

# Criminal Justice and Immigration Bill (Volume II)

The Bill is divided into two volumes. Volume I contains the Clauses. Volume II contains the Schedules to the Bill.

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## SCHEDULES

## SCHEDULE 1

Section 1

## FURTHER PROVISIONS ABOUT YOUTH REHABILITATION ORDERS

## PART 1

## PROVISIONS TO BE INCLUDED IN YOUTH REHABILITATION ORDERS 5

*Imposition of requirements*

- 1 Subsection (1) of section 1 has effect subject to the following provisions of Part 2 of this Schedule which relate to particular requirements –
- (a) paragraph 8(3) and (4) (activity requirement),
  - (b) paragraph 10(3) (unpaid work requirement), 10
  - (c) paragraph 11(3) and (4) (programme requirement),
  - (d) paragraph 12(3) (attendance centre requirement),
  - (e) paragraph 13(2) (prohibited activity requirement),
  - (f) paragraph 16(2), (4) and (7) (residence requirement),
  - (g) paragraphs 17(3) and (4) and 19 (local authority residence requirement), 15
  - (h) paragraph 20(3) (mental health treatment requirement),
  - (i) paragraph 22(2) and (4) (drug treatment requirement),
  - (j) paragraph 23(3) (drug testing requirement),
  - (k) paragraph 24(2) and (4) (intoxicating substance treatment requirement), and 20
  - (l) paragraph 25(4) (education requirement).

*Electronic monitoring requirement*

- 2 (1) Sub-paragraph (2) applies to a youth rehabilitation order which –
- (a) imposes a curfew requirement (whether by virtue of paragraph 3(4)(b) or otherwise), or 25
  - (b) imposes an exclusion requirement.
- (2) The order must also impose an electronic monitoring requirement unless –
- (a) in the particular circumstances of the case, the court considers it inappropriate for the order to do so, or 30
  - (b) the court is prevented by paragraph 26(3) or (6) from including such a requirement in the order.
- (3) Subsection (2)(a) of section 1 has effect subject to paragraph 26(3) and (6).

*Youth rehabilitation order with intensive supervision and surveillance*

- 3 (1) This paragraph applies where paragraphs (a) to (c) of section 1(4) are satisfied.
- (2) The court, if it makes a youth rehabilitation order which imposes an activity requirement, may specify in relation to that requirement a number of days which is more than 90 but not more than 180. 5
- (3) Such an activity requirement is referred to in this Part of this Act as “an extended activity requirement”.
- (4) A youth rehabilitation order which imposes an extended activity requirement must also impose – 10
- (a) a supervision requirement, and
  - (b) a curfew requirement (and, accordingly, if so required by paragraph 2, an electronic monitoring requirement).
- (5) A youth rehabilitation order which imposes an extended activity requirement (and other requirements in accordance with sub-paragraph (4)) is referred to in this Part of this Act as “a youth rehabilitation order with intensive supervision and surveillance” (whether or not it also imposes any other requirement mentioned in section 1(1)). 15

*Youth rehabilitation order with fostering*

- 4 (1) This paragraph applies where paragraphs (a) to (c) of section 1(4) are satisfied. 20
- (2) If the court is satisfied –
- (a) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and 25
  - (b) that the imposition of a fostering requirement (see paragraph 18) would assist in the offender’s rehabilitation,
- it may make a youth rehabilitation order in accordance with section 1 which imposes a fostering requirement.
- (3) But a court may not impose a fostering requirement unless – 30
- (a) it has consulted the offender’s parents or guardians (unless it is impracticable to do so), and
  - (b) it has consulted the local authority which is to place the offender with a local authority foster parent.
- (4) A youth rehabilitation order which imposes a fostering requirement must also impose a supervision requirement. 35
- (5) This paragraph has effect subject to paragraphs 18(7) and 19 (pre-conditions to imposing fostering requirement).
- (6) A youth rehabilitation order which imposes a fostering requirement is referred to in this Part of this Act as “a youth rehabilitation order with fostering” (whatever other requirements mentioned in section 1(1) or (2) it imposes). 40

*Intensive supervision and surveillance and fostering: further provisions*

- 5 (1) A youth rehabilitation order with intensive supervision and surveillance may not impose a fostering requirement.
- (2) Nothing in –
- (a) section 1(4)(b), or 5
  - (b) section 148(1) or (2)(b) of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences),
- prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender if the offender fails to comply with an order under section 161(2) of the Criminal Justice Act 2003 (pre-sentence drug testing). 10

PART 2

REQUIREMENTS

*Activity requirement*

- 6 (1) In this Part of this Act “activity requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must do any or all of the following –
- (a) participate, on such number of days as may be specified in the order, in activities at a place, or places, so specified;
  - (b) participate in an activity, or activities, specified in the order on such number of days as may be so specified; 20
  - (c) participate in one or more residential exercises for a continuous period or periods comprising such number or numbers of days as may be specified in the order;
  - (d) in accordance with paragraph 7, engage in activities in accordance with instructions of the responsible officer on such number of days as may be specified in the order. 25
- (2) Subject to paragraph 3(2), the number of days specified in the order under sub-paragraph (1) must not, in aggregate, be more than 90.
- (3) A requirement such as is mentioned in sub-paragraph (1)(a) or (b) operates to require the offender, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement –
- (a) in the case of a requirement such as is mentioned in sub-paragraph (1)(a), to present himself or herself at a place specified in the order to a person of a description so specified, or 35
  - (b) in the case of a requirement such as is mentioned in sub-paragraph (1)(b), to participate in an activity specified in the order,
- and, on each such day, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be). 40
- (4) Where the order requires the offender to participate in a residential exercise, it must specify, in relation to the exercise –
- (a) a place, or
  - (b) an activity. 45

- (5) A requirement to participate in a residential exercise operates to require the offender, in accordance with instructions given by the responsible officer –
- (a) if a place is specified under sub-paragraph (4)(a) –
    - (i) to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place so specified to a person of a description specified in the instructions, and 5
    - (ii) to reside there for that period,
  - (b) if an activity is specified under sub-paragraph (4)(b), to participate, for the period specified in the order in relation to the exercise, in the activity so specified, 10
- and, during that period, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).
- Activity requirement: instructions of responsible officer under paragraph 6(1)(d)* 15
- 7 (1) Subject to sub-paragraph (3), instructions under paragraph 6(1)(d) relating to any day must require the offender to do either of the following –
- (a) present himself or herself to a person or persons of a description specified in the instructions at a place so specified;
  - (b) participate in an activity specified in the instructions. 20
- (2) Any such instructions operate to require the offender, on that day or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or, as the case may be, the activity.
- (3) If the order so provides, instructions under paragraph 6(1)(d) may require the offender to participate in a residential exercise for a period comprising not more than 7 days, and, for that purpose – 25
- (a) to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place so specified and to reside there for that period, or 30
  - (b) to participate for that period in an activity specified in the instructions.
- (4) Instructions such as are mentioned in sub-paragraph (3) –
- (a) may not be given except with the consent of a parent or guardian of the offender, and 35
  - (b) operate to require the offender, during the period specified under that sub-paragraph, to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified under sub-paragraph (3)(a) or (b) (as the case may be).
- Activity requirement: further provisions* 40
- 8 (1) Instructions given by, or under the authority of, a person in charge of any place under any of the following provisions –
- (a) paragraph 6(3),
  - (b) paragraph 6(5),
  - (c) paragraph 7(2), or 45
  - (d) paragraph 7(4)(b),

may require the offender to engage in activities otherwise than at that place.

- (2) An activity specified –
- (a) in an order under paragraph 6(1)(b), or
  - (b) in instructions given under paragraph 6(1)(d),
- may consist of or include an activity whose purpose is that of reparation, such as an activity involving contact between an offender and persons affected by the offences in respect of which the order was made. 5
- (3) A court may not include an activity requirement in a youth rehabilitation order unless –
- (a) it has consulted a member of a youth offending team or an officer of a local probation board, 10
  - (b) it is satisfied that it is feasible to secure compliance with the requirement, and
  - (c) it is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the local justice area in which the offender resides or is to reside. 15
- (4) A court may not include an activity requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion. 20

*Supervision requirement*

- 9 In this Part of this Act “supervision requirement”, in relation to a youth rehabilitation order, means a requirement that, during the period for which the order remains in force, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such times and places as may be determined by the responsible officer. 25

*Unpaid work requirement*

- 10 (1) In this Part of this Act “unpaid work requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must perform unpaid work in accordance with this paragraph. 30
- (2) The number of hours which a person may be required to work under an unpaid work requirement must be specified in the youth rehabilitation order and must be, in aggregate –
- (a) not less than 40, and 35
  - (b) not more than 240.
- (3) A court may not impose an unpaid work requirement in respect of an offender unless –
- (a) after hearing (if the court thinks necessary) an appropriate officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement, and 40
  - (b) the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which the offender resides or is to reside. 45



- (4) In sub-paragraph (3)(a) “an appropriate officer” means a member of a youth offending team or an officer of a local probation board.
- (5) An offender in respect of whom an unpaid work requirement of a youth rehabilitation order is in force must perform for the number of hours specified in the order such work at such times as the responsible officer may specify in instructions. 5
- (6) Subject to paragraph 17 of Schedule 2, the work required to be performed under an unpaid work requirement of a youth rehabilitation order must be performed during the period of 12 months beginning with the day on which the order takes effect. 10
- (7) Unless revoked, a youth rehabilitation order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.

*Programme requirement*

- 11 (1) In this Part of this Act “programme requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must participate in a systematic set of activities (“a programme”) specified in the order at a place or places so specified on such number of days as may be so specified. 15
- (2) A programme requirement may require the offender to reside at any place specified in the order under sub-paragraph (1) for any period so specified if it is necessary for the offender to reside there for that period in order to participate in the programme. 20
- (3) A court may not include a programme requirement in a youth rehabilitation order unless –
- (a) the programme which the court proposes to specify in the order has been recommended to the court by – 25
- (i) a member of a youth offending team, or
- (ii) an officer of a local probation board, as being suitable for the offender, and
- (b) the court is satisfied that the programme is available at the place or places proposed to be specified. 30
- (4) A court may not include a programme requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender’s responsible officer, unless that other person consents to its inclusion. 35
- (5) A requirement to participate in a programme operates to require the offender –
- (a) in accordance with instructions given by the responsible officer to participate in the programme at the place or places specified in the order on the number of days so specified, and 40
- (b) while at any of those places, to comply with instructions given by, or under the authority of, the person in charge of the programme.

*Attendance centre requirement*

- 12 (1) In this Part of this Act “attendance centre requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must attend at 45

- 
- an attendance centre specified in the order for such number of hours as may be so specified.
- (2) The aggregate number of hours for which the offender may be required to attend at an attendance centre –
- (a) if the offender is aged 16 or over at the time of conviction, must be – 5
    - (i) not less than 12, and
    - (ii) not more than 36;
  - (b) if the offender is aged 14 or over but under 16 at the time of conviction, must be – 10
    - (i) not less than 12, and
    - (ii) not more than 24;
  - (c) if the offender is aged under 14 at the time of conviction, must not be more than 12.
- (3) A court may not include an attendance centre requirement in a youth rehabilitation order unless it – 15
- (a) has been notified by the Secretary of State that –
    - (i) an attendance centre is available for persons of the offender’s description, and
    - (ii) provision can be made at the centre for the offender, and
  - (b) is satisfied that the attendance centre proposed to be specified is reasonably accessible to the offender, having regard to the means of access available to the offender and any other circumstances. 20
- (4) The first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.
- (5) The subsequent hours are to be fixed by the officer in charge of the centre – 25
- (a) in accordance with arrangements made by the responsible officer, and
  - (b) having regard to the offender’s circumstances.
- (6) An offender may not be required under this paragraph to attend at an attendance centre – 30
- (a) on more than one occasion on any day, or
  - (b) for more than three hours on any occasion.
- (7) A requirement to attend at an attendance centre for any period on any occasion operates as a requirement – 35
- (a) to attend at the centre at the beginning of the period, and
  - (b) during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere.
- Prohibited activity requirement* 40
- 13 (1) In this Part of this Act “prohibited activity requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must refrain from participating in activities specified in the order –
- (a) on a day or days so specified, or
  - (b) during a period so specified. 45

- (2) A court may not include a prohibited activity requirement in a youth rehabilitation order unless it has consulted –
- (a) a member of a youth offending team, or
  - (b) an officer of a local probation board.
- (3) The requirements that may by virtue of this paragraph be included in a youth rehabilitation order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27). 5

*Curfew requirement*

- 14 (1) In this Part of this Act “curfew requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must remain, for periods specified in the order, at a place so specified. 10
- (2) A youth rehabilitation order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than 2 hours or more than 12 hours in any day. 15
- (3) A youth rehabilitation order imposing a curfew requirement may not specify periods which fall outside the period of 6 months beginning with the day on which the requirement first takes effect.
- (4) Before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender). 20

*Exclusion requirement*

- 15 (1) In this Part of this Act “exclusion requirement”, in relation to a youth rehabilitation order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified. 25
- (2) The period specified must not be more than 3 months.
- (3) An exclusion requirement –
- (a) may provide for the prohibition to operate only during the periods specified in the order, and
  - (b) may specify different places for different periods or days.
- (4) In this paragraph “place” includes an area. 30

*Residence requirement*

- 16 (1) In this Part of this Act, “residence requirement”, in relation to a youth rehabilitation order, means a requirement that, during the period specified in the order, the offender must reside – 35
- (a) with an individual specified in the order, or
  - (b) at a place specified in the order.
- (2) A court may not by virtue of sub-paragraph (1)(a) include in a youth rehabilitation order a requirement that the offender reside with an individual unless that individual has consented to the requirement. 40

- (3) In this paragraph, a residence requirement falling within sub-paragraph (1)(b) is referred to as “a place of residence requirement”.
- (4) A court may not include a place of residence requirement in a youth rehabilitation order unless the offender was aged 16 or over at the time of conviction. 5
- (5) If the order so provides, a place of residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.
- (6) Before making a youth rehabilitation order containing a place of residence requirement, the court must consider the home surroundings of the offender. 10
- (7) A court may not specify a hostel or other institution as the place where an offender must reside for the purposes of a place of residence requirement except on the recommendation of— 15
- (a) a member of a youth offending team,
  - (b) an officer of a local probation board, or
  - (c) a social worker of a local authority.

*Local authority residence requirement*

- 17 (1) In this Part of this Act, “local authority residence requirement”, in relation to a youth rehabilitation order, means a requirement that, during the period specified in the order, the offender must reside in accommodation provided by or on behalf of a local authority specified in the order for the purposes of the requirement. 20
- (2) A youth rehabilitation order which imposes a local authority residence requirement may also stipulate that the offender is not to reside with a person specified in the order. 25
- (3) A court may not include a local authority residence requirement in a youth rehabilitation order made in respect of an offence unless it is satisfied— 30
- (a) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and
  - (b) that the imposition of that requirement will assist in the offender’s rehabilitation.
- (4) A court may not include a local authority residence requirement in a youth rehabilitation order unless it has consulted— 35
- (a) a parent or guardian of the offender (unless it is impracticable to consult such a person), and
  - (b) the local authority which is to receive the offender.
- (5) A youth rehabilitation order which imposes a local authority residence requirement must specify, as the local authority which is to receive the offender, the local authority in whose area the offender resides or is to reside. 40
- (6) Any period specified in a youth rehabilitation order as a period for which the offender must reside in accommodation provided by or on behalf of a local authority must— 45
- (a) not be longer than 6 months, and

- (b) not include any period after the offender has reached the age of 18.

*Fostering requirement*

- 18 (1) In this Part of this Act “fostering requirement”, in relation to a youth rehabilitation order, means a requirement that, for a period specified in the order, the offender must reside with a local authority foster parent. 5
- (2) A period specified in a youth rehabilitation order as a period for which the offender must reside with a local authority foster parent must –
- (a) end no later than the end of the period of 12 months beginning with the date on which the requirement first has effect (but subject to paragraphs 6(9), 8(9) and 16(2) of Schedule 2), and 10
- (b) not include any period after the offender has reached the age of 18.
- (3) A youth rehabilitation order which imposes a fostering requirement must specify the local authority which is to place the offender with a local authority foster parent under section 23(2)(a) of the Children Act 1989 (c. 41).
- (4) The authority so specified must be the local authority in whose area the offender resides or is to reside. 15
- (5) If at any time during the period specified under sub-paragraph (1), the responsible officer notifies the offender –
- (a) that no suitable local authority foster parent is available, and
- (b) that the responsible officer has applied or proposes to apply under Part 3 or 4 of Schedule 2 for the revocation or amendment of the order, 20
- the fostering requirement is, until the determination of the application, to be taken to require the offender to reside in accommodation provided by or on behalf of a local authority. 25
- (6) This paragraph does not affect the power of a local authority to place with a local authority foster parent an offender in respect of whom a local authority residence requirement is imposed.
- (7) A court may not include a fostering requirement in a youth rehabilitation order unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent. 30
- (8) In this paragraph, “local authority foster parent” has the same meaning as it has in the Children Act 1989. 35

*Pre-conditions to imposing local authority residence requirement or fostering requirement*

- 19 (1) A court may not include a local authority residence requirement or a fostering requirement in a youth rehabilitation order in respect of an offender unless –
- (a) the offender was legally represented at the relevant time in court, or 40
- (b) either of the conditions in sub-paragraph (2) is satisfied.
- (2) Those conditions are –
- (a) that the offender was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service

- for the purposes of the proceedings but the right was withdrawn because of the offender’s conduct, or
- (b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply. 5
- (3) In this paragraph –
- “the proceedings” means –
- (a) the whole proceedings, or
- (b) the part of the proceedings relating to the imposition of the local authority residence requirement or the fostering requirement; 10
- “the relevant time” means the time when the court is considering whether to impose that requirement.

*Mental health treatment requirement*

- 20 (1) In this Part of this Act “mental health treatment requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition. 15
- (2) The treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order –
- (a) treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 (c. 14) or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided; 25
- (b) treatment as a non-resident patient at such institution or place as may be specified in the order; 30
- (c) treatment by or under the direction of such registered medical practitioner or chartered psychologist (or both) as may be so specified;
- but the order must not otherwise specify the nature of the treatment.
- (3) A court may not include a mental health treatment requirement in a youth rehabilitation order unless – 35
- (a) the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983, that the mental condition of the offender –
- (i) is such as requires and may be susceptible to treatment, but 40
- (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of that Act,
- (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident patient, arrangements for the reception of the offender), and 45
- (c) the offender has expressed willingness to comply with the requirement.

- (4) While the offender is under treatment as a resident patient in pursuance of a mental health treatment requirement of a youth rehabilitation order, the responsible officer is to carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order. 5
- (5) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 (c. 20) have effect with respect to proof of an offender’s mental condition for the purposes of sub-paragraph (3)(a) as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act. 10
- (6) In this paragraph and paragraph 21, “chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists.

*Mental health treatment at place other than that specified in order*

- 21 (1) Where the registered medical practitioner or chartered psychologist by whom or under whose direction an offender is being treated in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which – 15
- (a) is not specified in the youth rehabilitation order, and 20
  - (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or chartered psychologist,
- the medical practitioner or psychologist may make arrangements for the offender to be treated accordingly. 25
- (2) Such arrangements as are mentioned in sub-paragraph (1) may only be made if the offender has expressed willingness for the treatment to be given as mentioned in that sub-paragraph.
- (3) Such arrangements as are mentioned in sub-paragraph (1) may provide for part of the treatment to be provided to the offender as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the youth rehabilitation order. 30
- (4) Where any such arrangements as are mentioned in sub-paragraph (1) are made for the treatment of an offender – 35
- (a) the registered medical practitioner or chartered psychologist by whom the arrangements are made must give notice in writing to the offender’s responsible officer, specifying the institution or place in or at which the treatment is to be carried out, and
  - (b) the treatment provided for by the arrangements is deemed to be treatment to which the offender is required to submit in pursuance of the youth rehabilitation order. 40

*Drug treatment requirement*

- 22 (1) In this Part of this Act, “drug treatment requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or 45

- experience (“the treatment provider”), with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs.
- (2) A court may not include a drug treatment requirement in a youth rehabilitation order unless it is satisfied –
- (a) that the offender is dependent on, or has a propensity to misuse, drugs, and 5
  - (b) that the offender’s dependency or propensity is such as requires and may be susceptible to treatment.
- (3) The treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order – 10
- (a) treatment as a resident in such institution or place as may be specified in the order, or
  - (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified, 15
- but the order must not otherwise specify the nature of the treatment.
- (4) A court may not include a drug treatment requirement in a youth rehabilitation order unless –
- (a) the court has been notified by the Secretary of State that arrangements for implementing drug treatment requirements are in force in the local justice area in which the offender resides or is to reside, 20
  - (b) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender), 25
  - (c) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team or by an officer of a local probation board, and
  - (d) the offender has expressed willingness to comply with the requirement. 30
- (5) In this paragraph “drug” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

*Drug testing requirement*

- 23 (1) In this Part of this Act, “drug testing requirement”, in relation to a youth rehabilitation order, means a requirement that, for the purpose of ascertaining whether there is any drug in the offender’s body during any treatment period, the offender must, during that period, provide samples in accordance with instructions given by the responsible officer or the treatment provider. 35
- (2) In sub-paragraph (1) –
- “drug” has the same meaning as in paragraph 22,
  - “treatment period” means a period specified in the youth rehabilitation order as a period during which the offender must submit to treatment as mentioned in sub-paragraph (1) of that paragraph, and 40
  - “the treatment provider” has the meaning given by that sub-paragraph. 45



- (3) A court may not include a drug testing requirement in a youth rehabilitation order unless –
- (a) the court has been notified by the Secretary of State that arrangements for implementing drug testing requirements are in force in the local justice area in which the offender resides or is to reside, 5
  - (b) the order also imposes a drug treatment requirement, and
  - (c) the offender has expressed willingness to comply with the requirement.
- (4) A youth rehabilitation order which imposes a drug testing requirement – 10
- (a) must specify for each month the minimum number of occasions on which samples are to be provided, and
  - (b) may specify –
    - (i) times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided, and 15
    - (ii) descriptions of the samples which may be so required.
- (5) A youth rehabilitation order which imposes a drug testing requirement must provide for the results of tests carried out otherwise than by the responsible officer on samples provided by the offender in pursuance of the requirement to be communicated to the responsible officer. 20

*Intoxicating substance treatment requirement*

- 24 (1) In this Part of this Act, “intoxicating substance treatment requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience, with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse intoxicating substances. 25
- (2) A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless it is satisfied – 30
- (a) that the offender is dependent on, or has a propensity to misuse, intoxicating substances, and
  - (b) that the offender’s dependency or propensity is such as requires and may be susceptible to treatment. 35
- (3) The treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order –
- (a) treatment as a resident in such institution or place as may be specified in the order, or 40
  - (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified,
- but the order must not otherwise specify the nature of the treatment.
- (4) A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless – 45
- (a) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where

	the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender),	
	(b) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team or by an officer of a local probation board, and	5
	(c) the offender has expressed willingness to comply with the requirement.	
(5)	In this paragraph “intoxicating substance” means –	
	(a) alcohol, or	
	(b) any other substance or product other than a drug which is, or the fumes of which are, capable of being inhaled or otherwise used for the purpose of causing intoxication.	10
(6)	In sub-paragraph (5)(b) “drug” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).	
	<i>Education requirement</i>	15
25	(1) In this Part of this Act “education requirement”, in relation to a youth rehabilitation order, means a requirement that the offender must comply, during a period or periods specified in the order, with approved education arrangements.	
	(2) For this purpose, “approved education arrangements” means arrangements for the offender’s education –	20
	(a) made for the time being by the offender’s parent or guardian, and	
	(b) approved by the local education authority specified in the order.	
	(3) The local education authority so specified must be the local education authority for the area in which the offender resides or is to reside.	25
	(4) A court may not include an education requirement in a youth rehabilitation order unless –	
	(a) it has consulted the local education authority proposed to be specified in the order with regard to the proposal to include the requirement, and	30
	(b) it is satisfied –	
	(i) that, in the view of that local education authority, arrangements exist for the offender to receive efficient full-time education suitable to the offender’s age, ability, aptitude and special educational needs (if any), and	35
	(ii) that, having regard to the circumstances of the case, the inclusion of the education requirement is necessary for securing the good conduct of the offender or for preventing the commission of further offences.	
	(5) Any period specified in a youth rehabilitation order as a period during which an offender must comply with approved education arrangements must not include any period after the offender has ceased to be of compulsory school age.	40
	(6) In this paragraph, “local education authority” and “parent” have the same meanings as in the Education Act 1996 (c. 56).	45

*Electronic monitoring requirement*

- 26 (1) In this Part of this Act “electronic monitoring requirement”, in relation to a youth rehabilitation order, means a requirement for securing the electronic monitoring of the offender’s compliance with other requirements imposed by the order during a period specified in the order or determined by the responsible officer in accordance with the order. 5
- (2) Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the youth rehabilitation order, the responsible officer must, before the beginning of that period, notify – 10
- (a) the offender,
  - (b) the person responsible for the monitoring, and
  - (c) any person falling within sub-paragraph (3)(b),
- of the time when the period is to begin.
- (3) Where – 15
- (a) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order, but
  - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure that the monitoring takes place, 20
- the requirement may not be included in the order without that person’s consent.
- (4) A youth rehabilitation order which imposes an electronic monitoring requirement must include provision for making a person responsible for the monitoring. 25
- (5) The person who is made responsible for the monitoring must be of a description specified in an order made by the Secretary of State.
- (6) A court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court –
- (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available – 30
    - (i) in the local justice area proposed to be specified in the order, and
    - (ii) for each requirement mentioned in the first column of the Table in sub-paragraph (7) which the court proposes to include in the order, in the area in which the relevant place is situated, and 35
  - (b) is satisfied that the necessary provision can be made under the arrangements currently available.
- (7) For the purposes of sub-paragraph (6), “relevant place”, in relation to a requirement mentioned in the first column of the following Table which the court proposes to include in the order, means the place mentioned in relation to it in the second column of the Table. 40

<i>Proposed requirement of youth rehabilitation order</i>	<i>Relevant place</i>	
Curfew requirement.	The place which the court proposes to specify in the order for the purposes of that requirement.	5
Exclusion requirement.	The place (within the meaning of paragraph 15) which the court proposes to specify in the order.	10
Attendance requirement.                      centre	The attendance centre which the court proposes to specify in the order.	

*Power to amend limits*

- 27 (1) The Secretary of State may by order amend – 15
- (a) paragraph 10(2) (unpaid work requirement), or
- (b) paragraph 14(2) (curfew requirement),
- by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order. 20
- (2) The Secretary of State may by order amend any of the provisions mentioned in sub-paragraph (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.
- (3) Those provisions are – 25
- (a) paragraph 14(3) (curfew requirement);
- (b) paragraph 15(2) (exclusion requirement);
- (c) paragraph 17(6) (local authority residence requirement);
- (d) paragraph 18(2) (fostering requirement).
- (4) An order under this paragraph which amends paragraph 18(2) may also make consequential amendments of paragraphs 6(9), 8(9) and 16(2) of Schedule 2. 30

PART 3

PROVISIONS APPLYING WHERE COURT PROPOSES TO MAKE YOUTH REHABILITATION ORDER

*Family circumstances*

- 28 Before making a youth rehabilitation order, the court must obtain and consider information about the offender’s family circumstances and the likely effect of such an order on those circumstances. 35

*Compatibility of requirements, requirement to avoid conflict with religious beliefs, etc.*

- 29 (1) Before making –

- (a) a youth rehabilitation order imposing two or more requirements, or
  - (b) two or more youth rehabilitation orders in respect of associated offences,
- the court must consider whether, in the circumstances of the case, the requirements to be imposed by the order or orders are compatible with each other. 5
- (2) Sub-paragraph (1) is subject to paragraphs 2, 3(4) and 4(4).
- (3) The court must ensure, as far as practicable, that any requirement imposed by a youth rehabilitation order is such as to avoid –
- (a) any conflict with the offender’s religious beliefs, 10
  - (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
  - (c) any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject. 15
- (4) The Secretary of State may by order provide that sub-paragraph (3) is to have effect with such additional restrictions as may be specified in the order.

*Date of taking effect and other existing orders*

- 30 (1) Subject to sub-paragraph (2), a youth rehabilitation order takes effect on the day after the day on which the order is made. 20
- (2) If a detention and training order is in force in respect of an offender, a court making a youth rehabilitation order in respect of the offender may order that it is to take effect instead –
- (a) when the period of supervision begins in relation to the detention and training order in accordance with section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or 25
  - (b) on the expiry of the term of the detention and training order.
- (3) A court must not make a youth rehabilitation order in respect of an offender at a time when –
- (a) another youth rehabilitation order, or 30
  - (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000,
- is in force in respect of the offender, unless when it makes the order it revokes the earlier order.
- (4) Where the earlier order is revoked under sub-paragraph (3), paragraph 24 of Schedule 2 (provision of copies of orders) applies to the revocation as it applies to the revocation of a youth rehabilitation order. 35

*Concurrent and consecutive orders*

- 31 (1) This paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences. 40
- (2) If, in respect of one of the offences, the court makes an order of any of the following kinds –
- (a) a youth rehabilitation order with intensive supervision and surveillance,

- (b) a youth rehabilitation order with fostering,  
(c) any other youth rehabilitation order,  
it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.
- (3) If the court makes two or more youth rehabilitation orders with intensive supervision and surveillance, or with fostering, both or all of the orders must take effect at the same time (in accordance with paragraph 30(1) or (2)). 5
- (4) Where the court includes requirements of the same kind in two or more youth rehabilitation orders, it must direct, in relation to each requirement of that kind, whether – 10
- (a) it is to be concurrent with the other requirement or requirements of that kind, or any of them, or  
(b) it and the other requirement or requirements of that kind, or any of them, are to be consecutive.
- (5) But the court may not direct that two or more fostering requirements are to be consecutive. 15
- (6) Where the court directs that two or more requirements of the same kind are to be consecutive –
- (a) the number of hours, days or months specified in relation to one of them is additional to the number of hours, days, or months specified in relation to the other or others, but 20  
(b) the aggregate number of hours, days or months specified in relation to both or all of them must not exceed the maximum number which may be specified in relation to any one of them.
- (7) For the purposes of sub-paragraphs (4) and (6), requirements are of the same kind if they fall within the same paragraph of Part 2 of this Schedule. 25

#### PART 4

##### PROVISIONS APPLYING WHERE COURT MAKES YOUTH REHABILITATION ORDER ETC.

##### *Date for compliance with requirements to be specified in order*

- 32 (1) A youth rehabilitation order must specify a date, not more than 3 years after the date on which the order takes effect, by which all the requirements in it must have been complied with. 30
- (2) A youth rehabilitation order which imposes two or more different requirements falling within Part 2 of this Schedule may also specify an earlier date or dates in relation to compliance with any one or more of them. 35
- (3) In the case of a youth rehabilitation order with intensive supervision and surveillance, the date specified for the purposes of sub-paragraph (1) must not be earlier than 12 months after the date on which the order takes effect.

##### *Local justice area to be specified in order*

- 33 A youth rehabilitation order must specify the local justice area in which the offender resides or will reside. 40

*Provision of copies of orders*

- 34 (1) The court by which any youth rehabilitation order is made must forthwith provide copies of the order –
- (a) to the offender,
  - (b) if the offender is aged under 14, to the offender’s parent or guardian, and
  - (c) to a member of a youth offending team assigned to the court or to an officer of a local probation board assigned to the court. 5
- (2) Sub-paragraph (3) applies where a youth rehabilitation order –
- (a) is made by the Crown Court, or 10
  - (b) is made by a magistrates’ court which does not act in the local justice area specified in the order.
- (3) The court making the order must –
- (a) provide to the magistrates’ court acting in the local justice area specified in the order – 15
    - (i) a copy of the order, and
    - (ii) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order, and 20
  - (b) provide a copy of the order to the local probation board acting for that area.
- (4) Where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement. 25

<i>Requirement</i>	<i>Person to whom copy of requirement is to be given</i>	
An activity requirement specifying a place under paragraph 6(1)(a).	The person in charge of that place.	30
An activity requirement specifying an activity under paragraph 6(1)(b).	The person in charge of that activity.	35
An activity requirement specifying a residential exercise under paragraph 6(1)(c).	The person in charge of the place or activity specified under paragraph 6(4) in relation to that residential exercise.	
An attendance centre requirement.	The officer in charge of the attendance centre specified under paragraph 12(1).	40

<i>Requirement</i>	<i>Person to whom copy of requirement is to be given</i>	
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected.	5
A residence requirement requiring residence with an individual.	The individual specified under paragraph 16(1)(a).	10
A place of residence requirement (within the meaning of paragraph 16) relating to residence in an institution.	The person in charge of the institution.	15
A local authority residence requirement.	The local authority specified under paragraph 17(1).	
A mental health treatment requirement.	The person in charge of the institution or place specified under sub-paragraph (2)(a) or (b) of paragraph 20, or the person specified under sub-paragraph (2)(c) of that paragraph.	20
A drug treatment requirement.	The treatment provider specified under paragraph 22(1).	25
A drug testing requirement.	The treatment provider specified under paragraph 22(1).	
An intoxicating substance treatment requirement	The person specified under paragraph 24(1).	30
An education requirement.	The local education authority specified under paragraph 25(2).	
An electronic monitoring requirement.	Any person who by virtue of paragraph 26(4) will be responsible for the electronic monitoring. Any person without whose consent the requirement could not have been included in the order.	35

*Power to provide for court review of orders*

- 35 (1) The Secretary of State may by order – 40
- (a) enable or require a court making a youth rehabilitation order to provide for the order to be reviewed periodically by that or another court,



- (b) enable a court to amend a youth rehabilitation order so as to include or remove a provision for review by a court, and
  - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- (2) An order under this paragraph may, in particular, make provision in relation to youth rehabilitation orders corresponding to any provision made by sections 191 and 192 of the Criminal Justice Act 2003 (c. 44) (reviews of suspended sentence orders) in relation to suspended sentence orders. 5
- (3) An order under this paragraph may repeal or amend any provision of – 10
  - (a) this Part of this Act, or
  - (b) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (general provisions about sentencing).

*Order made by Crown Court: direction in relation to further proceedings*

- 36 (1) Where the Crown Court makes a youth rehabilitation order, it may include in the order a direction that further proceedings relating to the order be in a youth court or other magistrates' court (subject to paragraph 7 of Schedule 2). 15
- (2) In sub-paragraph (1), “further proceedings”, in relation to a youth rehabilitation order, means proceedings – 20
  - (a) for any failure to comply with the order within the meaning given by paragraph 1(2)(b) of Schedule 2, or
  - (b) on any application for amendment or revocation of the order under Part 3 or 4 of that Schedule.

SCHEDULE 2

Section 2

BREACH, REVOCATION OR AMENDMENT OF YOUTH REHABILITATION ORDERS 25

PART 1

PRELIMINARY

*Interpretation*

- 1 (1) In this Schedule, “the offender”, in relation to a youth rehabilitation order, means the person in respect of whom the order is made. 30
- (2) In this Schedule –
  - (a) any reference (however expressed) to an offender's compliance with a youth rehabilitation order is a reference to the offender's compliance with – 35
    - (i) the requirement or requirements imposed by the order, and
    - (ii) if the order imposes an attendance centre requirement, rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 (“attendance centre rules”), and
  - (b) any reference (however expressed) to the offender's failure to comply with the order is a reference to any failure of the offender to comply – 40

- (i) with a requirement imposed by the order, or
  - (ii) if the order imposes an attendance centre requirement, with attendance centre rules.
- (3) For the purposes of this Schedule –
- (a) a requirement falling within any paragraph of Part 2 of Schedule 1 is of the same kind as any other requirement falling within that paragraph, and 5
  - (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within Part 2 of Schedule 1 to which it relates. 10

*Orders made on appeal*

- 2 Where a youth rehabilitation order has been made on appeal, for the purposes of this Schedule it is to be treated –
- (a) if it was made on an appeal from a magistrates’ court, as having been made by a magistrates’ court; 15
  - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, as having been made by the Crown Court.

PART 2

BREACH OF REQUIREMENT OF ORDER 20

*Duty to give warning*

- 3 (1) If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, the responsible officer must give the offender a warning under this paragraph unless under paragraph 4(1) or (2) the responsible officer causes an information to be laid before a justice of the peace in respect of the failure. 25
- (2) A warning under this paragraph must –
- (a) describe the circumstances of the failure,
  - (b) state that the failure is unacceptable, and
  - (c) state that the offender will be liable to be brought before a court – 30
    - (i) in a case where the warning is given during the warned period relating to a previous warning under this paragraph, if during that period the offender again fails to comply with the order, or
    - (ii) in any other case, if during the warned period relating to the warning, the offender fails on more than one occasion to comply with the order. 35
- (3) The responsible officer must, as soon as practicable after the warning has been given, record that fact.
- (4) In this paragraph, “warned period”, in relation to a warning under this paragraph, means the period of 12 months beginning with the date on which the warning was given. 40

*Breach of order*

- 4 (1) If the responsible officer –
- (a) has given a warning (“the first warning”) under paragraph 3 to the offender in respect of a youth rehabilitation order,
  - (b) during the warned period relating to the first warning, has given another warning under that paragraph to the offender in respect of a failure to comply with the order, and
  - (c) is of the opinion that, during the warned period relating to the first warning, the offender has again failed without reasonable excuse to comply with the order,
- the responsible officer must cause an information to be laid before a justice of the peace in respect of the failure mentioned in paragraph (c). 5 10
- (2) If –
- (a) the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, and
  - (b) sub-paragraph (1) does not apply,
- the responsible officer may cause an information to be laid before a justice of the peace in respect of that failure. 15
- (3) In this paragraph, “warned period” has the same meaning as in paragraph 3. 20

*Issue of summons or warrant by justice of the peace*

- 5 (1) If at any time while a youth rehabilitation order is in force it appears on information to a justice of the peace that an offender has failed to comply with a youth rehabilitation order, the justice may –
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
  - (b) if the information is in writing and on oath, issue a warrant for the offender’s arrest. 25
- (2) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought – 30
- (a) if the youth rehabilitation order was made by the Crown Court and does not include a direction under paragraph 36 of Schedule 1, before the Crown Court, and
  - (b) in any other case, before the appropriate court.
- (3) In sub-paragraph (2), “appropriate court” means – 35
- (a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and
  - (b) if the offender is aged 18 or over, a magistrates’ court (other than a youth court) acting in that local justice area.
- (4) In sub-paragraph (3), “relevant local justice area” means – 40
- (a) the local justice area in which the offender resides, or
  - (b) if it is not known where the offender resides, the local justice area specified in the youth rehabilitation order.
- (5) Sub-paragraphs (6) and (7) apply where the offender does not appear in answer to a summons issued under this paragraph. 45

- (6) If the summons required the offender to appear before the Crown Court, the Crown Court may –
- (a) unless the summons was issued under this sub-paragraph, issue a further summons requiring the offender to appear at the place and time specified in it, or 5
  - (b) in any case, issue a warrant for the arrest of the offender.
- (7) If the summons required the offender to appear before a magistrates' court, the magistrates' court may issue a warrant for the arrest of the offender.

