

# Recent Developments in Sentencing

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3PB Barristers

	Page
<b>The Police, Crime, Sentencing and Courts Act 2022</b>	2
Assaulting emergency workers – s2	2
Harper’s Law: Manslaughter of emergency worker – s3	2
Criminal damage to memorials – s50	3
Causing death by dangerous driving and causing death by careless driving while under the influence of drink or drugs – s86	4
Child cruelty – s122	4
Causing or allowing death or serious injury to a child or vulnerable adult – s123	4
Minimum Sentences - s124	5
Tariffs for Life Sentences - ss125-127	6
<b>Release On Licence</b>	7
<b>Release Provisions of the Police, Crime, Sentencing and Courts Act 2022</b>	8
<b>Blocking the Automatic Release of Prisoners</b>	12
<b>Community and Suspended Sentences</b>	16
<b>Detention and Training Orders</b>	21
<b>Youth Rehabilitation Orders</b>	22
<b>Preventative Orders</b>	24
<b>Knife Crime Prevention Orders – The Offensive Weapons Act 2019</b>	25
<b>Surcharge Increase</b>	26
<b>Surcharge Amounts for Offences Committed on or after 16th June 2022</b>	27

## The Police, Crime, Sentencing and Courts Act 2022

The vast bulk of recent change to sentencing law has been brought in by the Police, Crime, Sentencing and Courts Act 2022 (PCSCA). I am going to cover the major changes made by that Act, nor cover every sentencing change made in other legislation. I am going to focus on those that are in force and that will impact on everyday practice.

Unless specified otherwise, section numbers refer to the PCSCA 2022.

### Assaulting emergency workers – s2

- Section 2 amends [section 1 of the Assaults on Emergency Workers Act 2018](#).
  - It increases the maximum sentence to 2 years for offences committed on or after 28<sup>th</sup> June 2022.

### Harper's Law: Manslaughter of emergency worker – s3

- Following the death of PC Andrew Harper, there is now a mandatory life sentence for manslaughter of an emergency worker committed on or after 28<sup>th</sup> June 2022.
- Section 3 is a long section because it contains all the amendments to the Sentencing Act that are required, including new sections for defendants aged under 18, 18 - 20 and 21+
  - The mandatory life sentence applies if:
    - It is a relevant offence (see below);
    - The offence was committed on or after 28<sup>th</sup> June 2022;
    - The offender was 16 or over at the date of the offence;
    - The victim was emergency worker acting in the exercise of their functions as such
      - This includes times when they are not at work but are doing something which, had they done it while at work, would have been their function (e.g. off-duty police trying to apprehend somebody; off-duty paramedic trying to give first aid).
  - The relevant offences are:
    - Gross negligence manslaughter;
    - S2(3) Homicide Act 1957 (diminished responsibility);
    - S4(1) Homicide Act 1957 (suicide pact);
    - S54(7) Coroners and Justice Act 2009 (loss of control);

- If those conditions are met then, unless there are exceptional circumstances that relate to the offence or the offender and justify not doing so, the mandatory sentence is:
  - U18: s258A SA: detention for life under s250;
  - 18-20: s274A: custody for life under s272;
  - 21+: s285A: imprisonment for life.

### Criminal damage to memorials – s50

- This is a section that caused some fuss in the news, because it was widely portrayed as being “10 years for anybody who defaces a statue”. Surprisingly, this is not what the section actually does.
- As we probably all know, criminal damage is triable either way, with a maximum sentence of 10 years, but if the value of the damage is £5,000 or less then the offence must be tried in the Magistrates’ Court and the maximum is 3 months.
  - That is all pursuant to ss [17D](#), [22](#) and [33 Magistrates’ Court Act 1980](#).
  - There are exceptions for offences covered in [Schedule 2](#) (arson and aggravated vehicle taking).
- Section 50 PCSCA makes criminal damage to memorials a further exception:
  - It amends Schedule 2 (offences for which value involved is relevant to mode of trial).
  - Section 50 also adds a s22(11A) – (11D) to the Magistrates’ Court Act, defining that addition to the Schedule.
    - “Memorial” is anything erected or installed on land or in or on any building or structure on land, or grown or planted on land, which has a commemorative purpose.
    - It also includes any movable thing, such as a bunch of flowers, left in, on or at a memorial, which has or can reasonably be assumed to have a commemorative purpose.
    - “commemorative purpose” means at least one purpose is to commemorate an individual or group of people or animals or a particular description of people or animals (e.g. firefighters, or animals killed in war); or an event or series of events (such as armed conflict).

