - (b) if given, must be given in writing unless that is not reasonably practicable.

- (10) In this section 'public place' means a place to which at the material time the public or a section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- (11) In this Part 'exclusion period' has the meaning given by subsection (1)(b).

ASSAULTS ON EMERGENCY WORKERS (OFFENCES) ACT 2018

(2018, c. 23)

1. Common assault and battery

- (1) The section applies to an offence of common assault, or battery, that is committed against an emergency worker acting in the exercise of functions as such a worker.
- (2) A person guilty of an offence to which this section applies is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, or to a fine, or to both.
- (3) For the purposes of subsection (1), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.
- (4) In relation to an offence committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (increase in maximum term that may be imposed on summary conviction of offence triable either way), the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.
- (5) In consequence of subsections (1) to (3), in section 39 of the Criminal Justice Act 1988 (which provides for common assault and battery to be summary offences punishable with imprisonment for a term not exceeding 6 months)—
 - (a) the existing text becomes subsection (1);
 - (b) after that subsection insert—

'(2) Subsection (1) is subject to section 1 of the Assaults on Emergency Workers (Offences) Act 2018 (which makes provision for increased sentencing powers for offences of common assault and battery committed against an emergency worker acting in the exercise of functions as such a worker).'
- (6) This section applies only in relation to offences committed on or after the day it comes into force.

3. Meaning of 'emergency worker'

- (1) In sections 1 and 2, 'emergency worker' means—
 - (a) a constable;
 - (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
 - (c) a National Crime Agency officer;
 - (d) a prison officer;
 - (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
 - (f) a prisoner custody officer, so far as relating to the exercise of escort functions;
 - (g) a custody officer, so far as relating to the exercise of escort functions;
 - (h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;
 - (i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);
 - (j) a person employed for the purposes of providing, or engaged to provide—
 - (i) NHS health services, or
 - (ii) services in the support of the provision of NHS health services,
 and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.

- (2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.
- (3) In this section—
- ‘custodial institution’ means any of the following—
 - (a) a prison;
 - (b) a young offender institution, secure training centre, secure college or remand centre;
 - (c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by section 147 of the Immigration and Asylum Act 1999;
 - (d) services custody premises, as defined by section 300(7) of the Armed Forces Act 2006;
 - ‘custody officer’ has the meaning given by section 12(3) of the Criminal Justice and Public Order Act 1994;
 - ‘escort functions’—
 - (a) in the case of a prisoner custody officer, means the functions specified in section 80(1) of the Criminal Justice Act 1991;
 - (b) in the case of a custody officer, means the functions specified in paragraph 1 of Schedule 1 to the Criminal Justice and Public Order Act 1994;
 - ‘NHS health services’ means any kind of health services provided as part of the health service continued under section 1(1) of the National Health Service Act 2006 and under section 1(1) of the National Health Service (Wales) Act 2006;
 - ‘prisoner custody officer’ has the meaning given by section 89(1) of the Criminal Justice Act 1991.

BAIL ACT 1976 (1976, c. 63)

3. General provisions

- (1) A person granted bail in criminal proceedings shall be under a duty to surrender to custody, and that duty is enforceable in accordance with section 6 of this Act.
- (2) No recognizance for his surrender to custody shall be taken from him.
- (3) Except as provided by this section—
- (a) no security for his surrender to custody shall be taken from him,
 - (b) he shall not be required to provide a surety or sureties for his surrender to custody, and
 - (c) no other requirement shall be imposed on him as a condition of bail.
- (4) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.
- (5) He may be required, before release on bail, to give security for his surrender to custody. The security may be given by him or on his behalf.
- (6) He may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary—
- (a) to secure that he surrenders to custody,
 - (b) to secure that he does not commit an offence while on bail,
 - (c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,
 - (ca) for his own protection or, if he is a child or young person, for his own welfare or in his own interests,
 - (d) to secure that he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.
 - (e) to secure that before the time appointed for him to surrender to custody, he attends an interview with a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- and, in any Act, ‘the normal powers to impose conditions of bail’ means the powers to impose conditions under paragraph (a), (b), (c) or (ca) above.
- (6ZAA) The requirements which may be imposed under subsection (6) include electronic monitoring requirements.
- (6ZAB)–(7) ...

- (8) Where a court has granted bail in criminal proceedings that court or, where the court has sent a person on bail to the Crown Court for trial or committed him on bail to the Crown Court to be sentenced or otherwise dealt with, that court or the Crown Court may on application—
 - (a) by or on behalf of the person to whom the bail was granted, or
 - (b) by the prosecutor or a constable,
 vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.
- (9) This section is subject to subsection (3) of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (conditions of bail on remand for medical examination).
- (10) This section is subject, in its application to bail granted by a constable, to section 3A of this Act.

3A. Conditions of bail in case of police bail

- (1) Section 3 of this Act applies, in relation to bail granted by a custody officer under Part IV of the Police and Criminal Evidence Act 1984 or Part 3 of the Criminal Justice Act 2003 in cases where the normal powers to impose conditions of bail are available to him, subject to the following modifications.
- (2) Subsection (6) does not authorise the imposition of a requirement to reside in a bail hostel or any requirement under paragraph (d) or (e).
- (3) Subsections (6ZAA) ... shall be omitted.
- (4) For subsection (8), substitute the following—

‘(8) Where a custody officer has granted bail in criminal proceedings he or another custody officer serving at the same police station may, at the request of the person to whom it was granted, vary the conditions of bail; and in doing so he may impose conditions or more onerous conditions.’
- (5) Where a constable grants bail to a person no conditions shall be imposed under subsections (4), (5), (6) or (7) of section 3 of this Act unless it appears to the constable that it is necessary to do so—
 - (a) for the purpose of preventing that person from failing to surrender to custody, or
 - (b) for the purpose of preventing that person from committing an offence while on bail, or
 - (c) for the purpose of preventing that person from interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person, or
 - (d) for that person's own protection or, if he is a child or young person, for his own welfare or in his own interests.
- (6) Subsection (5) above also applies on any request to a custody officer under subsection (8) of section 3 of this Act to vary the conditions of bail.