*Powers of magistrates' court*

- 6 (1) This paragraph applies where – 10
- (a) an offender appears or is brought before a youth court or other magistrates' court under paragraph 5, and
  - (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order. 15
- (2) The court may deal with the offender in respect of that failure in any one of the following ways (and must do so if the youth rehabilitation order is in force) –
- (a) by ordering the offender to pay a fine of an amount not exceeding – 20
    - (i) £250, if the offender is aged under 14, or
    - (ii) £1,000, in any other case;
  - (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made – 25
    - (i) in addition to, or
    - (ii) in substitution for,
 any requirement or requirements already imposed by the order;
  - (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it). 30
- (3) Sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).
- (4) In dealing with the offender under sub-paragraph (2), the court must take into account the extent to which the offender has complied with the youth rehabilitation order. 35
- (5) A fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (6) Any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1. 40
- (7) Where –
- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
  - (b) the youth rehabilitation order does not contain an unpaid work requirement, 45

paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

- (8) The court may not under sub-paragraph (2)(b) impose –
- (a) an extended activity requirement, or
  - (b) a fostering requirement,
- if the order does not already impose such a requirement. 5
- (9) Where –
- (a) the order imposes a fostering requirement (the “original requirement”), and
  - (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,
- paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date. 10 15
- (10) Where –
- (a) the court deals with the offender under sub-paragraph (2)(b), and
  - (b) it would not otherwise have the power to amend the youth rehabilitation order under paragraph 13 (amendment by reason of change of residence),
- that paragraph has effect as if references in it to the appropriate court were references to the court which is dealing with the offender. 20
- (11) Where the court deals with the offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force. 25
- (12) Sub-paragraphs (13) to (15) apply where –
- (a) the court is dealing with the offender under sub-paragraph (2)(c), and
  - (b) the offender has wilfully and persistently failed to comply with a youth rehabilitation order.
- 30
- (13) The court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).
- (14) If –
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
  - (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,
- the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences). 35 40
- (15) If –
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of sub-paragraph (13) or paragraph 8(12), and
  - (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,
- 45

for the purposes of dealing with the offender under sub-paragraph (2)(c), the court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

- (16) An offender may appeal to the Crown Court against a sentence imposed under sub-paragraph (2)(c). 5

*Power of magistrates' court to refer offender to Crown Court*

- 7 (1) Sub-paragraph (2) applies if –
- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and 10
  - (b) a youth court or other magistrates' court would (apart from that sub-paragraph) be required, or has the power, to deal with the offender in one of the ways mentioned in paragraph 6(2).
- (2) The court may instead –
- (a) commit the offender in custody, or 15
  - (b) release the offender on bail,
- until the offender can be brought or appear before the Crown Court.
- (3) Where a court deals with the offender's case under sub-paragraph (2) it must send to the Crown Court –
- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation order in the respect specified in the certificate, and 20
  - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court. 25

*Powers of Crown Court*

- 8 (1) This paragraph applies where –
- (a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 7(2), and
  - (b) it is proved to the satisfaction of that court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order. 30
- (2) The Crown Court may deal with the offender in respect of that failure in any one of the following ways (and must do so if the youth rehabilitation order is in force) – 35
- (a) by ordering the offender to pay a fine of an amount not exceeding –
    - (i) £250, if the offender is aged under 14, or
    - (ii) £1,000, in any other case;
  - (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made – 40
    - (i) in addition to, or
    - (ii) in substitution for,
- any requirement or requirements already imposed by the order;

- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.
- (3) Sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).
- (4) In dealing with the offender under sub-paragraph (2), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order. 5
- (5) A fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (6) Any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1. 10
- (7) Where –
- (a) the court is dealing with the offender under sub-paragraph (2)(b), and 15
- (b) the youth rehabilitation order does not contain an unpaid work requirement,
- paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.
- (8) The court may not under sub-paragraph (2)(b) impose – 20
- (a) an extended activity requirement, or
- (b) a fostering requirement,
- if the order does not already impose such a requirement.
- (9) Where –
- (a) the order imposes a fostering requirement (the “original requirement”), and 25
- (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,
- paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date. 30
- (10) Where the Crown Court deals with an offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force. 35
- (11) Sub-paragraphs (12) to (14) apply where –
- (a) an offender has wilfully and persistently failed to comply with a youth rehabilitation order; and
- (b) the Crown Court is dealing with the offender under sub-paragraph (2)(c). 40
- (12) The court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).
- (13) If –
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and 45

- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,  
the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences). 5
- (14) If—
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of paragraph 6(13) or sub-paragraph (12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment, 10
- for the purposes of dealing with the offender under sub-paragraph (2)(c), the Crown Court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months. 15
- (15) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the youth rehabilitation order is to be determined by the court and not by the verdict of a jury.

*Restriction of powers in paragraphs 6 and 8 where treatment required*

- 9 (1) Sub-paragraph (2) applies where a youth rehabilitation order imposes either of the following requirements in respect of an offender— 20
- (a) a mental health treatment requirement;
- (b) a drug treatment requirement.
- (2) The offender is not to be treated for the purposes of paragraph 6 or 8 as having failed to comply with the order on the ground only that the offender had refused to undergo any surgical, electrical or other treatment required by that requirement if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances. 25

*Power to amend amounts of fines*

- 10 (1) The Secretary of State may by order amend any sum for the time being specified in paragraph 6(2)(a)(i) or (ii) or 8(2)(a)(i) or (ii). 30
- (2) The power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- (3) In sub-paragraph (2), “the relevant date” means— 35
- (a) if the sum specified in paragraph 6(2)(a)(i) or (ii) or 8(2)(a)(i) or (ii) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
- (b) otherwise, the date on which this Act was passed.
- (4) An order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any youth rehabilitation order made in respect of an offence committed before the fine amendment order comes into force. 40



PART 3

REVOCATION OF ORDER

*Revocation of order with or without re-sentencing: powers of appropriate court*

- 11 (1) This paragraph applies where –
- (a) a youth rehabilitation order is in force in respect of any offender, 5
  - (b) the order –
    - (i) was made by a youth court or other magistrates’ court, or
    - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
  - (c) the offender or the responsible officer makes an application to the appropriate court under this sub-paragraph. 10
- (2) If it appears to the appropriate court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the appropriate court may –
- (a) revoke the order, or 15
  - (b) both –
    - (i) revoke the order, and
    - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the appropriate court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it). 20
- (3) The circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (2) include the offender’s making good progress or responding satisfactorily to supervision or treatment (as the case requires).
- (4) In dealing with an offender under sub-paragraph (2)(b), the appropriate court must take into account the extent to which the offender has complied with the requirements of the youth rehabilitation order. 25
- (5) A person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.
- (6) No application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.
- (7) If an application under sub-paragraph (1) relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the appropriate court. 35
- (8) In this paragraph, “the appropriate court” means –
- (a) if the offender is aged under 18 when the application under sub-paragraph (1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
  - (b) if the offender is aged 18 or over at that time, a magistrates’ court (other than a youth court) acting in that local justice area. 40

*Revocation of order with or without re-sentencing: powers of Crown Court*

- 12 (1) This paragraph applies where –

- (a) a youth rehabilitation order is in force in respect of an offender,  
 (b) the order –  
     (i) was made by the Crown Court, and  
     (ii) does not contain a direction under paragraph 36 of Schedule 1, and 5  
 (c) the offender or the responsible officer makes an application to the Crown Court under this sub-paragraph.
- (2) If it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made, the Crown Court may – 10  
 (a) revoke the order, or  
 (b) both –  
     (i) revoke the order, and  
     (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence. 15
- (3) The circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (2) include the offender’s making good progress or responding satisfactorily to supervision or treatment (as the case requires).
- (4) In dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order. 20
- (5) No application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.
- (6) If an application under sub-paragraph (1) relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the Crown Court. 25

PART 4 30

AMENDMENT OF ORDER

*Amendment by appropriate court*

- 13 (1) This paragraph applies where –  
 (a) a youth rehabilitation order is in force in respect of an offender,  
 (b) the order – 35  
     (i) was made by a youth court or other magistrates’ court, or  
     (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and  
 (c) an application for the amendment of the order is made to the appropriate court by the offender or the responsible officer. 40
- (2) If the appropriate court is satisfied that the offender proposes to reside, or is residing, in a local justice area (“the new local justice area”) other than the local justice area for the time being specified in the order, the court –  
 (a) must, if the application under sub-paragraph (1)(c) was made by the responsible officer, or 45

- (b) may, in any other case,  
amend the youth rehabilitation order by substituting the new local justice area for the area specified in the order.
- (3) Sub-paragraph (2) is subject to paragraph 15.
- (4) The appropriate court may by order amend the youth rehabilitation order – 5
  - (a) by cancelling any of the requirements of the order, or
  - (b) by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.
- (5) Sub-paragraph (4) is subject to paragraph 16. 10
- (6) In this paragraph, “the appropriate court” means –
  - (a) if the offender is aged under 18 when the application under sub-paragraph (1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
  - (b) if the offender is aged 18 or over at that time, a magistrates’ court 15  
(other than a youth court) acting in that local justice area.

*Amendment by Crown Court*

- 14 (1) This paragraph applies where –
  - (a) a youth rehabilitation order is in force in respect of an offender,
  - (b) the order – 20
    - (i) was made by the Crown Court, and
    - (ii) does not contain a direction under paragraph 36 of Schedule 1, and
  - (c) an application for the amendment of the order is made to the Crown Court by the offender or the responsible officer. 25
- (2) If the Crown Court is satisfied that the offender proposes to reside, or is residing, in a local justice area (“the new local justice area”) other than the local justice area for the time being specified in the order, the court –
  - (a) must, if the application under sub-paragraph (1)(c) was made by the responsible officer, or 30
  - (b) may, in any other case,  
amend the youth rehabilitation order by substituting the new local justice area for the area specified in the order.
- (3) Sub-paragraph (2) is subject to paragraph 15.
- (4) The Crown Court may by order amend the youth rehabilitation order – 35
  - (a) by cancelling any of the requirements of the order, or
  - (b) by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.
- (5) Sub-paragraph (4) is subject to paragraph 16. 40

*Exercise of powers under paragraph 13(2) or 14(2): further provisions*

- 15 (1) In sub-paragraphs (2) and (3), “specific area requirement”, in relation to a youth rehabilitation order, means a requirement contained in the order

which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area specified in the youth rehabilitation order.

- (2) A court may not under paragraph 13(2) or 14(2) amend a youth rehabilitation order which contains specific area requirements unless, in accordance with paragraph 13(4) or, as the case may be, 14(4), it either – 5
- (a) cancels those requirements, or
  - (b) substitutes for those requirements other requirements which can be complied with if the offender resides in the new local justice area mentioned in paragraph 13(2) or (as the case may be) 14(2). 10
- (3) If –
- (a) the application under paragraph 13(1)(c) or 14(1)(c) was made by the responsible officer, and
  - (b) the youth rehabilitation order contains specific area requirements, the court must, unless it considers it inappropriate to do so, so exercise its powers under paragraph 13(4) or, as the case may be, 14(4) that it is not prevented by sub-paragraph (2) from amending the order under paragraph 13(2) or, as the case may be, 14(2). 15
- (4) The court may not under paragraph 13(2) or, as the case may be, 14(2) amend a youth rehabilitation order imposing a programme requirement unless the court is satisfied that a programme which – 20
- (a) corresponds as nearly as practicable to the programme specified in the order for the purposes of that requirement, and
  - (b) is suitable for the offender, is available in the new local justice area. 25

*Exercise of powers under paragraph 13(4) or 14(4): further provisions*

- 16 (1) Any requirement imposed under paragraph 13(4)(b) or 14(4)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.
- (2) Where – 30
- (a) a youth rehabilitation order imposes a fostering requirement (the “original requirement”), and
  - (b) under paragraph 13(4)(b) or 14(4)(b) a court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement, 35
- paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.
- (3) The court may not under paragraph 13(4) or 14(4) impose – 40
- (a) a mental health treatment requirement,
  - (b) a drug treatment requirement, or
  - (c) a drug testing requirement,
- unless the offender has expressed willingness to comply with the requirement. 45
- (4) If an offender fails to express willingness to comply with a mental health treatment requirement, a drug treatment requirement or a drug testing

requirement which the court proposes to impose under paragraph 13(4) or 14(4), the court may –

- (a) revoke the youth rehabilitation order, and
  - (b) deal with the offender, for the offence in respect of which the order was made, in any way in which that court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it). 5
- (5) In dealing with the offender under sub-paragraph (4)(b), the court must take into account the extent to which the offender has complied with the order.

*Extension of unpaid work requirement* 10

17 Where –

- (a) a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender, and
  - (b) on the application of the offender or the responsible officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, 15
- the court may, in relation to the order, extend the period of 12 months specified in paragraph 10(6) of Schedule 1.

PART 5 20

POWERS OF COURT IN RELATION TO ORDER FOLLOWING SUBSEQUENT CONVICTION

*Powers of magistrates' court following subsequent conviction*

18 (1) This paragraph applies where –

- (a) a youth rehabilitation order is in force in respect of an offender, and
  - (b) the offender is convicted of an offence (the “further offence”) by a youth court or other magistrates’ court (“the convicting court”). 25
- (2) Sub-paragraphs (3) and (4) apply where –
- (a) the youth rehabilitation order –
    - (i) was made by a youth court or other magistrates’ court, or
    - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and 30
  - (b) the convicting court is dealing with the offender for the further offence.
- (3) The convicting court may revoke the order.
- (4) Where the convicting court revokes the order under sub-paragraph (3), it may deal with the offender, for the offence in respect of which the order was made, in any way in which it could have dealt with the offender for that offence (had the offender been before that court to be dealt with for the offence). 35
- (5) The convicting court may not exercise its powers under sub-paragraph (3) or (4) unless it considers that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made. 40

- 
- (6) In dealing with an offender under sub-paragraph (4), the sentencing court must take into account the extent to which the offender has complied with the order.
- (7) A person sentenced under sub-paragraph (4) for an offence may appeal to the Crown Court against the sentence. 5
- (8) Sub-paragraph (9) applies where –
- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
  - (b) the convicting court would, but for that sub-paragraph, deal with the offender for the further offence. 10
- (9) The convicting court may, instead of proceeding under sub-paragraph (3) –
- (a) commit the offender in custody, or
  - (b) release the offender on bail,
- until the offender can be brought before the Crown Court.
- (10) Sub-paragraph (11) applies if the youth rehabilitation order was made by the Crown court and does not contain a direction under paragraph 36 of Schedule 1. 15
- (11) The convicting court may –
- (a) commit the offender in custody, or
  - (b) release the offender on bail, 20
- until the offender can be brought or appear before the Crown Court.
- (12) Where the convicting court deals with an offender’s case under sub-paragraph (9) or (11), it must send to the Crown Court such particulars of the case as may be desirable.
- Powers of Crown Court following subsequent conviction* 25
- 19 (1) This paragraph applies where –
- (a) a youth rehabilitation order is in force in respect of an offender, and
  - (b) the offender –
    - (i) is convicted by the Crown Court of an offence, or
    - (ii) is brought or appears before the Crown Court by virtue of paragraph 18(9) or (11) or having been committed by the magistrates’ court to the Crown Court for sentence. 30
- (2) The Crown Court may revoke the order.
- (3) Where the Crown Court revokes the order under sub-paragraph (2), the Crown Court may deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could have dealt with the offender for that offence. 35
- (4) The Crown Court must not exercise its powers under sub-paragraph (2) or (3) unless it considers that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made. 40
- (5) In dealing with an offender under sub-paragraph (3), the Crown Court must take into account the extent to which the offender has complied with the order.

- (6) If the offender is brought or appears before the Crown Court by virtue of paragraph 18(9) or (11), the Crown Court may deal with the offender for the further offence in any way which the convicting court could have dealt with the offender for that offence.
- (7) In sub-paragraph (6), “further offence” and “the convicting court” have the same meanings as in paragraph 18. 5

## PART 6

### SUPPLEMENTARY

#### *Appearance of offender before court*

- 20 (1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court – 10
- (a) must summon the offender to appear before the court, and
  - (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender’s arrest. 15
- (2) Sub-paragraph (1) does not apply where a court proposes to make an order –
- (a) revoking a youth rehabilitation order,
  - (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or 20
  - (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.

#### *Warrants*

- 21 (1) Sub-paragraph (2) applies where an offender is arrested in pursuance of a warrant issued by virtue of this Schedule and cannot be brought immediately before the court before which the warrant directs the offender to be brought (“the relevant court”). 25
- (2) The person in whose custody the offender is –
- (a) may make arrangements for the offender’s detention in a place of safety for a period of not more than 72 hours from the time of the arrest, and 30
  - (b) must within that period bring the offender before a magistrates’ court.
- (3) In the case of a warrant issued by the Crown Court, section 81(5) of the Supreme Court Act 1981 (c. 54) (duty to bring person before magistrates’ court) does not apply. 35
- (4) A person who is detained under arrangements made under sub-paragraph (2)(a) is deemed to be in legal custody.
- (5) In sub-paragraph (2)(a) “place of safety” has the same meaning as in the Children and Young Persons Act 1933. 40
- (6) Sub-paragraphs (7) to (10) apply where, under sub-paragraph (2), the offender is brought before a court (“the alternative court”) which is not the relevant court.

- (7) If the relevant court is a magistrates' court –
- (a) the alternative court may –
    - (i) direct that the offender be released forthwith, or
    - (ii) remand the offender, and
  - (b) for the purposes of paragraph (a), section 128 of the Magistrates' Courts Act 1980 (c. 43) (remand in custody or on bail) has effect as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the relevant court. 5
- (8) If the relevant court is the Crown Court, section 43A of that Act (functions of magistrates' court where a person in custody is brought before it with a view to appearance before the Crown Court) applies as if, in subsection (1) – 10
- (a) the words "issued by the Crown Court" were omitted, and
  - (b) the reference to section 81(5) of the Supreme Court Act 1981 (c. 54) were a reference to sub-paragraph (2)(b).
- (9) Any power to remand the offender in custody which is conferred by section 43A or 128 of the Magistrates' Courts Act 1980 is to be taken to be a power – 15
- (a) if the offender is aged under 18, to remand the offender to accommodation provided by or on behalf of a local authority, and
  - (b) in any other case, to remand the offender to a prison.
- (10) Where the court remands the offender to accommodation provided by or on behalf of a local authority, the court must designate, as the authority which is to receive the offender, the local authority for the area in which it appears to the court that the offender resides. 20

#### *Adjournment of proceedings*

- 22 (1) This paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in any proceedings under this Schedule. 25
- (2) The court may adjourn the hearing, and, where it does so, may –
- (a) direct that the offender be released forthwith, or
  - (b) remand the offender. 30
- (3) Where the court remands the offender under sub-paragraph (2) –
- (a) it must fix the time and place at which the hearing is to be resumed, and
  - (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand. 35
- (4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender –
- (a) it may fix the time and place at which the hearing is to be resumed, but
  - (b) if it does not do so, must not resume the hearing unless it is satisfied that the offender, the responsible officer and, if the offender is aged under 14, a parent or guardian of the offender have had adequate notice of the time and place of the resumed hearing. 40



- (5) The powers of a magistrates’ court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980 (c. 43).
- (6) This paragraph –
- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but 5
  - (b) is not to be taken to affect the application of that section to hearings of any other description.
- Restrictions on imposition of intensive supervision and surveillance or fostering* 10
- 23 Subsection (4), and the provisions mentioned in subsection (6), of section 1 apply in relation to a power conferred by paragraph 6(2)(b), 8(2)(b), 13(4)(b) or 14(4)(b) to impose a requirement as they apply in relation to any power conferred by section 1 or Part 1 of Schedule 1 to make a youth rehabilitation order which includes such a requirement. 15
- Provision of copies of orders etc.*
- 24 (1) Where a court makes an order under this Schedule revoking or amending a youth rehabilitation order, the proper officer of the court must forthwith –
- (a) provide copies of the revoking or amending order to the offender and, if the offender is aged under 14, to the offender’s parent or guardian, 20
  - (b) provide a copy of the revoking or amending order to the responsible officer,
  - (c) in the case of an amending order which substitutes a new local justice area, provide copies of the amending order to – 25
    - (i) the local probation board acting for that area, and
    - (ii) the magistrates’ court acting in that area,
  - (d) in the case of an amending order which imposes or cancels a requirement specified in the first column of the Table in paragraph 34(4) of Schedule 1, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Table, 30
  - (e) in the case of an order which revokes a requirement specified in the first column of that Table, provide a copy of the revoking order to the person specified in relation to that requirement in the second column of that Table, and 35
  - (f) if the court is a magistrates’ court acting in a local justice area other than the area specified in the youth rehabilitation order, provide a copy of the revoking or amending order to a magistrates’ court acting in the local justice area specified in the order. 40
- (2) Where under sub-paragraph (1)(c) the proper officer of the court provides a copy of an amending order to a magistrates’ court acting in a different area, the officer must also provide to that court such documents and information relating to the case as appear likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order. 45
- (3) In this paragraph “proper officer” means –

- (a) in relation to a magistrates' court, the designated officer for the court, and
- (b) in relation to the Crown Court, the appropriate officer.

*Power to amend maximum period of fostering requirement*

- |    |  |    |
|----|--|----|
| 25 | The Secretary of State may by order amend paragraph 6(9), 8(9) or 16(2) by substituting, for –     | 5  |
|    | (a) the period of 18 months specified in the provision, or   |    |
|    | (b) any other period which may be so specified by virtue of a previous order under this paragraph, |    |
|    | such other period as may be specified in the order.  | 10 |

SCHEDULE 3

Section 3

TRANSFER OF YOUTH REHABILITATION ORDERS TO NORTHERN IRELAND

PART 1

MAKING OR AMENDMENT OF A YOUTH REHABILITATION ORDER WHERE OFFENDER RESIDES OR PROPOSES TO RESIDE IN NORTHERN IRELAND	15
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*Making of youth rehabilitation order where offender resides or will reside in Northern Ireland*

- |   |  |    |
|---|--|----|
| 1 | (1) This paragraph applies where a court considering the making of a youth rehabilitation order is satisfied that the offender –   |    |
|   | (a) resides in Northern Ireland, or  |    |
|   | (b) will reside there when the order takes effect.   | 20 |
|   | (2) The court may not make a youth rehabilitation order in respect of the offender unless it appears to the court that –   |    |
|   | (a) in the case of an order imposing a requirement mentioned in sub-paragraph (6), the conditions in sub-paragraphs (3), (4) and (5) are satisfied, or   | 25 |
|   | (b) in any other case, that the conditions in sub-paragraphs (3) and (4) are satisfied.  |    |
|   | (3) The condition in this sub-paragraph is satisfied if the number of hours, days or months in respect of which any requirement of the order is imposed is no greater than the number of hours, days or months which may be imposed by a court in Northern Ireland in respect of a similar requirement in the order which the court proposes to specify as the corresponding order under paragraph 3(b). | 30 |
|   | (4) The condition in this sub-paragraph is satisfied if suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by order.  | 35 |
|   | (5) The condition in this sub-paragraph is satisfied in relation to an order imposing a requirement mentioned in sub-paragraph (6) if –  |    |
|   | (a) arrangements exist for persons to comply with such a requirement in the petty sessions district in Northern Ireland in which the offender resides, or will be residing when the order takes effect, and  | 40 |

- (b) provision can be made for the offender to comply with the requirement under those arrangements.
- (6) The requirements referred to in sub-paragraphs (2)(a) and (5) are—
- (a) an activity requirement (including an extended activity requirement); 5
  - (b) an unpaid work requirement;
  - (c) a programme requirement;
  - (d) an attendance centre requirement;
  - (e) a mental health treatment requirement;
  - (f) a drug treatment requirement; 10
  - (g) a drug testing requirement;
  - (h) an education requirement;
  - (i) an electronic monitoring requirement.
- (7) The court may not by virtue of this paragraph require a local authority residence requirement or a fostering requirement to be complied with in Northern Ireland. 15

*Amendment of youth rehabilitation order where offender resides or proposes to reside in Northern Ireland*

- 2 (1) This paragraph applies where the appropriate court for the purposes of paragraph 13(2) of Schedule 2 (amendment by reason of change of residence) or the Crown Court is satisfied that an offender in respect of whom a youth rehabilitation order is in force is residing or proposes to reside in Northern Ireland. 20
- (2) The power of the court to amend the order under Part 4 of Schedule 2 includes power to amend it by requiring it to be complied with in Northern Ireland if it appears to the court that— 25
- (a) in the case of an order which once amended will impose a requirement mentioned in sub-paragraph (6), that the conditions in sub-paragraphs (3), (4) and (5) are satisfied, or
  - (b) in any other case, that the conditions in sub-paragraphs (3) and (4) are satisfied. 30
- (3) The condition in this sub-paragraph is satisfied if the number of hours, days or months in respect of which any requirement of the order is imposed is no greater than the number of hours, days or months which may be imposed by a court in Northern Ireland in respect of a similar requirement in the order which the court proposes to specify as the corresponding order under paragraph 3(b). 35
- (4) The condition in this sub-paragraph is satisfied if suitable arrangements for the offender’s supervision can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by order. 40
- (5) The condition in this sub-paragraph is satisfied in relation to an order that will impose a requirement mentioned in sub-paragraph (6) if—
- (a) arrangements exist for persons to comply with such a requirement in the petty sessions district in Northern Ireland in which the offender resides, or will be residing when the amendment to the order takes effect, and 45

- (b) provision can be made for the offender to comply with the requirement under those arrangements.
- (6) The requirements referred to in sub-paragraphs (2)(a) and (5) are –
- (a) an activity requirement (including an extended activity requirement); 5
  - (b) an unpaid work requirement;
  - (c) a programme requirement;
  - (d) an attendance centre requirement;
  - (e) a mental health treatment requirement;
  - (f) a drug treatment requirement; 10
  - (g) a drug testing requirement;
  - (h) an education requirement;
  - (i) an electronic monitoring requirement.
- (7) The court may not by virtue of this paragraph require a local authority residence requirement or a fostering requirement to be complied with in Northern Ireland. 15

*Further provisions regarding the making or amending of youth rehabilitation orders under paragraphs 1 or 2*

- 3 A youth rehabilitation order made or amended in accordance with paragraph 1 or 2 must – 20
- (a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment takes effect, and
  - (b) specify as the corresponding order for the purposes of this Schedule an order that may be made by a court in Northern Ireland, 25
- and paragraph 33 of Schedule 1 (local justice area to be specified in order) does not apply in relation to an order so made or amended.
- 4 (1) Before making or amending a youth rehabilitation order in accordance with paragraph 1 or 2, the court must explain to the offender in ordinary language – 30
- (a) the requirements of the legislation in Northern Ireland relating to the order to be specified under paragraph 3(b),
  - (b) the powers of the home court under that legislation, as modified by Part 2 of this Schedule, and
  - (c) its own powers under Part 2 of this Schedule. 35
- (2) The court which makes or amends the order must –
- (a) provide the persons mentioned in sub-paragraph (3) with a copy of the order as made or amended, and
  - (b) provide the home court with such other documents and information relating to the case as it considers likely to be of assistance to that court; 40
- and sub-paragraphs (1) to (3) of paragraph 34 of Schedule 1 (provision of copies of orders) do not apply.
- (3) The persons referred to in sub-paragraph (2)(a) are – 45
- (a) the offender,
  - (b) where the offender is aged under 14 –

- 
- (i) the offender’s parent or guardian, or
  - (ii) if an authority in Northern Ireland has parental responsibility for, and is looking after, the offender, the authority,
  - (c) the body which is to make suitable arrangements for the offender’s supervision under the order, and 5
  - (d) the home court.
- (4) In sub-paragraph (3)(b)(ii) –
- (a) “authority” has the meaning given by Article 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), 10
  - (b) references to an offender who is looked after by an authority are to be construed in accordance with Article 25 of that Order, and
  - (c) “parental responsibility” has the same meaning as in that Order.
- (5) In this paragraph, “home court” has the meaning given by paragraph 8.
- Modifications to Part 1* 15
- 5 (1) Where a court is considering the making or amendment of a youth rehabilitation order by virtue of paragraph 1 or 2, Part 1 of this Act (youth rehabilitation orders) has effect subject to the following modifications.
- (2) The following provisions of Schedule 1 are omitted –
- (a) in paragraph 8(3)(a) (activity requirement: further provisions), the words “a member of a youth offending team or”, 20
  - (b) paragraphs 8(3)(c), 10(3)(b) and 12(3)(a) (availability of arrangements in local area: activity requirement, unpaid work requirement and attendance centre requirement),
  - (c) paragraph 16(7) (residence requirement: restriction on requiring residence at hostel or institution), and 25
  - (d) paragraphs 18(7), 22(4)(a), 23(3)(a) and 26(6) and (7) (availability of arrangements in local area: fostering requirement, drug treatment and testing requirements and electronic monitoring requirement).
- (3) In paragraph 12 of Schedule 1 (attendance centre requirement) any reference to an attendance centre has effect as a reference to an attendance centre as defined by Article 50(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)). 30
- (4) In paragraph 20 of that Schedule (mental health treatment requirement), for sub-paragraph (2)(a) there is substituted – 35
- “(a) treatment as a resident patient at such hospital as may be specified in the order, being a hospital within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), approved by the Department of Health, Social Services and Public Safety for the purposes of paragraph 4(3) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));”.
- (5) In paragraphs 25 (education requirement) and 34(4) (additional persons to whom court must give a copy of the order) of that Schedule, any reference to a local education authority (except in sub-paragraph (6) of paragraph 25) has effect as a reference to an Education and Library Board established 45

under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).

- (6) In paragraph 26 of that Schedule (electronic monitoring requirements: common provisions) sub-paragraph (5) is omitted.
- (7) Paragraph 36 of that Schedule has effect as if it required the Crown Court, where it makes a direction under that paragraph, to specify the youth court or other magistrates' court in England and Wales which is to be the relevant court in England or Wales for the purposes of Part 2 of this Schedule. 5
- (8) Any reference to the responsible officer has effect as a reference to the person who is to be responsible for the offender's supervision under the order. 10

#### *Meaning of "supervision"*

- 6 In this Part of this Schedule "supervision", in relation to a youth rehabilitation order which a court is considering making or amending in accordance with paragraph 1 or 2, means the performance of supervisory, enforcement and other related functions conferred by the legislation which has effect in Northern Ireland relating to corresponding orders of the kind which the court proposes to specify under paragraph 3(b). 15

#### PART 2

##### PROVISIONS RELATING TO AN ORDER MADE OR AMENDED UNDER PART 1

#### *Application of this Part* 20

- 7 This Part of this Schedule applies where a youth rehabilitation order is made or amended in accordance with Part 1 of this Schedule.

#### *Interpretation*

- 8 In this Part of this Schedule, in relation to the youth rehabilitation order –
- “corresponding order” means the order specified under paragraph 3(b); 25
- “home court” means –
- (a) the court of summary jurisdiction acting for the petty sessions district in Northern Ireland in which the offender resides or proposes to reside, or 30
- (b) where the youth rehabilitation order was made or amended by the Crown Court and the Crown Court in Northern Ireland has not made a direction under paragraph 11, the Crown Court in Northern Ireland;
- “supervision” means the performance of supervisory, enforcement and other related functions conferred by the legislation which has effect in Northern Ireland relating to the corresponding order; 35
- “the relevant court in England or Wales” means –
- (a) the court in England and Wales which made or which last amended the order, or 40
- (b) if the order was made by the Crown Court and includes a direction under paragraph 36 of Schedule 1, such youth court or other magistrates' court as may be specified in the order;

“the relevant officer” means the person responsible for the offender’s supervision under the order.

*Effect of the youth rehabilitation order in Northern Ireland*

- 9 (1) The youth rehabilitation order is to be treated in Northern Ireland as if it were a corresponding order and the legislation which has effect in Northern Ireland in relation to such orders applies accordingly. 5
- (2) Sub-paragraph (1) is subject to paragraphs 12 to 16.

*Duty of offender to keep in touch with relevant officer*

- 10 In section 5(5) (duty of offender to keep in touch with responsible officer), references to the responsible officer are to be read as references to the relevant officer. 10

*Direction by Crown Court in Northern Ireland that proceedings in Northern Ireland be before a court of summary jurisdiction*

- 11 Where the youth rehabilitation order was made or amended by the Crown Court, the Crown Court in Northern Ireland may direct that any proceedings in Northern Ireland in relation to the order be before the court of summary jurisdiction acting for the petty sessions district in which the offender resides or proposes to reside. 15

*Powers of the home court in respect of the youth rehabilitation order*

- 12 The home court may exercise in relation to the youth rehabilitation order any power which it could exercise in relation to a corresponding order made by a court in Northern Ireland, by virtue of the legislation relating to such orders which has effect there, except the following – 20
- (a) any power to discharge or revoke the order (other than a power to revoke the order where the offender has been convicted of a further offence and the court has imposed a custodial sentence), 25
- (b) any power to deal with the offender for the offence in respect of which the order was made, and
- (c) in the case of a youth rehabilitation order imposing a curfew requirement, any power to vary the order by substituting for the period specified in it any longer period than the court which made the order could have specified. 30
- 13 (1) The home court may require the offender to appear before the relevant court in England or Wales if sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies where it appears to the home court upon a complaint being made to a lay magistrate acting for the petty sessions district for the time being specified in the order that the offender has failed to comply with one or more requirements of the order. 35
- (3) This sub-paragraph applies where it appears to the home court, on the application of the offender or the relevant officer, that it would be in the interests of justice for a power conferred by any of paragraphs 11 to 14 of Schedule 2 to be exercised. 40

- 14 Where an offender is required by virtue of paragraph 13 to appear before the relevant court in England or Wales –
- (a) the home court must send to that court a certificate certifying that the offender has failed to comply with such of the requirements of the order as may be specified in the certificate, together with such other particulars of the case as may be desirable, and 5
  - (b) a certificate purporting to be signed by the clerk of the home court (or, if the home court is the Crown Court in Northern Ireland, by the chief clerk) is admissible as evidence of the failure before the relevant court in England or Wales. 10

*Powers of court in England or Wales before which the offender is required to appear*

- 15 Where an offender is required by virtue of paragraph 13 to appear before the relevant court in England or Wales, that court may –
- (a) issue a warrant for the offender’s arrest, and
  - (b) exercise any power which it could exercise in respect of the youth rehabilitation order if the offender resided in England or Wales, 15
- and any enactment relating to the exercise of such powers has effect accordingly, and with any reference to the responsible officer being read as a reference to the relevant officer.
- 16 (1) Paragraph 15(b) does not enable the relevant court in England or Wales to amend the youth rehabilitation order unless it appears to the court that the conditions in paragraph 2(2)(a) and (b) are satisfied in relation to any requirement to be imposed. 20
- (2) The preceding paragraphs of this Schedule have effect in relation to the amendment of the youth rehabilitation order by virtue of paragraph 15(b) as they have effect in relation to the amendment of such an order by virtue of paragraph 2(2). 25

*Power to amend provisions of Schedule in consequence of changes to the law in Northern Ireland*

- 17 (1) This paragraph applies where a change is made to the law in Northern Ireland adding further descriptions of orders to the kinds of orders which a court in that jurisdiction may impose in dealing with an offender aged under 18 at the time of conviction. 30
- (2) The Secretary of State may by order make such amendments to any of the preceding provisions of this Schedule as appear expedient in consequence of the change. 35



SCHEDULE 4

Section 6

YOUTH REHABILITATION ORDERS: CONSEQUENTIAL AND RELATED AMENDMENTS

PART 1

CONSEQUENTIAL AMENDMENTS

<i>Children and Young Persons Act 1933 (c. 12)</i>	5
1 The Children and Young Persons Act 1933 has effect subject to the following amendments.	
2 (1) Section 34 (attendance at court of parent of child or young person charged with an offence, etc.) is amended as follows.	
(2) In subsection (7), omit “section 163 of the Powers of Criminal Courts (Sentencing) Act 2000 or”.	10
(3) After subsection (7A) insert –	
“(7B) If it appears that at the time of his arrest a youth rehabilitation order, as defined in Part 1 of the Criminal Justice and Immigration Act 2008, is in force in respect of him, the responsible officer, as defined in section 4 of that Act, shall also be informed as described in subsection (3) above as soon as it is reasonably practicable to do so.”	15
3 (1) Section 49 (restrictions on reports of proceedings in which children or young persons are concerned) is amended as follows.	
(2) In subsection (2), for paragraphs (c) and (d) substitute –	20
“(c) proceedings in a magistrates’ court under Schedule 2 to the Criminal Justice and Immigration Act 2008 (proceedings for breach, revocation or amendment of youth rehabilitation orders);	
(d) proceedings on appeal from a magistrates’ court arising out of any proceedings mentioned in paragraph (c) (including proceedings by way of case stated).”	25
(3) In subsection (4A), omit paragraph (d) (but not the word “or” immediately following it).	
(4) In subsection (10), for the words from “Schedule 7” to “supervision orders)” substitute the words “Schedule 2 to the Criminal Justice and Immigration Act 2008 (proceedings for breach, revocation or amendment of youth rehabilitation orders)”.	30
(5) In subsection (13), omit paragraph (c)(i).	
<i>Criminal Appeal Act 1968 (c. 19)</i>	35
4 In section 10(2) of the Criminal Appeal Act 1968 (appeal against sentence in other cases dealt with at assizes or quarter sessions), for paragraph (b) substitute –	
“(b) having been given a suspended sentence or made the subject of –	
(i) an order for conditional discharge,	40

- (ii) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, or
  - (iii) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, 5
- appears or is brought before the Crown Court to be further dealt with for the offence.”

*Firearms Act 1968 (c. 27)*

- 5 The Firearms Act 1968 has effect subject to the following amendments.
- 6 In section 21(3ZA)(a) (possession of firearms by persons previously convicted of crime), after “2003”, insert “, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008;”. 10
- 7 In section 52(1A)(a) (forfeiture and disposal of firearms; cancellation of certificate by convicting court), after “2003”, insert “, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008;”. 15

*Health Services and Public Health Act 1968 (c. 46)*

- 8 The Health Services and Public Health Act 1968 has effect subject to the following amendments. 20
- 9 In section 64(3)(a) (financial assistance by the Secretary of State to certain voluntary organisations) –
  - (a) in paragraph (xxi) of the definition of “the relevant enactments”, for “sections 63 to 66 and 92 of, and Schedules 6 and 7 to,” substitute “section 92 of”, and 25
  - (b) after that paragraph, insert –
    - “(xxii) Part 1 of the Criminal Justice and Immigration Act 2008;”.
- 10 In section 65(3)(b) (financial and other assistance by local authorities to certain voluntary organisations), for paragraph (xxii) of the definition of “relevant enactments” substitute – 30
  - “(xxii) Part 1 of the Criminal Justice and Immigration Act 2008;”.

*Social Work (Scotland) Act 1968 (c. 49)*

- 11 The Social Work (Scotland) Act 1968 has effect subject to the following amendments. 35
- 12 In section 86(3) (adjustments between authority providing accommodation etc, and authority of area of residence) after “supervision order” insert “, youth rehabilitation order”.
- 13 In section 94(1) (interpretation) – 40
  - (a) for the definition of “probation order” substitute –
    - ““probation order”, in relation to an order imposed by a court in Northern Ireland, has the same meaning as in the Criminal Justice (Northern Ireland) Order 1996,”,

(b) in the definition of “supervision order”, omit “the Powers of Criminal Courts (Sentencing) Act 2000 or”, and

(c) at the end insert –

““youth rehabilitation order” means an order made under section 1 of the Criminal Justice and Immigration Act 2008.”

