defendants had been found guilty by a unanimous verdict, it was discovered that one juror had been deaf so that he was unable to follow the proceedings, it was held that that did not make the verdict unsafe or unsatisfactory and was a situation covered by the Juries Act 1974, s 18. However, a judge has a discretion *to discharge* a juror *during the trial*, e.g. for bias, as where on a charge of shoplifting from a store a juror reveals that she is employed by that store (*R* v *Morris* (1991) *The Times*, 24 January).

Under s 3 of the 1974 Act the responsibility for summoning jurors is placed upon the Lord Chancellor. The court's administration at each centre acts as summoning officer. However, selection from the electoral register is now effected randomly by computer at the Central Summoning Bureau at Blackfriars in London. Juries are paid travelling and subsistence allowances and are compensated for loss of earnings and other expenses.

Advantages and disadvantages of jury trial

Some take the view that the verdict of a jury is more acceptable to the public than the verdict of a judge, and certainly the jury system gives ordinary persons a part to play in the administration of justice. It is perhaps better that lay men and women should decide matters of fact and the credibility of witnesses. The jury system also tends to clarify the law, in that the judge has to explain the more important points arising at the trial in clear and simple terms, so that the jury may arrive at a proper verdict.

On the other hand, juries may be too easily swayed by experienced advocates and the random method of selection sometimes produces a jury which is not as competent in intellectual terms as it might be in weighing the evidence and following the arguments presented. It has been suggested that trial by, say, three judges would be better, particularly where difficult issues are involved.

There is also the possibility that a member or members of a jury may be subjected to threats by organised crime or by delinquent associates of the accused or his family to achieve an acquittal. Therefore, the prosecution will, in some cases, ask for police protection of the jury, which the judge may grant. The prosecution's application is not made in court but to the judge in the presence of the defendant and his lawyer(s).

Indictable offences are triable before a jury of 12 persons. A panel of more than 12 jurors is brought into court and the clerk will select 12 jurors by a ballot.

Challenge

The names of the jury as selected by the clerk's ballot are called out on selection and each person goes into the jury box to be sworn. Under s 118 of the Criminal Justice Act 1988 the right to challenge jurors without cause (reasons), in proceedings for the trial of a person on indictment, is abolished.

Now a challenge must be supported by reasons. The defence may, before a potential juror is sworn, say 'Challenge for cause' in order, e.g., to challenge the inclusion of a man who has published anti-semitic articles where the defendant is of the Jewish faith. The cause should not be stated in the presence of the potential juror and the other potential jurors who are waiting to be sworn: they should be excluded from the court while the matter is argued before the judge. Jurors may also be challenged because they know the defendant.

The prosecution can also challenge for cause. However, it has, in effect, a right to challenge without cause under the 'stand by' procedure. The prosecution may call on a juror to 'stand by for the Crown', i.e. to be excluded unless it is impossible for a jury to be empanelled without calling on him. In practice, such persons are not called again. This right should not be used to ensure a pro-prosecution jury.

Jury vetting

Following judicial decisions, particularly perhaps that of the Court of Appeal in *R* v *Mason* [1980] 3 All ER 777, that it was not only lawful but necessary and a 'commonsense' precaution, for the police to vet jurors' criminal records and pass information to the prosecution so that challenge could be made, the Attorney-General has issued guidelines on jury checks. In the first place, the guidelines state that a person will in general be disqualified or ineligible for a jury only as provided by the Juries Act 1974 (as amended). However, where the case involves national security and part of the evidence is likely to be heard *in camera* (i.e. the court closed to the public and the news media), or in terrorist cases, extra precautions may be necessary. However, no check on the records of police special branches will be made except on the authority of the Attorney-General following a recommendation from the DPP. Furthermore, checks involving so-called strong political motives will not be made except in terrorist cases or where national security is involved and the court is expected to sit *in camera*. There is, of course, no reason why routine police checks on criminal records for the purpose of ascertaining whether or not a jury panel includes any person disqualified under the Juries Act 1974 should not continue.

It was held in *R* v *Ford* [1989] 3 All ER 445 that fairness in the composition of a jury was best achieved by random selection and a trial judge had no power to interfere with the make up of a jury in order to get a racially mixed jury on the trial of a black defendant charged with reckless driving. The Court of Appeal also ruled in *R* v *Smith (Lance Percival)* (2003) *The Times*, 3 March that judges cannot influence the racial composition of juries and that the Juries Act 1974 is not incompatible with the Human Rights Act 1998 because it fails to provide for multi-racial juries. Mr Smith, who is a black man, appealed against his conviction by an all-white jury for causing grievous bodily harm with intent and possessing a firearm with intent in an incident at a night club in a town where almost all of the residents were white. His appeal failed.