- It doesn't matter whether those being commemorated are alive or dead or whether they can be identified.
- The effect is simply that criminal damage to a memorial is triable either way, with a maximum 10 years, regardless of value, in exactly the same way that arson is.
- There is no sign of new Sentencing Guidelines. Presumably judges will draw some reference to the guidelines for arson and/or damage over £5,000.

### **Causing death by dangerous driving and causing death by careless driving while under the influence of drink or drugs – s86**

- Section 86 amends [Schedule 2 of the Road Traffic Offenders Act 1988](#) in relation to these two offences.
- Both now have a maximum of life (for offences committed on or after 28<sup>th</sup> June 2022).
  - Both used to be 14 years.
  - The Sentencing Council recently launched a consultation on new guidelines for motoring offences, including these ones.
- In addition, both offences carry minimum 5 years' disqualification (s86(7) and (8)).
  - A second death by careless while under the influence in 10 years carries a minimum 6-year disqualification (s86(5) and (6)).

### **Child cruelty – s122**

- [Section 1 of the Children and Young Persons Act 1933](#) is amended, so that the maximum penalty is now 14 years (it was 10).
  - This applies to offences committed on or after 28<sup>th</sup> June 2022.

### **Causing or allowing death or serious injury to a child or vulnerable adult – s123**

- [Section 5 Domestic Violence, Crime and Victims Act 2004](#) is amended as follows:
  - If death is caused or allowed, the maximum is now life.
  - If serious injury is caused or allowed, the maximum now 14 years.
- In both cases, this is for offences committed on or after 28<sup>th</sup> June 2022.

### Minimum Sentences - s124

- Section 124 makes amendments to [Sentencing Code ss312-315](#), which deal with minimum sentences for:
  - threats with a bladed article;
  - 3<sup>rd</sup> and subsequent class A drug trafficking offences;
  - 3<sup>rd</sup> and subsequent domestic burglary offences;
  - repeat offending with blades or offensive weapons.
  
- At present, those minimum sentences apply unless there are “particular” circumstances that make it unjust.
  - If the offence is committed on or after 28<sup>th</sup> June 2022, the minimum sentences apply unless there are “exceptional” circumstances that make it unjust.
    - This in fact brings them into line with the provisions of s311 (minimum 5 years for firearms that are prohibited weapons) – that has always required exceptional circumstances.

**Tariffs for Life Sentences - ss125-127**

- If the offence is committed on or after 28<sup>th</sup> June 2022, the following apply when setting the tariff:
  - Murder of a child involving “substantial degree of premeditation or planning” now attracts a whole life tariff - [s125](#).
  - Offenders 18-20 can now get whole life tariff if the court “*considers that the seriousness of the offence, or combination of offences, is exceptionally high even by the standard of offences which would normally result in a whole life order*” – [s126](#).
  - For offenders under 18 convicted of murder, the tariff now varies with age (previously it was 12 years for all, which remains the case for murders committed before 28<sup>th</sup> June 2022) – [s127](#). The new tariffs are shown in the table below (taken from s127).

1	2	3	4
<b>Age of offender when offence committed</b>	<b>Starting point supplied by paragraph 3(1) had offender been 18</b>	<b>Starting point supplied by paragraph 4(1) had offender been 18</b>	<b>Starting point supplied by paragraph 5 had offender been 18</b>
17	27 years	23 years	14 years
15 or 16	20 years	17 years	10 years
14 or under	15 years	13 years	8 years

- There are also new provisions relating to those detained during HM pleasure applying to have their minimum term reviewed by the High Court - [s128](#).
  - The procedure is set out in the section and I do not propose to go through it here.