5

*Children and Young Persons Act 1969 (c. 54)*

14 The Children and Young Persons Act 1969 has effect subject to the following amendments.

15 Section 25 (transfers between England or Wales and Northern Ireland) ceases to have effect. 10

16 (1) Section 26 (transfers between England or Wales and the Channel Islands or Isle of Man) is amended as follows.

(2) In subsection (1)(c), for the words from “supervision order” to “2000” substitute “youth rehabilitation order imposing a local authority residence requirement”. 15

(3) In subsection (2), for the words from “supervision order” to “2000” substitute “youth rehabilitation order imposing a local authority residence requirement”.

17 (1) Section 32 (detention of absentees) is amended as follows. 20

(2) In subsection (1A) –

(a) in paragraph (a), for “paragraph 7(4) of Schedule 7 to the Powers of Criminal Courts (Sentencing) Act 2000” substitute “paragraph 21(2) of Schedule 2 to the Criminal Justice and Immigration Act 2008”, and

(b) for paragraph (b) substitute – 25

“(b) from local authority accommodation –

(i) in which he is required to live by virtue of a youth rehabilitation order imposing a local authority residence requirement (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008); or 30

(ii) to which he has been remanded under paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008; or

(iii) to which he has been remanded or committed under section 23(1) of this Act.” 35

(3) For subsection (1C) substitute –

“(1C) In this section “the responsible person” means, as the case may be –

(a) the person who made the arrangements under paragraph 21(2) of Schedule 2 to the Criminal Justice and Immigration Act 2008; 40

(b) the authority specified under paragraph 17(5) of Schedule 1 to the Criminal Justice and Immigration Act 2008;

(c) the authority designated under paragraph 21(10) of Schedule 2 to the Criminal Justice and Immigration Act 2008; or 45

(d) the authority designated under section 23 of this Act.”

- 
- (4) After subsection (1C) insert –
- “(1D) If a child or young person –
- (a) is required to reside with a local authority foster parent by virtue of a youth rehabilitation order with fostering, and
- (b) is absent, without the consent of the responsible officer (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008), from the place in which he is required to reside,
- he may be arrested by a constable anywhere in the United Kingdom without a warrant.
- (1E) A person so arrested shall be conducted to –
- (a) the place where he is required to reside, or
- (b) such other place as the local authority specified under paragraph 18(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008 may direct, at that local authority’s expense.”
- (5) In subsection (2), for “or (1A)” substitute “, (1A) or (1D)”.
- (6) In subsection (2A), for the words from “mentioned in subsection” to “this section is in premises” substitute “mentioned in subsection (1), (1A)(a) or (b)(i) or (ii) or (1D) of this section is in premises”.
- (7) In subsection (2B) –
- (a) after “subsection (1A)” insert “or (1D)”, and
- (b) at the end insert “or the responsible officer, as the case may be.”
- (8) In subsection (3), for “or (1A)” substitute “, (1A) or (1D)”.
- (9) In subsection (4), after “(1A)” insert “, (1D)”.
- 18 In section 70(1) (interpretation) –
- (a) omit the definition of “supervision order”,
- (b) after the definition of “local authority accommodation” insert –
- ““local authority residence requirement” has the same meaning as in Part 1 of the Criminal Justice and Immigration Act 2008;”, and
- (c) after the definition of “youth offending team” insert –
- ““youth rehabilitation order” and “youth rehabilitation order with fostering” have the same meanings as in Part 1 of the Criminal Justice and Immigration Act 2008 (see section 1 of that Act);”.
- 19 In section 73(4)(a) (provisions of section 32 extending to Scotland) for “to (1C)” substitute “to (1E)”.
- Rehabilitation of Offenders Act 1974 (c. 53)*
- 20 The Rehabilitation of Offenders Act 1974 has effect subject to the following amendments.
- 21 In section 5(5) (rehabilitation periods for particular sentences) after

- paragraph (d) insert –  
    “(da) a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008;”.
- 22 In section 7(2) (limitations on rehabilitation under Act, etc.) for paragraph (d) substitute – 5  
    “(d) in any proceedings relating to the variation or discharge of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008, or on appeal from any such proceedings;”.
- Bail Act 1976 (c. 63)* 10
- 23 In section 4(3) of the Bail Act 1976 (general right to bail of accused persons and others) –  
    (a) omit the words “to be dealt with”, and  
    (b) for paragraph (a), substitute – 15  
        “(a) Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation orders), or”.
- Magistrates’ Courts Act 1980 (c. 43)*
- 24 In Schedule 6A to the Magistrates’ Courts Act 1980 (fines that may be altered under section 143), omit the entries relating to Schedules 3, 5 and 7 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). 20
- Contempt of Court Act 1981 (c. 49)*
- 25 In section 14 of the Contempt of Court Act 1981 (proceedings in England and Wales), omit the subsection (2A) inserted by the Criminal Justice Act 1982 (c. 48). 25
- Criminal Justice Act 1982*
- 26 Part 3 of Schedule 13 to the Criminal Justice Act 1982 (reciprocal arrangements for transfer of community service orders from Northern Ireland) has effect subject to the following amendments.
- 27 (1) Paragraph 7 (transfer to England and Wales) is amended as follows. 30  
(2) In sub-paragraph (1), in Article 13(4)(b) inserted by that provision, for “such orders” substitute “an unpaid work requirement of a community order under section 177 of the Criminal Justice Act 2003 or youth rehabilitation order under section 1 of the Criminal Justice and Immigration Act 2008”.  
(3) In sub-paragraph (2)(b) – 35  
    (a) after “a community order” insert “or a youth rehabilitation order”, and  
    (b) omit “(within the meaning of Part 12 of the Criminal Justice Act 2003)”.  
(4) In sub-paragraph (3) – 40  
    (a) for “A community service order” substitute “An adult community service order”, and

- 
- (b) in paragraph (b)–
- (i) omit “within the meaning of Part 12 of the Criminal Justice Act 2003”, and
  - (ii) for “by that Part of that Act” substitute “by Part 12 of the Criminal Justice Act 2003”. 5
- (5) After sub-paragraph (3) insert–
- “(4) A youth community service order made or amended in accordance with this paragraph shall–
- (a) specify the local justice area in England or Wales in which the offender resides or will be residing when the order or the amendment comes into force; and 10
  - (b) require–
    - (i) the local probation board for that area established under section 4 of the Criminal Justice and Court Services Act 2000, or 15
    - (ii) a youth offending team established under section 39 of the Crime and Disorder Act 1998 by a local authority for the area in which the offender resides or will be residing when the order or amendment comes into force, 20  
 to appoint or assign an officer of the board or, as the case may be, a member of the team who will discharge in respect of the order the functions in respect of youth rehabilitation orders conferred on responsible officers by Part 1 of the Criminal Justice and Immigration Act 2008.” 25
- 28 (1) Paragraph 9 (general provision) is amended as follows.
- (2) In sub-paragraph (3)–
- (a) in paragraph (a)–
    - (i) for “a community service order” substitute “an adult community service order”; 30
    - (ii) omit “under section 177 of the Criminal Justice Act 2003”;
    - (iii) for “of that Act” substitute “of the Criminal Justice Act 2003”, and
  - (b) before “and” at the end of that paragraph insert–
    - “(aa) a youth community service order made or amended in the circumstances specified in paragraph 7 above shall be treated as if it were a youth rehabilitation order made in England and Wales and the provisions of Part 1 of the Criminal Justice and Immigration Act 2008 shall apply accordingly;”. 35  
40
- (3) In sub-paragraph (4)(a)–
- (a) after “community orders” insert “or youth rehabilitation orders”, and
  - (b) omit “(within the meaning of Part 12 of the Criminal Justice Act 2003)”. 45
- (4) In sub-paragraph (5)–
- (a) after “community order” insert “or youth rehabilitation order”, and

- (b) omit “(within the meaning of Part 12 of the Criminal Justice Act 2003)”.
- (5) In sub-paragraph (6) –
- (a) after “community orders” insert “or youth rehabilitation orders”,
- (b) omit “(within the meaning of Part 12 of the Criminal Justice Act 2003)”, and 5
- (c) in paragraph (b)(i), after “2003” insert “or, as the case may be, Part 1 of the Criminal Justice and Immigration Act 2008”.
- 29 After that paragraph insert –
- “Community service orders relating to persons residing in England and Wales: 10  
interpretation
- 10 In paragraphs 7 and 9 above –
- “adult community service order” means a community service order made in respect of an offender who was aged at least 18 when convicted of the offence in respect of which the order is made; 15
- “community order” means an order made under section 177 of the Criminal Justice Act 2003;
- “youth community service order” means a community service order made in respect of an offender who was aged under 18 when convicted of the offence in respect of which the order is made; 20
- “youth rehabilitation order” means an order made under section 1 of the Criminal Justice and Immigration Act 2008.” 25
- Mental Health Act 1983 (c. 20)*
- 30 In section 37(8) of the Mental Health Act 1983 (powers of courts to order hospital admission or guardianship) –
- (a) in paragraph (a), after “Criminal Justice Act 2003)” insert “or a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)”, and 30
- (b) in paragraph (c), omit the words “a supervision order (within the meaning of that Act) or”.
- Child Abduction Act 1984 (c. 37)*
- 31 In paragraph 2(1) of the Schedule to the Child Abduction Act 1984 (modifications of section 1 for children in certain cases) – 35
- (a) in paragraph (a), for “paragraph 7(4) of Schedule 7 to the Powers of Criminal Courts (Sentencing) Act 2000” substitute “paragraph 21(2) of Schedule 2 to the Criminal Justice and Immigration Act 2008”, and
- (b) in paragraph (b), after “1969” insert “or paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008”. 40
- Prosecution of Offences Act 1985 (c. 23)*
- 32 (1) Section 19 of the Prosecution of Offences Act 1985 (provision for orders as to costs in other circumstances) is amended as follows.

- (2) In subsection (3B)(b)(i), for the words from “in a community order” to “that Act” substitute “a mental health treatment requirement in a community order or youth rehabilitation order”.
- (3) After subsection (3B) insert –
- “(3C) For the purposes of subsection (3B)(b)(i) – 5  
“community order” has the same meaning as in Part 12 of the Criminal Justice Act 2003;  
“mental health treatment requirement” means –  
(a) in relation to a community order, a mental health treatment requirement under section 207 of the Criminal Justice Act 2003, and 10  
(b) in relation to a youth rehabilitation order, a mental health treatment requirement under paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008; 15  
“youth rehabilitation order” has the same meaning as in Part 1 of the Criminal Justice and Immigration Act 2008.”

*Children Act 1989 (c. 41)*

- 33 The Children Act 1989 has effect subject to the following amendments.
- 34 (1) Section 21 (provision of accommodation for children in police protection or detention or on remand, etc.) is amended as follows. 20
- (2) In subsection (2)(c) –
- (a) in sub-paragraph (i), omit “paragraph 7(5) of Schedule 7 to the Powers of Criminal Courts (Sentencing) Act 2000 or” and “or” at the end of that sub-paragraph, and 25
- (b) for sub-paragraph (ii), substitute –
- “(ii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach etc. of youth rehabilitation orders); or 30
- (iii) the subject of a youth rehabilitation order imposing a local authority residence requirement or a youth rehabilitation order with fostering.” 35
- (3) After subsection (2) insert –
- “(2A) In subsection (2)(c)(iii), the following terms have the same meanings as in Part 1 of the Criminal Justice and Immigration Act 2008(see section 7 of that Act) – 40  
“local authority residence requirement”;  
“youth rehabilitation order”;  
“youth rehabilitation order with fostering”.”
- 35 In section 31(7)(b) (care and supervision orders), for sub-paragraph (ii)



- substitute –
- “(ii) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008; or”.
- 36 In section 105(6) (interpretation) – 5
- (a) in paragraph (b), omit from the words “or an” to the end of the paragraph, and
- (b) after that paragraph insert –
- “(ba) in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008; or”.
- 37 (1) Part 3 of Schedule 3 (education supervision orders) is amended as follows.
- (2) In paragraph 13(2), for paragraph (c) substitute –
- “(c) a youth rehabilitation order made under Part 1 of the Criminal Justice and Immigration Act 2008 with respect to the child, while the education supervision order is in force, may not include an education requirement (within the meaning of that Part);”.
- (3) In paragraph 14 –
- (a) in sub-paragraph (1), for “order under section 63(1) of the Powers of Criminal Courts (Sentencing) Act 2000” substitute “youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)”, and
- (b) in sub-paragraph (2), after “direction” (in the second place it occurs) insert “or instruction”.
- 38 In paragraph 3 of Schedule 8 (privately fostered children) for paragraph (a) substitute –
- “(a) a youth rehabilitation order made under section 1 of the Criminal Justice and Immigration Act 2008;”.
- Criminal Justice Act 1991 (c. 53)* 30
- 39 Part 3 of Schedule 3 to the Criminal Justice Act 1991 (transfer of probation orders from Northern Ireland to England and Wales) has effect subject to the following amendments.
- 40 (1) Paragraph 10 is amended as follows.
- (2) In sub-paragraph (2)(b), for the words from “the local probation board” to the end substitute “–
- (i) the local probation board for the area which contains the local justice area in which he resides or will reside, or
- (ii) a youth offending team established by a local authority for the area in which he resides or will reside,”, and
- (3) In sub-paragraph (3)(a), for the words from “an officer of a local probation board” to the end substitute “–
- (i) an officer of a local probation board assigned to the local justice area in England and Wales in which

- 
- the offender resides or will be residing when the order or amendment comes into force, or
- (ii) a member of a youth offending team established by a local authority for the area in England and Wales in which the offender resides or will then be residing;” 5
- 41 (1) Paragraph 11 is amended as follows.
- (2) In sub-paragraph (2) –
- (a) for “a probation order” substitute “an adult probation order”,
- (b) in paragraph (a), omit “under section 177 of the Criminal Justice Act 2003”, and 10
- (c) in paragraph (b), for “of that Act” substitute “of the Criminal Justice Act 2003”.
- (3) After that sub-paragraph insert –
- “(2A) Where a youth probation order is made or amended in any of the circumstances specified in paragraph 10 above then, subject to the following provisions of this paragraph – 15
- (a) the order shall be treated as if it were a youth rehabilitation order made in England and Wales, and
- (b) the provisions of Part 1 of the Criminal Justice and Immigration Act 2008 shall apply accordingly.” 20
- (4) In sub-paragraph (3) –
- (a) for paragraph (a) substitute –
- “(a) the requirements of the legislation relating to community orders or, as the case may be, youth rehabilitation orders;” 25
- (b) in paragraph (b), for “Schedule 8 to that Act” substitute “that legislation”.
- (5) In sub-paragraph (4) –
- (a) after “a community order” insert “or, as the case may be, a youth rehabilitation order”, 30
- (b) omit “under section 177 of the Criminal Justice Act 2003”, and
- (c) for “to that Act” substitute “to the Criminal Justice Act 2003 or by paragraph 6(2)(c) or 11(2) of Schedule 2 to the Criminal Justice and Immigration Act 2008”. 35
- (6) In sub-paragraph (5) –
- (a) after “2003” insert “or, as the case may be, Part 1 of the Criminal Justice and Immigration Act 2008”, and
- (b) in paragraph (b), after “local probation board” insert “or, as the case may be, member of a youth offending team”. 40
- (7) In sub-paragraph (8) –
- (a) after “In this paragraph” insert –
- ““adult probation order” means a probation order made in respect of an offender who was aged at least 18 when convicted of the offence in respect of which the order is made; 45

“community order” means an order made under section 177 of the Criminal Justice Act 2003;”;

(b) at the end insert –

““youth probation order” means a probation order made in respect of an offender who was aged under 18 when convicted of the offence in respect of which the order is made;

“youth rehabilitation order” means an order made under section 1 of the Criminal Justice and Immigration Act 2008.”

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*Criminal Justice and Public Order Act 1994 (c. 33)*

42 In section 136 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement: execution of warrants), in subsection (7A), after “youth offender panel)” insert “or under Schedule 2 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders: breach etc.)”.

15

*Criminal Procedure (Scotland) Act 1995 (c. 46)*

43 The Criminal Procedure (Scotland) Act 1995 has effect subject to the following amendments.

44 (1) Section 234 (probation orders: persons residing in England and Wales) is amended as follows.

20

(2) In subsection (2), at the end insert “(in any case where the offender has attained the age of 18 years) or under section 1 of the Criminal Justice and Immigration Act 2008 (in any other case)”.

(3) In subsection (4) –

(a) in paragraph (a), for “and section 207(2) of the Criminal Justice Act 2003” substitute “, section 207(2) of the Criminal Justice Act 2003 and paragraph 20(2) of Schedule 1 to the Criminal Justice and Immigration Act 2008”,

25

(b) in paragraph (a), for “or, as the case may be, community orders under Part 12 of that Act” substitute “, community orders under Part 12 of the Criminal Justice Act 2003 or, as the case may be, youth rehabilitation orders under Part 1 of the Criminal Justice and Immigration Act 2008”,

30

(c) in paragraph (a), for “and section 207 of the Criminal Justice Act 2003” substitute “, section 207 of the Criminal Justice Act 2003 and paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008”,

35

(d) in paragraph (b), after “2003” insert “or (as the case may be) paragraphs 20(4) and 21(1) to (3) of Schedule 1 to the Criminal Justice and Immigration Act 2008”, and

40

(e) in paragraph (b), at the end insert “or that paragraph”.

(4) In subsection (4A) at the end insert “(in any case where the offender has attained the age of 18 years) or in a youth rehabilitation order made under section 1 of the Criminal Justice and Immigration Act 2008 (in any other case)”.

45

(5) In subsection (5) for the words from “subject to subsection (6)” to the end

- 
- substitute “subject to subsections (6) and (6A) below –
- (a) Schedule 8 to the Criminal Justice Act 2003 shall apply as if it were a community order made by a magistrates’ court under section 177 of that Act and imposing the requirements specified under subsection (4A) above (in any case where the offender has attained the age of 18 years); and 5
  - (b) Schedule 2 to the Criminal Justice and Immigration Act 2008 shall apply as if it were a youth rehabilitation order made by a magistrates’ court under section 1 of that Act and imposing the requirements specified under that subsection (in any other case).” 10
- (6) After subsection (6) insert –
- “(6A) In its application to a probation order made or amended under this section, Schedule 2 to the Criminal Justice and Immigration Act 2008 has effect subject to the following modifications – 15
- (a) any reference to the responsible officer has effect as a reference to the person appointed or assigned under subsection (1)(a) above,
  - (b) in paragraph 6, sub-paragraph (2)(c) is omitted and, in sub-paragraph (16), the reference to the Crown Court has effect as a reference to a court in Scotland, and 20
  - (c) Parts 3 and 5 are omitted.”
- 45 (1) Section 242 (community service orders: persons residing in England and Wales) is amended as follows.
- (2) In subsection (1)(a) – 25
    - (a) in sub-paragraph (ii), after “Part 12 of the Criminal Justice Act 2003)” insert “, in any case where the offender has attained the age of 18 years, or an unpaid work requirement imposed by a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008), in any other case”, and 30
    - (b) in sub-paragraph (iii), after “section 177 of the Criminal Justice Act 2003” insert “or, as the case may be, imposed by youth rehabilitation orders made under section 1 of the Criminal Justice and Immigration Act 2008”.
  - (3) In subsection (2)(b) – 35
    - (a) after “that court” insert “, in any case where the offender has attained the age of 18 years,” and
    - (b) after “2003” insert “or it appears to that court, in any other case, that provision can be made for the offender to perform work under the order under the arrangements which exist in that area for persons to perform work under unpaid work requirements imposed by youth rehabilitation orders made under section 1 of the Criminal Justice and Immigration Act 2008”. 40
  - (4) In subsection (3)(b) at the end insert “or, as the case may be, conferred on responsible officers by Part 1 of the Criminal Justice and Immigration Act 2008 in respect of unpaid work requirements imposed by youth rehabilitation orders (within the meaning of that Part)”. 45

- 46 (1) Section 244 (community service orders: general provisions relating to persons residing in England and Wales or Northern Ireland) is amended as follows.
- (2) In subsection (3)(a) –
- (a) after “2003)” insert “or, as the case may be, a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)”, and 5
  - (b) after “such community orders” insert “or youth rehabilitation orders”.
- (3) In subsection (4)(a) – 10
- (a) for “or, as the case may be, community orders” substitute “, community orders”, and
  - (b) after “2003)” insert “or, as the case may be, youth rehabilitation orders (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)”. 15
- (4) In subsection (5) –
- (a) for “or, as the case may be, a community order” substitute “, a community order”, and
  - (b) after “2003)” insert “or, as the case may be, a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)”. 20
- (5) In subsection (6) –
- (a) for “or, as the case may be, community orders” substitute “, community orders”,
  - (b) after “within the meaning of Part 12 of the Criminal Justice Act 2003)” insert “or, as the case may be, youth rehabilitation orders (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008)”, and 25
  - (c) after “the responsible officer under Part 12 of the Criminal Justice Act 2003” insert “or, as the case may be, under Part 1 of the Criminal Justice and Immigration Act 2008”. 30

*Education Act 1996 (c. 56)*

- 47 In section 562(2)(b) of the Education Act 1996 (Act not to apply to persons detained under order of a court), for “community order under section 177 of the Criminal Justice Act 2003” substitute “youth rehabilitation order under section 1 of the Criminal Justice and Immigration Act 2008”. 35

*Crime and Disorder Act 1998 (c. 37)*

- 48 The Crime and Disorder Act 1998 has effect subject to the following amendments.
- 49 In section 38(4) (local provision of youth justice services) – 40
- (a) in paragraph (f), for “, reparation orders and action plan orders” substitute “and reparation orders”,
  - (b) after paragraph (f) insert –
    - “(fa) the provision of persons to act as responsible officers in relation to youth rehabilitation orders (within the 45

	meaning of Part 1 of the Criminal Justice and Immigration Act 2008);	
	(fb) the supervision of children and young persons sentenced to a youth rehabilitation order under that Part which includes a supervision requirement (within the meaning of that Part);”,	5
	(c) omit paragraph (g), and	
	(d) in paragraph (h), omit “or a supervision order”.	
50	In Schedule 8 (minor and consequential amendments), in paragraph 13(2), for “that section” substitute “section 10 of that Act”.	10
<i>Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)</i>		
51	The Powers of Criminal Courts (Sentencing) Act 2000 has effect subject to the following amendments.	
52	In section 19(4)(a) (making of referral orders: effect on court’s other sentencing powers), for “community sentence” substitute “sentence which consists of or includes a youth rehabilitation order”.	15
53	In section 73 (reparation orders) –	
	(a) for subsection (4)(b) substitute –	
	“(b) to make in respect of him a youth rehabilitation order or a referral order.”	20
	(b) after subsection (4) insert –	
	“(4A) The court shall not make a reparation order in respect of the offender at a time when a youth rehabilitation order is in force in respect of him unless when it makes the reparation order it revokes the youth rehabilitation order.	25
	(4B) Where a youth rehabilitation order is revoked under subsection (4A), paragraph 24 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation order) applies to the revocation.”	30
54	In section 74(3)(a) (requirements and provisions of reparation order, and obligations of person subject to it), omit “or with the requirements of any community order or any youth community order to which he may be subject”.	
55	In section 75 (breach, revocation and amendment of reparation orders) omit “action plan orders and” and “so far as relating to reparation orders”.	35
56	In section 91(3) (offenders under 18 convicted of certain serious offences: power to detain for specified period), for “a community sentence” substitute “a youth rehabilitation order”.	
57	In section 137(2) (power to order parent or guardian to pay fine, costs, compensation or surcharge) –	40
	(a) after “under –” insert –	
	“(za) paragraph 6(2)(a) or 8(2)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach of youth rehabilitation order),”, and	45
	(b) omit paragraphs (a) to (c), and	

- (c) in paragraph (d) omit “action plan order or”.
- 58 In section 150(2) (binding over of parent or guardian), for “a community sentence on the offender” substitute “on the offender a sentence which consists of or includes a youth rehabilitation order”.
- 59 In section 159 (execution of process between England and Wales and Scotland) – 5
- (a) after “Schedule 1 to this Act,” insert “or”,
- (b) omit “paragraph 3(1), 10(6) or 18(1) of Schedule 3 to this Act”,
- (c) omit “paragraph 1(1) of Schedule 5 to this Act”, and
- (d) omit “paragraph 7(2) of Schedule 7 to this Act, or”. 10
- 60 (1) Section 160 (rules and orders) is amended as follows.
- (2) Omit subsection (2).
- (3) In subsection (3)(a) –
- (a) omit “40(2)(a),” and
- (b) for “103(2) or paragraph 1(1A) of Schedule 3,” substitute “or 103(2).” 15
- (4) Omit subsection (5).
- 61 In section 163 (general definitions) –
- (a) omit the definitions of “action plan order”, “affected person”, “attendance centre”, “attendance centre order”, “community sentence”, “curfew order”, “exclusion order”, “supervision order”, “supervisor” and “youth community order”, 20
- (b) in the definition of “responsible officer”, omit paragraphs (a), (aa) and (f), and
- (c) at the end add –
- ““youth rehabilitation order” has the meaning given by section 1(1) of the Criminal Justice and Immigration Act 2008.” 25
- 62 (1) Schedule 8 (breach, revocation and amendment of action plan orders and reparation orders) is amended as follows.
- (2) In the heading to the Schedule omit “action plan orders and”. 30
- (3) In the cross-heading before paragraph 2, omit “action plan order or”.
- (4) In paragraph 2 –
- (a) in sub-paragraph (1), for “an action plan order or” substitute “a”,
- (b) in sub-paragraph (2) – 35
- (i) in paragraph (a), omit sub-paragraphs (ii) and (iii), and
- (ii) in each of paragraphs (b) and (c), omit “action plan order or”.
- (c) in each of sub-paragraphs (5) and (7), omit “action plan order or”, and
- (d) in sub-paragraph (8), omit “or action plan order” in both places where it occurs. 40
- (5) Omit paragraphs 3 and 4.
- (6) In the cross-heading before paragraph 5, omit “action plan order or”.
- (7) In paragraph 5 –

- 
- (a) in sub-paragraph (1), for “an action plan order or” substitute “a” and, in paragraph (a), omit “action plan order”, and
- (b) in sub-paragraph (3), for “an action plan order or” substitute “a”.
- (8) In paragraph 6(9), in each of paragraphs (a), (b) and (c), omit “action plan order or”. 5
- (9) In paragraph 7(b), for “an action plan order or” substitute “a”.
- 63 In Schedule 10 (transitory modifications), omit paragraphs 4 to 6 and 12 to 15.
- 64 In Schedule 11 (transitional provisions) – 10
- (a) in paragraph 4, omit –
- (i) paragraph (a) of sub-paragraph (1),
- (ii) sub-paragraph (2), and
- (iii) sub-paragraph (3), and
- (b) omit paragraph 5.
- Child Support, Pensions and Social Security Act 2000 (c. 19)* 15
- 65 The Child Support, Pensions and Social Security Act 2000 has effect subject to the following amendments.
- 66 (1) Section 62 (loss of benefit for breach of community order) is amended as follows.
- (2) In the definition of “relevant community order” in subsection (8) – 20
- (a) after “2003;” in paragraph (a) insert –
- “(aa) a youth rehabilitation order made under section 1 of the Criminal Justice and Immigration Act 2008;”, and
- (b) in paragraph (b) for “such an order” substitute “an order specified in paragraph (a) or (aa)”. 25
- (3) In subsection (11)(c)(ii) for “and (b)” substitute “to (b)”.
- 67 (1) Section 64 (information provision) is amended as follows.
- (2) In subsection (6)(a) after “2003)” insert “, youth rehabilitation orders (as defined by section 1 of the Criminal Justice and Immigration Act 2008)”.
- (3) In subsection (7) after paragraph (b) insert – 30
- “(ba) a responsible officer within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008;”.
- Criminal Justice and Court Services Act 2000 (c. 43)*
- 68 The Criminal Justice and Court Services Act 2000 has effect subject to the following amendments. 35
- 69 In section 1(2)(a) (purposes of Chapter), after “2003)” insert “, youth rehabilitation orders (as defined by section 1 of the Criminal Justice and Immigration Act 2008)”.
- 70 Section 70(5) (interpretation, etc.) is omitted.



*Criminal Justice Act 2003 (c. 44)*

- 71 Part 12 of the Criminal Justice Act 2003 (sentencing) has effect subject to the following amendments.
- 72 (1) Section 147 (meaning of “community sentence” etc.) is amended as follows.
- (2) In subsection (1) – 5
- (a) omit paragraph (b), and
- (b) after that paragraph insert –
- “(c) a youth rehabilitation order.”
- (3) Omit subsection (2).
- 73 (1) Section 148 (restrictions on imposing community sentences) is amended as follows. 10
- (2) In subsection (2) –
- (a) omit “which consists of or includes a community order”, and
- (b) in paragraph (a), after “community order” insert “, or, as the case may be, youth rehabilitation order, comprised in the sentence”. 15
- (3) After that subsection insert –
- “(2A) Subsection (2) is subject to paragraph 3(4) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance).”
- (4) Omit subsection (3). 20
- 74 In section 149(1) (passing of community sentence on offender remanded in custody) for “youth community order” substitute “youth rehabilitation order”.
- 75 In section 150 (community sentence not available where sentence fixed by law etc.) for “youth community order” substitute “youth rehabilitation order”. 25
- 76 (1) Section 151 (community order for persistent offender previously fined) is amended as follows.
- (2) In the title, after “community order” insert “or youth rehabilitation order”.
- (3) In subsections (A1), (1)(a) and (1A)(a), for “16” substitute “18”. 30
- (4) After subsection (2) insert –
- “(2A) Subsection (2B) applies where –
- (a) a person aged 16 or 17 is convicted of an offence (“the current offence”);
- (b) on three or more previous occasions the offender has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine; and 35
- (c) despite the effect of section 143(2), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a youth rehabilitation order. 40

- (2B) The court may make a youth rehabilitation order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to make such an order.” 5
- (5) In subsection (3) –
- (a) after “(2)” insert “and (2B)”; and
  - (b) in paragraph (a) for “or (1A)(b)” substitute “(1A)(b) or (2A)(b)”.
- (6) In subsections (4), (5) and (6), for “and (1A)(b)” substitute “(1A)(b) and (2A)(b)”. 10
- (7) In section 166 (savings for powers to mitigate etc.), in subsection (1)(a) after “151(2)” insert “or (2B)”.
- 77 (1) Section 156 (pre-sentence reports and other requirements) is amended as follows.
- (2) In subsection (1) – 15
- (a) for “, (2)(b) or (3)(b)” substitute “or (2)(b),”, and
  - (b) after “153(2),” insert “or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering),”.
- (3) In subsection (2) omit “or (3)(a)”. 20
- (4) In subsection (3)(b) –
- (a) for “, (2)(b) or (3)(b)” substitute “or (2)(b), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008,”, and
  - (b) after “community order” insert “or youth rehabilitation order”.
- 78 (1) Section 166 (savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders) is amended as follows. 25
- (2) In subsection (1), after paragraph (d) add –
- “(e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance), or 30
  - (f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering),”.
- (3) In subsections (3) and (5), for “(d)” substitute “(f)”.
- 79 In section 174(2) (duty to give reasons for, and explain effect of, sentence) –
- (a) in paragraph (b), after “that section” insert “or any other statutory provision”, 35
  - (b) in paragraph (c), after “community sentence” insert “, other than one consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering,”, and
  - (c) after paragraph (c) insert – 40
    - “(ca) where the sentence consists of or includes a youth rehabilitation order with intensive supervision and surveillance and the case does not fall within paragraph 5(2) of Schedule 1 to the Criminal Justice and Immigration Act 2008, state that it is of the opinion that section 1(4)(a) to (c) of that Act and 45

- section 148(1) of this Act apply and why it is of that opinion,
- (cb) where the sentence consists of or includes a youth rehabilitation order with fostering, state that it is of the opinion that section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act apply and why it is of that opinion,”. 5
- 80 In section 176 (interpretation of Chapter 1) –
- (a) omit the definition of “youth community order”, and
- (b) at the end add – 10
- ““youth rehabilitation order” has the meaning given by section 1(1) of the Criminal Justice and Immigration Act 2008;
- “youth rehabilitation order with fostering” has the meaning given by paragraph 4 of Schedule 1 to that Act; 15
- “youth rehabilitation order with intensive supervision and surveillance has the meaning given by paragraph 3 of Schedule 1 to that Act.”
- 81 In section 177(1) (community orders) for “16” substitute “18”. 20
- 82 In section 197(1)(b) (meaning of “the responsible officer”), omit “the offender is aged 18 or over and”.
- 83 In section 199 (unpaid work requirement) –
- (a) in subsection (3), for “appropriate officer” substitute “officer of a local probation board”, and 25
- (b) omit subsection (4).
- 84 In section 201 (activity requirement), in subsection (3)(a), for sub-paragraphs (i) and (ii) (but not “and” immediately following sub-paragraph (ii)) substitute “an officer of a local probation board”.
- 85 In section 202 (programme requirement), in subsection (4)(a), for sub-paragraphs (i) and (ii) (but not “and” immediately following sub-paragraph (ii)) substitute “by an officer of a local probation board”. 30
- 86 In section 203(2), for paragraphs (a) and (b) substitute “an officer of a local probation board”.
- 87 In section 209(2)(c) (drug rehabilitation requirement), for sub-paragraphs (i) and (ii) substitute “by an officer of a local probation board, and”. 35
- 88 In section 211 (periodic review of drug rehabilitation requirement), omit subsection (5).
- 89 In section 214 (attendance centre requirement), after subsection (6) add –
- “(7) A requirement to attend at an attendance centre for any period on any occasion operates as a requirement, during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere.” 40
- 45

90	In section 217(1)(b) (requirement to avoid conflict with religious beliefs etc.), for “school or any other” substitute “any”.	
91	In section 221(2) (provision of attendance centres) – (a) omit “or” at the end of paragraph (a), (b) after that paragraph insert – “(aa) attendance centre requirements of youth rehabilitation orders, within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008;”, and (c) omit paragraph (b).	5
92	In section 222(1)(e) (rules), after “attendance centre requirements” insert “, or to attendance centre requirements imposed by youth rehabilitation orders under Part 1 of the Criminal Justice and Immigration Act 2008;”.	10
93	Section 279 (drug treatment and testing requirement in action plan order or supervision order) ceases to have effect.	
94	In Schedule 8 (breach, revocation or amendment of community order), omit paragraphs 12, 15 and 17(5) (powers of magistrates’ court in case of offender reaching 18).	15
95	Schedule 24 (drug treatment and testing requirement in action plan order or supervision order) ceases to have effect.	
<i>Violent Crime Reduction Act 2006 (c. 38)</i>		20
96	In section 47 of the Violent Crime Reduction Act 2006 (power to search persons in attendance centres for weapons), in the definition of “relevant person” in subsection (11), for paragraph (b) substitute – “(b) a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008;”.	25
<i>Offender Management Act 2007 (c. 21)</i>		
97	In section 1(4) of the Offender Management Act 2007 (meaning of “the probation purposes”), in the definition of “community order” – (a) after paragraph (a) insert – “(aa) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008 (see section 1 of that Act);”, and (b) after paragraph (b) insert – “(c) a youth community order within the meaning of that Act (as it applies to offences committed before section 1 of the Criminal Justice and Immigration Act 2008 comes into force)”.	30  35

PART 2

RELATED AMENDMENTS

*Children and Young Persons Act 1933 (c. 12)*

- 98 In section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children or young persons are concerned), in subsection (13)(g)(ii), for “the Powers of Criminal Courts (Sentencing) Act 2000” substitute “Part 1 or 2 of Schedule 15 to the Criminal Justice Act 2003”. 5

*Children and Young Persons Act 1969 (c. 54)*

- 99 (1) Section 32 of the Children and Young Persons Act 1969 (detention of absentees) is amended as follows. 10
- (2) In subsection (1A) –
- (a) in paragraph (a), after “under” insert “paragraph 4(1)(a) of Schedule 1 or paragraph 6(4)(a) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 or”,
  - (b) in paragraph (b) (as substituted by paragraph 17(2)(b) of this Schedule), in sub-paragraph (ii), after “under” insert “paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 or”. 15
- (3) In subsection (1C) (as substituted by paragraph 17(3) of this Schedule) –
- (a) in paragraph (a), after “under” insert “paragraph 4(1)(a) of Schedule 1 or paragraph 6(4)(a) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 or”, and 20
  - (b) in paragraph (c), after “under” insert “paragraph 4(6) of Schedule 1 or paragraph 6(8) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 or”. 25

*Bail Act 1976 (c. 63)*

- 100 In section 4(3) of the Bail Act 1976 (general right to bail of accused persons and others), before paragraph (a) (as substituted by paragraph 23(b) of this Schedule) insert –
- “(za) Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders: referral back to appropriate court), 30
  - (zb) Schedule 8 to that Act (breach of reparation order).”.

*Magistrates’ Courts Act 1980 (c. 43)*

- 101 In Schedule 6A to the Magistrates’ Courts Act 1980 (fines that may be altered under section 143), at the end insert – 35

“In Schedule 8, paragraph 2(2)(a)(i) | £1,000”.  
(failure to comply with reparation order) |

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*Child Abduction Act 1984 (c. 37)*

- 102 In paragraph 2(1) of the Schedule to the Child Abduction Act 1984 (modifications of section 1 for children in certain cases) –
- (a) in paragraph (a), after “under” insert “paragraph 4(1)(a) of Schedule 1 or paragraph 6(4)(a) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 or”, and 5
  - (b) in paragraph (b), before “or” (as inserted by paragraph 31(b) of this Schedule) insert “, paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000”.