Again, in *R* v *Tarrant (James Nicholas)* (1997) *The Times*, 29 December Tarrant appealed against his conviction of conspiracy to possess cannabis resin with intent, contending that his trial was a nullity because the judge, who thought that jurors might be intimidated, had ordered that the jury be selected from outside the area. The appeal to the Court of Appeal succeeded because the jury had not been randomly selected.

The oath

The 12 persons who survive the selection procedure are then sworn, by each holding a Bible in his right hand and reading the following oath:

> *I swear by Almighty God that I will faithfully try the defendant and give a true verdict according to the evidence.*

Christians are sworn on the New Testament and those of the Jewish faith on the Old Testament. Other faiths may be sworn upon a holy book of their choice. For example, Hindus are sworn on the Vedas, and Muslims are sworn on the Koran.

The affirmation which jurors may select if non-Christian or of no religion or belief is as follows:

> *I do solemnly, and sincerely and truly declare and affirm that I will faithfully try the defendant and give a true verdict according to the evidence.*

All jurors must take the oath in the presence of each other. The jury is then addressed by the clerk who explains the charges and tells the jurors that having heard the evidence they must decide whether the defendant is guilty or not, and the trial begins officially at this point (*R* v *Tonner* [1985] 1 All ER 807).

Juror personation

It may be that a person who receives a jury summons will get someone to stand in for them. This is known as juror personation and there are legal consequences. A notice is included in all jury summonses. It says:

> Impersonation of Jurors: It is an offence for any person to impersonate a juror and serve on a jury on his or her behalf. As a matter of routine, court staff may need to verify the identity of a juror. Those attending for jury service are therefore requested to have with them some form of personal identification.

Trials on indictment without a jury

Part 7 of the Criminal Justice Act 2003 sets out (ss 43–50) the circumstances in which a trial on indictment may take place in the Crown Court before a judge sitting alone.

Defendant's application

Defendants being tried in the Crown Court may make an application to the court to have the trial heard by a judge sitting alone instead of by a judge and jury. Unless other defendants also being tried object to the application (or any one of them does) or there are exceptional circumstances applying leading the judge to believe that a trial before a jury would be in the interests of justice or necessary in the public interest, the judge *must* make an order granting trial by a judge alone. The Act does not specify what are to be regarded as 'exceptional circumstances'.

Prosecution application

The prosecution can apply for a judge-only trial on the following grounds:

- *The length or complexity of the trial*. The case must be so long or complex (or both) that the trial would be burdensome upon the jury to the extent that it is necessary in the interests of justice to conduct the trial without a jury, or the trial would be likely to place an excessive burden on the life of a typical juror. The trials that come to mind are those concerning business fraud where transactions and/or records of a financial or commercial nature or relating to property are involved. However, consideration must be given, always, to ways in which steps could be reasonably taken to reduce the length and complexity of the trial to allow it to be conducted before a jury. (Fraud trial provision not enacted.)
- *The real and present danger of jury tampering* so that the trial should be *conducted* without a jury or *continued* without a jury and the jury discharged. The court must be satisfied that the level and duration of police protection that would be required for the jury would be excessively burdensome to a typical juror or that jury tampering would remain a high threat even if maximum possible police protection was given so that it is in the interests of justice to conduct a judge-only trial. In trials already in progress where the jury has been discharged because of tampering the trial will continue without a jury unless the judge thinks it is necessary in the interests of justice to terminate the trial. In such a situation the judge may order a retrial and has the option of ordering that the retrial will take place without a jury.

The issue as to whether there should be a jury or whether the trial should continue without a jury or retried without a jury will be considered at a preparatory hearing or a separate hearing.

There are *rights of appeal* to the Court of Appeal for both prosecution and defence against the decision of a court on application for a judge-only trial and against a court order to

continue a trial in the absence of a jury or to order a retrial without a jury because of jury tampering.

Where a trial is conducted or continued without a jury and a defendant is convicted the court must give its reasons for conviction.