## Release On Licence

Before we come to the big changes made to release on licence by the Police, Crime, Sentencing and Courts Act, there is a new SI that is worth mentioning:

### [The Criminal Justice \(Sentencing\) \(Licence Conditions\) \(Amendment\) \(No. 2\) Order 2022](#)

- This makes amendments to the standard licence release provisions, so a person released on licence must:
  - Tell their offender manager of any other names they use; and
  - Tell their offender manager if they change or add contact details, including email address or phone number.
  
- This comes into force on 19<sup>th</sup> July (it is not specified, but presumably this means for those released on licence on or after that date).
  
- The rest of the standard conditions are found in the [Criminal Justice \(Sentencing\) \(Licence Conditions\) Order 2015](#).

## Release Provisions of the Police, Crime, Sentencing and Courts Act 2022

There are various provisions relating to release from custodial sentences. They essentially just extend the categories of people who have to serve 2/3 of their sentence rather than 1/2. They take the form of amendments to the Criminal Justice Act 2003. The sections of the PCSCA have been hyperlinked but what follows is my summary of the provisions.

### Certain prisoners to serve 2/3 of their sentence – s130

- This section inserts a s244ZA into the CJA 2003.
- S244ZA subsections are as follows:

- (1) Any prisoner falling within this section must be released on licence once they have served the “requisite custodial period”. [*Spoiler: the “requisite custodial period” is 2/3 of the sentence.*]

*Note: after serving 2/3, they do not have to be approved by the Parole Board, it is automatic release.*

- (2) This section applies to a prisoner if:
  - (a) The prisoner is a fixed term prisoner within subsections 4, 5 or 6 below;
  - (b) They are not subject to s244A (offender of particular concern under s236A), 246A (extended sentence) or 247A (certain terrorism offences); and
  - (c) They have not already been released on licence (i.e. it doesn't apply to recall).
- (3) This section does not apply if the prisoner:
  - (a) Has been referred to Parole Board under s244ZB (dealt with below – it's the Secretary of State blocking automatic release and referring the prisoner to the Parole Board instead);
  - (b) is the subject of a notice under ss4 of that section (this is just a notice saying they are being referred to the Board).



Under s244ZA(2)(a), the section applies to those who fall within any of the following:

(4) this subsection applies if the sentence:

(a) is one of

(i) imprisonment; or

(ii) YOI (for those 18-20);

(b) is for 7 years or more;

(c) was imposed on or after 1.4.2020;

(d) was imposed for an offence

(i) specified under [Schedule 15 of the Criminal Justice Act 2003, Part 1](#)

(specified violent offences) or [Part 2](#) (specified sexual offences; and

(ii) for which life imprisonment was available for an offender aged 21 or over on the date of sentence.

*[this is the existing provision, preserved in the new section]*

(5) this subsection applies if the sentence:

(a) is of imprisonment or YOI;

(b) is for at least 4 years but less than 7;

(c) was imposed on or after 28<sup>th</sup> June 2022;

(d) was imposed in respect of an offence under subsection 7 below.

(6) this subsection applies if the sentence

(a) is of detention under [s250 Sentencing Act](#) (detention of those under 18 for certain serious offences)

(b) is for at least 7 years

(c) was imposed on or after 28<sup>th</sup> June 2022

(d) was imposed in respect of an offence under subsection 7 below.

**Subsection 7 (reproduced in full):**

- (7) An offence is within this subsection if—
- (a) it is specified in any of the following paragraphs of Part 1 of Schedule 15—
    - (i) paragraph 1 (manslaughter);
    - (ii) paragraph 4 (soliciting murder);
    - (iii) paragraph 6 (wounding with intent to cause grievous bodily harm);
    - (iv) paragraph 64 (ancillary offences), so far as it relates to an offence listed in paragraph 1, 4 or 6;
    - (v) paragraph 65 (inchoate offences in relation to murder), or
  - (b) it is an offence—
    - (i) that is specified in Part 2 of that Schedule (sexual offences), and
    - (ii) for which a sentence of life imprisonment could have been imposed (in the case of an offender aged 21 or over) at the time when the actual sentence was imposed.