*Children Act 1989 (c. 41)* 10

- 103 In section 21(2)(c) of the Children Act 1989 (provision of accommodation for children in police protection or detention or on remand, etc.), after sub-paragraph (i) insert –
- “(ia) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (breach etc. of referral orders and reparation orders);” 15

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)* 20

- 104 The Powers of Criminal Courts (Sentencing) Act 2000 has effect subject to the following amendments.
- 105 In Schedule 1 (youth offender panels: further court proceedings), after paragraph 9 insert –
- “*Power to adjourn hearing and remand offender* 25
- 9ZA (1) This paragraph applies to any hearing relating to an offender held by a youth court or other magistrates’ court in proceedings under this Part of this Schedule.
- (2) The court may adjourn the hearing, and, where it does so, may –
    - (a) direct that the offender be released forthwith, or 30
    - (b) remand the offender.
  - (3) Where the court remands the offender under sub-paragraph (2) –
    - (a) it must fix the time and place at which the hearing is to be resumed, and
    - (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand. 35
  - (4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender –
    - (a) it may fix the time and place at which the hearing is to be resumed, but 40
    - (b) if it does not do so, must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph

- (5) have had adequate notice of the time and place for the resumed hearing.
- (5) The persons referred to in sub-paragraph (4)(b) are –
- (a) the offender,
  - (b) if the offender is aged under 14, a parent or guardian of the offender, and
  - (c) a member of the youth offending team specified under section 18(1)(a) as responsible for implementing the order.
- (6) If a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority.
- (7) In sub-paragraph (6) –
- “local authority” has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,
  - “parental responsibility” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and
  - “social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.
- (8) The powers of a magistrates’ court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980.
- (9) This paragraph –
- (a) applies to any hearing in proceedings under this Part of this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
  - (b) is not to be taken to affect the application of that section to hearings of any other description.”
- 106 (1) Schedule 8 (breach, revocation and amendment of action plan orders and reparation orders) is amended as follows.
- (2) Omit paragraph 1 and the heading before that paragraph.
- (3) In paragraph 2(1), for “the appropriate court,” substitute –
- “(a) a youth court acting in the local justice area in which the offender resides, or
  - (b) if it is not known where the offender resides, a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act,”.
- (4) In paragraph 5 –
- (a) in sub-paragraphs (1) and (3), for “appropriate court” substitute “relevant court”, and
  - (b) at the end insert –
- “(4) In this paragraph, “the relevant court” means –

- 
- (a) a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act, or
- (b) in the case of an application made both under this paragraph and under paragraph 2(1), the court mentioned in paragraph 2(1).” 5
- (5) In paragraph 6—
- (a) in sub-paragraph (1), for “the appropriate court” substitute “a court”,
- (b) in sub-paragraph (4), for “the appropriate court” substitute “the court before which the warrant directs the offender to be brought (“the relevant court”)”, 10
- (c) in sub-paragraph (5), for “the appropriate court” substitute “the relevant court”, and
- (d) in sub-paragraph (7), for “the appropriate court”, in each place it occurs, substitute “the relevant court”. 15
- (6) After paragraph 6 insert—
- “Power to adjourn hearing and remand offender*
- 6A (1) This paragraph applies to any hearing relating to an offender held by a youth court in any proceedings under this Schedule.
- (2) The court may adjourn the hearing, and, where it does so, may— 20
- (a) direct that the offender be released forthwith, or
- (b) remand the offender.
- (3) Where the court remands the offender under sub-paragraph (2)—
- (a) it must fix the time and place at which the hearing is to be resumed, and 25
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.
- (4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender— 30
- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph (5) have had adequate notice of the time and place for the resumed hearing. 35
- (5) The persons referred to in sub-paragraph (4)(b) are—
- (a) the offender,
- (b) if the offender is aged under 14, a parent or guardian of the offender, and 40
- (c) the responsible officer.
- (6) If a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority. 45



- (7) In sub-paragraph (6) –  
“local authority” has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,  
“parental responsibility” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and  
“social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act. 5
- (8) The powers of a youth court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980. 10
- (9) This paragraph –  
(a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but  
(b) is not to be taken to affect the application of that section to hearings of any other description.” 15
- Criminal Justice Act 2003 (c. 44)* 20
- 107 In Schedule 8 to the Criminal Justice Act 2003 (breach, revocation or amendment of community order), after paragraph 25 insert –  
“25A(1) This paragraph applies to any hearing relating to an offender held by a magistrates’ court in any proceedings under this Schedule.  
(2) The court may adjourn the hearing, and, where it does so, may – 25  
(a) direct that the offender be released forthwith, or  
(b) remand the offender.  
(3) Where the court remands the offender under sub-paragraph (2) –  
(a) it must fix the time and place at which the hearing is to be resumed, and 30  
(b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.  
(4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender – 35  
(a) it may fix the time and place at which the hearing is to be resumed, but  
(b) if it does not do so, must not resume the hearing unless it is satisfied that the offender and the responsible officer have had adequate notice of the time and place for the resumed hearing. 40  
(5) The powers of a magistrates’ court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980.  
(6) This paragraph – 45

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.” 5

SCHEDULE 5

Section 39(6)

YOUTH DEFAULT ORDERS: MODIFICATION OF PROVISIONS APPLYING TO YOUTH  
 REHABILITATION ORDERS

*General* 10

- 1 Any reference to the offender is, in relation to a youth default order, to be read as a reference to the person in default; and any reference to the time when the offender is convicted is to be read as a reference to the time when the order is made.

*Unpaid work requirement* 15

- 2 (1) In its application to a youth default order, paragraph 10 of Schedule 1 (unpaid work requirement) is modified as follows.
- (2) Sub-paragraph (2) has effect as if for paragraphs (a) and (b) there were substituted—
- “(a) not less than 20, and 20
- (b) in the case of an amount in default which is specified in the first column of the following Table, not more than the number of hours set out opposite that amount in the second column.

TABLE 25

<i>Amount</i>	<i>Number of hours</i>
An amount not exceeding £200	40
An amount exceeding £200 but not exceeding £500	60
An amount exceeding £500	100”.

- (3) Sub-paragraph (7) has effect as if after “Unless revoked” there were inserted “(or section 39(7)(a) applies)”.

*Attendance centre requirement*

- 3 (1) In its application to a youth default order, paragraph 12 of Schedule 1 (attendance centre requirement) is modified as follows. 35

(2) Sub-paragraph (2) has effect as if –

- (a) in paragraph (a), for the words following “conviction” there were substituted “must be, in the case of an amount in default which is specified in the first column of the following Table, not more than the number of hours set out opposite that amount in the second column.

5

TABLE

<i>Amount</i>	<i>Number of hours</i>
An amount not exceeding £250	8
An amount exceeding £250 but not exceeding £500	14
An amount exceeding £500	24”,

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- (b) in paragraph (b), for the words following “conviction” there were substituted “must be, in the case of an amount in default which is specified in the first column of the following Table, not more than the number of hours set out opposite that amount in the second column.

15

TABLE

<i>Amount</i>	<i>Number of hours</i>
An amount not exceeding £250	8
An amount exceeding £250 but not exceeding £500	14
An amount exceeding £500	24”,

20

- (c) in paragraph (c), for “must not be more than 12” there were substituted “must be, in the case of an amount in default which is specified in the first column of the following Table, not more than the number of hours set out opposite that amount in the second column.

25

TABLE

<i>Amount</i>	<i>Number of hours</i>
An amount not exceeding £250	8

30

TABLE

<i>Amount</i>	<i>Number of hours</i>
An amount exceeding £250 but not exceeding £500	10
An amount exceeding £500	12”.

*Curfew requirement*

4 (1) In its application to a youth default order, paragraph 14 of Schedule 1 (curfew requirement) is modified as follows.

(2) That paragraph has effect as if after sub-paragraph (2) there were inserted –

“(2A) In the case of an amount in default which is specified in the first column of the following Table, the number of days on which the person in default is subject to the curfew requirement must not exceed the number of days set out opposite that amount in the second column. 5

TABLE

<i>Amount</i>	<i>Number of days</i>
An amount not exceeding £200	20
An amount exceeding £200 but not exceeding £500	30
An amount exceeding £500 but not exceeding £1,000	60
An amount exceeding £1,000 but not exceeding £2,000	90
An amount exceeding £2,000	180”.

10

15

20

*Enforcement, revocation and amendment of youth default order*

5 (1) In its application to a youth default order, Schedule 2 (breach, revocation or amendment of youth rehabilitation orders) is modified as follows. 25

(2) Any reference to the offence in respect of which the youth rehabilitation order was made is to be read as a reference to the default in respect of which the youth default order was made.

(3) Accordingly, any power of the court to revoke a youth rehabilitation order and deal with the offender for the offence is to be taken to be a power to revoke the youth default order and deal with him in any way in which the 30

	court which made the youth default order could deal with him for his default in paying the sum in question.	
(4)	Paragraph 2 has effect as if for paragraphs (a) and (b) there were substituted “as having been made by a magistrates’ court”.	
(5)	The following provisions are omitted –	5
	(a) paragraph 6(2)(a) and (b)(i), (5) and (12) to (16),	
	(b) paragraph 11(5),	
	(c) paragraph 18(7), and	
	(d) paragraph 19(3).	
	<i>Power to alter amount of money or number of hours or days</i>	10
6	The Secretary of State may by order amend paragraph 2, 3 or 4 by substituting for any reference to an amount of money or a number of hours or days there specified a reference to such other amount or number as may be specified in the order.	
	<i>Transfer of youth default order to Northern Ireland</i>	15
7	(1) In its application to a youth default order, Schedule 3 is modified as follows.	
	(2) Paragraph 9 has effect as if, after sub-paragraph (2) there were inserted –	
	“(3) Nothing in sub-paragraph (1) affects the application of section 39(7) to a youth default order made or amended in accordance with paragraph 1 or 2.”	20
	(3) Paragraph 12 has effect as if, after paragraph (b) there were inserted –	
	“(bb) any power to impose a fine on the offender”.	
SCHEDULE 6		Section 13(2)
	OFFENCES SPECIFIED FOR THE PURPOSES OF SECTIONS 225(3A) AND 227(2A) OF THE CRIMINAL JUSTICE ACT 2003	25
“SCHEDULE 15A		
OFFENCES SPECIFIED FOR THE PURPOSES OF SECTIONS 225(3A) AND 227(2A)		
PART 1		
OFFENCES UNDER THE LAW OF ENGLAND AND WALES		
1	An attempt to commit murder, a conspiracy to murder or an incitement to murder.	30
2	Manslaughter.	
3	An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).	
4	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	35

5	An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape) or an attempt to commit such an offence.	
6	An offence under section 5 of that Act (intercourse with a girl under 13).	
7	An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).	5
8	An offence under section 17(1) of that Act (use of a firearm to resist arrest).	
9	An offence under section 18 of that Act (carrying a firearm with criminal intent).	10
10	An offence of robbery under section 8 of the Theft Act 1968 (c. 60) where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.	
11	An offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape) or an attempt to commit such an offence.	15
12	An offence under section 2 of that Act (assault by penetration) or an attempt to commit such an offence.	
13	An offence under section 4 of that Act (causing a person to engage in sexual activity without consent), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	20
14	An offence under section 5 of that Act (rape of a child under 13) or an attempt to commit such an offence.	
15	An offence under section 6 of that Act (assault of a child under 13 by penetration) or an attempt to commit such an offence.	25
16	An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	30
17	An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	
18	An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	35
19	An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	40
20	An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc.), or an attempt to commit such an offence, if	45

	the offender was liable on conviction on indictment to imprisonment for life.	
21	An offence under section 47 of that Act (paying for sexual services of a child), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	5
22	An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.	
	PART 2	10
	OFFENCES UNDER THE LAW OF SCOTLAND	
23	Culpable homicide.	
24	An attempt to commit murder, a conspiracy to murder or an incitement to murder.	
25	Rape or an attempt to commit rape.	15
26	Assault where the assault— (a) is aggravated because it caused severe injury or endangered the victim's life, or (b) was carried out with intent to rape or ravish the victim.	
27	Sodomy, or an attempt to commit sodomy, where the person against whom the offence was committed did not consent.	20
28	Lewd, indecent or libidinous behaviour or practices.	
29	Robbery, where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968 (c. 27).	25
30	An offence under section 16 of the Firearms Act 1968 (possession of firearm with intent to endanger life).	
31	An offence under section 17(1) of that Act (use of a firearm to resist arrest).	30
32	An offence under section 18 of that Act (carrying a firearm with criminal intent).	
33	An offence under section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (unlawful intercourse with a girl under 13).	35
	PART 3	
	OFFENCES UNDER THE LAW OF NORTHERN IRELAND	
34	An attempt to commit murder, a conspiracy to murder or an incitement to murder.	
35	Manslaughter.	40

36	Rape or an attempt to commit rape.	
37	An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).	
38	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	5
39	An offence under section 4 of the Criminal Law Amendment Act 1885 (c. 69) (intercourse with a girl under 14).	
40	An offence of robbery under section 8 of the Theft Act (Northern Ireland) 1969 (c. 16) where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms (Northern Ireland) Order 1981.	10
41	An offence under Article 17 of the Firearms (Northern Ireland) Order 1981 (S.I. 1981/155 (N.I.2)) (possession of firearm with intent to endanger life).	15
42	An offence under Article 18(1) of that Order (use of a firearm to resist arrest).	
43	An offence under Article 19 of that Order (carrying a firearm with criminal intent).	
44	An offence under Article 58 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I.3)) (possession of firearm with intent to endanger life).	20
45	An offence under Article 59 of that Order (use of a firearm to resist arrest).	
46	An offence under Article 60 of that Order (carrying a firearm with criminal intent).	25
47	An offence under section 47 of the Sexual Offences Act 2003 (paying for sexual services of a child), or an attempt to commit such an offence, if the offender was liable on conviction on indictment to imprisonment for life.”	30

## SCHEDULE 7

Section 23

## CREDIT FOR PERIOD OF REMAND ON BAIL: TRANSITIONAL PROVISIONS

1	A period specified under paragraph 2 is to be treated as being a relevant period within the meaning of section 67 of the Criminal Justice Act 1967 (c. 80).	35
2	(1) This paragraph applies where –	
	(a) a court sentences an offender to a term of imprisonment for an offence that was committed before 4th April 2005,	
	(b) the offender was remanded on bail by a court in the course of or in connection with proceedings for the offence, or any related offence, after the coming into force of paragraph 1, and	40



- (c) the offender’s bail was subject to a qualifying curfew condition and an electronic monitoring condition (“the relevant conditions”).
- (2) Subject to sub-paragraph (4), the court must by order specify the credit period.
- (3) The “credit period” is the number days represented by half of the sum of –
  - (a) the day on which the offender’s bail was first subject to conditions that, had they applied throughout the day in question, would have been relevant conditions, and
  - (b) the number of other days on which the offender’s bail was subject to those conditions (excluding the last day on which it was so subject), rounded up to the nearest whole number.
- (4) Sub-paragraph (2) does not apply if and to the extent that –
  - (a) rules made by the Secretary of State so provide, or
  - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (5) Where as a result of paragraph (a) or (b) of sub-paragraph (4) the court does not specify the credit period under sub-paragraph (2), it may in accordance with either of those paragraphs by order specify a lesser period.
- (6) Rules under sub-paragraph (4)(a) may, in particular, make provision in relation to –
  - (a) sentences of imprisonment for consecutive terms;
  - (b) sentences of imprisonment for terms which are wholly or partly concurrent;
  - (c) periods during which a person granted bail subject to the relevant conditions is also subject to electronic monitoring required by an order made by a court or the Secretary of State.
- (7) In considering whether it is of the opinion mentioned in sub-paragraph (4)(b) the court must, in particular, take into account whether or not the offender has, at any time whilst on bail subject to the relevant conditions, broken either or both of them.
- (8) Where the court specifies a period under sub-paragraph (2) or (5) it shall state in open court –
  - (a) the number of days on which the offender was subject to the relevant conditions, and
  - (b) the number of days in the period specified.
- (9) Sub-paragraph (10) applies where the court –
  - (a) does not specify the credit period under sub-paragraph (2) but does specify a lesser period under sub-paragraph (5), or
  - (b) does not specify a period under either sub-paragraph (2) or (5).
- (10) The court shall state in open court –
  - (a) that its decision is in accordance with rules made under paragraph (a) of sub-paragraph (4), or
  - (b) that it is of the opinion mentioned in paragraph (b) of that sub-paragraph and what the circumstances are.
- (11) In this paragraph –

- “electronic monitoring condition” means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 (c. 63) for the purpose of securing the electronic monitoring of a person’s compliance with a qualifying curfew condition;
- “qualifying curfew condition” means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day; and
- “related offence” means an offence, other than the offence for which the sentence is imposed (“offence A”), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.

## SCHEDULE 8

Section 49

## APPEALS IN CRIMINAL CASES

## PART 1

## AMENDMENTS TO THE CRIMINAL APPEAL ACT 1968 15

- 1 The Criminal Appeal Act 1968 (c. 19) has effect subject to the following amendments.

*Time limit on grant of certificates of fitness for appeal*

- 2 In section 1 (appeal against conviction), in subsection (2)(b) after “if” insert “, within 28 days from the date of the conviction,”. 20
- 3 In section 11 (supplementary provisions as to appeal against sentence), in subsection (1A) –
- (a) after “if” insert “, within 28 days from the date on which the sentence was passed,”; and
- (b) for “the sentence” substitute “it”. 25
- 4 In section 12 (appeal against verdict of not guilty on ground of insanity), in subsection (1)(b) after “if” insert “, within 28 days from the date of the verdict,”.
- 5 In section 15 (appeal against finding of disability), in subsection (2)(b) after “if” insert “, within 28 days from the date of the finding that the accused did the act or made the omission charged,”. 30

*Powers of Court to substitute different sentence*

- 6 (1) Section 4 (sentence when appeal allowed on part of indictment) is amended as follows.
- (2) For the heading substitute “**Power to re-sentence where appellant remains convicted of related offences**”. 35
- (3) For subsection (1) substitute –
- “(1) This section applies where –
- (a) two or more related sentences are passed,

- (b) the Court of Appeal allow an appeal against conviction in respect of one or more of the offences for which the sentences were passed (“the related offences”), but
  - (c) the appellant remains convicted of one or more of those offences.” 5
- (4) In subsection (2) –
  - (a) for “in respect of any count on which the appellant remains convicted” substitute “in respect of any related offence of which the appellant remains convicted”, and
  - (b) omit “for the offence of which he remains convicted on that count”. 10
- (5) In subsection (3) –
  - (a) for “on the indictment as a whole” substitute “for all the related offences (taken as a whole)”, and
  - (b) for “for all offences of which he was convicted on the indictment” substitute “for all the related offences”. 15
- (6) After subsection (3) insert –
  - “(4) For the purposes of subsection (1)(a), two or more sentences are related if –
    - (a) they are passed on the same day,
    - (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence, or 20
    - (c) they are passed on different days but in respect of counts on the same indictment.
  - (5) Where – 25
    - (a) two or more sentences are related to each other by virtue of subsection (4)(a) or (b), and
    - (b) any one or more of those sentences is related to one or more other sentences by virtue of subsection (4)(c),all the sentences are to be treated as related for the purposes of subsection (1)(a).” 30

*Interim hospital orders*

- 7 The following provisions (which relate to the effect of interim hospital orders made by the Court of Appeal) are omitted –
  - (a) section 6(5) and the definition of interim hospital order in section 6(7),
  - (b) section 11(6),
  - (c) section 14(5) and the definition of interim hospital order in section 14(7), and
  - (d) section 16B(3). 40
- 8 After section 30B (as inserted by section 42(7)) insert –
  - “**30C Effect of interim hospital orders**
  - (1) This section applies where the Court of Appeal –
    - (a) make an interim hospital order by virtue of any provision of this Part, or 45

- (b) renew an interim hospital order so made.
- (2) The court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.”
- 9 In section 31 (powers of Court which are exercisable by single judge) after subsection (2) insert – 5
- “(2ZA) The power of the Court of Appeal to renew an interim hospital order made by them by virtue of any provision of this Part may be exercised by a single judge in the same manner as it may be exercised by the Court.” 10

*Evidence*

- 10 (1) Section 23 (evidence) is amended as follows.
- (2) In subsection (1) after “an appeal” insert “, or an application for leave to appeal,”.
- (3) In that subsection, for paragraph (b) substitute – 15
- “(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”.
- (4) After subsection (1) insert –
- “(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to – 20
- (a) the Court;
- (b) the appellant;
- (c) the respondent.” 25
- (5) In subsection (4) after “an appeal” insert “, or an application for leave to appeal,”.
- (6) After subsection (5) insert –
- “(6) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.” 30

*Powers of single judge*

- 11 (1) Section 31 (powers of Court of Appeal which are exercisable by single judge) is amended as follows.
- (2) In the heading, omit “under Part 1”.
- (3) After subsection (2C) insert – 35
- “(2D) The power of the Court of Appeal to grant leave to appeal under section 9(11) of the Criminal Justice Act 1987 may be exercised by a single judge in the same manner as it may be exercised by the Court.
- (2E) The power of the Court of Appeal to grant leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996 40

may be exercised by a single judge in the same manner as it may be exercised by the Court.”

*Appeals against procedural directions*

- 12 In section 31C (appeals against procedural directions), omit subsections (1) and (2). 5

*Detention of defendant pending appeal to Supreme Court*

- 13 (1) Section 37 (detention of defendant on appeal by Crown) is amended as follows.
- (2) In subsection (2) for the words from “may make” to the end substitute “shall make – 10
- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the Court as under section 36 above), so long as the appeal is pending, or
- (b) an order that he be released without bail.” 15
- (3) After subsection (2) insert –
- “(2A) The Court may make an order under subsection (2)(b) only if they think that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.” 20
- (4) In subsection (3) for “this section” substitute “subsection (2)(a)”.
- (5) In subsection (4) for “this section” (in each place where it occurs) substitute “subsection (2)(a)”.
- (6) In subsection (4A) for “this section” (in the first place where it occurs) substitute “subsection (2)(a)”.
- (7) For subsection (5) substitute – 25
- “(5) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if –
- (a) the Court of Appeal have made an order under subsection (2)(b), or 30
- (b) the Court have made an order under subsection (2)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).”

PART 2 35

AMENDMENTS TO THE CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1980

- 14 The Criminal Appeal (Northern Ireland) Act 1980 (c. 47) has effect subject to the following amendments.

*Time limit on grant of certificates of fitness for appeal*

- 15 In section 1 (appeal against conviction), in paragraph (b) after “if” insert “, within 28 days from the date of the conviction,”.
- 16 In section 12 (appeal against finding of not guilty on ground of insanity), in subsection (1)(b) after “if” insert “, within 28 days from the date of the finding,”. 5
- 17 In section 13A (appeal against finding of unfitness to be tried), in subsection (2)(b) after “if” insert “, within 28 days from the date of the finding that the person did the act or made the omission charged,”.

*Powers of Court to substitute different sentence* 10

- 18 (1) Section 4 (alteration of sentence on appeal against conviction) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) Subsection (1A) applies where –
- (a) two or more related sentences are passed, 15
- (b) the Court of Appeal allows an appeal against conviction in respect of one or more of the offences for which the sentences were passed (“the related offences”), but
- (c) the appellant remains convicted of one or more of those offences. 20
- (1A) The Court may, in respect of any related offence of which the appellant remains convicted, pass such sentence, in substitution for the sentence passed thereon at the trial, as it thinks proper and is authorised by law.”
- (3) After subsection (2) insert – 25
- “(3) For the purposes of subsection (1)(a), two or more sentences are related if –
- (a) they are passed on the same day,
- (b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence, or 30
- (c) they are passed on different days but in respect of counts on the same indictment.
- (4) Where –
- (a) two or more sentences are related to each other by virtue of subsection (3)(a) or (b), and 35
- (b) any one or more of those sentences is related to one or more other sentences by virtue of subsection (3)(c),
- all the sentences are to be treated as related for the purposes of subsection (1)(a).” 40

*Interim hospital orders*

- 19 Section 10(6) (effect of interim hospital orders made by Court of Appeal) is omitted.

- 20 After section 29A (as inserted by section 43(6)) insert –
- “29B Effect of interim hospital orders**
- (1) This section applies where the Court of Appeal –
- (a) makes an interim hospital order by virtue of any provision of this Part, or 5
- (b) renews an interim hospital order so made.
- (2) The Crown Court shall be treated for the purposes of Article 45(6) of the Mental Health Order (absconding offenders) as the court that made the order.”
- 21 In section 45 (powers of Court which are exercisable by single judge) after subsection (3) insert – 10
- “(3ZA) The power of the Court of Appeal to renew an interim hospital order made by it by virtue of any provision of this Act may be exercised by a single judge in the same manner as it may be exercised by the Court.” 15

*Evidence*

- 22 (1) Section 25 (evidence) is amended as follows.
- (2) In subsection (1) after “an appeal” insert “, or an application for leave to appeal,”.
- (3) In that subsection, for paragraph (b) substitute – 20
- “(b) order any witness to attend and be examined before the Court (whether or not he was called at the trial); and”.
- (4) After subsection (1) insert –
- “(1A) The power conferred by subsection (1)(a) may be exercised so as to require the production of any document, exhibit or other thing mentioned in that subsection to – 25
- (a) the Court;
- (b) the appellant;
- (c) the respondent.”
- (5) After subsection (3) insert – 30
- “(4) In this section, “respondent” includes a person who will be a respondent if leave to appeal is granted.”
- 23 In section 26 (additional powers of Court), in subsection (1) after “an appeal” insert “, or an application for leave to appeal,”.

*Detention of defendant pending appeal to Supreme Court* 35

- 24 (1) Section 36 (detention of defendant on appeal by Crown) is amended as follows.
- (2) In subsection (1) for the words from “may make” to the end substitute “shall make – 40
- (a) an order providing for his detention, or directing that he shall not be released except on bail (which may be granted by the

- Court as under section 35 above), so long as the appeal is pending, or
- (b) an order that he be released without bail.”
- (3) After subsection (1) insert –
- “(1A) The Court may make an order under subsection (1)(b) only if it thinks that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.” 5
- (4) In subsection (2) for “subsection (1)” substitute “subsection (1)(a)”.
- (5) In subsection (3) for “this section” (in each place where it occurs) substitute “subsection (1)(a)”.
- (6) In subsection (3A) for “this section” (in the first place where it occurs) substitute “subsection (1)(a)”.
- (7) For subsection (4) substitute –
- “(4) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if – 15
- (a) the Court of Appeal has made an order under subsection (1)(b), or
- (b) the Court has made an order under subsection (1)(a) but the order has ceased to have effect by virtue of subsection (2) or the defendant has been released or discharged by virtue of subsection (3) or (3A).” 20

*Powers of single judge*

- 25 (1) Section 45 (powers of Court of Appeal which are exercisable by single judge) is amended as follows. 25
- (2) After subsection (3C) insert –
- “(3D) The power of the Court of Appeal to grant leave to appeal under Article 8(11) of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 may be exercised by a single judge in the same manner as it may be exercised by the Court.” 30

PART 3

AMENDMENTS OF OTHER ACTS

*Detention of defendant pending appeal from High Court to Supreme Court*

- 26 (1) Section 5 of the Administration of Justice Act 1960 (c. 65) (power to order detention or admission to bail of defendant) is amended as follows. 35
- (2) In subsection (1) for the words from “may make” to the end substitute “shall make –
- (a) an order providing for the detention of the defendant, or directing that he shall not be released except on bail (which may be granted by the court as under section 4 above), so long as the appeal is pending, or 40
- (b) an order that the defendant be released without bail.”



- (3) After subsection (1) insert –
- “(1A) The court may make an order under subsection (1)(b) only if it thinks that it is in the interests of justice that the defendant should not be liable to be detained as a result of the decision of the Supreme Court on the appeal.” 5
- (4) In subsection (3) for “subsection (1)” substitute “subsection (1)(a)”.
- (5) In subsection (4) for “the said subsection (1)” substitute “the said subsection (1)(a)”.
- (6) In subsection (4A) for “the said subsection (1)” substitute “the said subsection (1)(a)”.
- (7) For subsection (5) substitute – 10
- “(5) The defendant shall not be liable to be detained again as a result of the decision of the Supreme Court on the appeal if –
- (a) the court has made an order under subsection (1)(b), or
- (b) the court has made an order under subsection (1)(a) but the order has ceased to have effect by virtue of subsection (3) or the defendant has been released or discharged by virtue of subsection (4) or (4A).” 15

*Variation of sentences by Crown Court*

- 27 (1) Section 49 of the Judicature (Northern Ireland) Act 1978 (c. 23) (sentences imposed and other decisions made by Crown Court) is amended as follows. 20
- (2) In subsection (2) –
- (a) for “28 days” substitute “56 days”, and
- (b) omit the words from “or, where subsection (3) applies,” to the end.
- (3) After subsection (2) insert – 25
- “(2A) The power conferred by subsection (1) may not be exercised in relation to any sentence or order if an appeal, or an application for leave to appeal, against that sentence or order has been determined.”
- (4) Subsection (3) is omitted.
- 28 (1) Section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (alteration of Crown Court sentence) is amended as follows. 30
- (2) In subsection (1) –
- (a) for “28 days” substitute “56 days”, and
- (b) omit the words from “or, where subsection (2) below applies,” to the end. 35
- (3) After subsection (1) insert –
- “(1A) The power conferred by subsection (1) may not be exercised in relation to any sentence or order if an appeal, or an application for leave to appeal, against that sentence or order has been determined.”
- (4) Subsections (2) and (3) are omitted. 40

## SCHEDULE 9

Section 50

## HER MAJESTY’S COMMISSIONER FOR OFFENDER MANAGEMENT AND PRISONS

*Appointment and removal from office*

- 1 Her Majesty may appoint a person to be the Commissioner.
- 2 (1) A person appointed as Commissioner shall hold office for such term, not exceeding five years, as may be specified in the terms of appointment. 5
- (2) At the end of that term the person concerned is eligible for re-appointment for a further period not exceeding five years.
- (3) A person may not be re-appointed for a third consecutive term unless, by reason of special conditions, such re-appointment is desirable in the public interest. 10
- 3 (1) The Commissioner may be relieved of office by Her Majesty at the Commissioner’s own request or removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament.
- (2) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed is incapable for medical reasons of performing the functions of that office. 15

*Remuneration, pensions and other benefits*

- 4 The Secretary of State shall pay the Commissioner such remuneration and such travelling and other allowances as the Secretary of State may determine. 20
- 5 The Secretary of State shall pay to or in respect of a person who holds or has held office as Commissioner such pension, allowances or gratuities as the Secretary of State may determine.

*Appointment of acting Commissioner* 25

- 6 (1) Where the office of Commissioner becomes vacant, the Secretary of State may appoint a person as acting Commissioner.
- (2) The power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with the day on which the vacancy arose.
- 7 (1) Any person holding office as acting Commissioner shall cease to hold that office – 30
- (a) on the appointment of a new Commissioner; or
- (b) at the end of the period of two years beginning with the day on which the vacancy arose.
- (2) Otherwise, a person appointed as acting Commissioner holds office in accordance with the terms of appointment. 35
- 8 A person holding office as acting Commissioner is to be treated for all purposes (apart from those of paragraphs 1 to 7) as the Commissioner.

*The Commissioner’s staff*

- 9 The Commissioner’s staff shall be provided by (or in pursuance of arrangements made by) the Secretary of State.

*Delegation of functions*

- 10 (1) Any function of the Commissioner may be performed on behalf of the Commissioner by an authorised member of staff (but only to the extent that the person concerned is authorised to do so). 5
- (2) In sub-paragraph (1) “authorised member of staff” means a member of the Commissioner’s staff who is authorised by the Commissioner to exercise that function. 10

*Advisers*

- 11 (1) The Commissioner may obtain advice to assist in the performance of any of the Commissioner’s functions from any person who appears to the Commissioner to be qualified to give it.
- (2) The Commissioner may pay fees or allowances to any person in relation to the provision of advice under this paragraph. 15

*Annual and other reports*

- 12 (1) The Commissioner –
- (a) shall publish a general report on the performance of the Commissioner’s functions during each year (an “annual report”); 20
  - (b) may publish other reports with respect to those functions.
- (2) An annual report must be published as soon as may be practicable after the end of the year to which it relates.
- (3) The Commissioner shall send a copy of each report under this paragraph to the Secretary of State. 25
- (4) The Secretary of State shall lay before Parliament –
- (a) a copy of each annual report,
  - (b) a copy of any other report under this paragraph which is sent with a request for it to be so laid,
- and shall do so as soon as practicable after receiving a copy of the report concerned. 30

SCHEDULE 10

Section 51

THE COMMISSIONER’S COMPLAINTS REMIT

PART 1

THE SPECIFIED MATTERS

35

- 1 Any matter relating to the way in which a person has been treated at any applicable premises while being held there.

- |   |  |              |
|---|--|--------------|
| 2 | <p>Any matter relating to the way in which a person has been treated by prison officers or prisoner custody officers while in their custody, or under their control or escort, anywhere in the world.</p> <p><i>Note:</i> The matters covered by this paragraph include matters affecting a person who has been charged with or convicted of an offence which relate to the exercise of the statutory functions of a prison officer or a prisoner custody officer.</p>   | 5            |
| 3 | <p>Any matter relating to the exercise –</p> <p style="padding-left: 20px;">(a) in relation to a person who has been charged with or convicted of an offence, of any statutory function of the Secretary of State relating to applicable premises (other than approved premises) or persons held there; or</p> <p style="padding-left: 20px;">(b) in relation to a person being held in approved premises, of any statutory function of the Secretary of State relating to approved premises or persons held there.</p>  | 10<br><br>15 |
| 4 | <p>Any matter relating to the conduct of a local probation board or officer of a local probation board in connection with responsibilities assumed by the board or officer in relation to a person who has been charged with or convicted of an offence.</p> <p><i>Note:</i> The reference to a local probation board includes a reference to a person acting in pursuance of arrangements of the kind mentioned in section 5(2) of the Criminal Justice and Court Services Act 2000 (c. 43).</p>                        | 20           |
| 5 | <p>Any matter relating to the conduct of a provider of probation services or an officer of a provider of probation services in connection with responsibilities assumed by the provider or officer in relation to a person who has been charged with or convicted of an offence.</p> <p><i>Note:</i> The reference to a provider of probation services includes a reference to a person acting in pursuance of arrangements of the kind mentioned in section 3(3)(c)(i) of the Offender Management Act 2007 (c. 21).</p> | 25           |
| 6 | <p>Any matter relating to the way in which a person has been treated at any immigration detention premises (other than excepted premises) while being detained there under –</p> <p style="padding-left: 20px;">(a) the Immigration Act 1971 (c. 77);</p> <p style="padding-left: 20px;">(b) section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41); or</p> <p style="padding-left: 20px;">(c) section 36 of the UK Borders Act 2007 (c.30).</p>   | 30<br><br>35 |
| 7 | <p>Any matter relating to the way in which a person has been treated by immigration custody officers while in their custody, or under their control or escort, anywhere in the world (other than at immigration detention premises).</p>   | 40           |

## PART 2

### SUPPLEMENTARY

- |   |   |    |
|---|---|----|
| 8 | <p>In this Schedule “statutory functions” means functions conferred by or under any Act (including, in the case of prison officers, functions exercisable by virtue of section 8 of the Prison Act 1952 (c. 52)).</p> | 45 |
| 9 | <p>In paragraph 3 the references to the Secretary of State are references to the Secretary of State having responsibility for prisons.</p>  |    |

SCHEDULE 11

Section 56

THE COMMISSIONER’S DEATHS REMIT

- |   |   |          |
|---|---|----------|
| 1 | A death of a person at any applicable premises while being held there.  |          |
| 2 | A death of a person while in the custody, or under the control or escort, of prison officers or prisoner custody officers anywhere in the world.  | 5        |
| 3 | A death of a person which the Commissioner is satisfied should be investigated because it is or may be linked to events which have occurred –<br>(a) at any applicable premises while that person was being held there; or<br>(b) while that person was in the custody, or under the control or escort, of prison officers or prisoner custody officers anywhere in the world.  | 10       |
| 4 | A death of a person at any immigration detention premises (other than excepted premises) while being detained there under –<br>(a) the Immigration Act 1971 (c. 77);<br>(b) section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41); or<br>(c) section 36 of the UK Borders Act 2007 (c.30).   | 15       |
| 5 | A death of a person while in the custody, or under the control or escort, of immigration custody officers anywhere in the world (other than at immigration detention premises).   |          |
| 6 | A death of a person which the Commissioner is satisfied should be investigated because it is or may be linked to events which have occurred –<br>(a) at any immigration detention premises (other than excepted premises) while that person was being detained there; or<br>(b) while that person was in the custody, or under the control or escort, of immigration custody officers anywhere in the world (other than at immigration detention premises). | 20<br>25 |

SCHEDULE 12

Section 69

CONSEQUENTIAL AMENDMENTS RELATING TO PART 4

*Parliamentary Commissioner Act 1967 (c. 13)*

- |   |  |          |
|---|--|----------|
| 1 | (1) In subsection (2) of section 11 of the Parliamentary Commissioner Act 1967 (restrictions on disclosure of information) after paragraph (aa) insert –<br>“(ab) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008;<br>(ac) for the purposes of any co-operation under subsection (3) of that section;”. | 30<br>35 |
|   | (2) After subsection (5) of that section insert –<br>“(6) Information which –<br>(a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of  | 40       |

- section 63 of the Criminal Justice and Immigration Act 2008 or for the purposes of any co-operation under subsection (3) of that section, and
- (b) is protected information within the meaning of section 65 of that Act, 5
- shall be treated for the purposes of subsection (2) of this section as obtained in the course of an investigation under this Act; and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.” 10
- (3) In Schedule 3 to that Act (matters not subject to investigation by the Parliamentary Commissioner) after paragraph 12 insert –
- “13 Any matter which falls within the complaints or deaths remit of Her Majesty’s Commissioner for Offender Management and Prisons (within the meaning of Part 4 of the Criminal Justice and Immigration Act 2008).” 15
- (4) Sub-paragraph (3) has no effect in relation to any matter which the Parliamentary Commissioner for Administration has started to investigate before the commencement of that sub-paragraph.
- Local Government Act 1974 (c. 7)* 20
- 2 (1) In subsection (2) of section 32 of the Local Government Act 1974 (restrictions on disclosure of information) after paragraph (aa) insert –
- “(ab) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008, or 25
- (ac) for the purposes of any co-operation under subsection (3) of that section, or”.
- (2) After subsection (7) of that section insert –
- “(8) Information which –
- (a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008 or for the purposes of any co-operation under subsection (3) of that section, and 30
- (b) is protected information within the meaning of section 65 of that Act, 35
- shall be treated for the purposes of subsection (2) above as obtained in the course of an investigation under this Part of this Act; and, in relation to such information, the reference in subsection (2)(a) above to the investigation shall have effect as a reference to any investigation.” 40
- Health Service Commissioners Act 1993 (c. 46)*
- 3 (1) In subsection (1) of section 15 of the Health Service Commissioners Act 1993

(restrictions on disclosure of information) after paragraph (aa) insert –

“(ab) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008;

(ac) for the purposes of any co-operation under subsection (3) of that section;” 5

(2) After subsection (4) of that section insert –

“(5) Information which –

(a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008 or for the purposes of any co-operation under subsection (3) of that section, and 10

(b) is protected information within the meaning of section 65 of that Act, 15

shall be treated for the purposes of subsections (1) and (2) as obtained in the course of an investigation; and, in relation to such information, the reference in subsection (1)(a) to the investigation shall have effect as a reference to any investigation.” 20

*Data Protection Act 1998 (c. 29)*

4 In section 31(4) of the Data Protection Act 1998 (exceptions to data protection requirements for ombudsmen), after paragraph (a)(i) insert –

“(ia) Her Majesty’s Commissioner for Offender Management and Prisons;” 25

*Care Standards Act 2000 (c. 14)*

5 In section 76 of the Care Standards Act 2000 (further functions of the Children’s Commissioner for Wales) after subsection (3) insert –

“(3A) The Commissioner may give advice and information to Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of – 30

(a) any consultation of the kind mentioned in subsection (1) or (2) of section 65 of the Criminal Justice and Immigration Act 2008; or

(b) any co-operation under subsection (3) of that section.” 35

*Freedom of Information Act 2000 (c. 36)*

6 (1) In section 76(1) of the Freedom of Information Act 2000 (disclosure of information between Information Commissioner and ombudsmen) in the Table at the appropriate place insert –

“Her Majesty’s Commissioner for Offender Management and Prisons.	Part 4 of the Criminal Justice and Immigration Act 2008.”	40
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- (2) In Part 6 of Schedule 1 to that Act (public authorities) at the appropriate place insert “Her Majesty’s Commissioner for Offender Management and Prisons”.