4. General right to bail of accused persons and others

- (1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.
- (2) This section applies to a person who is accused of an offence when—
 - (a) he appears or is brought before a magistrates' court or the Crown Court in the course of or in connection with proceedings for the offence, or
 - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

This subsection does not apply as respects proceedings on or after a person's conviction of the offence.
- (2A) This section also applies to a person whose extradition is sought in respect of an offence, when—
 - (a) he appears or is brought before a court in the course of or in connection with extradition proceedings in respect of the offence, or
 - (b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.
- (2B) But subsection (2A) above does not apply if the person is alleged to have been convicted of the offence.
- (3) This section also applies to a person who, having been convicted of an offence, appears or is brought before a magistrates' court or the Crown Court under—

- (za) Schedule 4 to the Sentencing Code (referral orders: referral back to appropriate court),
- (zb) Schedule 5 to that Code (breach of reparation order),
- (a) Schedule 7 to that Code (breach, revocation or amendment of youth rehabilitation orders),
- (b) Part 2 of Schedule 10 to that Code (breach of requirement of community order), or
- (c) the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act).
- (4) This section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.
- (5) Schedule 1 to this Act also has effect as respects conditions of bail for a person to whom this section applies.
- (6) In Schedule 1 to this Act 'the defendant' means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (4) above.
- (7) This section is subject to section 41 of the Magistrates' Courts Act 1980 (restriction of bail by magistrates' court in cases of treason) and section 115(1) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge).
- (8) This section is subject to section 25 of the Criminal Justice and Public Order Act 1994 (exclusion of bail in cases of homicide and rape).
- (9) In taking any decisions required by Part I or II of Schedule 1 to this Act, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant ('controlled drugs' and 'misuse' having the same meanings as in the Misuse of Drugs Act 1971).

6. Offence of absconding by person released on bail

- (1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.
- (2) If a person who—
 - (a) has been released on bail in criminal proceedings, and
 - (b) having reasonable cause therefor, has failed to surrender to custody, fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.
- (3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.
- (4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.
- (5) An offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.
- (6) Where a magistrates' court convicts a person of an offence under subsection (1) or (2) above the court may, if it thinks—
 - (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or
 - (b) in a case where it sends that person for trial to the Crown Court for another offence, that it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) above by the court before which he is tried for the other offence, commit him in custody or on bail to the Crown Court for sentence.
- (7) A person who is convicted summarily of an offence under subsection (1) or (2) above and is not committed to the Crown Court for sentence shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or to both and a person who is so committed for sentence or is dealt with as for such a contempt shall be liable to imprisonment for a term not exceeding 12 months or to a fine or to both.

7. Liability to arrest for absconding or breaking conditions of bail

- (1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender at the time appointed for him to do so the court may issue a warrant for his arrest.

...

SCHEDULE 1
PERSONS ENTITLED TO BAIL: SUPPLEMENTARY PROVISIONS

PART I
DEFENDANTS ACCUSED OR CONVICTED OF IMPRISONABLE OFFENCES

...

Exceptions to right to bail

2. (1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—
 - (a) fail to surrender to custody, or
 - (b) commit an offence while on bail, or
 - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
3. The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.
4. The defendant need not be granted bail if he is in custody in pursuance of a sentence of a court or a sentence imposed by an officer under the Armed Forces Act 2006.
5. The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this Part of this Schedule for want of time since the institution of the proceedings against him.
6. The defendant need not be granted bail if, having previously been released on bail in, or in connection with, the proceedings, the defendant has been arrested in pursuance of section 7.
- 6ZA. If the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.

...

9. In taking the decisions required by paragraph 2(1) ... the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say—
 - (a) the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it),
 - (b) the character, antecedents, associations and community ties of the defendant,
 - (c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings,
 - (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted,
 - (e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant,
 and to any others which appear to be relevant.

...

BAIL (AMENDMENT) ACT 1993
(1993, c. 26)

1. Prosecution right of appeal

- (1) Where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail.

...

- (3) An appeal under subsection (1) ... may be made only if—
 - (a) the prosecution made representations that bail should not be granted; and
 - (b) the representations were made before it was granted.

...

CHILDREN AND YOUNG PERSONS ACT 1933

(1933, c. 12)

44. General considerations

- (1) Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall 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.
- (2) ...

45. Youth courts

- (1) Magistrates' courts—
 - (a) constituted in accordance with this section or section 66 of the Courts Act 2003 (judges having powers of District Judges (Magistrates' Courts)), and
 - (b) sitting for the purpose of—
 - (i) hearing any charge against a child or young person, or
 - (ii) exercising any other jurisdiction conferred on youth courts by or under this or any other Act,
 are to be known as youth courts.
- (2) A justice of the peace is not qualified to sit as a member of a youth court for the purpose of dealing with any proceedings unless he has an authorisation extending to the proceedings.
- (3) He has an authorisation extending to the proceedings only if he has been authorised by the Lord Chief Justice, with the concurrence of the Lord Chancellor, to sit as a member of a youth court to deal with—
 - (a) proceedings of that description, or
 - (b) all proceedings dealt with by youth courts.