**Schedule 15, Part 1: specified violent offences****Schedule 15, Part 2: specified sexual offences**

*Note that while Schedule 15 is no longer used to determine dangerous offenders (having been replaced by Schedule 18 of the Sentencing Act 2020), this provision specifically uses the old Schedule 15 CJA rather than the newer Schedule 18 SA.*

Subsection (8) defines the requisite custodial period as 2/3 of the sentence (or 2/3 of the total of consecutive sentences).

**Summary of s130 PCSCA**

- Prisoners are automatically released after serving 2/3 of their (non-extended) sentence if:
  - They get at least 7 years' imprisonment or YOI for a specified violent or sexual offence, for which life is available for offenders over 21;
  - OR
  - They get at least 4 years' imprisonment or YOI (18+ years old) for an offence listed in ss7 (above);
  - OR
  - They are under 18 and get at least 7 years' detention for an offence listed in ss7.

### Offenders of particular concern – s131

- Short version: offenders of particular concern are now referred to the Parole Board for consideration of release after 2/3, not 1/2, of their sentence.
  
- Longer version:
  - Offenders of particular concern are those falling within [s278 Sentencing Act](#) (offences listed in [Schedule 13 of that Act](#)) .
    - This covers various terrorism offences but, more importantly for most of us, it also includes rape of a child under 13 (s5 Sexual Offences Act 2003) or assault by penetration of a child under 13 (s6 Sexual Offences Act 2003) or any abolished offence that would constitute those offences if committed now.
  
  - Hitherto, such offenders have been referred to the Parole Board after serving 1/2 of their sentence ([s244A Criminal Justice Act 2003](#)).
    - They are released if the Board think that it is not necessary for the protection of the public that the offender continue to be confined.
  
  - That consideration now takes place once they have served 2/3.
  
  - As before, if the Board refuse to order their release then the prisoner must be referred again within 2 years.
  
- There is specific provision for release once the prisoner has completed their sentence, without requiring the Board's approval.

**See separate document for what would be a flowchart if I'd put it in boxes but is actually a kind of route to verdict for release dates...**

## Blocking the Automatic Release of Prisoners

- [Section 132](#) covers the procedure for the Secretary of State to block automatic release on licence of prisoners and refer their cases to the Parole Board.
- There are various amendments made to other pieces of legislation, basically inserting this procedure as an exception to release provisions.

Section 132 creates two new sections in CJA2003:

### 244ZB (covers issuing a notice):

- 1) This section applies to any prisoner who is due for automatic release on licence and will be 18 or over on the first day when they would be so eligible.
- 2) Defines “the requisite opinion” as being if the SoS believes, on reasonable grounds, that if released the prisoner would pose a significant risk to members of the public of serious harm occasioned by the commission of
  - (a) murder; or
  - (b) a specified offence (as set out in [s306](#) and [Schedule 18 Sentencing Act](#)).
- 3) In that case, SoS may refer the prisoner’s case to the Parole Board.
- 4) Before doing so, the SoS must issue a notice to the prisoner.
- 5) The notice must take effect before earliest release date (see ss6 below).
- 6) The notice must explain the effect, the reasons for the opinion and right to make representations.
- 7) The notice takes effect when received or likely to be received and remains in effect until revoked or referred to Board.
- 8) The SoS can revoke the notice before the Board determine the case and must do so if no longer of the “requisite opinion” (see ss2 above).

- 9) The prisoner can apply to High Court if they have otherwise become entitled to release and the hearing by the Board has been delayed more than reasonably necessary (HC must revoke the notice if it agrees that such a delay has taken place).
- 10) The SoS can rescind the reference at any time before Board disposes of the reference and must do so if no longer of the “requisite opinion”.
- 11) If the notice is rescinded, the prisoner is no longer treated as being referred (this does not revive the notice under ss4 above).
- 12) The prisoner may make representations to the SoS before the Board dispose of case [basically trying to persuade the SoS to revoke the notice or rescind the referral) but the SoS is not required to delay reference to Board to allow representations.

### **Summary of s244ZB**

- Any prisoner who is due for automatic release on licence can be issued with a ss4 notice at any point prior to their release date.
  - This is done if the Secretary of State is of the opinion, based on reasonable grounds, that the person is a significant risk of serious harm to the public through the commission of murder or a specified offence.
- Having issued a notice, the SoS can refer the case to the Parole Board
  - If the SoS ceases to be of the requisite opinion they revoke the notice (if not yet referred to the Board) or rescind the reference.
  - The prisoner can make representations to try to persuade the SoS of that.
- If release is being delayed more than is reasonably necessary to complete the reference to the Board, the prisoner can apply to the High Court, who will revoke the notice if they agree.