Judge-only trials: present position

There were problems over the provisions of Part 7 of the CJA 2003 when the Bill was before Parliament. Trial by jury is a major feature of the legal system in England and Wales and many MPs felt strongly that it should be retained and available in trials on indictment. In order to get the Bill through Parliament, a compromise was reached and the 2003 Act regarding complex issues such as fraud trials was not enacted. The only judge-only trials under the 2003 Act are in relation to cases involving threats to and intimidation of juries. The government has said, however, that it will try to legislate again in the future on the complex fraud trial issue.

The judge

Criminal offences are divided into three classes for the purpose of trial in a Crown Court. The classifications are set out on p 39 and should be referred to. Fred's offence is in Class 3 and can be tried by a High Court judge, a circuit judge, a deputy circuit judge or a recorder or assistant recorder. As will be seen from the material at p 39, it is unlikely to be a High Court judge and will probably be a recorder or assistant recorder.

Trial and evidence

The advocate appearing for the prosecution will make an opening speech outlining the case to the court and will then call witnesses to confirm the facts. However, before doing so he must tell the jury that the burden of proof rests on the prosecution to establish that the defendant is guilty beyond a reasonable doubt. A witness will first take the oath appropriate to his religion or affirm if he has no religious belief. The Christian oath is most often used. It is: 'I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.' Contrary to popular belief, it does not end with 'so help me God'.

Leading of witnesses and hearsay evidence

During the examination-in-chief, counsel for the prosecution must not lead his witnesses, i.e. must not suggest a particular answer to his question. Thus, counsel for the prosecution cannot ask one of his witnesses, say, a police officer, 'Did the defendant punch you when you arrested him?' He must instead say, 'What happened when you arrested the defendant?'

Also, in examination-in-chief counsel must not contradict his own witness by referring to a prior inconsistent statement made in, say, committal proceedings, unless the witness becomes 'hostile', i.e. as where he is now showing bias against the person calling him. In addition, hearsay evidence is not admissible. A witness must give evidence only as to what he himself saw or heard. Thus, evidence given by a witness either for the prosecution or the defence in the form: 'Alice told me that she saw Bill in the pub on Wednesday' would be inadmissible, unless the provisions of s 114 of the Criminal Justice Act 2003 are satisfied, e.g. that the court has given leave that the evidence be admitted where the court is satisfied that it would not be contrary to the interests of justice to admit the evidence even though there is some difficulty in challenging the statement since Alice is not present.

After counsel for the prosecution has carried out his examination-in-chief of a witness, counsel for the defence can cross-examine the witness. In this situation he can lead and say, for example, 'My client was upset by the circumstances of his arrest, wasn't he? There was no need to have called him a lying swine, was there?' Counsel for the defence can also refer to prior inconsistent statements of the witness.

When the prosecution has called all its witnesses, the defence will present its case and call witnesses to support it. These witnesses are examined-in-chief, cross-examined, and sometimes re-examined. More rarely, defence counsel may, before calling his witnesses, try to bring the trial to an end by endeavouring to persuade the judge that there is no case to answer, e.g. that the prosecution has not produced sufficient evidence to warrant the trial proceeding. This argument takes place without the jury. If the judge agrees with defence counsel, he will call the jurors back and tell them to give a formal acquittal. Otherwise the trial proceeds.

Bad character evidence and evidence of previous convictions

Part 11 of the Criminal Justice Act 2003 removes previous common law rules regarding the admission before verdict of evidence of bad character of the defendant and any previous convictions. The new rules apply also to non-defendants such as witnesses. The permission of the court is required before such evidence can be given. This provision has led to some concern in that it may encourage the police to focus investigations on those with previous convictions, past acquittals or a history of arrests.

The defendant's evidence: defendant's silence

The defendant may give evidence on oath or by affirmation on his own behalf, though he is not obliged to give evidence at all. This is affirmed by s 35 of the Criminal Justice and Public Order Act 1994. However, under s 35 of that Act the silence of the accused at a trial allows the judge or jury in determining guilt to draw such inferences as appear proper from the failure of the accused to give evidence at all or to answer a particular question or questions, unless there is good cause. Under s 34 of the Act the same is true of the failure to answer police questions when a suspect, but police officers must tell suspects that silence could go against them in court and then repeat the question. For example, John is arrested on suspicion of theft having been found by the police standing near a broken shop window from which items of jewellery are missing. The police, suspecting that John has been involved (probably with others) in the theft, ask him to account for his presence near the shop window. John does not reply. He is told this may go against him but still does not reply. The court may draw the inference that John is guilty on the grounds that if he could have explained his presence in terms that he was not guilty of the theft he would have done so.

