

MAY 2022

The Police, Crime, Sentencing and Courts Act 2022 (Part I)

Introduction

The Police, Crime, Sentencing and Courts Act 2022 ('the PCSCA') is a miscellany of new crimes, changes to old crimes, updates on sentences and a veritable array of what might be categorised as 'other'.

One example of the final category is section 71 which, in the Contents section, suggests it is a new offence of Administering a substance with intent to cause harm. In fact, on closer inspection, it is a rather curious section which requires the Secretary of State to publish a report within a year about the prevalence of 'spiking' with needles in nightclubs, and what the Government is going to do about it. Although it is archaic in language, I wonder what this adds to sections 23 and 24 of the Offences Against the Persons Act 1861.

Another example is section 196 which amends the Juries Act 1974 to allow a deaf juror to serve on the jury with the assistance of a British Sign Language interpreter, along with an offence punishable by 2 years if the interpreter interferes with or influences the jury deliberations. It will be interesting to see how many BSL interpreters will sign up for that brief.

Perhaps more political is the subtle change in wording to what might be considered the judge's discretion when considering whether to impose a minimum term for third domestic burglary, third drug trafficking offence and knife offences. Instead of the

judge being asked to consider whether there are '**particular circumstances** relating to the offence or offender, and **would make it unjust** to impose the minimum term', she now has to consider if there are '**exceptional circumstances** which relate to the offence or offender and **justify not doing so**' [imposing the minimum term].

Because of the variety of topics, our analysis of the PCSCA, will be broken down into three parts:

- Part I – how has the law on Homicide been affected by the Act
- Part II – what changes are there to Motoring offences
- Part III – what is the impact on the Magistrates' court (including the change in sentencing powers).

Homicide

The headlines

The following sections, as per the Contents, relate to homicide. The devil though, as always, is in the detail of the sections.

- s.3 – Required life sentence for manslaughter of emergency worker
- ss24-36 – Offensive weapons homicide review
- s.123 – Penalty for causing or allowing a child or vulnerable adult to die
- s.125 – Life sentences/starting points

Section 3

This section, which comes into force on 28 June, flows from the terrible death of PC Harper and the jury's acquittal of his killers of murder, but conviction for manslaughter. The Attorney-General tried, but failed to refer the non-life sentences passed on the three young men.

This section adds in new sections to the Sentencing Act 2020 – s.258A, s.274A and s.285A (to cover all ages from under 18 (but over 16) upwards). Apart from the ages, and the wording that follows in relation to imprisonment or detention, the sections are identical. In short, it makes a sentence for manslaughter of an emergency worker:

...a sentence of detention for life under section 250 unless the court is of the opinion that there are exceptional circumstances which—

- (a) relate to the offence or the offender, and*
- (b) justify not doing so.”*

However, importantly, the new mandatory sentence does not apply to every type of manslaughter. It does not apply to gross negligence manslaughter, nor to those species of manslaughter which arise from partial defences to murder – diminished responsibility, suicide pact or loss of control. In short, the only type of manslaughter where such a sentence must be imposed (subject to the court’s decision on ‘exceptional circumstances’) will be ‘unlawful act manslaughter’.

Clearly, as now, the judge will need to determine, if multiple defences are run during a murder charge of a police officer, on what basis the jury convicted of manslaughter only. It will be interesting to see how this change of sentencing law impacts on tactical decisions at trial and sentences for such offences over time.

Sections 24 to 36

These sections introduce a new review process between police, Local Authority, health care providers, similar to those presently required following the death of a child, or domestic homicide review, where there has been a death from an offensive weapon.

Section 123

This section flows from a number of high-profile cases where children died or were seriously injured but the killer could not be narrowed down between, usually, the two parents. It is known as ‘Tony’s Law’.

In line with an increase in sentence for Child Cruelty from 10 years to 14 years (per section 122) the sentence for allowing a child or vulnerable adult to die is increased from 14 years to life; and allowing a child or vulnerable adult to suffer serious harm is increased from 10 years to 14 years' custody.

The section comes into force on 28 June 2022.

Section 125

This section, which also comes into force on 28 June 2022, similarly arises from public outcry of the death a child – this section is known in the press as 'Arthur's Law'.

Schedule 21 (dealing with minimum terms for murder) is to be amended so that a whole-life order will be the starting point for the murder of a child involving a 'substantial degree of premeditation or planning.'

This section does, to a certain extent, pre-empt the judgment of the conjoined appeal of six cases – four defendants (including Wayne Couzens) appealing whole-life orders, and two (including the killers of Arthur Labinjo-Hughes) who the Attorney-General says should have received a whole-life order.

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12 May 2022

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