A prisoner who has been referred under s244ZB is dealt with as set out in s244ZC:

**244ZC:**

- 1) This section applies to cases where there has been a notice under 244ZB.
- 2) If the Board does not direct release, the SoS must refer the case to the Board again not more than 1 year later.
- 3) The SoS must release the prisoner as soon as the prisoner has served requisite custodial period (which is the period at the end of which they would have been released but for the notice – ss6) and the Board has directed that they be released.
- 4) The Board must not direct release under ss3 above unless it is satisfied that the prisoner's confinement is no longer necessary for the protection of the public.
- 5) If the Board refuse release, it must not subsequently order release unless the SoS refers it again under ss2 and the Board is now satisfied under ss4.
- 6) "Requisite custodial period" means the period ending with the day on which the prisoner would be eligible for release were it not for the notice (i.e. even if the Board pass you for release, you still wait until the date when you would be due for release, which will be either 1/2 or 2/3 of your sentence).

There is no specific provision saying that you still get released at the end of your sentence, regardless of the outcome of a reference, but these sections only block release on licence, so my reading is that you must still be released on completion of the full sentence imposed.

There are further provisions in section 133-139 relating to the Parole Board and its procedures. We shall not cover them here.

### Extension of driving disqualifications for prisoners – s140 and 141

- [Section 35A Road Traffic Offenders Act 1988](#) makes provision for extending driving disqualifications in the case of those who receive custodial sentences (effectively meaning that the ban starts at release).
- [Section 140](#) changes the period of the extension for offences covered by sections 130 and 131 above. Basically, if you are going to serve 2/3 then your ban is extended by 2/3. This section came into force on 28<sup>th</sup> April 2022.
- [Section 141](#) means that if a prisoner who is due to serve 2/3 of a sentence of 7 years or more for a specified offence that carries life (i.e. somebody falling within s244ZA(4) of the Criminal Justice Act 2003, dealt with above), imposed between 1<sup>st</sup> April 2020 and 28<sup>th</sup> April 2022, their ban is automatically now extended by 2/3 rather than 1/2.
  - From 1<sup>st</sup> April 2020, those sentenced to 7 years or more for a specified offence carrying life have had to serve 2/3 but their driving bans have only been extended by 1/2. That seems to have been an oversight when making the amendment, but it has been retrospectively fixed.

## Community and Suspended Sentences

Sections 149 – 157 make changes to community sentences and suspended sentences. Some relate to imposition, others to compliance.

### Attending appointments – s149 – Not yet in force

- Anybody who is convicted [note: convicted, not sentenced] after the date when this section comes into force will have to attend any appointments given to them by their supervising officer.
  - Section 149 amends [s215 Sentencing Act](#) and [s301 Sentencing Act](#) (community orders and suspended sentences respectively), which hitherto simply require keeping in contact.

### Increase in permissible curfew hours – s150

- This section amends [paragraph 9 of Schedule 9 of the Sentencing Act](#)
  - Hitherto, that paragraph has set a maximum of 16 hours per day for up to 12 months for curfews imposed on suspended sentences and community orders.
- S150(2) replaces “16 hours” with “the relevant number of hours”.
  - S150(3) defines “the relevant number of hours” as:
    - 16 hours if convicted before 28<sup>th</sup> June 2022;
    - 20 hours if convicted on or after 28<sup>th</sup> June 2022.
- S150(2) also sets a maximum of 112 hours in a given 7-day period.
  - That’s 16 hours per day over a 7-day period.

In essence, this means that a Court can impose a curfew of up to 20 hours for some days but only by reducing the curfew hours for other days so that the total is not more than 112 (i.e. an average 16 hours per day).



- S150(4) amends the maximum length of a curfew. Hitherto, it has been 12 months but s150(4) amends that to “the relevant period”.
  - S150(5) defines “the relevant period” as:
    - 12 months if convicted before 28<sup>th</sup> June 2022;
    - 2 years if convicted on or after 28<sup>th</sup> June 2022.
  