COMPANY DIRECTORS DISQUALIFICATION ACT 1986

(1986, c. 46)

1. Disqualification orders: general

- (1) In the circumstances specified below in this Act a court may, and under sections 6 and 9A shall, make against a person a disqualification order, that is to say an order that for a period specified in the order—
 - (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court, and
 - (b) he shall not act as an insolvency practitioner.
- (2) In each section of this Act which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in sections 6 and 8ZA, the minimum) period of disqualification which may or (as the case may be) must be imposed by means of the order and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.
- (3) Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking shall run concurrently.

- (4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

2. Disqualification on conviction of indictable offence

- (1) The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management liquidation or striking off of a company with the receivership of a company's property or with his being an administrative receiver of a company.
- (1A) In subsection (1) 'company' includes overseas company.
- (2) 'The court' for this purpose means—
- (a) any court having jurisdiction to wind up the company in relation to which the offence was committed, or
 - (b) the court by or before which the person is convicted of the offence, or
 - (c) in the case of a summary conviction in England and Wales, any other magistrates' court acting in the same local justice area;
- and for the purposes of this section the definition of 'indictable offence' in Schedule 1 to the Interpretation Act 1978 applies for Scotland as it does for England and Wales.
- (3) The maximum period of disqualification under this section is—
- (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
 - (b) in any other case, 15 years.

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS*

Rome, 4.XI.1950

Article 5 Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

* Reprinted with the permission of the Council of Europe

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

CORONERS AND JUSTICE ACT 2009 (2009, c. 25)

118. Sentencing Council for England and Wales

- (1) There is to be a Sentencing Council for England and Wales.
- (2) Schedule 15 makes provision about the Council.

119. Annual report

- (1) The Council must, as soon as practicable after the end of each financial year, make to the Lord Chancellor a report on the exercise of the Council's functions during the year.
- (2) The Lord Chancellor must lay a copy of the report before Parliament.
- (3) The Council must publish the report once a copy has been so laid.

120. Sentencing guidelines

- (1) In this Chapter 'sentencing guidelines' means guidelines relating to the sentencing of offenders.
- (2) A sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender.
- (3) The Council must prepare—
 - (a) sentencing guidelines about the discharge of a court's duty under section 73 of the Sentencing Code (reduction of sentences for guilty pleas), and
 - (b) sentencing guidelines about the application of any rule of law as to the totality of sentences.
- (4) The Council may prepare sentencing guidelines about any other matter.
- (5) Where the Council has prepared guidelines under subsection (3) or (4), it must publish them as draft guidelines.
- (6) The Council must consult the following persons about the draft guidelines—
 - (a) the Lord Chancellor;
 - (b) such persons as the Lord Chancellor may direct;
 - (c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
 - (d) such other persons as the Council considers appropriate.
- (7) In the case of guidelines within subsection (3), the Council must, after making any amendments of the guidelines which it considers appropriate, issue them as definitive guidelines.
- (8) In any other case, the Council may, after making such amendments, issue them as definitive guidelines.
- (9) The Council may, from time to time, review the sentencing guidelines issued under this section, and may revise them.
- (10) Subsections (5), (6) and (8) apply to a revision of the guidelines as they apply to their preparation (and subsection (8) applies even if the guidelines being revised are within subsection (3)).
- (11) When exercising functions under this section, the Council must have regard to the following matters—
 - (a) the sentences imposed by courts in England and Wales for offences;
 - (b) the need to promote consistency in sentencing;
 - (c) the impact of sentencing decisions on victims of offences;
 - (d) the need to promote public confidence in the criminal justice system;
 - (e) the cost of different sentences and their relative effectiveness in preventing re-offending;
 - (f) the results of the monitoring carried out under section 128.

121. Sentencing ranges

- (1) When exercising functions under section 120, the Council is to have regard to the desirability of sentencing guidelines which relate to a particular offence being structured in the way described in subsections (2) to (9).
- (2) The guidelines should, if reasonably practicable given the nature of the offence, describe, by reference to one or more of the factors mentioned in subsection (3), different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed.
- (3) Those factors are—
 - (a) the offender's culpability in committing the offence;

- (b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;
 - (c) such other factors as the Council considers to be particularly relevant to the seriousness of the offence in question.
- (4) The guidelines should—
 - (a) specify the range of sentences ('the offence range') which, in the opinion of the Council, it may be appropriate for a court to impose on an offender convicted of that offence, and
 - (b) if the guidelines describe different categories of case in accordance with subsection (2), specify for each category the range of sentences ('the category range') within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category.
- (5) The guidelines should also—
 - (a) specify the sentencing starting point in the offence range, or
 - (b) if the guidelines describe different categories of case in accordance with subsection (2), specify the sentencing starting point in the offence range for each of those categories.
- (6) The guidelines should—
 - (a) (to the extent not already taken into account by categories of case described in accordance with subsection (2)) list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating factors which the Council considers are relevant to such a consideration,
 - (b) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence, and
 - (c) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within paragraph (a) or (b) as the Council considers to be of particular significance in relation to the offence or the offender.
- (7) For the purposes of subsection (6)(b) the following are to be disregarded—
 - (a) the requirements of section 73 of the Sentencing Code (reduction in sentences for guilty pleas);
 - (b) sections 74, 387 and 388 of the Sentencing Code (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence;
 - (c) any rule of law as to the totality of sentences.
- (8) The provision made in accordance with subsection (6)(c) should be framed in such manner as the Council considers most appropriate for the purpose of assisting the court, when sentencing an offender for the offence, to determine the appropriate sentence within the offence range.
- (9) The provision made in accordance with subsections (2) to (8) may be different for different circumstances or cases involving the offence.
- (10) The sentencing starting point in the offence range—
 - (a) for a category of case described in the guidelines in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for cases within that category—
 - (i) before taking account of the factors mentioned in subsection (6), and
 - (ii) assuming the offender has pleaded not guilty, and
 - (b) where the guidelines do not describe categories of case in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for the offence—
 - (i) before taking account of the factors mentioned in subsection (6), and
 - (ii) assuming the offender has pleaded not guilty.