*Scottish Public Services Ombudsman Act 2002 (asp 11)*

- 7 (1) Section 19 of the Scottish Public Services Ombudsman Act 2002 (asp 11) (restrictions on disclosure of information) is amended as follows. 5
- (2) In subsection (2), after paragraph (a) insert –
- “(aa) the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008; 10
- (ab) the purposes of any co-operation under subsection (3) of that section;”.
- (3) After subsection (8) insert –
- “(8A) Information which –
- (a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008 or for the purposes of any co-operation under subsection (3) of that section, and 15
- (b) is protected information within the meaning of section 65 of that Act, 20
- shall be treated for the purposes of subsections (1) and (5) as obtained in connection with any matter in respect of which a complaint or request has been made.” 25
- (4) In subsection (9), for “such information” substitute “information within subsection (8) or (8A)”.

*Public Services Ombudsman (Wales) Act 2005 (c. 10)*

- 8 (1) Section 26 of the Public Services Ombudsman (Wales) Act 2005 (disclosure of information) is amended as follows. 30
- (2) In subsection (1), after paragraph (ba) insert –
- “(bb) protected information (within the meaning of section 65 of the Criminal Justice and Immigration Act 2008) obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in section 63(1) or (2) of that Act or for the purposes of any co-operation under section 63(3) of that Act;” 35
- (3) In subsection (2), after paragraph (e) insert –
- “(ea) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 63 of the Criminal Justice and Immigration Act 2008 or for the purposes of any co-operation under subsection (3) of that section;” 40
- (4) In subsection (6), for “or (b)” substitute “, (b) or (bb)”.



SCHEDULE 13

Section 71

CONTROLLING AUTHORITIES FOR PURPOSES OF PART 4

The Secretary of State.

Governors and directors of prisons, young offender institutions and secure training centres in England and Wales. 5

Persons with whom the Secretary of State has made arrangements under section 80 of the Criminal Justice Act 1991 (c. 53) or other relevant contractors.

An independent monitoring board under section 6 of the Prison Act 1952 (c. 52). 10

The Youth Justice Board.

Local probation boards.

Organisations with which a local probation board has made arrangements of the kind mentioned in section 5(2)(a) of the Criminal Justice and Court Services Act 2000 (c. 43). 15

Providers of probation services whose arrangements under section 3(2) of the Offender Management Act 2007 provide for them to be controlling authorities for the purposes of this Part.

Persons with whom a provider of probation services has made arrangements of the kind mentioned in section 3(3)(c)(i) of the Offender Management Act 2007. 20

Managers of removal centres (within the meaning of Part 8 of the Immigration and Asylum Act 1999 (c. 33)).

Managers of short-term holding facilities (within the meaning of Part 8 of the Immigration and Asylum Act 1999). 25

Persons with whom the Secretary of State has made arrangements under section 156 of the Immigration and Asylum Act 1999.

A visiting committee under section 152 of the Immigration and Asylum Act 1999.

SCHEDULE 14

Section 74(5) 30

THE NORTHERN IRELAND COMMISSIONER FOR PRISON COMPLAINTS

*Appointment and removal from office*

- 1 Her Majesty may appoint a person to be the Commissioner.
- 2 (1) A person appointed as Commissioner shall hold office for such term, not exceeding five years, as may be specified in the terms of appointment. 35
- (2) At the end of that term the person concerned is eligible for re-appointment for a further period not exceeding five years.

- (3) A person may not be re-appointed for a third consecutive term unless, by reason of special conditions, such re-appointment is desirable in the public interest.
- 3 (1) The Commissioner may be relieved of office by Her Majesty at the Commissioner’s own request or removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament. 5
- (2) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed is incapable for medical reasons of performing the functions of that office.
- Remuneration, pensions and other benefits* 10
- 4 The Secretary of State shall pay the Commissioner such remuneration and such travelling and other allowances as the Secretary of State may determine.
- 5 The Secretary of State shall pay to or in respect of a person who holds or has held office as Commissioner such pension, allowances or gratuities as the Secretary of State may determine. 15
- Appointment of acting Commissioner*
- 6 (1) Where the office of Commissioner becomes vacant, the Secretary of State may appoint a person as acting Commissioner.
- (2) The power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with the day on which the vacancy arose. 20
- 7 (1) Any person holding office as acting Commissioner shall cease to hold that office –
- (a) on the appointment of a new Commissioner; or
- (b) at the end of the period of two years beginning with the day on which the vacancy arose. 25
- (2) Otherwise, a person appointed as acting Commissioner holds office in accordance with the terms of appointment.
- 8 A person holding office as acting Commissioner is to be treated for all purposes (apart from those of paragraphs 1 to 7) as the Commissioner. 30
- The Commissioner’s staff*
- 9 The Commissioner’s staff shall be provided by (or in pursuance of arrangements made by) the Secretary of State.
- Delegation of functions*
- 10 (1) Any function of the Commissioner may be performed on behalf of the Commissioner by an authorised member of staff (but only to the extent that the person concerned is authorised to do so). 35
- (2) In sub-paragraph (1) “authorised member of staff” means a member of the Commissioner’s staff who is authorised by the Commissioner to exercise that function. 40

*Advisers*

- 11 (1) The Commissioner may obtain advice to assist in the performance of any of the Commissioner’s functions from any person who appears to the Commissioner to be qualified to give it.
- (2) The Commissioner may pay fees or allowances to any person in relation to the provision of advice under this paragraph. 5

*Annual and other reports*

- 12 (1) The Commissioner –
- (a) shall publish a general report on the performance of the Commissioner’s functions during each year (an “annual report”); 10
  - (b) may publish other reports with respect to those functions.
- (2) An annual report must be published as soon as may be practicable after the end of the year to which it relates.
- (3) The Commissioner shall send a copy of each report under this paragraph to the Secretary of State. 15
- (4) The Secretary of State shall lay before Parliament –
- (a) a copy of each annual report,
  - (b) a copy of any other report under this paragraph which is sent with a request for it to be so laid,
- and shall do so as soon as practicable after receiving a copy of the report concerned. 20

SCHEDULE 15

Section 75(2)

THE NORTHERN IRELAND COMMISSIONER’S COMPLAINTS REMIT

PART 1

THE SPECIFIED MATTERS 25

- 1 Any matter relating to the way in which a person has been treated at any applicable premises while being held there.
- 2 Any matter relating to the way in which a person has been treated by prison officers or prisoner custody officers while in their custody, or under their control or escort, anywhere in the world. 30
- 3 Any matter relating to the exercise, in relation to a person who has been charged with or convicted of an offence, of any statutory function of the Secretary of State relating to applicable premises or persons held there.

PART 2

SUPPLEMENTARY 35

- 4 In this Schedule, “statutory function” means functions conferred by or under any Act or by or under Northern Ireland legislation (including, in the case of

prison officers, functions exercisable by virtue of section 8 of the Prison Act (Northern Ireland) 1953 (N.I. 18)).

- |   |  |   |
|---|--|---|
| 5 | The matters covered by paragraph 2 include matters affecting a person who has been charged with and convicted of an offence which relate to the exercise of the statutory functions of a prison officer or a prison custody officer. | 5 |
| 6 | In paragraph 3 the references to the Secretary of State are references to the Secretary of State having responsibility for prisons in Northern Ireland.  |   |

#### SCHEDULE 16

Section 80(2)

##### THE NORTHERN IRELAND COMMISSIONER’S DEATHS REMIT

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- |   |  |    |
|---|--|----|
| 1 | A death of a person at any applicable premises while being held there.   |    |
| 2 | A death of a person while in the custody, or under the control or escort, of prison officers or prisoner custody officers anywhere in the world. |    |
| 3 | A death of a person which the Commissioner is satisfied should be investigated because it is or may be linked to events which have occurred –    | 15 |
|   | (a) at any applicable premises while that person was being held there; or  |    |
|   | (b) while that person was in the custody, or under the control or escort, of prison officers or prisoner custody officers anywhere in the world. |    |

#### SCHEDULE 17

Section 95(1)

##### CONTROLLING AUTHORITIES FOR PURPOSES OF PART 5

20

The Secretary of State.

Governors of prisons, young offender centres and remand centres in Northern Ireland.

An independent monitoring board appointed under section 10 of the Prisons Act (Northern Ireland) 1953 (N.I. 18).

25

Persons with whom the Secretary of State has made arrangements under section 118 of the Criminal Justice and Public Order Act 1994 (c. 33).

#### SCHEDULE 18

Section 98

##### ALTERNATIVES TO PROSECUTION FOR PERSONS UNDER 18

- |   |   |    |
|---|---|----|
| 1 | The Crime and Disorder Act 1998 (c. 37) has effect subject to the following amendments. | 30 |
| 2 | (1) Section 65 (reprimands and warnings) is amended as follows.                         |    |
|   | (2) In subsection (1) –   |    |

- (a) for paragraph (b) substitute –
    - “(b) the constable considers that there is sufficient evidence to charge the offender with the offence;”,
  - (b) in paragraph (d), after “an offence” insert “or given a youth conditional caution in respect of an offence”, and 5
  - (c) for paragraph (e) substitute “the constable does not consider that the offender should be prosecuted or given a youth conditional caution.”
- (3) In subsection (3)(b) after “to be brought” insert “or a youth conditional caution to be given”.
- (4) In subsection (6), in paragraph (a)(i) after “to be brought” insert “or a youth conditional caution to be given”. 10
- (5) In subsection (7) for “In this section” substitute “In this Chapter”.
- (6) For subsection (8) (cautions not to be given to children or young persons) substitute –
- “(8) No caution, other than a youth conditional caution, shall be given to a child or young person.” 15
- 3 After section 66 insert –

*“Youth conditional cautions*

**66A Youth conditional cautions for offenders aged 16 or 17**

- (1) An authorised person may give a youth conditional caution to a young person aged 16 or 17 (“the offender”) if – 20
- (a) the offender has not previously been convicted of an offence, and
  - (b) each of the five requirements in section 66B is satisfied.
- (2) In this Chapter, “youth conditional caution” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply. 25
- (3) The conditions which may be attached to such a caution are those which have one or more of the following objects – 30
- (a) facilitating the rehabilitation of the offender;
  - (b) ensuring that the offender makes reparation for the offence;
  - (c) punishing the offender.
- (4) The conditions that may be attached to a youth conditional caution include – 35
- (a) (subject to section 66C) a condition that the offender pay a financial penalty;
  - (b) a condition that the offender attend at a specified place at specified times.
- “Specified” means specified by a relevant prosecutor. 40
- (5) Conditions attached by virtue of subsection (4)(b) may not require the offender to attend for more than 20 hours in total, not including any attendance required by conditions attached for the purpose of facilitating the offender’s rehabilitation.

- (6) The Secretary of State may by order amend subsection (5) by substituting a different figure.
- (7) In this section, “authorised person” means –
- (a) a constable,
  - (b) an investigating officer, or
  - (c) a person authorised by a relevant prosecutor for the purposes of this section.

5

**66B The five requirements**

- (1) The first requirement is that the authorised person has evidence that the offender has committed an offence.
- (2) The second requirement is that a relevant prosecutor decides –
- (a) that there is sufficient evidence to charge the offender with the offence, and
  - (b) that a youth conditional caution should be given to the offender in respect of the offence.
- (3) The third requirement is that the offender admits to the authorised person that he committed the offence.
- (4) The fourth requirement is that the authorised person explains the effect of the youth conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.
- (5) If the offender is aged 16, the explanation and warning mentioned in subsection (4) must be given in the presence of an appropriate adult.
- (6) The fifth requirement is that the offender signs a document which contains –
- (a) details of the offence,
  - (b) an admission by him that he committed the offence,
  - (c) his consent to being given the youth conditional caution, and
  - (d) the conditions attached to the caution.

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**66C Financial penalties**

- (1) A condition that the offender pay a financial penalty (a “financial penalty condition”) may not be attached to a youth conditional caution given in respect of an offence unless the offence is one that is prescribed, or of a description prescribed, in an order made by the Secretary of State.
- (2) An order under subsection (1) must prescribe, in respect of each offence or description of offence in the order, the maximum amount of the penalty that may be specified under subsection (5)(a).
- (3) The amount that may be prescribed in respect of any offence must not exceed £100.
- (4) The Secretary of State may by order amend subsection (3) by substituting a different figure.
- (5) Where a financial penalty condition is attached to a youth conditional caution, a relevant prosecutor must also specify –

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35

40

- (a) the amount of the penalty; and
    - (b) the person to whom the financial penalty is to be paid and how it may be paid.
  - (6) To comply with the condition, the offender must pay the penalty in accordance with the provision specified under subsection (5)(b). 5
  - (7) Where a financial penalty is (in accordance with the provision specified under subsection (5)(b)) paid to a person other than a designated officer for a local justice area, the person to whom it is paid must give the payment to such an officer.
- 66D Variation of conditions** 10
- A relevant prosecutor may, with the consent of the offender, vary the conditions attached to a youth conditional caution by –
- (a) modifying or omitting any of the conditions;
  - (b) adding a condition.
- 66E Failure to comply with conditions** 15
- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the youth conditional caution, criminal proceedings may be instituted against the person for the offence in question.
  - (2) The document mentioned in section 66B(6) is to be admissible in such proceedings. 20
  - (3) Where such proceedings are instituted, the youth conditional caution is to cease to have effect.
  - (4) Section 24A(1) of the Criminal Justice Act 2003 (“the 2003 Act”) applies in relation to the conditions attached to a youth conditional caution as it applies in relation to the conditions attached to a conditional caution (within the meaning of Part 3 of that Act). 25
  - (5) Sections 24A(2) to (9) and 24B of the 2003 Act apply in relation to a person who is arrested under section 24A(1) of that Act by virtue of subsection (4) above as they apply in relation to a person who is arrested under that section for failing to comply with any of the conditions attached to a conditional caution (within the meaning of Part 3 of that Act). 30
- 66F Restriction on sentencing powers where youth conditional caution given** 35
- Where a person who has been given a youth conditional caution is convicted of an offence committed within two years of the giving of the caution, the court by or before which the person is so convicted –
- (a) may not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its doing so; and 40
  - (b) where it does make such an order, must state in open court that it is of that opinion and why it is. 45

**66G Code of practice on youth conditional cautions**

- (1) The Secretary of State must prepare a code of practice in relation to youth conditional cautions.
- (2) The code may, in particular, make provision as to –
- (a) the circumstances in which youth conditional cautions may be given, 5
  - (b) the procedure to be followed in connection with the giving of such cautions,
  - (c) the conditions which may be attached to such cautions and the time for which they may have effect, 10
  - (d) the category of constable or investigating officer by whom such cautions may be given,
  - (e) the persons who may be authorised by a relevant prosecutor for the purposes of section 66A,
  - (f) the form which such cautions are to take and the manner in which they are to be given and recorded, 15
  - (g) the places where such cautions may be given,
  - (h) the provision which may be made by a relevant prosecutor under section 66C(5)(b),
  - (i) the monitoring of compliance with conditions attached to such cautions, 20
  - (j) the exercise of the power of arrest conferred by section 24A(1) of the Criminal Justice Act 2003 (c. 44) as it applies by virtue of section 66E(4),
  - (k) who is to decide how a person should be dealt with under section 24A(2) of that Act as it applies by virtue of section 66E(5). 25
- (3) After preparing a draft of the code the Secretary of State –
- (a) must publish the draft,
  - (b) must consider any representations made to him about the draft, and 30
  - (c) may amend the draft accordingly,
- but he may not publish or amend the draft without the consent of the Attorney General.
- (4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament. 35
- (5) When he has done so he may bring the code into force by order.
- (6) The Secretary of State may from time to time revise a code of practice brought into force under this section.
- (7) Subsections (3) to (6) are to apply (with appropriate modifications) to a revised code as they apply to an original code. 40

*Interpretation of Chapter 1***66H Interpretation**

In this Chapter –

- (a) “appropriate adult” has the meaning given by section 65(7); 45



- (b) “authorised person” has the meaning given by section 66A(7);
- (c) “investigating officer” means an officer of Revenue and Customs, appointed in accordance with section 2(1) of the Commissioners for Revenue and Customs Act 2005, or a person designated as an investigating officer under section 38 of the Police Reform Act 2002 (c. 30); 5
- (d) “the offender” has the meaning given by section 66A(1);
- (e) “relevant prosecutor” means – 10
- (i) the Attorney General,
  - (ii) the Director of the Serious Fraud Office,
  - (iii) the Director of Revenue and Customs Prosecutions,
  - (iv) the Director of Public Prosecutions,
  - (v) a Secretary of State, or
  - (vi) a person who is specified in an order made by the Secretary State as being a relevant prosecutor for the purposes of this Chapter; 15
- (f) “youth conditional caution” has the meaning given by section 66A(2).”
- 4 (1) Section 114 (orders and regulations) is amended as follows. 20
- (2) In subsection (2) (which specifies orders that are subject to annulment in pursuance of a resolution of either House of Parliament), for “or 10(6)” substitute “10(6), 66C(1), 66G(5) or 66H(e)(vi)”.
- (3) After subsection (2) insert –
- “(2A) Subsection (2) also applies to a statutory instrument containing an order under section 66C(4) unless the order makes provision of the kind mentioned in subsection (3A) below.” 25
- (4) In subsection (3) (which specifies orders that may not be made unless a draft has been approved by a resolution of each House of Parliament) after “41(6)” insert “, 66A(6)”. 30
- (5) After subsection (3) insert –
- “(3A) Subsection (3) also applies to an order under section 66C(4) which makes provision increasing the figure in section 66C(3) by more than is necessary to reflect changes in the value of money.” 35

## SCHEDULE 19

Section 99

### PROTECTION FOR SPENT CAUTIONS UNDER THE REHABILITATION OF OFFENDERS ACT 1974

- 1 The Rehabilitation of Offenders Act 1974 (c. 53) is amended as follows.
- 2 In section 6(6) for “the Schedule” substitute “Schedule 1”.

3 After section 8 (defamation actions) there is inserted –

**“8A Protection afforded to spent cautions**

- (1) Schedule 2 to this Act (protection for spent cautions) shall have effect.
- (2) In this Act “caution” means – 5
- (a) a conditional caution, that is to say, a caution given under section 22 of the Criminal Justice Act 2003 (c. 44) (conditional cautions for adults) or under section 66A of the Crime and Disorder Act 1998 (c. 37) (conditional cautions for persons aged 16 or 17); 10
  - (b) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted;
  - (c) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18); 15
  - (d) anything corresponding to a caution, reprimand or warning falling within paragraphs (a) to (c) (however described) which is given to a person in respect of an offence under the law of a country outside England and Wales.” 20

4 After section 9 (unauthorised disclosure of spent convictions) insert –

**“9A Unauthorised disclosure of spent cautions**

- (1) In this section –
- (a) “official record” means a record which – 25
    - (i) contains information about persons given a caution for any offence or offences; and
    - (ii) is kept for the purposes of its functions by any court, police force, Government department or other public authority in England and Wales;
  - (b) “caution information” means information imputing that a named or otherwise identifiable living person (“the named person”) has committed, been charged with or prosecuted or cautioned for any offence which is the subject of a spent caution; and 30
  - (c) “relevant person” means any person who, in the course of his official duties (anywhere in the United Kingdom), has or at any time has had custody of or access to any official record or the information contained in it. 35
- (2) Subject to the terms of any order made under subsection (5), a relevant person shall be guilty of an offence if, knowing or having reasonable cause to suspect that any caution information he has obtained in the course of his official duties is caution information, he discloses it, otherwise than in the course of those duties, to another person. 40
- (3) In any proceedings for an offence under subsection (2) it shall be a defence for the defendant to show that the disclosure was made – 45
- (a) to the named person or to another person at the express request of the named person;

- (b) to a person whom he reasonably believed to be the named person or to another person at the express request of a person whom he reasonably believed to be the named person.
- (4) Any person who obtains any caution information from any official record by means of any fraud, dishonesty or bribe shall be guilty of an offence. 5
- (5) The Secretary of State may by order make such provision as appears to him to be appropriate for excepting the disclosure of caution information derived from an official record from the provisions of subsection (2) in such cases or classes of case as may be specified in the order. 10
- (6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 51 weeks, or to both. 15
- (8) Proceedings for an offence under subsection (2) shall not be instituted except by or on behalf of the Director of Public Prosecutions.” 20
- 5 The Schedule (service disciplinary proceedings) is re-numbered as Schedule 1.
- 6 After that Schedule insert –

“SCHEDULE 2 25

PROTECTION FOR SPENT CAUTIONS

*Preliminary*

- 1 (1) For the purposes of this Schedule a caution shall be regarded as a spent caution –
- (a) in the case of a conditional caution (as defined in section 8A(2)(a)), at the end of the relevant period for the caution; 30
- (b) in any other case, at the time the caution is given.
- (2) In sub-paragraph (1)(a) “the relevant period for the caution” means (subject to sub-paragraph (3)) the period of three months from the date on which the conditional caution was given. 35
- (3) If the person concerned is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given –
- (a) the relevant period for the caution shall end at the same time as the rehabilitation period for the offence; and 40
- (b) if the conviction occurs after the end of the period mentioned in sub-paragraph (1)(a), the caution shall be treated for the purposes of this Schedule as not having become spent in relation to any period before the end of the rehabilitation period for the offence. 45

- 2 (1) In this Schedule “ancillary circumstances”, in relation to a caution, means any circumstances of the following –
- (a) the offence which was the subject of the caution or the conduct constituting that offence;
  - (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution); 5
  - (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end); 10
  - (d) any judicial review proceedings relating to the caution;
  - (e) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (c. 37), anything done in pursuance of or undergone in compliance with a requirement to participate in a rehabilitation programme under section 66(2) of that Act; 15
  - (f) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions. 20
- (2) Where the caution relates to two or more offences, references in sub-paragraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.
- (3) In this Schedule “proceedings before a judicial authority” has the same meaning as in section 4. 25

*Protection relating to spent cautions and ancillary circumstances*

- 3 (1) A person who is given a caution for an offence shall, from the time the caution is spent, be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and notwithstanding the provisions of any other enactment or rule of law to the contrary – 30
- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed, been charged with or prosecuted for, or been given a caution for the offence; and 35
  - (b) a person shall not, in any such proceedings, be asked and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances. 40
- (2) Nothing in sub-paragraph (1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution.
- (3) Where a question seeking information with respect to a person’s previous cautions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority – 45

- (a) the question shall be treated as not relating to spent cautions or to any ancillary circumstances, and the answer may be framed accordingly; and
    - (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent caution or any ancillary circumstances in his answer to the question. 5
  - (4) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent caution or any ancillary circumstances (whether the caution is his own or another's). 10
  - (5) A caution which has become spent or any ancillary circumstances, or any failure to disclose such a caution or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment. 15
  - (6) This paragraph has effect subject to paragraphs 4 to 6.
- 4 The Secretary of State may by order –
- (a) make provision for excluding or modifying the application of either or both of paragraphs (a) or (b) of paragraph 3(2) in relation to questions put in such circumstances as may be specified in the order; 20
  - (b) provide for exceptions from the provisions of subparagraphs (4) and (5) of paragraph 3, in such cases or classes of case, and in relation to cautions of such a description, as may be specified in the order. 25
- 5 Nothing in paragraph 3 affects –
- (a) the operation of the caution in question; or
  - (b) the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect, the period of which extends beyond the rehabilitation period applicable to the caution. 30
- 6 (1) Section 7(2), (3) and (4) apply for the purposes of this Schedule as follows. 35
- (2) Subsection (2) (apart from paragraphs (b) and (d)) applies to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto. 40
  - (3) Subsection (3) applies to evidence of a person's previous cautions and ancillary circumstances as it applies to evidence of a person's convictions and the circumstances ancillary thereto; and for this purpose subsection (3) shall have effect as if – 45
    - (a) any reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph; and

- (b) the words “or proceedings to which section 8 below applies” were omitted.
- (4) Subsection (4) applies for the purpose of excluding the application of paragraph 3(1); and for that purpose subsection (4) shall have effect as if the words “(other than proceedings to which section 8 below applies)” were omitted. 5
- (5) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3(1).”

## SCHEDULE 20

Section 101

- ELECTRONIC MONITORING OF PERSONS RELEASED ON BAIL SUBJECT TO CONDITIONS 10
- 1 The Bail Act 1976 (c. 63) has effect subject to the following amendments.
- 2 In section 3 (general provisions) for subsection (6ZAA) substitute –
- “(6ZAA) The requirements which may be imposed under subsection (6) include electronic monitoring requirements. 15  
The imposition of electronic monitoring requirements is subject to section 3AA (in the case of a child or young person), section 3AB (in the case of other persons) and section 3AC (in all cases).
- (6ZAB) In this section and sections 3AA to 3AC “electronic monitoring requirements” means requirements imposed for the purpose of securing the electronic monitoring of a person’s compliance with any other requirement imposed on him as a condition of bail.” 20
- 3 (1) Section 3AA (electronic monitoring of compliance with bail conditions) is amended as follows.
- (2) In the heading to the section, for “Electronic monitoring of compliance with bail conditions” substitute “Conditions for the imposition of electronic monitoring requirements: children and young persons”. 25
- (3) For subsection (1) substitute –
- “(1) A court may not impose electronic monitoring requirements on a child or young person unless each of the following conditions is met.” 30
- (4) For subsection (4) substitute –
- “(4) The third condition is that the court is satisfied that the necessary provision for dealing with the person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.”” 35
- (5) In subsection (5), for “such a requirement” substitute “electronic monitoring requirements”.
- (6) Subsections (6) to (10) and (12) (which are superseded by section 3AC) are omitted. 40

4 After section 3AA insert –

**“3AB Conditions for the imposition of electronic monitoring requirements:  
other persons**

- (1) A court may not impose electronic monitoring requirements on a person who has attained the age of seventeen unless each of the following conditions is met. 5
- (2) The first condition is that the court is satisfied that without the electronic monitoring requirements the person would not be granted bail.
- (3) The second condition is that the court is satisfied that the necessary provision for dealing with the person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area. 10
- (4) If the person is aged seventeen, the third condition is that a youth offending team has informed the court that in its opinion the imposition of electronic monitoring requirements will be suitable in his case. 15

**3AC Electronic monitoring: general provisions**

- (1) Where a court imposes electronic monitoring requirements as a condition of bail, the requirements must include provision for making a person responsible for the monitoring. 20
- (2) A person may not be made responsible for the electronic monitoring of a person on bail unless he is of a description specified in an order made by the Secretary of State. 25
- (3) The Secretary of State may make rules for regulating –
  - (a) the electronic monitoring of persons on bail;
  - (b) without prejudice to the generality of paragraph (a), the functions of persons made responsible for such monitoring.
- (4) The rules may make different provision for different cases. 30
- (5) Any power of the Secretary of State to make an order or rules under this section is exercisable by statutory instrument.
- (6) A statutory instrument containing rules under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (7) For the purposes of section 3AA or 3AB a local justice area is a relevant area in relation to a proposed electronic monitoring requirement if the court considers that it will not be practicable to secure the electronic monitoring in question unless electronic monitoring arrangements are available in that area. 40
- (8) Nothing in sections 3, 3AA or 3AB is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of persons released on bail.”

## SCHEDULE 21

Section 102

## BAIL FOR SUMMARY OFFENCES AND CERTAIN OTHER OFFENCES TO BE TRIED SUMMARILY

- 1 The Bail Act 1976 (c. 63) is amended as follows.
- 2 In section 3(6D)(a) (condition to be imposed on person in relation to whom paragraph 6B(1)(a) to (c) of Part 1 of Schedule 1 to that Act apply), after “apply” insert “(including where P is a person to whom the provisions of Part 1A of Schedule 1 apply)”. 5
- 3 After section 9 (offence of agreeing to indemnify sureties in criminal proceedings) insert –
- “9A Bail decisions relating to persons aged under 18 who are accused of offences mentioned in Schedule 2 to the Magistrates’ Courts Act 1980”** 10
- (1) This section applies whenever –
- (a) a magistrates’ court is considering whether to withhold or grant bail in relation to a person aged under 18 who is accused of a scheduled offence; and 15
- (b) the trial of that offence has not begun.
- (2) The court shall, before deciding whether to withhold or grant bail, consider whether, having regard to any representations made by the prosecutor or the accused person, the value involved does not exceed the relevant sum for the purposes of section 22. 20
- (3) The duty in subsection (2) does not apply in relation to an offence if –
- (a) a determination under subsection (4) has already been made in relation to that offence; or
- (b) the accused person is, in relation to any other offence of which he is accused which is not a scheduled offence, a person to whom Part 1 of Schedule 1 to this Act applies. 25
- (4) If where the duty in subsection (2) applies it appears to the court clear that, for the offence in question, the amount involved does not exceed the relevant sum, the court shall make a determination to that effect. 30
- (5) In this section –
- (a) “relevant sum” has the same meaning as in section 22(1) of the Magistrates’ Courts Act 1980 (certain either way offences to be tried summarily if value involved is less than the relevant sum); 35
- (b) “scheduled offence” means an offence mentioned in Schedule 2 to that Act (offences for which the value involved is relevant to the mode of trial); and
- (c) “the value involved” is to be construed in accordance with section 22(10) to (12) of that Act.” 40



- 4 Schedule 1 (persons entitled to bail: supplementary provisions) is amended as follows.
- 5 (1) Paragraph 1 (defendants to whom Part 1 applies) becomes sub-paragraph (1) of that paragraph.
- (2) In that sub-paragraph at the beginning insert “Subject to sub-paragraph (2),”.
- (3) After that sub-paragraph insert—
- “*(2) But those provisions do not apply by virtue of sub-paragraph (1)(a) if the offence, or each of the offences punishable with imprisonment, is—*
- (a) a summary offence; or
- (b) an offence mentioned in Schedule 2 to the Magistrates’ Courts Act 1980 (offences for which the value involved is relevant to the mode of trial) in relation to which—
- (i) a determination has been made under section 22(2) of that Act (certain either way offences to be tried summarily if value involved is less than the relevant sum) that it is clear that the value does not exceed the relevant sum for the purposes of that section; or
- (ii) a determination has been made under section 9A(4) of this Act to the same effect.”

6 After Part 1 insert—

“PART 1A

DEFENDANTS ACCUSED OR CONVICTED OF IMPRISONABLE OFFENCES TO WHICH  
PART 1 DOES NOT APPLY

*Defendants to whom Part 1A applies*

- 1 The following provisions of this Part apply to the defendant if—
- (a) the offence or one of the offences of which he is accused or convicted is punishable with imprisonment, but
- (b) Part 1 does not apply to him by virtue of paragraph 1(2) of that Part.

*Exceptions to right to bail*

- 2 The defendant need not be granted bail if—
- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and
- (b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.
- 3 The defendant need not be granted bail if—
- (a) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence; and

- (b) 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.
- 4 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 commit an offence while on bail by engaging in conduct that would, or would be likely to, cause – 5
- (a) physical or mental injury to any person other than the defendant; or 10
- (b) any person other than the defendant to fear physical or mental injury.
- 5 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. 15
- 6 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.
- 7 The defendant need not be granted bail if – 20
- (a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and
- (b) 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 fail to surrender to custody, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person). 25
- 8 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. 30
- Application of paragraphs 6A to 6C of Part 1* 35
- 9 Paragraphs 6A to 6C of Part 1 (exception applicable to drug users in certain areas and related provisions) apply to a defendant to whom this Part applies as they apply to a defendant to whom that Part applies.”

## SCHEDULE 22

Section 103

40

## ALLOCATION OF CASES TRIABLE EITHER WAY ETC.

- 1 Schedule 3 to the Criminal Justice Act 2003 (c. 44) (allocation of cases triable either way, and sending cases to the Crown Court etc.) has effect subject to the following amendments.

- 
- 2 In paragraph 2, in the paragraph set out in sub-paragraph (2), after “committed” insert “for sentence”.
- 3 In paragraph 6, for subsection (2)(c) of the section set out in that paragraph substitute –
- “(c) that if he is tried summarily and is convicted by the court, he may be committed for sentence to the Crown Court under section 3 or (if applicable) section 3A of the Powers of Criminal Courts (Sentencing) Act 2000 if the court is of such opinion as is mentioned in subsection (2) of the applicable section.”
- 4 In paragraph 8, in sub-paragraph (2)(a) for “trial on indictment” substitute “summary trial”.
- 5 (1) Paragraph 9 is amended as follows.
- (2) In sub-paragraph (3) after “(1A)” insert “, (1B)”.
- (3) After sub-paragraph (3) insert –
- “(4) In subsection (3) for “the said Act of 2000” substitute “the Powers of Criminal Courts (Sentencing) Act 2000”.”
- 6 Paragraph 13 is omitted.
- 7 Paragraph 22 is omitted.
- 8 Before paragraph 23 insert –
- “22A(1) Section 3 (committal for sentence on summary trial of offence triable either way) is amended as follows.
- (2) In subsection (2) –
- (a) in paragraph (a) for the words from “greater punishment” to the end of the paragraph substitute “the Crown Court should, in the court’s opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment”, and
- (b) omit paragraph (b) (and the word “or” immediately preceding it).
- (3) In subsection (4), after “section” insert “17D or”.
- (4) In subsection (5), in paragraph (b) omit the words “paragraph (b) and”.”
- 9 In paragraph 23, in subsection (5) of the first of the sections inserted by that paragraph (section 3A), for “a specified offence” substitute “an offender convicted of a specified offence”.
- 10 In paragraph 24 after sub-paragraph (4) insert –
- “(4A) In subsection (2) for “committed” substitute “sent”.”

## SCHEDULE 23

Section 117

## SPECIAL RULES RELATING TO PROVIDERS OF INFORMATION SOCIETY SERVICES

*Domestic service providers: extension of liability*

- 1 (1) This paragraph applies where a service provider is established in England and Wales or Northern Ireland (a “domestic service provider”). 5
- (2) Section 113(1) applies to a domestic service provider who –
- (a) is in possession of an extreme pornographic image in an EEA state other than the United Kingdom, and
  - (b) is in possession of it there in the course of providing information society services, 10
- as well as to persons (of any description) who are in possession of such images in England and Wales or Northern Ireland.
- (3) In the case of an offence under section 113, as it applies to a domestic service provider by virtue of sub-paragraph (2) –
- (a) proceedings for the offence may be taken at any place in England and Wales or Northern Ireland, and 15
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (4) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 3 to 5. 20

*Non-UK service providers: restriction on institution of proceedings*

- 2 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a “non-UK service provider”).
- (2) Proceedings for an offence under section 113 may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied. 25
- (3) The derogation condition is satisfied where the institution of proceedings –
- (a) is necessary for the purposes of the public interest objective;
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective; and 30
  - (c) is proportionate to that objective.
- (4) “The public interest objective” means the pursuit of public policy.

*Exceptions for mere conduits*

- 3 (1) A service provider is not capable of being guilty of an offence under section 113 in respect of anything done in the course of providing so much of an information society service as consists in – 35
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service, 40
- if the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that the service provider does not –

- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1) –
- (a) the provision of access to a communication network, and 5
  - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission. 10

*Exception for caching*

- 4 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service. 15
- (2) The service provider is not capable of being guilty of an offence under section 113 in respect of the automatic, intermediate and temporary storage of information so provided, if –
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and 20
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider –
- (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and 25
  - (c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that – 30
- (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information. 35

*Exception for hosting*

- 5 (1) A service provider is not capable of being guilty of an offence under section 113 in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if – 40
- (a) the service provider had no actual knowledge when the information was provided that it contained offending material, or
  - (b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it. 45

- (2) “Offending material” means material the possession of which constitutes an offence under section 113.
- (3) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

5

- 6 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Extreme pornographic image” has the same meaning as in section 113.
- (3) “Information society services” –
- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and 10
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”; 15
- and “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). 20
- (4) “Recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible. 25
- (5) “Service provider” means a person providing an information society service.
- (6) For the purpose of construing references in this Schedule to a service provider who is established in a part of the United Kingdom or in some other EEA state –
- (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider – 30
- (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
- (ii) is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty; 35
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service. 40

SCHEDULE 24

Section 122

SEXUAL OFFENCES: GROOMING AND ADOPTION

*Meeting a child following sexual grooming*

- 1 In section 15(1) of the Sexual Offences Act 2003 (c. 42) (meeting a child following sexual grooming etc) for paragraphs (a) and (b) substitute – 5
- “(a) A has met or communicated with another person (B) on at least two occasions and subsequently –
- (i) A intentionally meets B,
- (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or 10
- (iii) B travels with the intention of meeting A in any part of the world,
- (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence.” 15

*Adoption*

- 2 The Sexual Offences Act 2003 has effect subject to the following amendments. 20
- 3 In section 27(1)(b) (family relationships) after “but for” insert “section 39 of the Adoption Act 1976 or”.
- 4 In section 29(1)(b) (sections 25 and 26: sexual relationships which pre-date family relationships) after “if” insert “section 39 of the Adoption Act 1976 or”. 25
- 5 (1) Section 64 (sex with an adult relative: penetration) is amended as follows.
- (2) In subsection (1) after “(A)” insert “(subject to subsection (3A))”.
- (3) In subsection (3) after “In subsection (2) –” insert –
- “(za) “parent” includes an adoptive parent;
- (zb) “child” includes an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002;”. 30
- (4) After that subsection insert –
- “(3A) Where subsection (1) applies in a case where A is related to B as B’s child by virtue of subsection (3)(zb), A does not commit an offence under this section unless A is 18 or over.” 35
- (5) After subsection (5) insert –
- “(6) Nothing in –
- (a) section 47 of the Adoption Act 1976 (which disapplies the status provisions in section 39 of that Act for the purposes of this section in relation to adoptions before 30 December 2005), or 40

- (b) section 74 of the Adoption and Children Act 2002 (which disapplies the status provisions in section 67 of that Act for those purposes in relation to adoptions on or after that date), is to be read as preventing the application of section 39 of the Adoption Act 1976 or section 67 of the Adoption and Children Act 2002 for the purposes of subsection (3)(za) and (zb) above.” 5
- 6 (1) Section 65 (sex with an adult relative: consenting to penetration) is amended as follows.
- (2) In subsection (1) after “(A)” insert “(subject to subsection (3A))”.
- (3) In subsection (3) after “In subsection (2) –” insert – 10
- “(za) “parent” includes an adoptive parent;
- “(zb) “child” includes an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002;”.
- (4) After that subsection insert –
- “(3A) Where subsection (1) applies in a case where A is related to B as B’s child by virtue of subsection (3)(zb), A does not commit an offence under this section unless A is 18 or over.” 15
- (5) After subsection (5) insert –
- “(6) Nothing in –
- (a) section 47 of the Adoption Act 1976 (which disapplies the status provisions in section 39 of that Act for the purposes of this section in relation to adoptions before 30 December 2005), or 20
- (b) section 74 of the Adoption and Children Act 2002 (which disapplies the status provisions in section 67 of that Act for those purposes in relation to adoptions on or after that date), is to be read as preventing the application of section 39 of the Adoption Act 1976 or section 67 of the Adoption and Children Act 2002 for the purposes of subsection (3)(za) and (zb) above.” 25
- 7 In section 47(1) of the Adoption Act 1976 (c. 36) (disapplication of section 39 (status conferred by adoption) for the purposes of miscellaneous enactments) for “sections 10 and 11 (incest) of the Sexual Offences Act 1956” substitute “or sections 64 and 65 of the Sexual Offences Act 2003 (sex with an adult relative)”. 30



SCHEDULE 25

Section 124(4)

SCHEDULE TO THE STREET OFFENCES ACT 1959

“SCHEDULE

Section 1A(11)

ORDERS UNDER SECTION 1(2A): BREACH, AMENDMENT ETC.