Under the Youth Justice and Criminal Evidence Act 1999 inferences from silence are not permissible where the defendant has not had prior access to legal advice *provided that the accused was at an authorised place of detention*, such as a police station, at the time of failure to answer questions or a particular question. The provision is to be found in s 34(2A) of the 1994 Act as inserted by the 1999 Act. The inferences that may be drawn where there is a failure to answer questions at a trial apply only where the trial is of a person who has attained 14 years of age (s 35 Criminal Justice and Public Order Act 1994).

Home Office Reports state that the provisions of the 1994 Act, before the passing of which the court could not draw adverse inferences from the defendant's silence, have not led to more convictions.

Section 72 of the Criminal Justice Act 1982 abolishes the right of an accused person to make an unsworn statement from the dock without being subject to cross-examination. However, the accused may address the court or jury if he has no legal representation and may make a statement in mitigation of sentence without being sworn. If he gives evidence on oath in the ordinary way, he may be cross-examined but there can be no cross-examination where a mere statement is made, though the making of a statement in this way often leads to the suggestion that the defendant has something to hide.

After the defence witnesses have been heard, the prosecution makes its closing speech, followed by the defence, which always has the last word.

Summing up

The judge will then explain his role to the jury. He will say that he will tell them what the law is and that the law is a matter for him but that they are the only judges of the facts in the case. He will repeat that it is for the prosecution to prove guilt. The judge will then sum up the evidence on both sides and will define the law of the offence. If he misleads the jury on this, the accused may well have grounds for a successful appeal. The judge will also explain that although Fred is charged under s 18 of the Offences Against the Person Act 1861 of wounding with intent to cause grievous bodily harm, the jury may acquit him of that offence and yet find him guilty of the lesser offence of unlawful wounding under s 20 of the Offences Against the Person Act 1861. The judge may then explain to the jury that it must endeavour to reach a unanimous verdict (but see below), though whether he does so or not is a matter of discretion (*R* v *Watson* [1988] 1 All ER 897). The judge will then leave the court and the jury, escorted by a bailiff, will retire to a jury room where it will try to reach a verdict. If a verdict is not reached on the day the jury retires, the jurors may be taken to a hotel to spend the night.

However, under s 13 of the Juries Act 1974 (as substituted by s 43 of the Criminal Justice and Public Order Act 1994), if on the trial of any person for an offence on indictment the court thinks fit, it may at any time (whether before or after the jury has been directed to consider its verdict) permit the jury to separate.

In this connection, *R* v *Rankine* (*Elliston*) [1997] CLY 1330 is of interest. In that case Rankine appealed against a conviction for unlawful wounding on the ground that the judge should not have invited the jury to consider its verdict without retiring. The Court of Appeal held that, as a matter of law, it was permissible for a judge to ask a jury if it wished to consider its verdict without retiring, and that an appeal court should intervene only if it felt that this put pressure on the jury to reach a verdict. Rankine's appeal on the retirement point failed.

The verdict

If the jury is unanimous in finding Fred guilty, it will tell the jury bailiff that it is ready to come back into court. The judge and counsel return and the jury files in. A court usher will ask the foreman of the jury what their verdict is. We assume that the jury has found Fred guilty of the s 18 offence; the foreman says so.

At this stage Fred's previous convictions, if any, will be handed to the judge who may refer to some of them openly in court. It will be appreciated that under the Criminal Justice Act 2003 evidence of previous convictions and bad character would already have been given in evidence if the court had permitted this (see p 147). Counsel for the defence will then normally put in a plea in mitigation, saying, perhaps, that Fred has not been in trouble before or at least not for some time, according to his record, in the hope that this plea will lead to a lighter sentence.

The judge will then address the defendant and pass sentence, which, in view of the violence involved in Fred's case, is likely to be a term of imprisonment.

Majority verdicts

The Juries Act 1974 provides for majority verdicts of juries in criminal proceedings. Section 17 provides that the verdict of the jury in criminal proceedings need not be unanimous if:

(*a*) in a case where there are not less than *eleven* jurors, *ten* of them agree on the verdict. In the case of an ordinary jury of 12, this means that the judge can accept a verdict of 11 to one or 10 to two; and

(*b*) in a case where there are *ten* jurors, *nine* of them agree on the verdict. If there are only nine jurors, the verdict must be unanimous (see below).