COURTS ACT 2003 (2003, c. 39)

66. Judges having powers of District Judges (Magistrates' Courts)

- (1) Every holder of a judicial office specified in subsection (2) has the powers of a justice of the peace who is a District Judge (Magistrates' Courts) in relation to—
 - (a) criminal causes and matters...
- (2) The offices are—
 - (a) judge of the High Court;
 - (aa) Master of the Rolls;
 - (ab) ordinary judge of the Court of Appeal;
 - (ac) Senior President of Tribunals;
 - (b) deputy judge of the High Court;
 - (c) Circuit judge;
 - (d) deputy Circuit judge;
 - (e) recorder.
- (3) For the purposes of section 45 of the 1933 Act, every holder of a judicial office specified in subsection (2) is qualified to sit as a member of a youth court.
- ...
- (7) This section does not give a person any powers that a District Judge (Magistrates' Courts) may have to act in a court or tribunal that is not a magistrates' court.

69. Criminal Procedure Rules

- (1) There are to be rules of court (to be called 'Criminal Procedure Rules') governing the practice and procedure to be followed in the criminal courts.
- (2) Criminal Procedure Rules are to be made by a committee known as the Criminal Procedure Rule Committee.
- (3) The power to make Criminal Procedure Rules includes power to make different provision for different cases or different areas, including different provision—
 - (a) for a specified court or description of courts, or
 - (b) for specified descriptions of proceedings or a specified jurisdiction.
- (4) Any power to make Criminal Procedure Rules is to be exercised with a view to securing that—
 - (a) the criminal justice system is accessible, fair and efficient, and
 - (b) the rules are both simple and simply expressed.

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*Source: Ministry of Justice, <https://www.justice.gov.uk/>

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(SI 2020/759)****Part 1 The overriding objective****1.1. The overriding objective**

- (1) The overriding objective of this procedural code is that criminal cases be dealt with justly.
- (2) Dealing with a case justly includes—
 - (a) acquitting the innocent and convicting the guilty;
 - (b) treating all participants with politeness and respect;
 - (c) dealing with the prosecution and defence fairly;
 - (d) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;

- (e) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
- (f) dealing with the case efficiently and expeditiously;
- (g) ensuring that appropriate information is available to the court when bail and sentence are considered; and
- (h) dealing with the case in ways that take into account—
 - (i) the gravity of the offence alleged,
 - (ii) the complexity of what is in issue,
 - (iii) the severity of consequences for the defendant and others affected, and
 - (iv) the needs of other cases.

1.2. The duty of the participants in a criminal case

- (1) Each participant, in the conduct of each case, must—
 - (a) prepare and conduct the case in accordance with the overriding objective;
 - (b) comply with these Rules, practice directions and directions made by the court; and
 - (c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.
- (2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

1.3. The application by the court of the overriding objective

The court must further the overriding objective in particular when—

- (a) exercising any power given to it by legislation (including these Rules);
- (b) applying any practice direction; or
- (c) interpreting any rule or practice direction.

Part 2 Understanding and applying the rules and powers of authorised court officers

Part 3 Case management

3.2. The duty of the court

- (1) The court must further the overriding objective by actively managing the case.
- (2) Active case management includes—
 - (a) the early identification of the real issues;
 - (b) the early identification of the needs of witnesses;
 - (c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
 - (d) monitoring the progress of the case and compliance with directions;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progression of the case; and
 - (h) making use of technology.
- (3) The court must actively manage the case by giving any directions appropriate to the needs of the case as early as possible.
- (4) Where appropriate live links are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not—
 - (a) for the conduct of a pre-trial hearing, including a pre-trial case management hearing;
 - (b) for the defendant's attendance at such a hearing—
 - (i) where the defendant is in custody, or where the defendant is not in custody and wants to attend by live link, but
 - (ii) only if the court is satisfied that the defendant can participate effectively by such means, having regard to all the circumstances including whether the defendant is represented or not; and

- (c) for receiving evidence under one of the powers to which the rules in Part 18 apply (Measures to assist a witness or defendant to give evidence).
- (5) Where appropriate telephone facilities are available, making use of technology for the purposes of this rule includes directing the use of such facilities, whether an application for such a direction is made or not, for the conduct of a pre-trial case management hearing—
 - (a) if telephone facilities are more convenient for that purpose than live links;
 - (b) unless at that hearing the court expects to take the defendant's plea; and
 - (c) only if—
 - (i) the defendant is represented, or
 - (ii) exceptionally, the court is satisfied that the defendant can participate effectively by such means without a representative.

3.3. The duty of the parties

- (1) Each party must—
 - (a) actively assist the court in fulfilling its duty under rule 3.2, without or of necessary with a direction; and
 - (b) apply for a direction if needed to further the overriding objective.
- (2) Active assistance for the purposes of this rule includes—
 - (a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;
 - (b) after that, communication between the parties and with the court officer until the conclusion of the case;
 - (c) by such communication establishing among other things—
 - (i) whether the defendant is likely to plead guilty or not guilty,
 - (ii) what is agreed and what is likely to be disputed,
 - (iii) what information, or other material, is required by one party of another, and why, and
 - (iv) what is to be done, by whom, and when (without or if necessary with a direction);
 - (d) reporting on that first communication to the court—
 - (i) at the first hearing, and
 - (ii) after that, as directed by the court;
 - (e) alerting the court to any reason why—
 - (i) a direction should not be made in any of the circumstances listed in rule 3.2(4) or (5) (The duty of the court: use of live link or telephone facilities), or
 - (ii) such a direction should be varied or revoked.
 - (f) alerting the court to any potential impediment to the defendant's effective participation in the trial; and
 - (g) alerting the court to any related family proceedings or anticipated family proceedings as soon as reasonably practicable after becoming aware of them.