- There are various consequential amendments as a result of these changes.

### **Probation Officers’ powers to amend curfews – s151**

The responsible officer (i.e. supervising Probation Officer) now has limited powers to amend terms of curfews. This is done by inserting a new paragraph 10A into Part 5 of Schedule 9 Sentencing Act (which is the Part dealing with curfew requirements in suspended sentences and community orders):

Para 10A:

- (1) Para 10A applies if:
  - (a) There is a community order or suspended sentence in force;
  - (b) It was imposed for an offence of which the offender was convicted on or after 28<sup>th</sup> June 2022;
  - (c) It includes a curfew;
  - (d) The responsible officer considers that “the variation condition” is met.
  
- (2) “The variation condition” is that having regard to a change in the offender’s circumstances since the relevant order was made, it is appropriate to:
  - (a) vary the start time of any of the curfew periods;
  - (b) vary the relevant place in relation to any of those periods.

Note that this does not make any reference to varying the finish time of any curfew periods but it is clear from paragraph 8 (below) that this can be done (and must be done if the start time is being varied).

- (3) The responsible officer may with the offender's consent give the offender a variation notice making the above variations.
- (4) The effect of a variation notice is to vary the order made by the Court, from the date specified.
- (5) A variation notice can make different variations on different days.
- (6) Before varying the place of curfew, the officer must obtain and consider information about any such place.
- (7) That includes the attitudes of anybody likely to be affected.
- (8) A variation notice must not:
  - (a) vary the length of any of the offender's curfew periods;
  - (b) vary the place for curfew in a way that is inconsistent with any residence condition that might also be attached to the community order or suspended sentence;
  - (c) make a variation prohibited by subparagraph 9.
- (9) A variation is prohibited if:
  - (a) The curfew is electronically monitored; and
  - (b) The supervising officer considers that had the Court passed the order in the form being considered by the proposed variation, it would not have imposed monitoring or would have imposed different monitoring
- (10) The supervising officer must give the appropriate Court (the one where they would breach) a copy of the variation notice and evidence of the offender's consent.

There are then a number of consequential amendments.

### Removal of attendance centre requirements for adults – s152

- Section 152 amends sections [207](#) and [291](#) of the Sentencing Act, which deal with attendance centre requirements for adults under community orders and suspended sentence respectively.
- In each case, an attendance centre requirement can be made only if:
  - The sentence is in respect of a conviction before 28<sup>th</sup> June 2022; and
  - The offender was under 25 when convicted.

### Drug testing requirements - s154 and Schedule 15

- Section 154 simply refers to Schedule 15.
- Schedule 15 amends the Sentencing Act to make drug testing requirements available for community orders and suspended sentences.
  - It inserts a new Part 10A into [Schedule 9 of the Sentencing Act](#) (where Part 10 is drug rehabilitation requirements).
- The new Part 10A defines a drug testing requirement:
  - Unsurprisingly, it is a requirement that an offender provide samples and notify results to the supervising officer.
- The Court may only make a drug testing requirement if:
  - the offender's misuse of a drug or psychoactive substance:
    - caused or contributed to the offence to which the order relates or an associated offence, or
    - Is likely to cause or contribute to the commission of further offences; and
  - The Court has been told that arrangements are available in the offender's area (the provisions are in force from 28<sup>th</sup> June 2022 but I am not aware of any Courts having been given the requisite notification).
- There are various consequential provisions.
- Note that providing a positive sample does not appear to constitute a breach.