A court must not accept a majority verdict of guilty unless the foreman of the jury has stated in open court the number of jurors who respectively agreed to and dissented from the verdict. No such statement is required if the verdict is one of not guilty so that it will not be known that a verdict of not guilty was by a majority.

Furthermore, a court must not accept a majority verdict unless it appears to the court that the jury has had not less than two hours' deliberation or such longer period as the court thinks reasonable, having regard to the nature and complexity of the case.

The judge cannot accept a majority verdict after less than two hours' deliberation and if the jury is not unanimous after two hours, he should send it back, at least once more, to try to reach unanimity. If the jury still cannot, he should send the jurors back to see if they can reach a decision by the necessary majority, having directed them on the law relating to majority verdicts.

When the jury returns to the courtroom, the judge will ask whether the required majority has agreed on a verdict. If so, the verdict is accepted *provided*, according to a Practice Direction, that at least two hours and *ten minutes* have elapsed between the time at which the last juror left the jury box to go to the jury room and the time when the judge asked whether the jury had reached a verdict by the required majority.

Before the judge asks whether the jury has reached a majority verdict, the senior officer of the court present must announce the deliberation time which the jury has had. The extra 10 minutes was added in order to reduce the number of appeals made to the Court of Appeal on the ground that majority verdicts had been accepted, although the deliberation time had been less than two hours, as for example where the jury had returned to put a question to the court during the deliberation period.

The majority provision is, of course, a controversial one because the principle of the unanimous decision was an old and much-respected feature of English law, indeed the requirement for a jury to be unanimous first appeared in a case in 1367. The main reason for the change was the growing problem of deliberate corruption or intimidation of jurors to secure an acquittal. The majority of 10 to two was chosen because it was felt that it would be difficult to find more than one or two who were susceptible to bribery or intimidation, particularly in view of the fact that those with criminal records are excluded from jury service under the Juries Act 1974 (as amended by the Criminal Justice Act 2003). It should be noted that what happens in a jury room is not supposed to be disclosed. This is reinforced by s 8 of the Contempt of Court Act 1981. This makes it an offence for a juror to reveal the discussions in the jury room and for a newspaper or any other organisation or person to try to find out by interviewing a juror.

Thus, in *AG* v *Associated Newspapers* [1994] 2 WLR 277 the House of Lords found the *Mail on Sunday* newspaper, through its editor and publisher, to be in contempt of court for revealing the deliberations of a jury in a criminal trial. The informant was also in contempt.

It should be noted that in cases where jury tampering is present a trial could, under the Criminal Justice Act 2003, be *conducted* or be *carried on* by a judge alone. This procedure is more effective than majority verdicts in appropriate cases.

Alternative verdicts

The common law, as restated by s 6(3) and (4) of the Criminal Law Act 1967, provides for alternative verdicts, which means that a jury can convict an accused of an offence other than the one with which he is charged. Although the wording of s 6 appears wider than the common law rule, subsequent cases seem to indicate that a jury cannot convict of an offence different in *character* from the offence charged. The power is limited to a conviction for an offence involving *the same criminal act* but with a lesser degree of aggravation. As we have seen, in Fred's case it would have been possible for the jury to bring in a verdict of unlawful wounding under s 20 of the Offences Against the Person Act 1861, although the charge was wounding with intent to cause grievous bodily harm under s 18 of the 1861 Act.

Where there exists an alternative and less serious offence to the one charged, the judge *must* direct the jury on the lesser offence if there is evidence to support it (*R* v *Fairbanks* [1986] 1 WLR 1202), but not apparently if the main offence is very serious and the alternative offence is trifling. So in a case of robbery, the judge is not bound to direct the jury on the alternative offence of theft (*R* v *Maxwell* [1990] 1 All ER 801).

Victims' advocate

The government has outlined plans for the introduction of victims' advocates and is carrying out pilot schemes in England and Wales. A victims' advocate will be able to address the court before sentence in a murder or manslaughter case. The advocate could be a family member or a third party and while the address is not intended to impact on sentence, it will give the advocate the chance to highlight how the crime has affected those close to the victim.