PART 1

5

PRELIMINARY

*Interpretation and application*

- 1 (1) This Schedule applies to an order made under section 1(2A).
- (2) In this Schedule, in relation to the order –
  - “the offender” means the person in respect of whom the order was made; 10
  - “the supervisor” means the person for the time being specified as the supervisor in the order.
- (3) For the purposes of this Schedule, the offender fails to comply with an order if he fails to attend any meeting that he is required to attend at the time and place determined by the supervisor. 15

PART 2

BREACH OF REQUIREMENT OF ORDER

*Breach of requirement of order*

- 2 (1) If the supervisor is of the opinion that the offender has failed without reasonable excuse to comply with the order, the supervisor must cause an information to be laid before a justice of the peace in respect of the failure. 20
- (2) If it appears on information to the justice of the peace that the offender has failed to comply with the order, the justice may – 25
  - (a) issue a summons requiring the offender to appear at the place and time specified in it, or
  - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- (3) Any such summons or warrant must direct the offender to appear or be brought before – 30
  - (a) a youth court acting in the relevant local justice area, if the offender is under the age of 18, or
  - (b) a magistrates’ court (other than a youth court) acting in the relevant local justice area, if the offender is aged 18 or over. 35
- (4) In sub-paragraph (3) “the relevant local justice area” means –
  - (a) the local justice area for the time being specified in the order, or
  - (b) if it appears to the justice of the peace that the offender resides in another local justice area, that local justice area. 40

*Failure to answer to a summons*

- 3 (1) This paragraph applies where the offender does not appear in answer to a summons issued under paragraph 2.
- (2) The magistrates' court may issue a warrant for the arrest of the offender. 5
- (3) Any warrant issued under sub-paragraph (2) must require the offender to be brought before—
- (a) a youth court acting in the relevant local justice area, if the offender is under the age of 18, or
- (b) a magistrates' court (other than a youth court) acting in the relevant local justice area, if the offender is aged 18 or over. 10
- (4) In sub-paragraph (3) “the relevant local justice area” means—
- (a) the local justice area for the time being specified in the order, or
- (b) if it appears to the magistrates' court acting under sub-paragraph (2) that the offender resides in another local justice area, that local justice area. 15

*Powers of magistrates' court*

- 4 (1) This paragraph applies where—
- (a) the offender appears or is brought before a magistrates' court in accordance with this Part of this Schedule, and 20
- (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the order.
- (2) The court— 25
- (a) must revoke the order (if it remains in force), and
- (b) may deal with the offender in respect of the failure by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence. 30
- (3) In dealing with an offender under sub-paragraph (2)(b), the court must take into account the extent to which the offender has complied with the order.
- (4) A person sentenced under sub-paragraph (2)(b) may appeal to the Crown Court against the sentence. 35

## PART 3

## AMENDMENT OF ORDER

*Change of supervisor*

- 5 (1) Where the supervisor is unable to continue acting in that capacity, the supervisor, a constable or the offender may apply to the relevant magistrates' court to amend the order by specifying a different person to act as supervisor. 40

- (2) Where the court is satisfied that the supervisor is unable to continue acting, the court must –
- (a) amend the order by specifying a different person to act as supervisor, or
  - (b) if no such person is available, revoke the order. 5
- (3) Any person specified in the order by virtue of this paragraph must be a suitable person (within the meaning of section 1A(3)).
- (4) In this paragraph “the relevant magistrates’ court” means –
- (a) if the offender is under the age of 18, a youth court acting in the relevant local justice area, or 10
  - (b) if the offender is aged 18 or over, a magistrates’ court (other than a youth court) acting in the relevant local justice area.
- (5) In sub-paragraph (4) “the relevant local justice area” means –
- (a) the local justice area for the time being specified in the order, or 15
  - (b) if the offender resides in another local justice area, that local justice area.
- 6 (1) Where a court revokes an order under paragraph 5(2)(b), it may deal with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence (other than by making an order under section 1(2A)). 20
- (2) In dealing with an offender under sub-paragraph (1), the court must take into account the extent to which the offender has complied with the order. 25
- (3) A person sentenced under sub-paragraph (1) may appeal to the Crown Court against the sentence.

*Substitution of different local justice area*

- 7 (1) The offender or the supervisor may apply to the relevant magistrates’ court to amend the order by substituting another local justice area for the area specified in the order. 30
- (2) An application under sub-paragraph (1) may only be made if the offender resides or will reside in the other local justice area.
- (3) The relevant magistrates’ court may, and on the application of the supervisor must, amend the order by substituting the other local justice area for the area specified in the order. 35
- (4) Sub-paragraphs (4) and (5) of paragraph 5 apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

*Supplementary*

- 8 (1) Where the relevant magistrates’ court proposes to exercise its powers under paragraph 5, otherwise than on the application of the offender, it must summon the offender to appear before the 40

court and, if the offender does not appear in answer to the summons, may issue a warrant for the arrest of the offender.

- (2) An order may not be amended under this Part of this Schedule while an appeal against the order is pending.

## PART 4

5

## SUPPLEMENTARY

*Detention and remand of arrested offender*

- 9 (1) This paragraph applies where the offender is arrested in pursuance of a warrant under this Schedule and cannot be brought immediately before the court before which the warrant directs him to be brought (“the appropriate court”). 10
- (2) The person in whose custody the offender is –
- (a) may make arrangements for his detention for no more than 72 hours beginning with the time of his arrest, and
- (b) must within that period bring him before – 15
- (i) the appropriate court, or
- (ii) if it is not reasonably practicable to do so, before an alternative court.
- (3) In sub-paragraph (2)(b)(ii) “alternative court” means –
- (a) if the appropriate court is a youth court, any youth court, and 20
- (b) in any other case, any magistrates’ court other than a youth court.
- (4) If the offender is under the age of 18 at the time of his arrest, the arrangements made under sub-paragraph (2)(a) must be for his detention in a place of safety (within the meaning of the Children and Young Persons Act 1933). 25
- (5) A person who is detained in pursuance of arrangements made under sub-paragraph (2)(a) is deemed to be in legal custody.
- 10 (1) This paragraph applies where an offender appears or is brought before an alternative court under paragraph 9(2)(b)(ii). 30
- (2) The alternative court may direct that the offender is to be released forthwith or remand him to appear before the appropriate court (within the meaning of paragraph 9).
- (3) For the purposes of sub-paragraph (2), section 128 of the Magistrates’ Courts Act 1980 (c. 43) (remand in custody or on bail) applies as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court. 35
- (4) Any power to remand the offender in custody which is conferred by section 128 of the Magistrates’ Court Act 1980 (as modified by sub-paragraph (3)) is to be taken to be a power to remand the offender – 40

- (a) if he is under the age of 18, to accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989 (c. 41)), and
  - (b) if he is aged 18 or over, to a prison.
- (5) Where the court remands the offender to accommodation provided by or on behalf of a local authority, the court must designate, as the authority who are to receive him, the local authority for the area in which it appears that he resides or will reside. 5

*Adjournments* 10

- 11 (1) This paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in any proceedings under this Schedule.
- (2) The court may adjourn the hearing, and, where it does so, may –
- (a) direct that the offender be released forthwith, or 15
  - (b) remand the offender.
- (3) Where the court remands the offender under sub-paragraph (2) –
- (a) it must fix the time and place at which the hearing is to be resumed, and
  - (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand. 20
- (4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender –
- (a) it may fix the time and place at which the hearing is to be resumed, but 25
  - (b) if it does not do so, must not resume the hearing unless it is satisfied that the offender and, where appropriate, the supervisor have had adequate notice of the time and place for the resumed hearing. 30
- (5) The powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980 (c. 43).
- (6) This paragraph –
- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but 35
  - (b) is not to be taken to affect the application of that section to hearings of any other description. 40

*Notification*

- 12 (1) This paragraph applies where a court revokes or amends an order under any provision of this Schedule.
- (2) The proper officer must –

- (a) provide copies of the revoking or amending order to the offender and the supervisor,
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to a magistrates’ court acting for that area, and 5
- (c) if the court that revokes or amends the order is a magistrates’ court acting in a local justice area other than the area specified in the order, provide a copy of the revoking or amending order to a magistrates’ court acting in the local justice area specified in the order. 10
- (3) Where under sub-paragraph (2)(b) the proper officer provides a copy of an amending order to a magistrates’ court acting for a different area, the officer must also provide to that court such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of any function in relation to the order. 15
- (4) In this paragraph “proper officer” means the designated officer for the court.”

## SCHEDULE 26

Section 126

## HATRED ON THE GROUNDS OF SEXUAL ORIENTATION 20

- 1 Part 3A of the Public Order Act 1986 (c. 64) (hatred against persons on religious grounds) has effect subject to the following amendments.
- 2 In the heading for Part 3A at the end insert “OR GROUNDS OF SEXUAL ORIENTATION”.
- 3 In the italic cross-heading before section 29A at the end insert “*and “hatred on the grounds of sexual orientation”*”. 25
- 4 After that section insert –
- “29AB Meaning of “hatred on the grounds of sexual orientation”**
- In this Part “hatred on the grounds of sexual orientation” means hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).” 30
- 5 In the italic cross-heading before section 29B at the end insert “*or hatred on the grounds of sexual orientation*”.
- 6 (1) Section 29B (use of words or behaviour or display of written material) is amended as follows. 35
- (2) In subsection (1), after “religious hatred” insert “or hatred on the grounds of sexual orientation”.
- (3) Omit subsection (3).
- 7 In section 29C(1) (publishing or distributing written material), after “religious hatred” insert “or hatred on the grounds of sexual orientation”. 40

- 
- |    |  |    |
|----|--|----|
| 8  | In section 29D(1) (public performance of play), after “religious hatred” insert “or hatred on the grounds of sexual orientation”.  |    |
| 9  | In section 29E(1) (distributing, showing or playing a recording), after “religious hatred” insert “or hatred on the grounds of sexual orientation”.  |    |
| 10 | In section 29F(1) (broadcasting or including programme in programme service), after “religious hatred” insert “or hatred on the grounds of sexual orientation”.  | 5  |
| 11 | In section 29G(1) (possession of inflammatory material), for “religious hatred to be stirred up thereby” substitute “thereby to stir up religious hatred or hatred on the grounds of sexual orientation”.  | 10 |
| 12 | (1) Section 29H (powers of entry and search) is amended as follows.<br>(2) In subsection (1), omit “in England and Wales”.<br>(3) Omit subsection (2).   |    |
| 13 | (1) Section 29I (power to order forfeiture) is amended as follows.<br>(2) In subsection (2) –<br>(a) in paragraph (a), omit “in the case of an order made in proceedings in England and Wales,”; and<br>(b) omit paragraph (b).<br>(3) Omit subsection (4).  | 15 |
| 14 | In section 29K(1) (savings for reports of parliamentary or judicial proceedings), for “or in the Scottish Parliament” substitute “, in the Scottish Parliament or in the National Assembly for Wales”.   | 20 |
| 15 | (1) Section 29L (procedure and punishment) is amended as follows.<br>(2) In subsections (1) and (2), omit “in England and Wales”.<br>(3) In subsection (3), in paragraph (b), for “six months” substitute “12 months”.<br>(4) After that subsection insert –<br>“(4) In subsection (3)(b) the reference to 12 months shall be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003.” | 25 |
| 16 | In section 29N (interpretation), after the definition of “dwelling” insert –<br>““hatred on the grounds of sexual orientation” has the meaning given by section 29AB;”.  | 30 |

SCHEDULE 27

Section 127

OFFENCES RELATING TO NUCLEAR MATERIAL AND NUCLEAR FACILITIES

PART 1

AMENDMENTS TO NUCLEAR MATERIAL (OFFENCES) ACT 1983

- |   |  |   |
|---|--|---|
| 1 | The Nuclear Material (Offences) Act 1983 (c. 18) has effect subject to the following amendments.   | 5                                       |
| 2 | <p>(1) Section 1 (extended scope of certain offences) is amended as follows.</p> <p>(2) In subsection (1)(b) (offences under certain enactments) for “section 78 of the Criminal Justice (Scotland) Act 1980” substitute “section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995”.</p> <p>(3) After subsection (1) insert –</p> <p style="margin-left: 20px;">“(1A) If –</p> <p style="margin-left: 40px;">(a) a person, whatever his nationality, does outside the United Kingdom an act directed at a nuclear facility, or which interferes with the operation of such a facility,</p> <p style="margin-left: 40px;">(b) the act causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material, and</p> <p style="margin-left: 40px;">(c) had he done that act in any part of the United Kingdom, it would have made him guilty of an offence mentioned in subsection (1)(a) or (b) above,</p> <p style="margin-left: 20px;">the person shall in any part of the United Kingdom be guilty of such of the offences mentioned in subsection (1)(a) and (b) as are offences of which the act would have made him guilty had he done it in that part of the United Kingdom.”</p> <p>(4) Omit subsection (2) (definition of “act”).</p> | <p>10</p> <p>15</p> <p>20</p> <p>25</p> |
| 3 | <p>After section 1 insert –</p> <p><b>“1A Increase in penalties for offences committed in relation to nuclear material etc.</b></p> <p>(1) If –</p> <p style="margin-left: 20px;">(a) a person is guilty of an offence to which subsection (2), (3) or (4) applies, and</p> <p style="margin-left: 20px;">(b) the penalty provided by this subsection would not otherwise apply,</p> <p style="margin-left: 20px;">the person shall be liable, on conviction on indictment, to imprisonment for life.</p> <p>(2) This subsection applies to an offence mentioned in section 1(1)(a) or (b) where the act making the person guilty of the offence was done in England and Wales or Northern Ireland and either –</p> <p style="margin-left: 20px;">(a) the act was done in relation to or by means of nuclear material, or</p> <p style="margin-left: 20px;">(b) the act –</p>  | <p>30</p> <p>35</p> <p>40</p>           |



- (i) was directed at a nuclear facility, or interfered with the operation of such a facility, and
    - (ii) caused death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material. 5
  - (3) This subsection applies to an offence mentioned in section 1(1)(c) or (d) where the act making the person guilty of the offence –
    - (a) was done in England and Wales or Northern Ireland, and
    - (b) was done in relation to or by means of nuclear material.
  - (4) This subsection applies to an offence mentioned in section 1(1)(a) to (d) where the offence is an offence in England and Wales or Northern Ireland by virtue of section 1(1) or (1A). 10
- 1B Offences relating to damage to environment**
  - (1) If a person, whatever his nationality, in the United Kingdom or elsewhere contravenes subsection (2) or (3) he is guilty of an offence. 15
  - (2) A person contravenes this subsection if without lawful authority –
    - (a) he receives, holds or deals with nuclear material, and
    - (b) he does so either –
      - (i) intending to cause, or for the purpose of enabling another to cause, damage to the environment by means of that material, or 20
      - (ii) being reckless as to whether, as a result of his so receiving, holding or dealing with that material, damage would be caused to the environment by means of that material. 25
  - (3) A person contravenes this subsection if without lawful authority –
    - (a) he does an act directed at a nuclear facility, or which interferes with the operation of such a facility, and
    - (b) he does so either –
      - (i) intending to cause, or for the purpose of enabling another to cause, damage to the environment by means of the emission of ionising radiation or the release of radioactive material, or 30
      - (ii) being reckless as to whether, as a result of his act, damage would be caused to the environment by means of such an emission or release. 35
  - (4) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.
- 1C Offences of importing or exporting etc. nuclear material: extended jurisdiction** 40
  - (1) If a person, whatever his nationality, outside the United Kingdom contravenes subsection (2) below he shall be guilty of an offence.
  - (2) A person contravenes this subsection if he is knowingly concerned in –
    - (a) the unlawful export or shipment as stores of nuclear material from one country to another, or 45

- (b) the unlawful import of nuclear material into one country from another.
- (3) For the purposes of subsection (2) –
- (a) the export or shipment as stores of nuclear material from a country, or 5
- (b) the import of nuclear material into a country,  
 is unlawful if it is contrary to any prohibition or restriction on the export, shipment as stores or import (as the case may be) of nuclear material having effect under or by virtue of the law of that country.
- (4) A statement in a certificate issued by or on behalf of the government of a country outside the United Kingdom to the effect that a particular export, shipment as stores or import of nuclear material is contrary to such a prohibition or restriction having effect under or by virtue of the law of that country, shall be evidence (in Scotland, sufficient evidence) that the export, shipment or import was unlawful for the purposes of subsection (2). 10  
15
- (5) In any proceedings a document purporting to be a certificate of the kind mentioned in subsection (4) above shall be taken to be such a certificate unless the contrary is proved.
- (6) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years. 20
- (7) In this section “country” includes territory.
- 1D Offences under section 1C: investigations and proceedings etc.**
- (1) Where the Commissioners for Her Majesty’s Revenue and Customs investigate, or propose to investigate, any matter with a view to determining – 25
- (a) whether there are grounds for believing that an offence under section 1C above has been committed, or
- (b) whether a person should be prosecuted for such an offence, 30  
 the matter is to be treated as an assigned matter within the meaning of CEMA 1979 (see section 1(1) of that Act).
- (2) Section 138 of CEMA 1979 (provisions as to arrest of persons) applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence under section 1C above as it applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence for which he is liable to be arrested under the customs and excise Acts. 35
- (3) Sections 145 to 148 and 150 to 155 of CEMA 1979 (provisions as to legal proceedings) apply in relation to an offence under section 1C above, and to the penalty and proceedings for the offence, as they apply in relation to offences, penalties and proceedings under the customs and excise Acts. 40
- (4) In this section – 45  
 “CEMA 1979” means the Customs and Excise Management Act 1979;

“the customs and excise Acts”, “shipment” and “stores” have the same meanings as in CEMA 1979 (see section 1(1) of that Act).”

4 For section 2 substitute –

- “2 Offences involving preparatory acts and threats”** 5
- (1) If a person, whatever his nationality, in the United Kingdom or elsewhere contravenes subsection (2), (3), (4) or (7) he shall be guilty of an offence.
- (2) A person contravenes this subsection if without lawful authority –
- (a) he receives, holds or deals with nuclear material, and 10
  - (b) he does so either –
    - (i) intending to cause, or for the purpose of enabling another to cause, relevant injury or damage by means of that material, or
    - (ii) being reckless as to whether, as a result of his so receiving, holding or dealing with that material, relevant injury or damage would be caused by means of that material. 15
- (3) A person contravenes this subsection if without lawful authority –
- (a) he does an act directed at a nuclear facility, or which interferes with the operation of such a facility, and 20
  - (b) he does so either –
    - (i) intending to cause, or for the purpose of enabling another to cause, relevant injury or damage by means of the emission of ionising radiation or the release of radioactive material, or 25
    - (ii) being reckless as to whether, as a result of his act, relevant injury or damage would be caused by means of such an emission or release.
- (4) A person contravenes this subsection if he – 30
- (a) makes a threat of a kind falling within subsection (5), and
  - (b) intends that the person to whom the threat is made shall fear that it will be carried out.
- (5) A threat falls within this subsection if it is a threat that the person making it or any other person will cause any of the consequences set out in subsection (6) either – 35
- (a) by means of nuclear material, or
  - (b) by means of the emission of ionising radiation or the release of radioactive material resulting from an act which is directed at a nuclear facility, or which interferes with the operation of such a facility. 40
- (6) The consequences mentioned in subsection (5) are –
- (a) relevant injury or damage, or
  - (b) damage to the environment.
- (7) A person contravenes this subsection if, in order to compel a State, international organisation or person to do, or abstain from doing, any act, he threatens that he or any other person will obtain nuclear 45

material by an act which, whether by virtue of section 1(1) above or otherwise, is an offence mentioned in section 1(1)(c) above.

- (8) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for life.
- (9) In this section references to relevant injury or damage are references to death or to injury or damage of a type which constitutes an element of any offence mentioned in section 1(1)(a) or (b) above. 5

## **2A Inchoate and secondary offences: extended jurisdiction**

- (1) If a person, whatever his nationality –
- (a) does an act outside the United Kingdom, and 10
  - (b) his act, if done in any part of the United Kingdom, would constitute an offence falling within subsection (2),
- he shall be guilty in that part of the United Kingdom of the offence.
- (2) The offences are –
- (a) attempting to commit a nuclear offence; 15
  - (b) conspiring to commit a nuclear offence;
  - (c) inciting the commission of a nuclear offence;
  - (d) aiding, abetting, counselling or procuring the commission of a nuclear offence.
- (3) In subsection (2) a “nuclear offence” means any of the following (wherever committed) –
- (a) an offence mentioned in section 1(1)(a) to (d) above (other than a blackmail offence), the commission of which is (or would have been) in relation to or by means of nuclear material; 25
  - (b) an offence mentioned in section 1(1)(a) or (b) above, the commission of which involves (or would have involved) an act –
    - (i) directed at a nuclear facility, or which interferes with the operation of such a facility, and 30
    - (ii) which causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material;
  - (c) an offence under section 1B, 1C or 2(1) and (2) or (3) above;
  - (d) an offence under section 50(2) or (3), 68(2) or 170(1) or (2) of the Customs and Excise Management Act 1979 the commission of which is (or would have been) in connection with a prohibition or restriction relating to the exportation, shipment as stores or importation of nuclear material; 35
  - (e) for the purposes of subsection (2)(b) to (d) – 40
    - (i) a blackmail offence, the commission of which is in relation to or by means of nuclear material;
    - (ii) an offence under section 2(1) and (4) or (7) above;
    - (iii) an offence of attempting to commit an offence mentioned in paragraphs (a) to (d). 45
- (4) In subsection (3) “a blackmail offence” means –
- (a) an offence under section 21 of the Theft Act 1968,

- (b) an offence under section 20 of the Theft Act (Northern Ireland) 1969, or
    - (c) an offence of extortion.
  - (5) In subsection (2)(c) the reference to incitement is –
    - (a) a reference to incitement under the law of Scotland, or 5
    - (b) in relation to any time before the coming into force of Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to England and Wales or Northern Ireland, a reference to incitement under the common law of England and Wales or (as the case may be) of Northern Ireland.” 10
- 5 After section 3 (supplemental) insert –
  - “3A Application to activities of armed forces**
  - (1) Nothing in this Act applies in relation to acts done by the armed forces of a country or territory –
    - (a) in the course of an armed conflict, or 15
    - (b) in the discharge of their functions.
  - (2) If in any proceedings a question arises whether an act done by the armed forces of a country or territory was an act falling within subsection (1), a certificate issued by or under the authority of the Secretary of State and stating that it was, or was not, such an act shall be conclusive of that question. 20
  - (3) In any proceedings a document purporting to be such a certificate as is mentioned in subsection (2) shall be taken to be such a certificate unless the contrary is proved.”
- 6 (1) Section 6 (material to which the Act applies) is amended as follows. 25
  - (2) Before subsection (1) insert –
    - “(A1) This section applies for the purposes of this Act.”
  - (3) In subsection (1), omit “in this Act”.
  - (4) After subsection (1) insert –
    - “(1A) “A nuclear facility” means a facility (including associated buildings and equipment) used for peaceful purposes in which nuclear material is produced, processed, used, handled, stored or disposed of. 30
    - (1B) For the purposes of subsections (1) and (1A) –
      - (a) nuclear material is not used for peaceful purposes if it is used or retained for military purposes, and 35
      - (b) a facility is not used for peaceful purposes if it contains any nuclear material which is used or retained for military purposes.”
  - (5) In subsection (2) (question whether or not nuclear material used for peaceful purposes to be determined conclusively by certificate of Secretary of State to that effect) after “material” insert “or facility”. 40

- (6) For subsection (5) substitute –
- “(5) “Act” includes omission.
- (6) “The Convention” means the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (formerly the Convention on the Physical Protection of Nuclear Material and renamed by virtue of the Amendment adopted at Vienna on 8th July 2005). 5
- (7) “The environment” includes land, air and water and living organisms supported by any of those media.
- (8) “Radioactive material” means nuclear material or any other radioactive substance which – 10
- (a) contains nuclides that undergo spontaneous disintegration in a process accompanied by the emission of one or more types of ionising radiation, such as alpha radiation, beta radiation, neutron particles or gamma rays, and
- (b) is capable, owing to its radiological or fissile properties, of – 15
- (i) causing bodily injury to a person,
- (ii) causing damage or destruction to property,
- (iii) endangering a person’s life, or
- (iv) causing damage to the environment.”
- (7) For the sidenote, substitute “Interpretation”. 20
- 7 In section 7 (application to the Channel Islands, Isle of Man etc.) in subsection (2), for “any colony” substitute “any British overseas territory”.

## PART 2

### AMENDMENTS TO CUSTOMS AND EXCISE MANAGEMENT ACT 1979

- 8 (1) The Customs and Excise Management Act 1979 (c. 2) is amended as follows. 25
- (2) In section 1 (interpretation) in subsection (1) insert at the appropriate place –
- ““nuclear material” has the same meaning as in the Nuclear Material (Offences) Act 1983 (see section 6 of that Act);”.
- (3) In section 50 (penalty for improper importation of goods) – 30
- (a) in subsection (4) (penalty for offence) for “or (5B)” substitute “, (5B) or (5C)”;
- (b) after subsection (5B) insert –
- “(5C) In the case of an offence under subsection (2) or (3) above in connection with a prohibition or restriction relating to the importation of nuclear material, subsection (4)(b) above shall have effect as if for the words “7 years” there were substituted the words “14 years”.” 35
- (4) In section 68 (offences in relation to exportation of prohibited or restricted goods) – 40
- (a) in subsection (3) (penalty for offence) for “or (4A)” substitute “, (4A) or (4B)”;

- (b) after subsection (4A) insert –
- “(4B) In the case of an offence under subsection (2) above in connection with a prohibition or restriction relating to the exportation or shipment as stores of nuclear material, subsection (3)(b) above shall have effect as if for the words “7 years” there were substituted the words “14 years”.” 5
- (5) In section 170 (penalty for fraudulent evasion of duty, etc.) –
- (a) in subsection (3) (penalty for offence) for “or (4B)” substitute “, (4B) or (4C)”;
- (b) after subsection (4B) insert – 10
- “(4C) In the case of an offence under subsection (1) or (2) above in connection with a prohibition or restriction relating to the importation, exportation or shipment as stores of nuclear material, subsection (3)(b) above shall have effect as if for the words “7 years” there were substituted the words “14 years”.” 15
- 9 (1) Her Majesty may by Order in Council provide for any provisions of section 1, 50, 68 or 170 of the Customs and Excise Management Act 1979 (c. 2) as amended by paragraph 8 to extend, with or without modifications, to any of the Channel Islands or any British overseas territory. 20
- (2) Section 196(2) applies in relation to an Order in Council under subparagraph (1) as it applies in relation to an order made by the Secretary of State.

## SCHEDULE 28

Section 141(1)

### PENALTIES SUITABLE FOR ENFORCEMENT IN ENGLAND AND WALES OR NORTHERN IRELAND 25

#### *Person residing in England and Wales*

- 1 The financial penalty is suitable for enforcement in England and Wales if the certificate states that the person required to pay the penalty is normally resident in England and Wales. 30

#### *Person residing in Northern Ireland*

- 2 The financial penalty is suitable for enforcement in Northern Ireland if the certificate states that the person required to pay the penalty is normally resident in Northern Ireland.

#### *Person having property etc. in England and Wales* 35

- 3 The financial penalty is suitable for enforcement in England and Wales if –
- (a) the certificate states that the person required to pay the penalty has property or a source of income in England and Wales, and
- (b) the certificate does not state – 40
- (i) that the person has property or a source of income in Northern Ireland or Scotland, or

- (ii) that the person is normally resident in the United Kingdom.

*Person having property etc. in Northern Ireland*

- 4 The financial penalty is suitable for enforcement in Northern Ireland if—
- (a) the certificate states that the person required to pay the penalty has property or a source of income in Northern Ireland, and 5
- (b) the certificate does not state—
- (i) that the person has property or a source of income in England and Wales or Scotland, or
- (ii) that the person is normally resident in the United Kingdom.

*Person having property etc. in England and Wales and Northern Ireland* 10

- 5 (1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in England and Wales,
- (b) the certificate also states that the person has property or a source of income in Northern Ireland, and 15
- (c) the certificate does not state—
- (i) that the person has property or a source of income in Scotland, or
- (ii) that the person is normally resident in the United Kingdom.
- (2) The financial penalty is suitable for enforcement in England and Wales unless it is suitable for enforcement in Northern Ireland by virtue of sub-paragraph (3). 20
- (3) The financial penalty is suitable for enforcement in Northern Ireland if the Lord Chancellor thinks that it is more appropriate for the penalty to be enforced in Northern Ireland than in England and Wales. 25

*Person having property etc. in England and Wales and Scotland*

- 6 (1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in England and Wales,
- (b) the certificate also states that the person has property or a source of income in Scotland, and 30
- (c) the certificate does not state—
- (i) that the person has property or a source of income in Northern Ireland, or
- (ii) that the person is normally resident in the United Kingdom. 35
- (2) The financial penalty is suitable for enforcement in England and Wales unless sub-paragraph (3) applies.
- (3) This sub-paragraph applies if—
- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and 40
- (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Scotland than in England and Wales.



*Person having property etc. in Northern Ireland and Scotland*

- 7 (1) This paragraph applies if—
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Northern Ireland,
  - (b) the certificate also states that the person has property or a source of income in Scotland, and 5
  - (c) the certificate does not state —
    - (i) that the person has property or a source of income in England and Wales, or
    - (ii) that the person is normally resident in the United Kingdom. 10
- (2) The financial penalty is suitable for enforcement in Northern Ireland unless sub-paragraph (3) applies.
- (3) This sub-paragraph applies if—
- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and 15
  - (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Scotland than in Northern Ireland.

*Person having property etc. in England and Wales, Scotland and Northern Ireland*

- 8 (1) This paragraph applies if— 20
- (a) the certificate states that the person required to pay the financial penalty has property or a source of income in Northern Ireland,
  - (b) the certificate also states that the person has property or a source of income in England and Wales and in Scotland, and
  - (c) the certificate does not state that the person is normally resident in the United Kingdom. 25
- (2) The financial penalty is suitable for enforcement in England and Wales unless—
- (a) the penalty is suitable for enforcement in Northern Ireland by virtue of sub-paragraph (3) or (4), or 30
  - (b) sub-paragraph (5) applies.
- (3) The financial penalty is suitable for enforcement in Northern Ireland if—
- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and 35
  - (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Northern Ireland than in England and Wales or Scotland.
- (4) The financial penalty is suitable for enforcement in Northern Ireland if—
- (a) the Lord Chancellor was given the certificate by the central authority for Scotland, and 40
  - (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Northern Ireland than in England and Wales.
- (5) The sub-paragraph applies if— 45

- (a) the Lord Chancellor was given the certificate by the competent authority or central authority of another member State (and not by the central authority for Scotland), and
- (b) the Lord Chancellor thinks that it is more appropriate for the financial penalty to be enforced in Scotland than in England and Wales or Northern Ireland. 5

*Interpretation*

- 9 Where the person required to pay the financial penalty is a body corporate, this Schedule applies as if –
- (a) the reference in paragraph 1 to the person being normally resident in England and Wales were a reference to the person having its registered office in England and Wales, 10
  - (b) the reference in paragraph 2 to the person being normally resident in Northern Ireland were a reference to the person having its registered office in Northern Ireland, and 15
  - (c) any reference to the person being normally resident in the United Kingdom were a reference to the person having its registered office in the United Kingdom.

## SCHEDULE 29

Section 141(2)

GROUNDS FOR REFUSAL TO ENFORCE FINANCIAL PENALTIES 20

## PART 1

## THE GROUNDS FOR REFUSAL

- 1 A penalty (of any kind) has been imposed on the liable person in respect of the conduct to which the certificate relates under the law of any part of the United Kingdom (whether or not the penalty has been enforced). 25
- 2 A penalty (of any kind) has been imposed on the liable person in respect of that conduct under the law of any member State, other than the United Kingdom and the issuing State, and that penalty has been enforced.
- 3 (1) The decision was made in respect of conduct –
- (a) that is not specified in Part 2 of this Schedule, and 30
  - (b) would not constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part.
- (2) In sub-paragraph (1), “the relevant part of the United Kingdom” means –
- (a) in the application of this Schedule to England and Wales, England and Wales, and 35
  - (b) in the application of this Schedule to Northern Ireland, Northern Ireland.
- 4 (1) The decision was made in respect of conduct –
- (a) that occurred outside the territory of the issuing State, and
  - (b) would not constitute an offence under the law of the relevant part of the United Kingdom if it occurred outside that part. 40

- (2) In sub-paragraph (1), “the relevant part of the United Kingdom” has the same meaning as in paragraph 3(2).
- 5 The decision was made in respect of conduct by a person who was under the age of 10 when the conduct took place.
- 6 The certificate does not confirm that – 5
- (a) if the proceedings in which the decision was made were conducted in writing, the liable person was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right;
- (b) if those proceedings provided for a hearing to take place and the liable person did not attend, the liable person was informed of the proceedings or indicated an intention not to contest them. 10
- 7 (1) The financial penalty is for an amount less than 70 euros.
- (2) For the purposes of sub-paragraph (1), if the amount of a financial penalty is specified in a currency other than the euro, that amount must be converted to euros by reference to the London closing exchange rate on the date the decision was made. 15
- (3) The Lord Chancellor may by order substitute a different amount for the amount for the time being specified in sub-paragraph (1).

PART 2 20

EUROPEAN FRAMEWORK LIST (FINANCIAL PENALTIES)

- 8 Participation in a criminal organisation.
- 9 Terrorism.
- 10 Trafficking in human beings.
- 11 Sexual exploitation of children and child pornography. 25
- 12 Illicit trafficking in narcotic drugs and psychotropic substances.
- 13 Illicit trafficking in weapons, munitions and explosives.
- 14 Corruption.
- 15 Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests. 30
- 16 Laundering of the proceeds of crime.
- 17 Counterfeiting currency, including of the euro.
- 18 Computer-related crime.
- 19 Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties. 35
- 20 Facilitation of unauthorised entry and residence.
- 21 Murder, grievous bodily injury.
- 22 Illicit trade in human organs and tissue.

23	Kidnapping, illegal restraint and hostage-taking.	
24	Racism and xenophobia.	
25	Organised or armed robbery.	
26	Illicit trafficking in cultural goods, including antiques and works of art.	
27	Swindling.	5
28	Racketeering and extortion.	
29	Counterfeiting and piracy of products.	
30	Forgery of administrative documents and trafficking therein.	
31	Forgery of means of payment.	
32	Illicit trafficking in hormonal substances and other growth promoters.	10
33	Illicit trafficking in nuclear or radioactive materials.	
34	Trafficking in stolen vehicles.	
35	Rape.	
36	Arson.	
37	Crimes within the jurisdiction of the International Criminal Court.	15
38	Unlawful seizure of aircraft or ships.	
39	Sabotage.	
40	Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.	20
41	Smuggling of goods.	
42	Infringement of intellectual property rights.	
43	Threats and acts of violence against persons, including violence during sport events.	
44	Criminal damage.	25
45	Theft.	
46	Offences created by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the treaty establishing the European Community or under Title VI of the Treaty on European Union.	30

### PART 3

#### INTERPRETATION

47	(1) In this Schedule—	
	(a) “conduct” includes any act or omission;	
	(b) “liable person” means the person required to pay the financial penalty to which the certificate relates.	35

- (2) If the decision was made in respect of conduct by a person other than the liable person, the references in paragraph 6 to the liable person are to be read as references to that other person.

SCHEDULE 30

Section 169

CLOSURE ORDERS: PREMISES ASSOCIATED WITH PERSISTENT DISORDER OR NUISANCE 5

After Part 1 of the Anti-social Behaviour Act 2003 (c. 38) (premises where drugs used unlawfully) insert the following Part.