3.5. The court's case management powers

- (1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.
- (2) In particular, the court may—
 - (a) nominate a judge, magistrate or justices' legal adviser to manage the case;
 - (b) give a direction on its own initiative or on application by a party;
 - (c) ask or allow a party to propose a direction;
 - (d) receive applications, notices, representations and information by letter, by telephone, by live link, by email or by any other means of electronic communication, and conduct a hearing by such live link, telephone or other such means;
 - (e) give a direction—
 - (i) at a hearing, in public or in private, or
 - (ii) without a hearing;
 - (f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (g) shorten or extend (even after it has expired) a time limit fixed by a direction;

- (h) require that issues in the case should be—
 - (i) identified in writing,
 - (ii) determined separately, and decide in what order they will be determined;
- (i) specify the consequences of failing to comply with a direction.
- (j) request information from a court dealing with family proceedings by—
 - (i) making the request itself, or
 - (ii) directing the court officer or a party to make the request on the criminal court's behalf; and
- (k) supply information to a court dealing with family proceedings as if an application had been made under rule 5.8(7) (Supply to the public, including reporters, of information about cases) by—
 - (i) supplying the information itself, or
 - (ii) directing the court officer or a party to supply that information on the criminal court's behalf.
- (3) A magistrates' court may give a direction that will apply in the Crown Court if the case is to continue there.
- (4) The Crown Court may give a direction that will apply in a magistrates' court if the case is to continue there.
- (5) Any power to give a direction under this Part includes a power to vary or revoke that direction.
- (6) If a party fails to comply with a rule or a direction, the court may—
 - (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (b) exercise its powers to make a costs order; and
 - (c) impose such other sanction as may be appropriate.

3.8. Case preparation and progression

- (1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.
- (2) At every hearing the court must, where relevant—
 - (a) if the defendant is absent, decide whether to proceed nonetheless;
 - (b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;
 - (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;
 - (d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and
 - (e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.
- (3) In order to prepare for the trial, the court must take every reasonable step—
 - (a) to encourage and to facilitate the attendance of witnesses when they are needed; and
 - (b) to facilitate the participation of any person, including the defendant.
- (4) Facilitating the participation of the defendant includes finding out whether the defendant needs interpretation because—
 - (a) the defendant does not speak or understand English; or
 - (b) the defendant has a hearing or speech disorder.
- (5) Where the defendant needs interpretation—
 - (a) the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend;
 - (b) interpretation may be by an intermediary where the defendant has a speech disorder, without the need for a defendant's evidence direction;
 - (c) on application or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless—
 - (i) translation of that document, or part, is not needed to explain the case against the defendant, or
 - (ii) the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences

3.12. Readiness for trial or appeal

- (1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.13 trial includes any hearing at which evidence will be introduced.
- (2) In fulfilling his duty under rule 3.3, each party must—
 - (a) comply with directions given by the court;
 - (b) take every reasonable step to make sure his witnesses will attend when they are needed;
 - (c) make appropriate arrangements to present any written or other material; and
 - (d) promptly inform the court and the other parties of anything that may—
 - (i) affect the date or duration of the trial or appeal, or
 - (ii) significantly affect the progress of the case in any other way.
- (3) The court may require a party to give a certificate of readiness.

3.13. Conduct of a trial or an appeal

In order to manage the trial or an appeal, the court—

- (a) must establish, with the active assistance of the parties, what are the disputed issues;
- (b) must consider setting a timetable that—
 - (i) takes account of those issues and any timetable proposed by a party, and
 - (ii) may limit the duration of any stage of the hearing;
- (c) may require a party to identify—
 - (i) which witnesses that party wants to give evidence in person,
 - (ii) the order in which that party wants those witnesses to give their evidence,
 - (iii) whether that party requires an order compelling the attendance of a witness,
 - (iv) what arrangements are desirable to facilitate the giving of evidence by a witness
 - (v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,
 - (vi) what written evidence that party intends to introduce,
 - (vii) what other material, if any, that person intends to make available to the court in the presentation of the case,
 - (x) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal, and
- (d) may limit—
 - (i) the examination, cross-examination or re-examination of witnesses, and
 - (ii) the direction of any stage of the hearing.

Part 4 Service of documents**Part 5 Forms and court records****Part 6 Reporting, etc. restrictions**

Criminal Practice Directions I: General matters

Part 7 Starting a prosecution in a magistrates' court**Part 8 Initial details of the prosecution case****Part 9 Allocation and sending for trial****Part 10 The indictment****Part 11 Deferred prosecution agreements****Part 12 Discontinuing a prosecution**

Criminal Practice Directions II: Preliminary proceedings

Part 13 Warrants for arrest, detention or imprisonment**Part 14 Bail and custody time limits**

Criminal Practice Directions III: Custody and bail

Part 15 Disclosure

Criminal Practice Directions IV: Disclosure

Part 16 Written witness statements**Part 17 Witness summonses, warrants and orders****Part 18 Measures to assist a witness or defendant to give evidence****Part 19 Expert evidence****Part 20 Hearsay evidence****Part 21 Evidence of bad character****Part 22 Evidence of a complainant's previous sexual behaviour****Part 23 Restriction on cross-examination by a defendant**

Criminal Practice Directions V: Evidence

Part 24 Trial and sentence in a magistrates' court**Part 25 Trial and sentence in the Crown Court****Part 26 Jurors****Part 27 Retrial after acquittal**

Criminal Practice Directions VI: Trial

Part 28 Sentencing procedures in special cases**Part 29 Road traffic penalties****Part 30 Enforcement of fines and other orders for payment****Part 31 Behaviour orders****Part 32 Breach, revocation and amendment of community and other orders**

Criminal Practice Directions VII: Sentencing

Part 33 Confiscation and related proceedings

[There are no Criminal Practice Directions relating to confiscation and related proceedings.]