### Assaulting a person providing a service to the public as an aggravating factor – s156

- Section 156 inserts a s68A into the Sentencing Act (straight after the sections on emergency workers)
  - S68A mirrors [s67](#) (which deals with offences against emergency workers (other than the specific offence of assaulting one))

#### S68A:

- (1) This section applies where the Court is dealing with a matter listed in ss(3), which is not committed against an emergency worker
- (2) If the offence was committed against somebody “providing a public service, performing a public duty or providing services to the public” then the Court must treat that as aggravating and say so in open court
- (3) The offences listed are:
  - (a) Common assault or battery (only if they don’t fall under the [Assaults on Emergency Workers \(Offences\) Act 2018](#))
  - (b) The following offences under the OAPA:
    - (i) s16 (threats to kill)
    - (ii) s18
    - (iii) s20
    - (iv) s47 (ABH)
  - (c) Any inchoate offence relating to any of the above
- (4) “Providing services” includes providing goods or facilities. “The public” includes a section of the public.
- (5) The Court may treat it as aggravating in respect of offences other than those in ss(3).
- (6) This section applies to offences of which the offender is convicted on or after 28<sup>th</sup> June 2022.

## Detention and Training Orders

### Discretion as to the term – s158

- Hitherto, detention and training orders have had to be made for one of a specific list of terms (4, 6, 8, 10, 12, 18 or 24 months).
- Section 158 amends [s236 of the Sentencing Act](#), so that now the term simply has to be at least 4 months and not more than 24 months.

Section 159 makes consequential provisions relating to detention and training orders that are consecutive to other detention.

### Time on remand counts towards detention and training orders – s160 and Schedule 16

- Hitherto, time on remand has not counted towards detention and training orders. Now it does.
- Section 160 simply refers to Schedule 16.
- Schedule 16 makes various amendments to the Criminal Justice Act 2003 and the Sentencing Act:
  - The upshot is that time served on remand counts towards any detention and training order imposed on or after 28<sup>th</sup> June 2022.
  - As a result, the sentencing Court is no longer required to bear time on remand in mind when passing a detention and training order (ss239 and 240 of the Sentencing Act are deleted).
  - [Section 325 of the Sentencing Act](#) is also amended, so time spent on qualifying curfews also counts towards detention and training orders.

## Youth Rehabilitation Orders

Various changes are made to YROs by [section 161](#), of which only s161(1) is in force. That subsection simply refers to [Schedule 17](#), of which only Parts 1, 4 and 5 are in force.

- Part 1 requires an offender to comply with electronic monitoring if it is imposed as part of a YRO made after 28<sup>th</sup> June 2022.
- Taking it out of order, Part 5 makes minor changes to the definition of “responsible officer”.
- Part 4, paragraphs 18 – 20 make the same amendments to curfew conditions in YROs as we dealt with above in relation to community orders and suspended sentences.
- Part 4, paragraph 21 amends [paragraph 39 of Schedule 6 of the Sentencing Act](#), relating to education requirements:
  - Hitherto, such a requirement must end before the offender ceases to be of compulsory school age (as defined by [s8 of the Education Act 1996](#) – it’s the end of the summer term when you have turned 16 or will do so before the start of the new school year):
    - That remains the case for those convicted before 28<sup>th</sup> June 2022 and those living outside England.
  - If an offender is convicted on or after 28<sup>th</sup> June 2022 and is resident in England then any education requirement must end before “the relevant time”.
    - In relation to such a person, the relevant time is:
      - The time they cease to be somebody to whom [Part 1 of the Education and Skills Act 2008](#) applies; or
      - When they cease to be of compulsory school age, if that is later.

- Part 1 of the Education and Skills Act 2008 applies to people who:
  - Are no longer of compulsory school age
  - Are not yet 18
  - Have not attained a level 3 qualification
    - A level 3 qualification is the equivalent of 2 A-Levels ([s3 Education and Skills Act 2008](#))
- All of this means that an education requirement imposed on an offender living in England must end when they:
  - turn 18; or
  - are no longer of compulsory school age (see above) and have attained the equivalent of 2 A-Levels.

#### **Abolition of reparation orders – s162**

- If an offender is convicted on or after 28<sup>th</sup> June 2022 then a reparation order cannot be made.