**“PART 1A**

PREMISES ASSOCIATED WITH PERSISTENT DISORDER OR NUISANCE

**11A Part 1A closure notice 10**

- (1) This section applies to premises if a police officer not below the rank of superintendent (“the authorising officer”) or the local authority has reasonable grounds for believing –
- (a) that at any time during the relevant period a person has engaged in anti-social behaviour on the premises, and 15
  - (b) that the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public.
- (2) The authorising officer may authorise the issue of a Part 1A closure notice in respect of the premises if the officer is satisfied – 20
- (a) that the local authority has been consulted; and
  - (b) that reasonable steps have been taken to establish the identity of any person who lives on the premises or who has control of or responsibility for, or an interest in, the premises.
- (3) The local authority may authorise the issue of a Part 1A closure notice in respect of the premises if it is satisfied – 25
- (a) that the appropriate chief officer has been consulted; and
  - (b) that reasonable steps have been taken to establish the identity of any person who lives on the premises or who has control of or responsibility for, or an interest in, the premises. 30
- (4) An authorisation under subsection (2) or (3) may be given orally or in writing, but if it is given orally the authorising officer or local authority (as the case may be) must confirm it in writing as soon as it is practicable.
- (5) A Part 1A closure notice must – 35
- (a) give notice that an application will be made under section 11B for the closure of the premises;
  - (b) state that access to the premises by any person other than a person who habitually resides in the premises or the owner of the premises is prohibited; 40
  - (c) specify the date and time when, and the place at which, the application will be heard;

- 
- (d) explain the effects of an order made in pursuance of section 11B;
- (e) state that failure to comply with the notice amounts to an offence; and
- (f) give information about relevant advice providers. 5
- (6) A Part 1A closure notice must be served by –
- (a) a constable if its issue was authorised by the authorising officer, or
- (b) an employee of the local authority if its issue was authorised by the authority. 10
- (7) Service is effected by –
- (a) fixing a copy of the notice to at least one prominent place on the premises,
- (b) fixing a copy of the notice to each normal means of access to the premises, 15
- (c) fixing a copy of the notice to any outbuildings which appear to the server of the notice to be used with or as part of the premises,
- (d) giving a copy of the notice to at least one person who appears to the server of the notice to have control of or responsibility for the premises, and 20
- (e) giving a copy of the notice to the persons identified in pursuance of subsection (2)(b) or (3)(b) (as the case may be) and to any other person appearing to the server of the notice to be a person of a description mentioned in that provision. 25
- (8) The Part 1A closure notice must also be served on any person who occupies any other part of the building or other structure in which the premises are situated if the server of the notice reasonably believes, at the time of serving the notice under subsection (7), that the person’s access to the other part of the building or structure will be impeded if a Part 1A closure order is made under section 11B. 30
- (9) A person acting under subsection (7) may enter any premises, using reasonable force if necessary, for the purposes of complying with subsection (7)(a).
- (10) The Secretary of State may by regulations specify premises or descriptions of premises to which this section does not apply. 35
- (11) In this section –
- “information about relevant advice providers” means information about the names of, and means of contacting, persons and organisations in the area that provide advice about housing and legal matters; 40
- “the relevant period” means the period of 3 months ending with the day on which the authorising officer or the local authority (as the case may be) considers whether to authorise the issue of a Part 1A closure notice in respect of the premises. 45

**11B Part 1A closure order**

- (1) If a Part 1A closure notice has been issued under section 11A an application must be made under this section to a magistrates' court for the making of a Part 1A closure order.
- (2) An application under subsection (1) must be made by – 5
  - (a) a constable if the issue of the Part 1A closure notice was authorised by the authorising officer, or
  - (b) the local authority if the issue of the Part 1A closure notice was authorised by the authority.
- (3) The application must be heard by the magistrates' court not later than 48 hours after the notice was served in pursuance of section 11A(7)(a). 10
- (4) The magistrates' court may make a Part 1A closure order if and only if it is satisfied that each of the following paragraphs applies – 15
  - (a) a person has engaged in anti-social behaviour on the premises in respect of which the Part 1A closure notice was issued;
  - (b) the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public; 20
  - (c) the making of the order is necessary to prevent the occurrence of such disorder or nuisance for the period specified in the order.
- (5) A Part 1A closure order is an order that the premises in respect of which the order is made are closed to all persons for such period (not exceeding 3 months) as is specified in the order. 25
- (6) But the order may include such provision as the court thinks appropriate relating to access to any part of the building or structure of which the premises form part.
- (7) The magistrates' court may adjourn the hearing on the application for a period of not more than 14 days to enable – 30
  - (a) the occupier of the premises,
  - (b) the person who has control of or responsibility for the premises, or
  - (c) any other person with an interest in the premises, 35to show why a Part 1A closure order should not be made.
- (8) If the magistrates' court adjourns the hearing under subsection (7) it may order that the Part 1A closure notice continues in effect until the end of the period of the adjournment.
- (9) A Part 1A closure order may be made in respect of the whole or any part of the premises in respect of which the Part 1A closure notice was issued. 40

**11C Part 1A closure order: enforcement**

- (1) This section applies if a magistrates' court makes an order under section 11B. 45
- (2) A relevant person may –

- 
- (a) enter the premises in respect of which the order is made;
  - (b) do anything reasonably necessary to secure the premises against entry by any person.
- (3) A person acting under subsection (2) may use reasonable force.
- (4) But a relevant person seeking to enter the premises for the purposes of subsection (2) must, if required to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of his identity and authority before entering the premises. 5
- (5) A relevant person may also enter the premises at any time while the order has effect for the purpose of carrying out essential maintenance of or repairs to the premises. 10
- (6) In this section “a relevant person” –
- (a) in relation to premises in respect of which a police Part 1A closure order has effect, means a constable or a person authorised by the appropriate chief officer; 15
  - (b) in relation to premises in respect of which a local authority Part 1A closure order has effect, means a person authorised by the local authority.
- 11D Closure of premises associated with persistent disorder or nuisance: offences** 20
- (1) A person who remains on or enters premises in contravention of a Part 1A closure notice commits an offence.
- (2) A person who –
- (a) obstructs a person acting under section 11A(7) or 11C(2),
  - (b) remains on closed premises, or
  - (c) enters closed premises,
- commits an offence. 25
- (3) A person guilty of an offence under this section is liable on summary conviction –
- (a) to imprisonment for a period not exceeding 51 weeks, or
  - (b) to a fine not exceeding level 5 on the standard scale,
- or to both. 30
- (4) A person who has a reasonable excuse for entering or being on the premises does not commit an offence under subsection (1) or (2)(b) or (c) (as the case may be). 35
- (5) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months.
- 11E Part 1A closure order: extension and discharge**
- (1) At any time before the end of the period for which a Part 1A closure order is made or extended, a complaint may be made by –
- (a) a constable if the order is a police Part 1A closure order, or
  - (b) the local authority if the order is a local authority Part 1A closure order,
- 40



- to a justice of the peace for an extension or further extension of the period for which the order has effect.
- (2) A complaint may not be made under subsection (1) in relation to a police Part 1A closure order unless the complaint is authorised by a police officer not below the rank of superintendent – 5
- (a) who has reasonable grounds for believing that it is necessary to extend the period for which the order has effect for the purpose of preventing the occurrence of significant and persistent disorder or persistent serious nuisance to members of the public, and 10
- (b) who is satisfied that the local authority has been consulted about the intention to make the complaint.
- (3) A complaint may not be made under subsection (1) in relation to a local authority Part 1A closure order unless the local authority – 15
- (a) has reasonable grounds for believing that it is necessary to extend the period for which the order has effect for the purpose of preventing the occurrence of significant and persistent disorder or persistent serious nuisance to members of the public, and
- (b) is satisfied that the appropriate chief officer has been consulted about the intention to make the complaint. 20
- (4) If a complaint is made to a justice of the peace under subsection (1), the justice may issue a summons directed to – 25
- (a) any person on whom the Part 1A closure notice relating to the closed premises was served under subsection (7)(d) or (e) or (8) of section 11A, or
- (b) any other person who appears to the justice to have an interest in the closed premises but on whom the Part 1A closure notice was not served, 30
- requiring such person to appear before the magistrates’ court to answer to the complaint.
- (5) If the court is satisfied that the order is necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance to members of the public for a further period, it may make an order extending the period for which the Part 1A closure order has effect by a period not exceeding 3 months. 35
- (6) But a Part 1A closure order must not have effect for more than 6 months.
- (7) Any of the following persons may make a complaint to a justice of the peace for an order that a Part 1A closure order is discharged – 40
- (a) a constable if the Part 1A closure order is a police Part 1A closure order;
- (b) the local authority if the Part 1A closure order is a local authority Part 1A closure order;
- (c) a person on whom the Part 1A closure notice relating to the closed premises was served under subsection (7)(d) or (e) or (8) of section 11A; 45
- (d) a person who has an interest in the closed premises but on whom the Part 1A closure notice was not served.

- (8) If a complaint is made under subsection (7) –
- (a) in relation to a police Part 1A closure order, by a person other than a constable, or
  - (b) in relation to a local authority Part 1A closure order, by a person other than the local authority,
- the justice may issue a summons directed to such constable as the justice thinks appropriate or to the local authority (as the case may be) requiring the constable or authority to appear before the magistrates' court to answer to the complaint. 5
- (9) The court may not make an order discharging a Part 1A closure order unless it is satisfied that the Part 1A closure order is no longer necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance to members of the public. 10
- (10) If a summons is issued in accordance with subsection (4) or (8), a notice stating the date, time and place at which the complaint will be heard must be served on – 15
- (a) if the summons is issued under subsection (4), the persons to whom it is directed;
  - (b) if the summons is issued under subsection (8), the persons mentioned in subsection (7)(c) and (d) (other than the complainant); 20
  - (c) if the complaint relates to a police Part 1A closure order, such constable as the justice thinks appropriate (unless a constable is the complainant);
  - (d) if the complaint relates to a local authority Part 1A closure order, the local authority (unless it is the complainant). 25

#### 11F Part 1A closure order: appeals

- (1) This section applies to –
- (a) an order under section 11B or 11E;
  - (b) a decision by a court not to make an order under either of those sections. 30
- (2) An appeal against an order or decision to which this section applies must be brought to the Crown Court before the end of the period of 21 days beginning with the day on which the order or decision is made. 35
- (3) An appeal against an order under section 11B or 11E(5) may be brought by –
- (a) a person on whom the Part 1A closure notice relating to the closed premises was served under section 11A(7)(d) or (e), or
  - (b) a person who has an interest in the closed premises but on whom the Part 1A closure notice was not served. 40
- (4) An appeal against the decision of a court not to make such an order may be brought by –
- (a) a constable if the Part 1A closure order is (or, if made, would have been) a police Part 1A closure order, or
  - (b) the local authority if the Part 1A closure order is (or, if made, would have been) a local authority Part 1A closure order. 45

- (5) On an appeal under this section the Crown Court may make such order as it thinks appropriate.

**11G Part 1A closure order: access to other premises**

- (1) This section applies to any person who occupies or owns any part of a building or structure – 5
- (a) in which closed premises are situated, and
  - (b) in respect of which the Part 1A closure order does not have effect.
- (2) A person to whom this section applies may, at any time while a Part 1A closure order has effect, apply to – 10
- (a) the magistrates’ court in respect of an order made under section 11B or 11E, or
  - (b) the Crown Court in respect of an order made under section 11F.
- (3) If an application is made under this section notice of the date, time and place of the hearing to consider the application must be given to – 15
- (a) such constable as the court thinks appropriate;
  - (b) the local authority;
  - (c) any person on whom the Part 1A closure notice relating to the closed premises was served under subsection (7)(d) or (e) or (8) of section 11A; and 20
  - (d) any person who has an interest in the closed premises but on whom the Part 1A closure notice was not served.
- (4) On an application under this section the court may make such order as it thinks appropriate in relation to access to any part of a building or structure in which closed premises are situated. 25
- (5) It is immaterial whether any provision has been made as mentioned in section 11B(6). 30

**11H Part 1A closure order: reimbursement of costs** 30

- (1) A police authority or a local authority which incurs expenditure for the purpose of clearing, securing or maintaining the premises in respect of which a Part 1A closure order has effect may apply to the court which made the order for an order under this section.
- (2) On an application under this section the court may make such order as it thinks appropriate in the circumstances for the reimbursement (in full or in part) by the owner of the premises of the expenditure mentioned in subsection (1). 35
- (3) But an application for an order under this section must not be entertained unless it is made before the end of the period of 3 months starting with the day the Part 1A closure order ceases to have effect. 40
- (4) An application under this section must be served on –
- (a) the police authority for the area in which the premises are situated if the application is made by the local authority;
  - (b) the local authority if the application is made by a police authority; and 45

- (c) the owner of the premises.

**11I Part 1A closure notice or order: exemption from liability**

- (1) A constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of functions under this Part. 5
- (2) A chief officer of police who has direction or control of a constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of functions under this Part.
- (3) Neither a local authority nor an employee of a local authority is liable for relevant damages in respect of anything done or omitted to be done by or on behalf of the authority in the performance or purported performance of functions under this Part. 10
- (4) Subsections (1) to (3) do not apply – 15
- (a) if the act or omission is shown to have been in bad faith;
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (5) This section does not affect any other exemption from liability for damages (whether at common law or otherwise). 20
- (6) In this section “relevant damages” means damages in proceedings for judicial review or for the tort of negligence or misfeasance in public office.

**11J Part 1A closure notices and orders: compensation**

- (1) This section applies to any person who incurs financial loss in consequence of – 25
- (a) the issue of a Part 1A closure notice, or
- (b) a Part 1A closure order having effect.
- (2) A person to whom this section applies may apply to – 30
- (a) the magistrates’ court which considered the application for a Part 1A closure order;
- (b) the Crown Court if the Part 1A closure order was made or extended by an order made by that Court on an appeal under section 11F. 35
- (3) An application under this section must not be entertained unless it is made not later than the end of the period of 3 months starting with whichever is the later of –
- (a) the day the court decides not to make a Part 1A closure order;
- (b) the day the Crown Court dismisses an appeal against a decision not to make a Part 1A closure order; 40
- (c) the day the Part 1A closure order ceases to have effect.
- (4) On an application under this section the court may order the payment of compensation out of central funds if it is satisfied –

- (a) that the person is not associated with such use of the premises as is mentioned in section 11A(1)(b),
  - (b) if the person is the owner or occupier of the premises, that the person took reasonable steps to prevent such use of the premises, 5
  - (c) that the person has incurred financial loss as mentioned in subsection (1), and
  - (d) having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.
- (5) In this section “central funds” has the same meaning as in enactments providing for the payment of costs. 10

### 11K Interpretation

- (1) This section applies for the purposes of this Part.
- (2) “Anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as the person. 15
- (3) “The appropriate chief officer”, in relation to—  
(a) any premises, or  
(b) a Part 1A closure order relating to any premises,  
means the chief officer of police for the area in which the premises are situated. 20
- (4) “Closed premises” means premises in respect of which a Part 1A closure order has effect.
- (5) “Local authority”, in relation to England, means—  
(a) a district council; 25  
(b) a London borough council;  
(c) a county council for an area for which there is no district council;  
(d) the Common Council of the City of London in its capacity as a local authority; 30  
(e) the Council of the Isles of Scilly.
- (6) “Local authority”, in relation to Wales, means—  
(a) a county council;  
(b) a county borough council.
- (7) References to the local authority in relation to—  
(a) any premises,  
(b) a Part 1A closure notice relating to any premises, or  
(c) a Part 1A closure order relating to any premises,  
are references to the local authority for the area in which the premises are situated 40
- (8) “A local authority Part 1A closure order” means a Part 1A closure order made or extended on the application of the local authority.
- (9) “The owner”, in relation to premises, means—

- (a) a person who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion (apart from a mortgagee not in possession), or
  - (b) a person who holds or is entitled to the rents and profits of the premises under a lease which (when granted) was for a term of not less than 3 years. 5
- (10) “A Part 1A closure notice” means a notice issued under section 11A.
- (11) “A Part 1A closure order” means –
- (a) an order made under section 11B;
  - (b) an order extended under section 11E; 10
  - (c) an order made or extended under section 11F which has the like effect as an order made or extended under section 11B or 11E (as the case may be).
- (12) “A police Part 1A closure order” means a Part 1A closure order made or extended on the application of a constable. 15
- (13) “Premises” includes –
- (a) any land or other place (whether enclosed or not);
  - (b) any outbuildings which are or are used as part of premises.”

## SCHEDULE 31

Section 173

## NUISANCE OR DISTURBANCE ON HSS PREMISES 20

*Offence of causing nuisance or disturbance on HSS premises*

- 1 (1) A person commits an offence if –
- (a) the person causes, without reasonable excuse and while on HSS premises, a nuisance or disturbance to an HSS staff member who is working there or is otherwise there in connection with work, 25
  - (b) the person refuses, without reasonable excuse, to leave the HSS premises when asked to do so by a constable or an HSS staff member, and
  - (c) the person is not on the HSS premises for the purpose of obtaining medical advice, treatment or care for himself or herself. 30
- (2) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) For the purposes of this paragraph –
- (a) a person ceases to be on HSS premises for the purpose of obtaining medical advice, treatment or care for himself or herself once the person has received the advice, treatment or care, and 35
  - (b) a person is not on HSS premises for the purpose of obtaining medical advice, treatment or care for himself or herself if the person has been refused the advice, treatment or care during the last 8 hours.
- (4) In this paragraph – 40
- “hospital grounds” means land in the vicinity of a hospital and associated with it,

“HSS premises” means –

- (a) any hospital vested in, or managed by, an HSS trust,
- (b) any building or other structure, or vehicle, associated with the hospital and situated on hospital grounds (whether or not vested in, or managed by, an HSS trust), and
- (c) the hospital grounds,

5

“HSS staff member” means a person employed by an HSS trust or otherwise working for it (whether as or on behalf of a contractor, as a volunteer or otherwise),

“HSS trust” means a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)), and

10

“vehicle” includes an air ambulance.

*Power to remove person causing nuisance or disturbance*

2 (1) If a constable reasonably suspects that a person is committing or has committed an offence under paragraph 1, the constable may remove the person from the HSS premises concerned.

15

(2) If an authorised officer reasonably suspects that a person is committing or has committed an offence under paragraph 1, the authorised officer may –

- (a) remove the person from the HSS premises concerned, or
- (b) authorise an HSS staff member to do so.

20

(3) Any person removing another person from HSS premises under this paragraph may use reasonable force (if necessary).

(4) An authorised officer cannot remove a person under this paragraph or authorise another person to do so if the authorised officer has reason to believe that –

25

- (a) the person to be removed requires medical advice, treatment or care for himself or herself, or
- (b) the removal of the person would endanger the person’s physical or mental health.

30

(5) In this paragraph –

“authorised officer” means any HSS staff member authorised by an HSS trust to exercise the powers conferred on an authorised officer by this paragraph, and

“HSS premises”, “HSS staff member” and “HSS trust” have the same meaning as in paragraph 1.

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*Guidance about the power to remove etc.*

3 (1) The Department of Health, Social Services and Public Safety may from time to time prepare and publish guidance to HSS trusts and authorised officers about the powers in paragraph 2.

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(2) Such guidance may, in particular, relate to –

- (a) the authorisation by HSS trusts of authorised officers,
- (b) the authorisation by authorised officers of HSS staff members to remove persons under paragraph 2,

- |     |   |    |
|-----|---|----|
| (c) | training requirements for authorised officers and HSS staff members authorised by them to remove persons under paragraph 2,   |    |
| (d) | matters that may be relevant to a consideration by authorised officers for the purposes of paragraph 2 of whether offences are being, or have been, committed under paragraph 1,  | 5  |
| (e) | matters to be taken into account by authorised officers in deciding whether there is reason to believe that a person requires medical advice, treatment or care for himself or herself or that the removal of a person would endanger the person’s physical or mental health, |    |
| (f) | the procedure to be followed by authorised officers or persons authorised by them before using the power of removal in paragraph 2,   | 10 |
| (g) | the degree of force that it may be appropriate for authorised officers or persons authorised by them to use in particular circumstances,  |    |
| (h) | arrangements for ensuring that persons on HSS premises are aware of the offence in paragraph 1 and the powers of removal in paragraph 2, or   | 15 |
| (i) | the keeping of records.   |    |
| (3) | Before publishing guidance under this paragraph, the Department of Health, Social Services and Public Safety must consult such persons as the Department considers appropriate.   | 20 |
| (4) | An HSS trust and an authorised officer must have regard to any guidance published under this paragraph when exercising functions under, or in connection with, paragraph 2.   |    |
| (5) | In this paragraph—<br>“authorised officer” has the same meaning as in paragraph 2, and<br>“HSS premises”, “HSS staff member” and “HSS trust” have the same meaning as in paragraph 1.   | 25 |

## SCHEDULE 32

Section 177

## POLICE MISCONDUCT AND PERFORMANCE PROCEDURES

30

## PART 1

## AMENDMENTS TO THE POLICE ACT 1996

- 1 The Police Act 1996 (c. 16) has effect subject to the following amendments.

*General duty of Secretary of State*

- 2 In section 36(2)(d) (general duty of Secretary of State) for “section 85” substitute “sections 84 and 85”. 35

*Regulations for police forces*

- 3 (1) Section 50 (regulations for police forces) is amended as follows.



(2) For subsection (3) substitute –

“(3) Without prejudice to the powers conferred by this section, regulations under this section shall –

(a) establish, or

(b) make provision for the establishment of,

procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of members of police forces, including procedures for cases in which such persons may be dealt with by dismissal.”

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(3) In subsection (4) omit “, subject to subsection (3)(b),”.

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#### *Regulations for special constables*

4 (1) Section 51 (regulations for special constables) is amended as follows.

(2) In subsection (2)(ba) (conduct of special constables) after “conduct” insert “, efficiency and effectiveness”.

(3) After subsection (2) insert –

15

“(2A) Without prejudice to the powers conferred by this section, regulations under this section shall –

(a) establish, or

(b) make provision for the establishment of,

procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of special constables, including procedures for cases in which such persons may be dealt with by dismissal.”

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#### *Police Federations*

5 In section 59(3) (representation only by another member of a police force except in certain circumstances) for “provided by” substitute “provided in regulations made in accordance with”.

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#### *Police Advisory Board*

6 (1) Section 63(3) (supply of draft regulations to the Police Advisory Board) is amended as follows.

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(2) In paragraph (a), for “regulations under section 50 or 52” substitute “regulations or rules under section 50, 52, 84 or 85”.

(3) After “a draft of the regulations” insert “or rules”.

#### *Representation at disciplinary and other proceedings*

7 For section 84 substitute –

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#### **“84 Representation etc. at disciplinary and other proceedings**

(1) The Secretary of State shall by regulations make provision for or in connection with –

- 
- (a) enabling the officer concerned or a relevant authority to be represented in proceedings conducted under regulations made in pursuance of section 50(3) or section 51(2A);
- (b) enabling the panel conducting such proceedings to receive advice from a relevant lawyer or another person falling within any prescribed description of persons. 5
- (2) Regulations under this section may in particular make provision –
- (a) specifying the circumstances in which the officer concerned or a relevant authority is entitled to be legally represented (by a relevant lawyer); 10
- (b) specifying the circumstances in which the officer concerned or a relevant authority is entitled to be represented by a person (other than a relevant lawyer) who falls within any prescribed description of persons;
- (c) for securing that – 15
- (i) a relevant authority may be legally represented, and
- (ii) the panel conducting the proceedings may receive advice from a relevant lawyer,
- whether or not the officer concerned is legally represented.
- (3) Without prejudice to the powers conferred by this section, regulations under this section shall, in relation to cases where the officer concerned is entitled to legal or other representation, make provision – 20
- (a) for securing that the officer is notified of his right to such representation; 25
- (b) specifying when the officer is to be so notified;
- (c) for securing that proceedings at which the officer may be dismissed are not to take place unless the officer has been notified of his right to such representation.
- (4) In this section – 30
- “the officer concerned”, in relation to proceedings within subsection (1)(a), means the member of a police force or special constable to whom the proceedings relate;
- “the panel”, in relation to proceedings within subsection (1)(a), means the panel of persons, or the person, prescribed for the purpose of conducting the proceedings; 35
- “prescribed” means prescribed by regulations under this section;
- “relevant authority” means –
- (a) where the officer concerned is a member of a police force (other than a senior officer), or a special constable, the chief officer of police of the police force of which the officer is a member, or for which the officer is appointed as a special constable; 40
- (b) where the officer concerned is a senior officer, the police authority for the police force of which the officer is a member; 45
- “relevant lawyer” means 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 (within the meaning of that Act);  
“senior officer” means a member of a police force holding a rank above that of chief superintendent.
- (5) But in prescribed circumstances “relevant authority” also includes the Independent Police Complaints Commission. 5
- (6) Regulations under this section may make different provision for different cases and circumstances.
- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 10

*Appeals against dismissal etc.*

- 8 (1) Section 85 (appeals against dismissal etc.) is amended as follows.
- (2) For subsections (1) and (2) substitute –
- “(1) The Secretary of State shall by rules make provision specifying the cases in which a member of a police force or a special constable may appeal to a police appeals tribunal. 15
- (2) A police appeals tribunal may, on the determination of an appeal under this section, make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against.” 20
- (3) For subsection (4) substitute –
- “(4) Rules made under this section may, in particular, make provision –
- (a) for enabling a police appeals tribunal, in such circumstances as are specified in the rules, to determine a case without a hearing; 25
- (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented –
- (i) by a relevant lawyer within the meaning of section 84, or 30
- (ii) by a person who falls within any description of persons prescribed by the rules;
- (c) for enabling a police appeals tribunal to require any person to attend a hearing to give evidence or to produce documents, and rules made in pursuance of paragraph (c) may apply subsections (2) and (3) of section 250 of the Local Government Act 1972 with such modifications as may be set out in the rules. 35
- (4A) Rules under this section may make different provision for different cases and circumstances.”
- (4) For subsection (5) substitute – 40
- “(5) A statutory instrument containing rules under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

*Guidance concerning disciplinary proceedings etc.*

- 9 (1) Section 87 (guidance concerning disciplinary proceedings etc.) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) The Secretary of State may issue relevant guidance to –
- (a) police authorities,
- (b) chief officers of police,
- (c) other members of police forces,
- (d) special constables, and
- (e) persons employed by a police authority who are under the direction and control of the chief officer of police of the police force maintained by that authority.
- (1ZA) “Relevant guidance” is guidance as to the discharge of functions under regulations under section 50 or 51 in relation to the matters mentioned in section 50(2)(e) or 51(2)(ba).”
- (3) In subsection (1A), after “section 50” insert “or 51”.
- (4) In subsection (5), after “section 50” insert “or 51”.

*Police officers engaged on service outside their force*

- 10 (1) Section 97 (police officers engaged on service outside their force) is amended as follows.
- (2) In subsection (6) –
- (a) in paragraph (b), omit “or is required to resign as an alternative to dismissal”;
- (b) in paragraph (c), omit “or is required to resign as an alternative to dismissal”.
- (3) In subsection (7), omit “, or required to resign as an alternative to dismissal.”

*Police Appeals Tribunals*

- 11 (1) Schedule 6 (appeals to police appeals tribunals) is amended as follows.
- (2) In paragraph 1(1) (appeals by senior officers) for paragraphs (b) and (c) substitute –
- “(b) one shall be Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) or one of Her Majesty’s Inspectors of Constabulary nominated by the Chief Inspector, and
- (c) one shall be the permanent secretary to the Home Office or a Home Office director nominated by the permanent secretary.”
- (3) In paragraph 2 (appeals by other members of police forces) for subparagraph (1) substitute –
- “(1) In the case of an appeal by a member of a police force (other than a senior officer) or a special constable, the police appeals tribunal

- shall consist of four members appointed by the relevant police authority, of whom—
- (a) one shall be a person chosen from the list referred to in paragraph 1(1)(a),
  - (b) one shall be a senior officer, 5
  - (c) one shall be a member of the relevant police authority, and
  - (d) one shall be a retired member of a police force who, at the time of his retirement, was a member of an appropriate staff association.”
- (4) Omit paragraph 6 (hearings). 10
- (5) In paragraph 7 (effect of orders) for sub-paragraph (1) substitute—
- “(1) Where on the determination of an appeal the tribunal makes such an order as is mentioned in section 85(2), the order shall take effect—
- (a) by way of substitution for the decision appealed against, and 15
  - (b) as from the date of that decision.”
- (6) In paragraph 10 (interpretation)—
- (a) for sub-paragraph (b) substitute—
  - “(b) “the relevant police authority” means the police authority which maintains— 20
    - (i) the police force of which the appellant is a member, or
    - (ii) the police force for the area for which the appellant is appointed as a special constable, 25as the case may be.”
  - (b) for sub-paragraph (c) substitute—
  - “(c) “appropriate staff association” means—
  - (i) where the appellant was, immediately before the proceedings from which the appeal is brought, of the rank of chief superintendent or superintendent, the Police Superintendents’ Association of England and Wales; and 30
  - (ii) in any other case, the Police Federation of England and Wales.” 35

## PART 2

### AMENDMENTS TO THE MINISTRY OF DEFENCE POLICE ACT 1987

- 12 The Ministry of Defence Police Act 1987 (c. 4) has effect subject to the following amendments.
- Defence Police Federation* 40
- 13 In section 3(4) (representation of a member of the Ministry of Defence Police by the Federation) for “on an appeal to the Secretary of State or as provided by” substitute “as provided in regulations made under”.

*Regulations relating to disciplinary matters*

- 14 (1) Section 3A (regulations relating to disciplinary matters) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) The Secretary of State may make regulations with respect to – 5
- (a) the conduct of members of the Ministry of Defence Police and the maintenance of discipline;
- (b) the suspension from duty of members of the Ministry of Defence Police.
- (1A) Without prejudice to the powers conferred by subsection (1), regulations under this section shall – 10
- (a) establish, or
- (b) make provision for the establishment of, 15
- procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police, including procedures for cases in which such persons may be dealt with by dismissal.”
- (3) For subsection (2) substitute –
- “(2) The regulations may provide for decisions which would otherwise fall to be taken by the Secretary of State or the chief constable of the Ministry of Defence Police to be taken instead by – 20
- (a) a person appointed in accordance with the regulations; or
- (b) the Ministry of Defence Police Committee.”

*Representation etc. at disciplinary proceedings*

- 15 For section 4 substitute – 25
- “4 Representation etc. at disciplinary proceedings**
- (1) The Secretary of State shall by regulations make provision for or in connection with –
- (a) enabling the officer concerned or the relevant authority to be represented in proceedings conducted under regulations made in pursuance of section 3A; 30
- (b) enabling the panel conducting such proceedings to receive advice from a relevant lawyer or another person falling within any prescribed description of persons.
- (2) Regulations under this section may in particular make provision – 35
- (a) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a relevant lawyer;
- (b) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a person (other than a relevant lawyer) who falls within any prescribed description of persons; 40
- (c) for securing that –
- (i) the relevant authority may be legally represented, 45
- and

- (ii) the panel conducting the proceedings may receive advice from a relevant lawyer,  
whether or not the officer concerned is legally represented.
- (3) Without prejudice to the powers conferred by this section, regulations under this section shall, in relation to cases where the officer concerned is entitled to legal or other representation, make provision— 5
- (a) for securing that the officer is notified of his right to such representation;
- (b) specifying when the officer is to be so notified; 10
- (c) for securing that proceedings at which the officer may be dismissed are not to take place unless the officer has been notified of his right to such representation.
- (4) In this section—
- “the officer concerned”, in relation to proceedings within subsection (1)(a), means the member of the Ministry of Defence Police to whom the proceedings relate; 15
- “the panel”, in relation to proceedings within subsection (1)(a), means the panel of persons, or the person, prescribed for the purpose of conducting the proceedings; 20
- “prescribed” means prescribed by regulations under this section;
- “relevant authority” means—
- (a) where the officer concerned is a member of the Ministry of Defence Police (other than a senior officer), the chief constable for the Ministry of Defence Police; 25
- (b) where the officer concerned is a senior officer, the Ministry of Defence Police Committee;
- “relevant lawyer” means— 30
- (a) in relation to England and Wales, 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 (within the meaning of that Act), and 35
- (b) in relation to Scotland or Northern Ireland, counsel or a solicitor;
- “senior officer” means a member of the Ministry of Defence Police holding a rank above that of chief superintendent.
- (5) But in prescribed circumstances “relevant authority” also includes— 40
- (a) in relation to England and Wales, the Independent Police Complaints Commission;
- (b) in relation to Scotland, the Police Complaints Commissioner for Scotland;
- (c) in relation to Northern Ireland, the Police Ombudsman for Northern Ireland. 45
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

*Appeals against dismissal etc.*

16 For section 4A substitute –

**“4A Appeals against dismissal etc.**

- (1) The Secretary of State shall by regulations –
- (a) make provision specifying the cases in which a member of the Ministry of Defence Police may appeal to a police appeals tribunal; 5
  - (b) make provision equivalent, subject to such modifications as the Secretary of State thinks fit, to that made (or authorised to be made) in relation to police appeals tribunals by any provision of Schedule 6 to the Police Act 1996 (c. 16) or Schedule 3 to the Police (Scotland) Act 1967 (c. 77). 10
- (2) A police appeals tribunal may, on the determination of an appeal under this section, make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against. 15
- (3) The Secretary of State may make regulations as to the procedure on appeals to police appeals tribunals under this section.
- (4) Regulations under this section may, in particular, make provision –
- (a) for enabling a police appeals tribunal, in such circumstances as are specified in the regulations, to determine a case without a hearing; 20
  - (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented –
    - (i) by a relevant lawyer, or 25
    - (ii) by a person who falls within any description of persons prescribed by the regulations;
  - (c) for enabling a police appeals tribunal to require any person to attend a hearing to give evidence or to produce documents, and regulations made in pursuance of paragraph (c) may apply subsections (2) and (3) of section 250 of the Local Government Act 1972 with such modifications as may be set out in the regulations. 30
- (5) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (6) In this section –
- “police appeals tribunal” means a tribunal constituted in accordance with regulations under this section;
  - “relevant lawyer” has the same meaning as in section 4.”

PART 3

40

AMENDMENTS TO THE RAILWAYS AND TRANSPORT SAFETY ACT 2003

17 The Railways and Transport Safety Act 2003 (c. 20) has effect subject to the following amendments.



*Police regulations: general*

- 18 (1) Section 36 (police regulations: general) is amended as follows.
- (2) In subsection (1) (power to make regulations about constables) after “conditions” insert “of service”.
- (3) For subsection (2) substitute— 5
- “(2) The Authority shall also make regulations similar to the provision made by and under—
- (a) sections 84 and 85 of the Police Act 1996 (representation etc. at disciplinary and other proceedings, and appeal), and
- (b) Schedule 6 to that Act (appeals to police appeals tribunals).” 10

*Police regulations: special constables*

- 19 After section 37(1) (power to make regulations about special constables) insert—
- “(1A) The Authority shall also make regulations similar to the provision made by and under— 15
- (a) sections 84 and 85 of the Police Act 1996 (representation etc. at disciplinary and other proceedings, and appeal), and
- (b) Schedule 6 to that Act (appeals to police appeals tribunals).”

*Police regulations by Secretary of State*

- 20 For section 42(3) substitute— 20
- “(3) If regulations under this section make provision for a matter specified in section 50(3) or section 51(2A) of the Police Act 1996 (disciplinary proceedings), they must also make provision similar to that made by and under—
- (a) sections 84 and 85 of that Act (representation etc. at disciplinary and other proceedings, and appeal), and 25
- (b) Schedule 6 to that Act (appeals to police appeals tribunals).”

*Regulations: further appeal*

- 21 Omit section 43 (regulations: further appeal).

SCHEDULE 33

Section 178

30

INVESTIGATION OF COMPLAINTS OF POLICE MISCONDUCT ETC.

- 1 Schedule 3 to the Police Reform Act 2002 (c. 30) (handling of complaints and conduct matters etc.) is amended as follows.
- 2 In paragraph 6(4) (handling of complaints by appropriate authority: use of local resolution procedures) in each of paragraphs (a)(ii) and (b)(ii), for the words from “, a requirement to resign” to the end substitute “or the giving of a final written warning.” 35

## 3 After paragraph 19 insert –

*“Assessment of seriousness of conduct under investigation*

- 19A (1) If, during the course of an investigation of a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have – 5
- (a) committed a criminal offence, or
  - (b) behaved in a manner which would justify the bringing of disciplinary proceedings,
- the person investigating must certify the investigation as one subject to special requirements. 10
- (2) If the person investigating a complaint certifies the investigation as one subject to special requirements, the person must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct of the person concerned to which the investigation relates. 15
- (3) The person investigating a recordable conduct matter must make a severity assessment in relation to the conduct to which the investigation relates –
- (a) as soon as is reasonably practicable after his appointment or designation, or 20
  - (b) in the case of a matter recorded in accordance with paragraph 21A(5) or 24B(2), as soon as is reasonably practicable after it is so recorded.
- (4) For the purposes of this paragraph a “severity assessment”, in relation to conduct, means an assessment as to – 25
- (a) whether the conduct, if proved, would amount to misconduct or gross misconduct, and
  - (b) if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take. 30
- (5) An assessment under this paragraph may only be made after consultation with the appropriate authority.
- (6) On completing an assessment under this paragraph, the person investigating the complaint or matter must give a notification to the person concerned that complies with sub-paragraph (7). 35
- (7) The notification must –
- (a) give the prescribed information about the results of the assessment;
  - (b) give the prescribed information about the effect of paragraph 19B and of regulations under paragraph 19C; 40
  - (c) set out the prescribed time limits for providing the person investigating the complaint or matter with relevant statements and relevant documents respectively for the purposes of paragraph 19B(2);
  - (d) give such other information as may be prescribed. 45

- (8) Sub-paragraph (6) does not apply for so long as the person investigating the complaint or matter considers that giving the notification might prejudice –
- (a) the investigation, or
  - (b) any other investigation (including, in particular, a criminal investigation). 5
- (9) Where the person investigating a complaint or matter has made a severity assessment and considers it appropriate to do so, the person may revise the assessment.
- (10) On revising a severity assessment, the person investigating the complaint or matter must notify the prescribed information about the revised assessment to the person concerned. 10
- (11) In this paragraph and paragraphs 19B to 19D –
- “the person concerned” –
- (a) in relation to an investigation of a complaint, means the person in respect of whom it appears to the person investigating that there is the indication mentioned in paragraph 19A(1); 15
  - (b) in relation to an investigation of a recordable conduct matter, means the person to whose conduct the investigation relates; 20
- “relevant document” –
- (a) means a document relating to any complaint or matter under investigation, and
  - (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed; 25
- “relevant statement” means an oral or written statement relating to any complaint or matter under investigation.
- Duty to consider submissions from person whose conduct is being investigated* 30
- 19B (1) This paragraph applies to –
- (a) an investigation of a complaint that has been certified under paragraph 19A(1) as one subject to special requirements, or
  - (b) an investigation of a recordable conduct matter. 35
- (2) If before the expiry of the appropriate time limit notified in pursuance of paragraph 19A(7)(c) –
- (a) the person concerned provides the person investigating the complaint or matter with a relevant statement or a relevant document, or 40
  - (b) any person of a prescribed description provides that person with a relevant document,
- that person must consider the statement or document.
- Interview of person whose conduct is being investigated*
- 19C (1) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with any interview of the 45

person concerned which is held during the course of an investigation within paragraph 19B(1)(a) or (b) by the person investigating the complaint or matter.

- (2) Regulations under this paragraph may, in particular, make provision— 5
- (a) for determining how the time at which an interview is to be held is to be agreed or decided,
  - (b) about the information that must be provided to the person being interviewed,
  - (c) for enabling that person to be accompanied at the interview by a person of a prescribed description. 10

*Duty to provide certain information to appropriate authority*

19D (1) This paragraph applies during the course of an investigation within paragraph 19B(1)(a) or (b).

- (2) The person investigating the complaint or matter must supply the appropriate authority with such information in that person's possession as the authority may reasonably request for the purpose mentioned in sub-paragraph (3). 15
- (3) That purpose is determining, in accordance with regulations under section 50 or 51 of the 1996 Act, whether the person concerned should be, or should remain, suspended— 20
- (a) from office as constable, and
  - (b) where that person is a member of a police force, from membership of that force."