Part 34 Appeal to the Crown Court**Part 35 Appeal to the High Court by case stated****Part 36 Appeal to the Court of Appeal: general rules****Part 37 Appeal to the Court of Appeal against ruling at preparatory hearing****Part 38 Appeal to the Court of Appeal against ruling adverse to prosecution****Part 39 Appeal to the Court of Appeal about conviction or sentence****Part 40 Appeal to the Court of Appeal about reporting or public access restriction****Part 41 Reference to the Court of Appeal of point of law or unduly lenient sentencing****Part 42 Appeal to the Court of Appeal in confiscation and related proceedings****Part 43 Appeal or reference to the Supreme Court****Part 44 Reopening a case in a magistrates' court**

Criminal Practice Directions IX: Appeal

Part 45 Costs

Criminal Practice Directions X: Costs

Part 46 Representatives

Part 47 Investigation orders and warrants

Part 48 Contempt of court

Part 49 International co-operation

Part 50 Extradition

Criminal Practice Directions XI: Other proceedings

Criminal Practice Directions XII: General application

Criminal Practice Directions XIII: Listing

CRIME AND DISORDER ACT 1998
(1998, c. 37)

37. Aim of the youth justice system

- (1) It shall be the principal aim of the youth justice system to prevent offending by children and young persons.
- (2) In addition to any other duty to which they are subject, it shall be the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim.

57E. Use of live link in sentencing hearings

- (1) This section applies where the accused is convicted of the offence.
- (2) If it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this section in relation to that hearing.
- (3) A live link direction under this section is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.
- (4) Such a direction—
 - (a) may be given by the court of its own motion or on an application by a party; and
 - (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.
- (5) The court may not give such a direction unless—

...

 - (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.
- (6) The court may rescind such a direction at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction in relation to the offender). The court may exercise this power of its own motion or on an application by a party.
- (7) The offender may not give oral evidence while attending a hearing through a live link by virtue of this section unless—

...

 - (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.
- (8) The court must—
 - (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
 - (b) if it is a magistrates' court, cause those reasons to be entered in the register of its proceedings.

57E. Use of live link in sentencing hearings (as temporarily amended by the Coronavirus Act 2020)

- (1) The court may, by a direction (a 'live link direction'), require or permit a person to take part in a sentencing hearing through—
 - (a) a live audio link, or
 - (b) a live video link.
- (2) But the court may not give a direction for a person to take part in a sentencing hearing through a live audio link or a live video link unless—
 - (a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the sentencing hearing in accordance with the direction through the live audio link or through the live video link,
 - (b) the parties to the sentencing hearing have been given the opportunity to make representations, and
 - (c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where—
 - (i) the offender has not attained the age of 18 years, or
 - (ii) the offender has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.
- (3) omitted
- (4) A live link direction under this section—
 - (a) may be given by the court of its own motion or on an application by a party; and
 - (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.
- (4A) The power to give a live link direction under this section includes power to give—
 - (a) a direction for a judge or justice to take part in a sentencing hearing through a live audio link or a live video link;
 - (b) a direction that is applicable to several, or all, of the persons participating in a particular sentencing hearing;
 - (c) a direction that is applicable to a particular person in respect of only some aspects of a particular sentencing hearing (such as giving evidence or attending the hearing when not giving evidence);
 - (d) a direction for a person who is outside England and Wales (whether in the United Kingdom or elsewhere) to take part in a sentencing hearing through a live audio link or a live video link.
- (4B) The power of the court to give a direction under this section is subject to Schedule 3A (prohibitions and limitations on use of live links).
- (4C) The court may vary a live link direction under this section; and the provisions of this section and Schedule 3A that apply to the giving of such a direction also apply to the variation of such a direction.
- (6) omitted
- (7) The court may rescind such a direction at any time before or during a hearing to which it relates (but this does not affect the court's power to give a further live link direction in relation to the hearing).
- (6A) A live link direction under this section may not be rescinded unless—
 - (a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,
 - (b) the parties to the sentencing hearing have been given the opportunity to make representations, and
 - (c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where—
 - (i) the offender has not attained the age of 18 years, or
 - (ii) the offender has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.
- (6B) A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but such an application may not be made

unless there has been a material change of circumstances since the direction was given.

- (6C) If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the court may require or permit a person to take part in that hearing through—
 - (a) a live audio link, or
 - (b) a live video link.
- (6D) In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.
- (6E) Those circumstances include in particular—
 - (a) in the case of a direction relating to a witness—
 - (i) the importance of the witness's evidence to the hearing;
 - (ii) whether a direction might tend to inhibit any party from effectively testing the witness's evidence;
 - (b) in the case of a direction relating to any participant in the hearing—
 - (i) the availability of the person;
 - (ii) the need for the person to attend in person;
 - (iii) the views of the person;
 - (iv) the suitability of the facilities at the place where the person would take part in the hearing in accordance with the direction;
 - (v) whether the person will be able to take part in the hearing effectively if he or she takes part in accordance with the direction.
- (8) omitted
- (9) The court must—
 - (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
 - (b) if it is a magistrates' court, cause those reasons to be entered in the register of its proceedings.
- (10) The following functions of a magistrates' court under this section may be discharged by a single justice—
 - (a) giving a live link direction under this section;
 - (b) rescinding a live link direction before a sentencing hearing begins; and
 - (c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).