## Preventative Orders

### Locations for sexual offender notification – s168

- Chief constables must publish a list of police stations where those subject to notification can go to notify as required
- Offenders subject to notification requirements must notify at a police station listed on such a list

### Notification for sexual offences committed abroad – s169

- Various provisions are made relating to notices making people subject to notification in relation to offences committed abroad (not those that are then brought before our Courts)

### Sexual Harm Prevention Orders and Sexual Risk Orders – Not yet in force

- Various provisions are going to be made in respect of Sexual Harm Prevention Orders and Sexual Risk Orders. Most notably:
  - The burden for a SHPO other than on conviction will be the balance of probabilities ([s174](#)).
  - SHPOs and SROs will be able to impose positive duties as well as prohibitions ([s175](#) and [s176](#) respectively).
  - SHPOS and SROs will be able to impose electronic monitoring of compliance ([s178](#))
    - Note: under other changes made elsewhere, “electronic monitoring” will be the new blanket term for tagging a curfew and GPS tagging.

### Football banning orders: ss190 - 192

- Various amendments have been made relating to the making of football banning orders. I shall not go through them, but they are in the Act and are **partly** in force (ss190 and 192 are in, s191 is not).



## Knife Crime Prevention Orders – The Offensive Weapons Act 2019

- Knife crime prevention orders (KCPOs) were created by [Part 2 of the Offensive Weapons Act 2019](#).
- They are currently in force only in the Metropolitan Police area but that pilot scheme is due to end shortly and it is likely that they will be rolled out nationally in the near future.
- I shall not go through them in depth here. The whole procedure is set out in the Act, save that [s167 PCSCA](#) allows applications for KCPOs to be adjourned, even if the defendant is sentenced.
- In summary:
  - KCPOs are available on application by the police or following a conviction for a “relevant offence”. They can only be made on conviction if the prosecution apply for one. The Court cannot make one of its own motion.
  - “Relevant offences” are those where violence is used or threatened, or the defendant or any other person used or had with them a bladed article.
  - KCPOs can be made if it is necessary to protect members of the public (including the defendant) from the risk of harm involving a bladed article or to prevent the defendant from committing an offence using a bladed article.
  - KCPOs must be at of least 6 months’ and not more than 2 years’ duration.
  - They can have a wide range or requirements and prohibitions, set out in [ss21 and 22](#).

## Surcharge Increase

- [The Sentencing Act 2020 \(Surcharge\) \(Amendment\) Regulations 2022](#) change the surcharge to be paid by offenders. It's going up...
- The new amount applies if all of the offences for which a defendant is being sentenced were committed on or after 16<sup>th</sup> June 2022.
- The table is copied on the next page (cut and pasted from the link above).

## Surcharge Amounts for Offences Committed on or after 16<sup>th</sup> June 2022

**Table 1**

<i>Column 1</i>	<i>Column 2</i>
An order for conditional discharge as defined in section 80 of the Sentencing Act 2020(3)	£20
A fine	£26
A youth rehabilitation order as defined in section 173 of the Sentencing Act 2020(4)	£26
A referral order as defined in section 83 of the Sentencing Act 2020	£26
A community order as defined in section 200 of the Sentencing Act 2020	£26
A custodial sentence as defined in section 222 of the Sentencing Act 2020	£41

**Table 2**

<i>Column 1</i>	<i>Column 2</i>
An order for conditional discharge as defined in section 80 of the Sentencing Act 2020.	£26
A fine	40 per cent of the value of the fine, rounded up or down to the nearest pound, subject to a maximum of £2,000.
A community order as defined in section 200 of the Sentencing Act 2020	£114
A suspended sentence of imprisonment, as defined in section 286 of the Sentencing Act 2020, where the sentence of imprisonment or detention in a young offender institution is for a period of up to and including 6 months	£154
A suspended sentence of imprisonment, as defined in section 286 of the Sentencing Act 2020 where the sentence of imprisonment or detention in a young offender institution is for a determinate period of more than 6 months	£187
A sentence of imprisonment, or detention in a young offender institution, for a determinate period of up to and including 6 months	£154
A sentence of imprisonment, or detention in a young offender institution, for a determinate period of more than 6 months and up to and including 24 months	£187
A sentence of imprisonment, or detention in a young offender institution, for a determinate period exceeding 24 months	£228
A sentence of imprisonment or custody for life	£228

**Table 3**

<i>Column 1</i>	<i>Column 2</i>
An order for conditional discharge, as defined in section 80 of the Sentencing Act 2020	£26
A fine	40 per cent of the value of the fine, rounded up or down to the nearest pound, subject to a maximum of £2,000."

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