Numbers of jurors

The number of jurors will normally be 12 unless the number has been reduced in accordance with s 16 of the Juries Act 1974. The section provides for the continuation of criminal trials where a juror dies or is discharged by the court, whether through illness or for any other reason.

If the number of members of the jury is not reduced below nine, the trial may proceed and the verdict may be given accordingly.

However, in a trial for any offence formerly punishable with death, e.g. treason, this rule only applied if assent in writing was given by or on behalf of both the prosecution and the accused, or each of the accused if there were more than one. The rule is now obsolete.

Moreover, the court has discretion in any criminal trial to discharge the jury if it sees fit to do so when its numbers are depleted.

Committal to the Crown Court for sentence

As we have seen, there are times when the Crown Court sits to sentence persons convicted of offences before the magistrates. This happens where the magistrates have found a particular defendant guilty and have had access to his previous convictions showing, shall we say, a very bad record, and feel that the defendant should receive a greater sentence than they can give. In such a situation they will commit the defendant to the Crown Court for sentence. The Crown Court may then deal with the defendant as if he had been convicted on indictment.

The Crown Court may sit solely for the purpose of sentencing and if so consists of a judge (either a High Court judge or circuit judge or recorder). Under s 74 of the Supreme Court Act 1981 (as amended by s 79 of the Access to Justice Act 1999) magistrates do not, as before, sit with the judge or recorder in sentencing cases. The judge or recorder deals with sentencing appeals by himself.

Under the Criminal Justice Act 2003 there is a limited power for magistrates to commit to the Crown Court for sentence. This will occur where a defendant is charged with a number of either-way offences and pleads guilty to one of them at plea before venue and is sent by the magistrates for trial in the Crown Court on the others. In such a case if the magistrates feel that having accepted jurisdiction on the guilty plea there are circumstances in which the defendant should be sent to the Crown Court for sentence then the magistrates may do so under s 4 of the Powers of Criminal Courts (Sentencing) Act 2000.

Appeal in criminal cases

A person who has been convicted and sentenced by a criminal court has rights of appeal. These have already been considered in Chapter 2.

Contempt of Court Act 1981

Under s 4 of the 1981 Act the trial judge may make an order imposing restrictions on the reporting of a trial in, e.g., newspapers. The section gives the court power to order the postponement of publication of reports of a trial or part of a trial where it appears necessary to avoid a substantial risk of prejudicing that trial or other proceedings pending or imminent, as where witnesses or potential witnesses might be intimidated.

Section 11 gives the court power to prohibit the publication of any name or other matter in connection with the proceedings where the court has allowed the name or other matter to be withheld from the public when the proceedings were before the court.

Sentencing

The matters to be taken into account in sentencing and the purposes of sentencing are set out in ss 142–146 of the Criminal Justice Act 2003.

- *Matters to be taken into account* are the purposes of sentencing (see below), the seriousness of the offence, whether the defendant pleaded guilty and whether the offence was aggravated by race or religion.
- *The purposes of sentencing* that are set out in statute for the first time are, punishment, public protection, crime reduction and reparation.

Custodial sentences: generally

The courts are given power to impose custodial sentences. Before doing so the courts must be satisfied that the circumstances are such, in terms particularly of the seriousness of the offence, that only a custodial sentence will suffice.

A custodial offence is:

- a sentence of imprisonment;
- a sentence of detention; and
- a detention and training order.

General restrictions on imposing custodial sentences

Section 152 of the CJA 2003 states that a court cannot impose a custodial sentence except where the offence, taken in combination with any past offences, merits it. Section 152(1) excludes from the above principle those offences which are punishable under ss 225 to 228 of the CJA 2003. These are:

- ***Life sentence or imprisonment for public protection for serious offences (s 225)***. This sentence of life (or unspecified term of imprisonment) can be passed by a court only if the offender is convicted of a sexual or violent offence specified in Sch 11, e.g. rape or wounding with intent to cause grievous bodily harm, *carrying a sentence of 10 years or more* and the court considers that the offender is in its opinion *a significant risk to members of the public*. Where the offence carries a maximum sentence of life imprisonment, as wounding with intent to cause grievous bodily harm does, the court must pass a life sentence if the offence is serious enough to warrant it. In other cases s 228(1) requires the court to impose a sentence of imprisonment for public protection if it considers that no other sentencing options are adequate to protect the public.
- ***Serious offences committed by those under 18 (s 226)***. This section applies the above principles to those aged under 18 as are applied to adults except that the sentence is not imprisonment but detention, in such place as the Secretary of State or a person authorised by him may decide.
- ***Extended sentence for certain violent and sexual offences: persons 18 or over (s 228)***. This section makes provision for an extended sentence for sexual and violent offenders. The offender must have committed a sexual or violent crime specified in Sch 15. It must carry *a maximum sentence of less than 10 years*, e.g. assault occasioning actual bodily harm (where the maximum sentence is five years) and the offender must be judged by the court to pose *a significant risk of serious harm to the public*. The sentence is in two parts, the first part being '*the appropriate custodial term*', and the second part being an '*extension period*'. The custodial period reflects the seriousness of the offence and must be at least 12 months. During the second half of the custodial period the offender may be released on the recommendation of the Parole Board. The court must also specify an '*extended period*' *of supervision on licence* to be added to the custodial period to protect the public. The extension period may be up to five years for violent offenders and nine years for sexual offenders. The total of the extended sentence must not be more than the maximum sentence for the offence in question. In the example given above the maximum extended period following a custodial sentence for assault occasioning actual bodily harm would be five years.
- ***Extended sentence for certain violent or sexual offenders: persons under 18 (s 228)***. This section applies the extended sentence regime to those aged under 18 in the same way as for adults but the appropriate custodial term is limited to 24 months.

Also excluded are the offences in ss 110 and 111 of the Powers of Criminal Courts (Sentencing) Act 2000. These are:

- ***Minimum of seven years for third class A drug trafficking offence (s 110)***. This section requires a court to pass a custodial sentence of at least seven years if the offender is aged 18 or over and has been convicted of a least two previous and separate class A drug trafficking

offences. The court is not required to pass a seven-year sentence if there are particular circumstances that would make this unjust.

- ***Minimum of three years for third domestic burglary (s 111)***. Under these provisions the court has a statutory duty to impose a custodial sentence of at least three years on a person who has been convicted of domestic burglary and who has been convicted on two previous occasions of domestic burglary unless there are particular circumstances that would make this unjust.

Section 152(2) of the CJA 2003 states that a custodial sentence must only be imposed if the offence is so serious that neither a fine nor a community sentence would be adequate punishment for it.

Section 152(3) makes clear that this does not prevent a court from passing a custodial sentence on an offender who does not consent to requirements imposed as part of a community sentence where consent is required or if he refuses to provide samples for the purposes of drug testing.

Length of discretionary custodial sentences: general provision (s 153, CJA 2003)

This section directs the court to impose the shortest term of custody that is commensurate with the seriousness of the offence. There are exceptions where the sentence is fixed by law, i.e. as in the case of an offence such as murder that carries a mandatory life sentence, and for the case of the new sentences for dangerous offenders in ss 225 to 226 (see above).

Restrictions where offender not legally represented (s 83, POCC(S)A 2000)

Under this section the court cannot impose a sentence of imprisonment on an offender who has not been legally represented at some time after being found guilty and before sentence is passed, unless representation has been offered and refused or withdrawn because of conduct or there has been failure to apply.

The pre-sentence report

Section 156 of the CJA 2003 deals with pre-sentence reports for community and custodial sentences. Where the court is considering whether to impose a discretionary custodial sentence and if so what its duration should be or whether to impose a community sentence and what restrictions to impose on the liberty of the offender as part of the sentence it must obtain a pre-sentence report (PSR). These reports are, in the case of adults, written by the probation service and are based on interviews with the offender and his or her history of offending and needs. The report contains advice as to punishment and what rehabilitative work would be likely to reduce the risk that the offender will re-offend. The court need not obtain a PSR if it thinks that it is unnecessary to do so in an individual case. Where the offender is under 18, the court must *not* decide that a PSR is unnecessary unless it has access to a report that relates to the offender. No sentence is invalid because the court did not obtain and consider a PSR even in the case of custodial and community sentences (see above).

Where an offender appeals, a PSR must be obtained unless the appeal court believes that the lower court was justified in not obtaining one. On appeal by offenders under 18, a PSR is required and the appeal court cannot decide that the lower court was justified in not obtaining a PSR or that a PSR is not necessary unless there is a previous PSR regarding the offender and the appeal court has access to it.

There are special provisions in s 157 CJA 2003 for reports on *mentally disordered offenders*. A qualified medical practitioner must be consulted to give a medical report unless a custodial