66ZA. Youth cautions

- (1) A constable may give a child or young person ('Y') a caution under this section (a 'youth caution') if—
 - (a) the constable decides that there is sufficient evidence to charge Y with an offence,
 - (b) Y admits to the constable that Y committed the offence, and
 - (c) the constable does not consider that Y should be prosecuted or given a youth conditional caution in respect of the offence.
- (2) A youth caution must be given in the presence of an appropriate adult.
- (3) If a constable gives a youth caution to a person, the constable must explain the matters referred to in subsection (4) in ordinary language to—
 - (a) that person, and
 - (b) the appropriate adult.
- (4) Those matters are—
 - (a) the effect of subsections (1) to (3) and (5) to (7) of section 66ZB, and
 - (b) any guidance issued under subsection (4) of that section.
- (5) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, guidance as to—
 - (a) the circumstances in which it is appropriate to give youth cautions,
 - (b) the places where youth cautions may be given,
 - (c) the category of constable by whom youth cautions may be given, and
 - (d) the form which youth cautions are to take and the manner in which they are to be given and recorded.
- (6) No caution other than a youth caution or a youth conditional caution may be given to a child or young person.

- (7) In this Chapter ‘appropriate adult’, in relation to a child or young person, means—
- (a) a parent or guardian of the child or young person,
 - (b) if the child or young person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
 - (c) a social worker of a local authority, or
 - (d) if no person falling within paragraph (a), (b) or (c) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.

66ZB. Effect of youth cautions

- (1) If a constable gives a youth caution to a person, the constable must as soon as practicable refer the person to a youth offending team.
- (2) Subject to subsection (3), on a referral of a person under subsection (1), the youth offending team—
 - (a) must assess the person, and
 - (b) unless they consider it inappropriate to do so, must arrange for the person to participate in a rehabilitation programme.
- (3) If the person has not previously been referred under subsection (1) and has not previously been given a youth conditional caution, the youth offending team—
 - (a) may assess the person, and
 - (b) may arrange for the person to participate in a rehabilitation programme.
- (4) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, guidance as to—
 - (a) what should be included in a rehabilitation programme arranged for a person under subsection (2) or (3),
 - (b) the manner in which any failure by a person to participate in a programme is to be recorded, and
 - (c) the persons to whom any such failure must be notified.
- (5) Subsection (6) applies if—
 - (a) a person who has received two or more youth cautions is convicted of an offence committed within two years beginning with the date of the last of those cautions, or
 - (b) a person who has received a youth conditional caution followed by a youth caution is convicted of an offence committed within two years beginning with the date of the youth caution.
- (6) The court by or before which the person is convicted—
 - (a) must not make an order under section 80 of the Sentencing Code (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the person that justify it doing so, and
 - (b) where it does so, must state in open court that it is of that opinion and its reasons for that opinion.
- (7) There may be cited in criminal proceedings—
 - (a) a youth caution given to a person, and
 - (b) a report on a failure by a person to participate in a rehabilitation programme arranged for the person under subsection (2) or (3),
 in the same circumstances as a conviction of the person may be cited.

CRIMINAL APPEAL ACT 1968

(1968, c. 19)

1. Right of appeal

- (1) Subject to subsection (3) below a person convicted of an offence on indictment may appeal to the Court of Appeal against his conviction.
- (2) An appeal under this section lies only—
 - (a) with the leave of the Court of Appeal; or
 - (b) if, within 28 days from the date of the conviction, the judge of the court of trial grants a certificate that the case is fit for appeal.

- (3) Where a person is convicted before the Crown Court of a scheduled offence it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the decision of the court which sent him to the Crown Court for trial as to the value involved was mistaken.
- (4) In subsection (3) above 'scheduled offence' and 'the value involved' have the same meanings as they have in section 22 of the Magistrates' Courts Act 1980 (certain offences against property to be tried summarily if value of property or damage is small).

2. Grounds for allowing appeal under s 1

- (1) Subject to the provisions of this Act, the Court of Appeal—
 - (a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
 - (b) shall dismiss such an appeal in any other case.
- (2) In the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.
- (3) An order of the Court of Appeal quashing a conviction shall, except when under section 7 below the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

3. Power to substitute conviction of alternative offence

- (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence.
- (2) The Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

7. Power to order retrial

- (1) Where the Court of Appeal allow an appeal against conviction and it appears to the Court that the interests of justice so require, they may order the appellant to be retried.
- (2) A person shall not under this section be ordered to be retried for any offence other than—
 - (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1) above;
 - (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
 - (c) an offence charged in an alternative count of the indictment in respect of which no verdict was given in consequence of his being convicted of the first-mentioned offence.

8. Supplementary provisions as to retrial

- (1) A person who is to be retried for an offence in pursuance of an order under section 7 of this Act shall be tried on a fresh indictment preferred by direction of the Court of Appeal, ... but after the end of two months from the date of the order for his retrial he may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal give leave.
- (1A) Where a person has been ordered to be retried but may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order for retrial and to direct the court of trial to enter a judgment and verdict of acquittal of the offence for which he was ordered to be retried.
- (1B) On an application under subsection (1) or (1A) above the Court of Appeal shall have power—
 - (a) to grant leave to arraign; or
 - (b) to set aside the order for retrial and direct the entry of a judgment and verdict of acquittal, but shall not give leave to arraign unless they are satisfied—

- (i) that the prosecution has acted with all due expedition; and
 - (ii) that there is a good and sufficient cause for a retrial in spite of the lapse of time since the order under section 7 of this Act was made.
- (2) The Court of Appeal may, on ordering a retrial, make such orders as appear to them to be necessary or expedient—
- (a) for the custody or, subject to section 25 of the Criminal Justice and Public Order Act 1994, release on bail of the person ordered to be retried pending his retrial; or
 - (b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.
- ...
- (4) Schedule 2 to this Act has effect with respect to the procedure in the case of a person ordered to be retried, the sentence which may be passed if the retrial results in his conviction and the order for costs which may be made if he is acquitted.

9. Appeal against sentence following conviction on indictment

- (1) A person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.
- (1A) In subsection (1) of this section, the reference to a section fixed by law does not include a reference to an order made under section 321 of the Sentencing Code in relation to a life sentence (as defined in section 324 of that Code) that is fixed by law.
- ...

11. Supplementary provisions as to appeal against sentence

- (1) Subject to subsection (1A) below, an appeal against sentence, whether under section 9(1) or under section 10 of this Act, lies only with the leave of the Court of Appeal.
- (1A) If, within 28 days from the date on which sentence was passed, the judge who passed it grants a certificate that the case is fit for appeal under section 9 or 10 of this Act, an appeal lies under this section without the leave of the Court of Appeal.
- (2) Where the Crown Court, in dealing with an offender either on his conviction on indictment or in a proceeding to which section 10(2) of this Act applies, has passed on him two or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 10), being sentences against which an appeal lies under section 9 (1) or section 10, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.
- ...
- (3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—
- (a) quash any sentence or order which is the subject of the appeal; and
 - (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;
- but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.
- ...

18. Initiating procedure

- (1) A person who wishes to appeal under this Part of this Act to the Court of Appeal, or to obtain the leave of that court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as may be directed by rules of court.
- (2) Notice of appeal, or of application for leave to appeal, shall be given within twenty-eight days from the date of the conviction, verdict or finding appealed against, or in the case of appeal against sentence, from the date on which sentence was passed or,

in the case of an order made or treated as made on conviction, from the date of the making of the order.

- (3) The time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

23. Evidence

- (1) For the purposes of an appeal, or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—
- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
 - (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
 - (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.
- (1A) ...
- (2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
- (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
- (3) Subsection (1)(c) above applies to any evidence of a witness (including the appellant) who is competent but not compellable

...

23A. Power to order investigations

- (1) On an appeal against conviction or an application for leave to appeal the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that—
- (a) in the case of an appeal, the matter is relevant to the determination of the case and ought, if possible, to be resolved before the case is determined;
 - (aa) in the case of an application for leave to appeal, the matter is relevant to the determination of the application and ought if possible to be resolved before the application is determined;
 - (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
 - (c) the matter cannot be resolved by the Court without an investigation by the Commission.
- (1A) A direction under subsection (1) above may not be given by a single judge ...
- ...
- (4) Where the Commission have reported to the Court of Appeal on any matter which they have been directed under subsection (1) above to investigate, the Court—
- (a) shall notify the appellant and the respondent that the Commission have reported; and
 - (b) may make available to the appellant and the respondent the report of the Commission and any statements, opinions and reports which accompanied it.
- (5) ...

33. Right of appeal to Supreme Court

- (1) An appeal lies to the Supreme Court, at the instance of the defendant or the prosecutor, from any decision of the Court of Appeal on an appeal to that court under Part I of this Act or Part 9 of the Criminal Justice Act 2003 or section 9 (preparatory hearings) of the Criminal Justice Act 1987 or section 35 of the Criminal Procedure and Investigations Act 1996 or section 47 of the Criminal Justice Act 2003.

- (1A) An appeal lies to the Supreme Court, at the instance of the acquitted person or the prosecutor, from any decision of the Court of Appeal on an application under section 76(1) or (2) of the Criminal Justice Act 2003 (retrial for serious offences).
- (2) The appeal lies only with the leave of the Court of Appeal or the Supreme Court; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by the Supreme Court.
- (3) Except as provided by this Part of this Act and section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), no appeal shall lie from any decision of the criminal division of the Court of Appeal.

34. Application for leave to appeal

- (1) An application to the Court of Appeal for leave to appeal to the Supreme Court shall be made within the period of 28 days beginning with the relevant date; and an application to the Supreme Court for leave to appeal shall be made within the period of 28 days beginning with the date on which the application for leave is refused by the Court of Appeal.
- (1A) In subsection (1) the 'relevant date' means—
 - (a) the date of the Court of Appeal's decision; or
 - (b) if later, the date on which the Court of Appeal gave reasons for its decision.

...

49. Saving for prerogative of mercy

Nothing in this Act is to be taken as affecting Her Majesty's prerogative of mercy.

50. Meaning of 'sentence'

- (1) In this Act 'sentence', in relation to an offence, includes any order made by a court when dealing with an offender including, in particular—
 - (a) a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order;
 - (b) an interim hospital order under that Part;
 - (bb) a hospital direction and a limitation direction under that Part;
 - (c) a recommendation for deportation;
 - (ca) a confiscation order under Part 2 of the Proceeds of Crime Act 2002;
 - (cb) an order which varies a confiscation order made under Part 2 of the Proceeds of Crime Act 2002 ...;
 - (d) a confiscation order under the Drug Trafficking Act 1994 other than one made by the High Court;
 - (e) a confiscation order under Part VI of the Criminal Justice Act 1988;
 - (f) an order varying a confiscation order of a kind which is included by virtue of paragraph (d) or (e) above;
 - (g) an order made by the Crown Court varying a confiscation order which was made by the High Court by virtue of section 19 of the Act of 1994;
 - (h) a declaration of relevance within the meaning of section 23 of the Football Spectators Act 1989; and
 - (i) an order under section 129(2) of the Licensing Act 2003 (forfeiture or suspension of personal licence).
- (1A) Section 82 of the Sentencing Code (under which a conviction of an offence for which ... an order for a conditional or absolute discharge is made is deemed not to be a conviction except for certain purposes) shall not prevent an appeal under this Act, whether against conviction or otherwise.
- (2) Any power of the criminal division of the Court of Appeal to pass a sentence includes a power to make a recommendation for deportation in cases where the court from which the appeal lies had power to make such a recommendation.
- (3) An order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not a sentence for the purposes of this Act.