- 4 (1) Paragraph 20A (accelerated procedure in special cases) is amended as follows. 25
- (2) In sub-paragraph (1) (application of paragraph) for "a person appointed or designated to investigate" substitute "the person investigating".
- (3) In sub-paragraph (6) (investigation to continue after submission of report) for "appointed or designated to investigate" substitute "investigating". 30
- (4) In sub-paragraph (7) (definition of special conditions)—
- (a) for paragraphs (a) and (b) substitute—
    - "(a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct;"; 35
    - (b) in paragraph (c), for "is the subject matter of the investigation" substitute "it is".
- (5) Omit sub-paragraph (8) (interpretation). 40
- 5 (1) Paragraph 20B (investigations managed or carried out by Commission: action by appropriate authority) is amended as follows.
- (2) For sub-paragraphs (3) and (4) (action to be taken where special conditions

- are satisfied) substitute –
- “(3) If the appropriate authority determines that the special conditions are satisfied then, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall –
- (a) certify the case as a special case for the purposes of regulations under section 50(3) or 51(2A) of the 1996 Act; and
- (b) take such steps as are required by those regulations in relation to a case so certified.”
- (3) Omit sub-paragraph (5) (appropriate authority to notify DPP if special conditions are satisfied).
- 6 In paragraph 20D(2) (action by Commission on receipt of memorandum) for “appointed under paragraph 18 or designated under paragraph 19” substitute “investigating the complaint or matter”.
- 7 (1) Paragraph 20E (other investigations: action by appropriate authority) is amended as follows.
- (2) For sub-paragraphs (3) and (4) (action to be taken where special conditions are satisfied) substitute –
- “(3) If the appropriate authority determines that the special conditions are satisfied then, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall –
- (a) certify the case as a special case for the purposes of regulations under section 50(3) or 51(2A) of the 1996 Act; and
- (b) take such steps as are required by those regulations in relation to a case so certified.”
- (3) Omit sub-paragraph (5) (appropriate authority to notify DPP if special conditions are satisfied).
- (4) In sub-paragraph (7) (appropriate authority to notify person investigating if special conditions are not satisfied) for “appointed under paragraph 16 or 17” substitute “investigating the complaint or matter”.
- 8 Omit paragraph 20G (special cases: Director of Public Prosecutions) and the cross heading immediately preceding it.
- 9 (1) Paragraph 21A (procedure where conduct matter is revealed in course of investigation of DSI matter) is amended as follows.
- (2) In sub-paragraph (5) (DSI matter is to be recorded as conduct matter) omit the words from “(and the other provisions” to the end.
- (3) After sub-paragraph (5) insert –
- “(6) Where a DSI matter is recorded under paragraph 11 as a conduct matter by virtue of sub-paragraph (5) –
- (a) the person investigating the DSI matter shall (subject to any determination made by the Commission under paragraph 15(5)) continue the investigation as if appointed or designated to investigate the conduct matter, and

- (b) the other provisions of this Schedule shall apply in relation to that matter accordingly.”
- 10 (1) Paragraph 22 (final reports on investigations) is amended as follows.
- (2) In subsection (1) (cases where paragraph 22 applies) –
- (a) after paragraph (a) insert “or”; 5
- (b) omit paragraph (c).
- (3) In subsection (4) (meaning of appropriate authority in the case of a conduct matter which was formerly a DSI matter) for the words from “a DSI matter” to “or (4)” substitute “a matter that was formerly a DSI matter but has been recorded as a conduct matter in pursuance of paragraph 21A(5)”. 10
- (4) At the end insert –
- “(7) The Secretary of State may by regulations make provision requiring a report on an investigation within paragraph 19B(1)(a) or (b) –
- (a) to include such matters as are specified in the regulations; 15
- (b) to be accompanied by such documents or other items as are so specified.
- (8) A person who has submitted a report under this paragraph on an investigation within paragraph 19B(1)(a) or (b) must supply the appropriate authority with such copies of further documents or other items in that person’s possession as the authority may request. 20
- (9) The appropriate authority may only make a request under sub-paragraph (8) in respect of a copy of a document or other item if the authority – 25
- (a) considers that the document or item is of relevance to the investigation, and
- (b) requires a copy of the document or the item for either or both of the purposes mentioned in sub-paragraph (10).
- (10) Those purposes are – 30
- (a) complying with any obligation under regulations under section 50(3) or 51(2A) of the 1996 Act which the authority has in relation to any person to whose conduct the investigation related;
- (b) ensuring that any such person receives a fair hearing at any disciplinary proceedings in respect of any such conduct of his.” 35
- 11 (1) Paragraph 23 (action by Commission in response to investigation report) is amended as follows.
- (2) In sub-paragraph (2) (action to be taken on receipt of report) – 40
- (a) for paragraph (b) substitute –
- “(b) shall determine whether the conditions set out in sub-paragraphs (2A) and (2B) are satisfied in respect of the report;”;
- (b) in paragraph (c), for “the report does so indicate” substitute “those conditions are so satisfied”; 45

- (c) in paragraph (d), after “appropriate authority” insert “and the persons mentioned in sub-paragraph (5)”.
- (3) After sub-paragraph (2) insert –
- “(2A) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related. 5
- (2B) The second condition is that –
- (a) the circumstances are such that, in the opinion of the Commission, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or 10
- (b) any matters dealt with in the report fall within any prescribed category of matters.”
- (4) In sub-paragraph (5) (persons to be notified) for “Those” substitute “The”.
- (5) For sub-paragraphs (6) and (7) substitute – 15
- “(6) On receipt of the report, the Commission shall also notify the appropriate authority that it must –
- (a) in accordance with regulations under section 50 or 51 of the 1996 Act, determine – 20
- (i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer, and
- (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report, and 25
- (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.”
- (7) On receipt of a notification under sub-paragraph (6) the appropriate authority shall make those determinations and submit a memorandum to the Commission which – 30
- (a) sets out the determinations the authority has made, and
- (b) if the appropriate authority has decided in relation to any person to whose conduct the investigation related that disciplinary proceedings should not be brought against that person, sets out its reasons for so deciding.” 35
- (6) In sub-paragraph (8)(a) (action by Commission on receipt of memorandum) for “is proposing to take the action” substitute “has made the determinations under sub-paragraph (7)(a)”.
- 12 (1) Paragraph 24 (action by the appropriate authority in response to investigation report) is amended as follows. 40
- (2) In sub-paragraph (2) (action to be taken on receipt of report) –
- (a) for paragraph (a) substitute –
- “(a) shall determine whether the conditions set out in sub-paragraphs (2A) and (2B) are satisfied in respect of the report;” 45

- (b) in paragraph (b), for “the report does so indicate” substitute “those conditions are so satisfied”;
- (c) after paragraph (b) insert “and  
(c) shall notify the persons mentioned in sub-paragraph (5) of its determination under paragraph (a) and of any action taken by it under paragraph (b).” 5
- (3) After sub-paragraph (2) insert –
- “(2A) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related. 10
- (2B) The second condition is that –
- (a) the circumstances are such that, in the opinion of the appropriate authority, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or 15
- (b) any matters dealt with in the report fall within any prescribed category of matters.”
- (4) In sub-paragraph (5) (persons to be notified) for “Those” substitute “The”.
- (5) After sub-paragraph (5) insert – 20
- “(5A) In the case of a report falling within sub-paragraph (1)(b) which relates to a recordable conduct matter, the appropriate authority shall also notify the Commission of its determination under sub-paragraph (2)(a).
- (5B) On receipt of such a notification that the appropriate authority has determined that the conditions in sub-paragraphs (2A) and (2B) are not satisfied in respect of the report, the Commission – 25
- (a) shall make its own determination as to whether those conditions are so satisfied, and
- (b) if it determines that they are so satisfied, shall direct the appropriate authority to notify the Director of Public Prosecutions of the Commission’s determination and to send the Director a copy of the report. 30
- (5C) It shall be the duty of the appropriate authority to comply with any direction given to it under sub-paragraph (5B).” 35
- (6) For sub-paragraph (6) substitute –
- “(6) On receipt of the report or (as the case may be) copy, the appropriate authority shall also –
- (a) in accordance with regulations under section 50 or 51 of the 1996 Act, determine – 40
- (i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer, and
- (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report, and 45



- (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.”
- (7) In sub-paragraph (7) (appropriate authority to give notice on making a determination under sub-paragraph (6)) for “a determination” substitute “the determinations”. 5
- (8) In sub-paragraph (8) (contents of notification authority is required to give of its determination) for paragraphs (b) and (c) substitute –  
“(b) the determinations the authority has made under sub-paragraph (6);”.
- 13 In paragraph 24A(2) (final reports on investigations into other DSI matters: obligation to submit report) for the words from “A person appointed” to “paragraph 19” substitute “The person investigating”. 10
- 14 (1) Paragraph 24B (action in response to a report on a DSI matter) is amended as follows.
- (2) In sub-paragraph (2) (circumstances in which appropriate authority must record matter as a conduct matter) omit the words from “(and the other provisions” to the end. 15
- (3) After sub-paragraph (2) insert –  
“(3) Where a DSI matter is recorded under paragraph 11 as a conduct matter by virtue of sub-paragraph (2) – 20  
(a) the person investigating the DSI matter shall (subject to any determination made by the Commission under paragraph 15(5)) investigate the conduct matter as if appointed or designated to do so, and  
(b) the other provisions of this Schedule shall apply in relation to that matter accordingly.” 25
- 15 (1) Paragraph 25 (appeals to Commission with respect to an investigation) is amended as follows.
- (2) In sub-paragraph (2) (rights of appeal) – 30  
(a) for paragraph (a)(ii) substitute –  
“(ii) about any determination of the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report on the investigation;” 35  
(b) for paragraph (c) substitute –  
“(ba) a right of appeal against any determination by the appropriate authority that a person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer; 40  
(c) a right of appeal against any determination by the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report; and 45  
(d) a right of appeal against any determination by the appropriate authority under paragraph 24(2)(a) as a result of which it is not required to send the

- Director of Public Prosecutions a copy of the report;”.
- (3) In sub-paragraph (3) (power of Commission to require appropriate authority to submit memorandum on an appeal) –
- (a) before paragraph (a) insert – 5
- “(za) sets out whether the appropriate authority has determined that a person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer;” 10
- (b) for paragraphs (a) and (b) substitute –
- “(a) sets out what action (if any) the authority has determined that it is required to or will, in its discretion, take in respect of the matters dealt with in the report;” 15
- (c) in paragraph (c), for “any person whose conduct is the subject-matter of the report” substitute “a person to whose conduct the investigation related”;
- (d) after paragraph (c) insert “and
- (d) if the appropriate authority made a determination under paragraph 24(2)(a) as a result of which it is not required to send the Director of Public Prosecutions a copy of the report, sets out the reasons for that determination;” 20
- (4) In sub-paragraph (5) (determinations to be made by Commission on an appeal) – 25
- (a) after “shall determine” insert “such of the following as it considers appropriate in the circumstances”;
- (b) for paragraph (c) substitute –
- “(c) whether the appropriate authority – 30
- (i) has made such a determination as is mentioned in sub-paragraph (3)(za) that the Commission considers to be appropriate in respect of the matters dealt with in the report, and 35
- (ii) has determined that it is required to or will, in its discretion, take the action (if any) that the Commission considers to be so appropriate; and
- (d) whether the conditions set out in paragraph 24(2A) and (2B) are satisfied in respect of the report.” 40
- (5) In sub-paragraph (9) (action to be taken by Commission when it determines appropriate authority is not taking appropriate action) for “is not proposing to take the action in consequence of” substitute “has not made a determination as to whether there is a case for a person to whose conduct the investigation related to answer that the Commission considers appropriate or has not determined that it is required to or will, in its discretion, take the action in respect of the matters dealt with in” 45

- (6) After sub-paragraph (9) insert –
- “(9A) If, on an appeal under this paragraph, the Commission determines that the conditions set out paragraph 24(2A) and (2B) are satisfied in respect of the report, it shall direct the appropriate authority –
- (a) to notify the Director of Public Prosecutions of the Commission’s determination, and
- (b) to send the Director a copy of the report.”
- 16 (1) Paragraph 27 (duties with respect to disciplinary proceedings) is amended as follows.
- (2) In sub-paragraph (1) (application of paragraph) in each of paragraphs (a) and (b), for “proposing to” substitute “required to or will, in its discretion.”
- (3) In sub-paragraph (3) (recommendations that may be made by Commission in certain circumstances) –
- (a) before paragraph (a) insert –
- “(za) that the person has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to his conduct to which the investigation related;”
- (b) for paragraph (a) substitute –
- “(a) that disciplinary proceedings of the form specified in the recommendation are brought against that person in respect of his conduct to which the investigation related;”
- (c) in paragraph (b), for “include such charges” substitute “deal with such aspects of that conduct”.
- 17 After paragraph 28 insert –
- “Minor definitions*
- 29 In this Part of this Schedule –
- “gross misconduct” and “misconduct” have the meanings given in regulations made by the Secretary of State;
- “the person investigating”, in relation to a complaint, recordable conduct matter or DSI matter, means the person appointed or designated to investigate that complaint or matter;
- “prescribed” means prescribed by regulations made by the Secretary of State.”

SCHEDULE 34

Section 191

SECTION 327A OF THE CRIMINAL JUSTICE ACT 2003: MEANING OF “CHILD SEX OFFENCE”

The following is the Schedule to be inserted as Schedule 34A to the Criminal

Justice Act 2003 (c. 44) –

## “SCHEDULE 34A

## CHILD SEX OFFENCES FOR PURPOSES OF SECTION 327A

*Offences under provisions repealed by Sexual Offences Act 2003*

- |   |  |    |
|---|--|----|
| 1 | An offence under –   | 5  |
|   | (a) section 5 or 6 of the Sexual Offences Act 1956 (intercourse with girl under 13 or 16), or  |    |
|   | (b) section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under 16).                              | 10 |
| 2 | An offence under any of –  |    |
|   | (a) section 1 of that Act (rape),  |    |
|   | (b) section 10 of that Act (incest by a man), and  |    |
|   | (c) sections 12 to 16 of that Act (buggery, indecency between men, indecent assault and assault with intent to commit buggery),                              | 15 |
|   | where the victim or (as the case may be) the other party was under 18 at the time of the offence.  |    |
| 3 | An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards child under 14).  | 20 |
| 4 | An offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape where the intended offence was an offence against a person under 18. |    |
| 5 | An offence under section 54 of the Criminal Law Act 1977 (incitement of child under 16 to commit incest).  | 25 |
| 6 | An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).   |    |

*Other offences*

- |   |   |    |
|---|---|----|
| 7 | An offence under any of –   |    |
|   | (a) sections 5 to 8 of the Sexual Offences Act 2003 (rape and other offences against children under 13),      | 30 |
|   | (b) sections 9 to 15 of that Act (child sex offences),  |    |
|   | (c) sections 16 to 19 of that Act (abuse of position of trust),   |    |
|   | (d) sections 25 and 26 of that Act (familial child sex offences), and   | 35 |
|   | (e) sections 47 to 50 of that Act (abuse of children through prostitution and pornography).                   |    |
| 8 | An offence under any of –   |    |
|   | (a) sections 1 to 4 of that Act (rape, assault and causing sexual activity without consent),                  | 40 |
|   | (b) sections 30 to 41 of that Act (persons with a mental disorder impeding choice, inducements etc to persons |    |

- with a mental disorder, and care workers for persons with a mental disorder), and
- (c) section 61 of that Act (administering a substance with intent),
- where the victim of the offence was under 18 at the time of the offence. 5
- 9 An offence under section 62 or 63 of that Act (committing an offence with intent to commit a sexual offence and trespass with intent to commit a sexual offence) where the intended offence was an offence against a person under 18. 10
- 10 An offence under section 66 or 67 of that Act (exposure and voyeurism) where the victim or intended victim of the offence was under 18 at the time of the offence.
- 11 An offence under –
- (a) section 1 of the Protection of Children Act 1978 (indecent photographs of children), or 15
- (b) section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of child).
- 12 An offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles) where the prohibited goods included any indecent photograph showing a person under 18. 20
- 13 An offence under section 113 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) in relation to an image showing a person under 18. 25
- General*
- 14 A reference in this Schedule to an offence (“offence A”) includes –
- (a) a reference to an attempt to commit offence A, 30
- (b) a reference to a conspiracy to commit offence A,
- (c) a reference to incitement to commit offence A,
- (d) a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed, and 35
- (e) a reference to aiding and abetting, counselling or procuring the commission of offence A.
- 15 A reference in this Schedule to an offence (“offence A”) includes –
- (a) a reference to an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning given by the section in question) is offence A, and 40
- (b) a reference to an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding 45

offence under the law of England and Wales (within the meaning given by that section) is offence A.”

SCHEDULE 35

Section 195

AMENDMENTS TO ARMED FORCES LEGISLATION

PART 1

5

COURTS-MARTIAL (APPEALS) ACT 1968

- 1 The Courts-Martial (Appeals) Act 1968 (c. 20) has effect subject to the following amendments.

*Determination of appeals from Court Martial*

- 2 (1) Section 12 (power to quash conviction as unsafe) is amended as follows. 10  
 (2) After subsection (1) insert –  
 “(1A) For the purposes of subsection (1)(a), the conviction is not unsafe if the Appeal Court think that there is no reasonable doubt about the appellant’s guilt.  
 (1B) Subsection (1A) does not require the Appeal Court to dismiss the appeal if they think that it would seriously undermine the proper administration of justice to allow the conviction to stand.” 15
- (3) After subsection (1B) (inserted by sub-paragraph (2) above) insert –  
 “(1C) In determining for the purposes of subsection (1)(a) whether the conviction is unsafe the Appeal Court may, if they think it appropriate in all the circumstances of the case, disregard any development in the law since the date of the conviction.” 20
- 3 (1) Section 21 (appeal against finding of not guilty by reason of insanity) is amended as follows.  
 (2) After subsection (1A) (as inserted by the Armed Forces Act 2006) insert – 25  
 “(1AA) For the purposes of subsection (1A)(a), the finding shall not be regarded as unsafe for a reason unrelated to the correctness of the finding of insanity if the Appeal Court think that there is no reasonable doubt that the appellant did the act or made the omission charged. 30  
 (1AB) Subsection (1AA) does not require the Appeal Court to dismiss the appeal if they think that it would seriously undermine the proper administration of justice to allow the finding to stand.”  
 (3) After subsection (1AB) (inserted by sub-paragraph (2) above) insert –  
 “(1AC) In determining for the purposes of subsection (1A)(a) whether the finding is unsafe the Appeal Court may, if they think it appropriate in all the circumstances of the case, disregard any development in the law since the date of the finding.” 35

- 4 (1) Section 25 (disposal of appeal against finding of unfitness) is amended as follows.
- (2) After subsection (1A) (as inserted by the Armed Forces Act 2006) insert –
- “(1AA) For the purposes of subsection (1A)(a), a finding shall not be regarded as unsafe for a reason unrelated to the correctness of the finding that the appellant is unfit to stand trial if the Appeal Court think that there is no reasonable doubt that the appellant did the act or made the omission charged.” 5
- (1AB) Subsection (1AA) does not require the Appeal Court to dismiss the appeal if they think that it would seriously undermine the proper administration of justice to allow the finding to stand.” 10
- (3) After subsection (1AB) (inserted by sub-paragraph (2) above) insert –
- “(1AC) In determining for the purposes of subsection (1A)(a) whether a finding is unsafe the Appeal Court may, if they think it appropriate in all the circumstances of the case, disregard any development in the law since the date of the finding.” 15
- 5 In section 28 (evidence) –
- (a) in subsection (2)(b) after “allowing” insert “or dismissing”, and
- (b) in subsection (2)(c) for “which is the subject of the appeal” substitute “which is relevant to the determination of the appeal”. 20
- 6 Before section 36 (but after the cross-heading preceding it) insert –
- “35A Evidence given after close of prosecution case**
- In determining an appeal under this Part, the Appeal Court shall not disregard any evidence solely on the ground that it was given after the judge advocate at the appellant’s trial wrongly permitted the trial to continue after the close of the evidence for the prosecution.” 25

## PART 2

### ARMED FORCES ACT 2006

- 7 The Armed Forces Act 2006 (c. 52) has effect subject to the following amendments. 30

#### *Term of sentence*

- 8 In section 196 (term of sentence etc: application of criminal justice provisions to service courts etc), after subsection (2) insert –
- “(3) In the application of section 189(1A) and (1B) of the 2003 Act to a relevant service court –
- (a) references to a summary offence shall be read as references to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a summary offence; and
- (b) references to an indictable offence shall be read as references to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an indictable offence under that law.” 40

*Review of sentence on reference by Attorney General*

- 9 In section 273 (reviews of unduly lenient sentencing by Court Martial Appeal Court) for subsection (7) substitute –
- “(7) Where a reference under subsection (1) relates to a case in which the Court Martial made an order specified in subsection (7A), the Court Martial Appeal Court may not, in deciding what sentence is appropriate for the case, make any allowance for the fact that the offender is being sentenced for a second time. 5
- (7A) The orders specified in this subsection are –
- (a) an order under section 269(2) of the 2003 Act (determination of minimum term in relation to mandatory life sentence); 10
- (b) an order under section 82A(2) of the Sentencing Act (determination of minimum term in relation to discretionary life sentences and certain other sentences).”

*Compensation for miscarriages of justice* 15

- 10 (1) Section 276 (compensation for miscarriages of justice) is amended as follows.
- (2) In subsection (1) for “subsections (2) and (3)” substitute “subsections (2) to (3A)”.
- (3) At the end of subsection (3) insert “before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned. 20
- (3A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.” 25
- (4) For subsection (6) substitute –
- “(6) Section 276A applies in relation to the assessment of the amount of the compensation.”
- (5) After subsection (7) insert –
- “(7A) But in a case where – 30
- (a) a person’s conviction for an offence is quashed on an appeal out of time, and
- (b) the person is to be subject to a retrial, the conviction is not to be treated for the purposes of subsection (1) as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.” 35

- 11 After section 276 insert –

**“276A Miscarriages of justice: amount of compensation**

- (1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 276 for a miscarriage of justice. 40



- (2) In assessing so much of any compensation payable under section 276 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to –
- (a) the seriousness of the offence of which the person was convicted and the severity of the punishment resulting from the conviction, and 5
  - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 276 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following – 10
- (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and 15
  - (b) any other convictions of the person and any punishment resulting from them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 276 is to be a nominal amount only. 20
- (5) The total amount of compensation payable to or in respect of a person under section 276 for a particular miscarriage of justice must not exceed the overall compensation limit. 25  
That limit is £500,000.
- (6) The total amount of compensation payable under section 276 for a person’s loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit. 30  
That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.
- (7) The Secretary of State may by order amend subsection (5) or (6) so as to alter the amount for the time being specified as the overall compensation limit or the earnings compensation limit.” 35
- 12 In section 373 (orders, regulations etc.) in subsection (3)(a), after “113,” insert “276A(7),”.

### PART 3

#### TRANSITIONAL PROVISIONS

- Transitional provisions: compensation for miscarriage of justice* 40
- 13 (1) Paragraph 10(3) has effect in relation to any application for compensation made in relation to –
- (a) a conviction which is reversed, and
  - (b) a pardon which is given,
- on or after the commencement date. 45

- (2) Paragraphs 10(4) and 11 have effect in relation to—
- (a) any application for compensation made on or after the commencement date, and
  - (b) any application for compensation made before that date in relation to which the question whether there is a right to compensation has not been determined before that date by the Secretary of State under section 276(4) of the 2006 Act. 5
- (3) Paragraph 10(5) has effect in relation to any conviction quashed on an appeal out of time in respect of which an application for compensation has not been made before the commencement date. 10
- (4) Paragraph 10(5) so has effect whether a conviction was quashed before, on or after the commencement date.
- (5) In the case of—
- (a) a conviction which is reversed, or
  - (b) a pardon which is given, 15
- before the commencement date but in relation to which an application for compensation has not been made before that date, any such application must be made before the end of the period of 2 years beginning with that date.
- (6) But the Secretary of State may direct that an application for compensation in relation to a case falling within sub-paragraph (5) which is made after the end of that period is to be treated as if it had been made before the end of that period if the Secretary of State considers that there are exceptional circumstances which justify doing so. 20
- (7) In this paragraph— 25
- “the 2006 Act” means the Armed Forces Act 2006 (c. 52);
- “application for compensation” means an application for compensation made under section 276(3) of the 2006 Act;
- “the commencement date” means the date on which paragraphs 10 and 11 come into force; 30
- “reversed” has the same meaning as in section 276(1) of the 2006 Act (as amended by paragraph 10(5)).

## SCHEDULE 36

Section 197

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

35

#### FINE DEFAULTERS

#### *Magistrates’ Courts Act 1980 (c. 43)*

- 1 In section 81(3) of the Magistrates’ Courts Act 1980 (enforcement of fines imposed on young offenders) for paragraph (a) substitute—
- “(a) a youth default order under section 39 of the Criminal Justice and Immigration Act 2008; or”.
- 40

*Criminal Justice Act 2003 (c. 44)*

- 2 (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In section 221(2) (provision of attendance centres) after paragraph (b) insert—
- “(c) default orders under section 300 of this Act, or 5  
 (d) youth default orders under section 39 of the Criminal Justice and Immigration Act 2008.”
- (3) In section 300 (power to impose unpaid work requirement or curfew requirement on fine defaulter) —
- (a) in subsection (1) — 10  
 (i) for “16” substitute “18”, and  
 (ii) omit paragraph (b), and  
 (b) in subsection (2), omit from “or, as the case may be” to “young offender”.
- (4) In Schedule 31 (modifications of community order provisions for purposes of default order) after paragraph 3 insert— 15
- “Attendance centre requirement*
- 3A In its application to a default order, section 214(2) (attendance centre requirement) is modified by the substitution for “not be less than 12 or more than 36” of “be— 20
- (a) not less than 12, and  
 (b) in the case of an amount in default which is specified in the first column of the following Table, not more than the number of hours set out opposite that amount in the second column. 25

TABLE

<i>Amount</i>	<i>Number of hours</i>	
An amount not exceeding £200	18 hours	
An amount exceeding £200 but not exceeding £500	21 hours	30
An amount exceeding £500 but not exceeding £1,000	24 hours	
An amount exceeding £1,000 but not exceeding £2,500	30 hours	35
An amount exceeding £2,500	36 hours”.	

- (5) In paragraph 4(5)(a) of that Schedule (modifications of community order provisions for purposes of default order) omit “, (5)”.
- (6) In paragraph 5 of that Schedule, for “or 3” substitute “, 3 or 3A”.

PART 2

OTHER AMENDMENTS

*Prison Act 1952 (c. 52)*

- 3      In section 43(1)(aa) of the Prison Act 1952 (provision by Secretary of State of young offender institutions), at the end insert “or other persons who may be lawfully detained there”. 5

*Criminal Justice Act 1961 (c. 39)*

- 4      In section 38(3)(c) of the Criminal Justice Act 1961 (construction of references to imprisonment or detention in case of children and young persons) after “in accordance with” insert “a determination of the Secretary of State or of a person authorised by him, in accordance with arrangements made by the Secretary of State or in accordance with”. 10

*Children and Young Persons Act 1969 (c. 54)*

- 5      (1) Section 23AA of the Children and Young Persons Act 1969 (electronic monitoring of remand conditions) is amended as follows. 15
- (2) In subsection (4) –
- (a) paragraph (a) is omitted; and
- (b) in paragraph (b), for “those arrangements” substitute “arrangements currently available in each local justice area which is a relevant area”.
- (3) In subsection (8) for “Subsections (8) to (10) of section 3AA” substitute “Subsections (4) to (7) of section 3AC”. 20

*Bail Act 1976 (c. 63)*

- 6      In section 4 of the Bail Act 1976 (general right to bail of accused persons), in subsection (3) after paragraph (b) insert “, or
- (c) the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act).”. 25

*Criminal Appeal (Northern Ireland) Act 1980 (c. 47)*

- 7      In section 13A(3) of the Criminal Appeal (Northern Ireland) Act 1980 (grounds for allowing appeal against finding of unfitness to be tried), in paragraph (a) for “the finding” substitute “a finding”. 30

*Wildlife and Countryside Act 1981 (c. 69)*

- 8      In section 19XA(1) of the Wildlife and Countryside Act 1981 (constables’ powers in connection with samples) for “by this section” substitute “by section 19”.

*Mental Health Act 1983 (c.20)*

- 9 In section 37 of the Mental Health Act 1983 (powers of court to order hospital admission or guardianship), in subsection (1A)(c) for “any of sections 225 to 228” substitute “section 225(2) or 226(2)”.

*Repatriation of Prisoners Act 1984 (c. 47)*

5

- 10 The Repatriation of Prisoners Act 1984 has effect subject to the following amendments.

- 11 Before section 1 insert—

*“Transfer of prisoners to or from the United Kingdom”.*

- 12 (1) Section 1 (issue of warrant for transfer) is amended as follows. 10

- (2) In subsections (2) and (3) for “warrant under this Act” substitute “warrant under this section”.

- (3) In subsection (4)—

- (a) for “warrant under this Act” (in both places) substitute “warrant under this section”; 15

- (b) in paragraph (b) omit the words “under this Act”.

- (4) In subsection (5) (as it applies in cases in which the relevant Minister is the Scottish Ministers and in cases in which the relevant Minister is the Secretary of State) for “warrant under this Act” substitute “warrant under this section”. 20

- (5) In subsection (6) after “warrant” (in the first place it appears) insert “under this section”.

- (6) In subsection (7)(b) after “under” insert “any of”.

- (7) In subsection (8)—

- (a) after “similar to” insert “any of”; 25

- (b) after “respect to” insert “—

- (a) ”; and

- (c) at the end insert “; or

- (b) the transfer between different countries and territories (or different parts of a country or territory) 30

of responsibility for the detention and release of persons who are required to be so detained in one of those countries or territories (or parts of a country or territory) but are present in the other country or territory (or part of a country or territory).” 35

- 13 (1) Section 2 (transfer out of the United Kingdom) is amended as follows.

- (2) In subsection (1) after “warrant” insert “under section 1”.

- (3) In subsection (4)—

- (a) in paragraph (a) for “warrant under this Act” substitute “warrant under section 1”; and 40

- (b) in paragraph (b)(i) after “33(1)(b)” insert “, (1A)”.

- 
- (4) In subsection (7) for “warrant under this Act” substitute “warrant under section 1”.
- 14 (1) Section 3 (transfer into the United Kingdom) is amended as follows.
- (2) In subsection (1), after “a warrant” insert “under section 1”.
- (3) In subsections (2), (4) and (6), for “warrant under this Act” substitute “warrant under section 1”. 5
- (4) In subsection (7) –
- (a) at the beginning insert “Part 1 of”; and
- (b) for “warrant under this Act” substitute “warrant under section 1”.
- (5) Subsection (10) is omitted. 10
- 15 (1) Section 4 (temporary return) is amended as follows
- (2) In subsection (1) –
- (a) for “warrant under this Act” substitute “warrant under section 1”;
- (b) in paragraph (a), after “Kingdom” (in the second place it appears) insert “, or from which responsibility for his detention and release has previously been transferred to the United Kingdom,”; 15
- (c) in paragraph (b), after “transferred” insert “, or to which responsibility for his detention and release has previously been transferred,”.
- (3) In subsection (2) – 20
- (a) for “a warrant under this Act” substitute “a warrant under section 1”;
- (b) for “earlier warrant under this Act” substitute “earlier warrant under section 1 or section 4A”.
- (4) In subsection (3) –
- (a) for “issued under this Act” substitute “issued under section 1”; 25
- (b) after “an earlier warrant” insert “under section 1 or section 4A”.
- (5) In subsection (4) for “warrant under this Act” substitute “warrant under section 1”.
- (6) After subsection (5) insert –
- “(6) Any reference in subsection (5)(a) to the prisoner having previously been transferred into or from Scotland includes a reference to responsibility for his detention and release having previously been transferred to or from the Scottish Ministers (as the case may be).” 30
- 16 Before section 5 (operation of warrant and retaking prisoners) insert –
- “Supplementary and general provisions”.* 35
- 17 (1) Section 5 (operation of warrant and retaking prisoners) is amended as follows.
- (2) In subsection (1) –
- (a) for “under this Act” substitute “under section 1”; and
- (b) after “this section” insert “(apart from subsection (9))”. 40

- (3) After subsection (8) insert—
- “(9) Where—
- (a) a warrant under section 4A has been issued, and
  - (b) the relevant person is a person to whom subsection (3) of that section applies,
- subsections (2) to (8) above apply for the purposes of that warrant (but with the modifications contained in subsection (10)), except (without prejudice to section 4C(4) or any enactment contained otherwise than in this Act) in relation to any time when the relevant person is required to be detained in accordance with provisions contained in the warrant by virtue of section 4C(1)(b). 5 10
- (10) In their application for the purposes of a warrant under section 4A those subsections shall have effect as if—
- (a) any reference to the warrant under section 1 (however expressed) were a reference to the warrant under section 4A; 15
  - (b) any reference to the prisoner were a reference to the relevant person;
  - (c) in subsection (4)—
    - (i) in paragraph (a) for “that person” there were substituted “the authorised person”; and 20
    - (ii) paragraph (b) were omitted; and
  - (d) in subsection (8)(a) for “transfer of a prisoner to or from Scotland” there were substituted “transfer of responsibility for the detention and release of the relevant person to the Scottish Ministers”.” 25
- 18 (1) Section 6 (revocation etc. of warrants) is amended as follows.
- (2) In subsection (1)—
- (a) for “warrant under this Act” (in the first place they appear) substitute “warrant under section 1”;
  - (b) in paragraph (b) for “this Act” substitute “that section”. 30
- (3) After subsection (1) insert—
- “(1A) Subject to section 4A(8), if at any time it appears to the relevant Minister appropriate, in order that effect may be given to any such arrangements as are mentioned in section 4A(5)(a) for a warrant under section 4A to be revoked or varied, he may as the case may require—
- (a) revoke that warrant; or
  - (b) revoke that warrant and issue a new warrant under section 4A containing provision superseding some or all of the provisions of the previous warrant.” 35 40
- (4) In subsections (2) and (3) after “subsection (1)(b)” insert “or (1A)(b)”.
- (5) In subsection (5)(a), for the words from “where” to the end substitute “in a case where—
- (i) the warrant was issued under section 1 and provides for the transfer of the prisoner to or from Scotland; or 45
  - (ii) the warrant was issued under section 4A and provides for the transfer of responsibility for the

detention and release of the relevant person to those Ministers;”.

- 19 (1) Section 8 is amended as follows.
- (2) In subsection (1) after the definition of “the prisoner” insert “; and  
 “the relevant person” has the meaning given by section 4A(5)(b).” 5
- (3) In subsection (3) –
- (a) in paragraph (a) after “section 1(1)(a)” insert “or 4A(5)(a)”;
- (b) in paragraph (b) for “such a party” substitute “a party to such international arrangements as are mentioned in section 1(1)(a)”;
- (c) after paragraph (b) (but before the “or” after that paragraph) insert –
- “(ba) that the appropriate authority of a country or territory which is a party to such international arrangements as are mentioned in section 4A(5)(a) has agreed to the transfer of responsibility for the detention and release of a particular person in accordance with those arrangements;”.
- 20 (1) The Schedule (operation of certain enactments in relation to the prisoner) is amended as follows.
- (2) For the cross-heading before paragraph 1 substitute – 20
- “PART 1
- WARRANTS UNDER SECTION 1
- Application of Part 1”.*
- (3) In paragraph 1 –
- (a) at the beginning insert “This Part of”; 25
- (b) after “under” insert “section 1 of”.
- (4) After paragraph 8 insert –
- “PART 2
- WARRANTS UNDER SECTION 4A TRANSFERRING RESPONSIBILITY TO THE RELEVANT MINISTER 30
- 9 This Part of this Schedule applies where a warrant is issued under section 4A providing for the transfer of responsibility for the detention and release of the relevant person to the relevant Minister (within the meaning of that section).
- 10 Paragraphs 2 to 8 above apply as they apply where a warrant is issued under section 1, but with the following modifications. 35
- 11 Any reference to “the relevant provisions” is to be read as a reference to the provisions contained in the warrant by virtue of section 4C(1)(b).
- 12 (1) Any reference to the prisoner is to be read as a reference to the relevant person. 40



- (2) Sub-paragraph (1) does not apply to the words “a short-term or long-term prisoner” in paragraph 2(3) (as it applies in Scotland to repatriated prisoners sentenced on or after 1 October 1993).
- 13 In paragraph 2 (as it applies in Scotland to repatriated prisoners sentenced on or after 1 October 1993) the reference to prisoners repatriated to Scotland is to be read as a reference to any relevant person sentenced on or after 1 October 1993 in whose case the warrant under section 4A transfers responsibility for his detention and release to the Scottish Ministers. 5
- 14 The reference in paragraph 7 to the time of the prisoner’s transfer into the United Kingdom is to be read as a reference to the time at which the warrant under section 4A was issued.” 10

*Police and Criminal Evidence Act 1984 (c. 60)*

- 21 (1) In section 37B of the Police and Criminal Evidence Act 1984 (consultation with the Director of Public Prosecutions) in subsection (9) (meaning of caution) – 15
- (a) after paragraph (a) (and before the word “and” immediately following it) insert –
- “(aa) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998”; and 20
- (b) in paragraph (b), for “of the Crime and Disorder Act 1998” substitute “of that Act”.
- (2) In section 63B of that Act (testing for presence of Class A drugs) in subsection (7) (disclosure of information obtained from drug samples) in paragraph (aa) after “Criminal Justice Act 2003” insert “or a youth conditional caution under Chapter 1 of Part 4 of the Crime and Disorder Act 1998”. 25

*Criminal Justice Act 1988 (c. 33)*

- 22 The Criminal Justice Act 1988 has effect subject to the following amendments. 30
- 23 In section 36 (reviews of sentencing), in subsection (2)(b)(iii) for “any of sections 225 to 228” substitute “section 225(2) or 226(2)”.
- 24 In section 160(1) (offence of possession of indecent photographs of children) for “Subject to subsection (1A),” substitute “Subject to section 160A,”. 35

*Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17))*

- 25 In article 15(5) of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (possession of indecent photographs of children) after “Article 2(2)” insert “, (2A)”.

*Football Spectators Act 1989 (c. 37)* 40

- 26 In paragraph 1(c), (k) and (q) of Schedule 1 to the Football Spectators Act 1989 (offences) –
- (a) for “Part III” substitute “Part 3 or 3A”; and

- (b) for “(racial hatred)” substitute “(hatred by reference to race etc)”.

*Criminal Justice (International Co-operation) Act 1990 (c. 5)*

- 27 In section 6(7) of the Criminal Justice (International Co-operation) Act 1990 (transfer of overseas prisoner to give evidence or assist investigation in the United Kingdom), for the words from “having been” to the end of paragraph (b) substitute “– 5
- (b) having been transferred there, or responsibility for his detention and release having been transferred there, from the United Kingdom under the Repatriation of Prisoners Act 1984; 10
- (c) having been transferred there, or responsibility for his detention and release having been transferred there, under any similar provision or arrangement from any other country or territory,”.

*Broadcasting Act 1990 (c. 42)* 15

- 28 (1) Section 167 of the Broadcasting Act 1990 (power to make copies of recordings) is amended as follows.
- (2) In subsection (4)(b), after “section 24” insert “or 29H”.
- (3) In subsection (5)(b), after “section 22” insert “or 29F”.

*Criminal Justice Act 1991 (c. 53)* 20

- 29 (1) The Criminal Justice Act 1991 is amended as follows.
- (2) In section 43(5) (young offenders), for “under this Part” substitute “under any provision of this Part other than section 33(1A)”.
- (3) In section 44(6) (disapplication of certain provisions for prisoners serving extended sentences) for “section 46” substitute “section 46(2)”. 25
- (4) In section 46(3) (definition of persons liable to removal from the United Kingdom) after “for the purposes of this section” insert “and the following provisions of this Part”.
- (5) In section 46B(5) (re-entry into United Kingdom of offender removed early from prison), after “subsections (1)” insert “, (1A)”. 30
- (6) In paragraph 10(3)(d) of Schedule 3 (reciprocal enforcement of certain orders)–
- (a) for “references in paragraph 3 to a day centre were references to” substitute “in paragraph 3 “day centre” meant”, and
- (b) at the end insert “or an attendance centre provided under section 221 of that Act”. 35
- (7) Sub-paragraph (6) extends to England and Wales and Northern Ireland only.

*Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)*

- 30 In section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 40

(life prisoners transferred to Scotland), after subsection (4) insert –

- “(4A) The reference in subsection (4)(b) above to a person who has been transferred to Scotland in pursuance of a warrant under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in Scotland in pursuance of a warrant issued by the Scottish Ministers under section 4A of that Act (warrant transferring responsibility for detention and release of offender).” 5
- (4B) Such a person is to be taken to have been transferred when the warrant under section 4A of that Act was issued in respect of that person.” 10

*Crime and Disorder Act 1998 (c. 37)*

- 31 (1) Section 38(4) of the Crime and Disorder Act 1998 (which defines “youth justice services” for the purposes of sections 38 to 41) is amended as follows.
- (2) After paragraph (a) insert –
- “(aa) the provision of assistance to persons determining whether reprimands or warnings should be given under section 65 below;” 15
- (3) After paragraph (b) insert –
- “(ba) the provision of assistance to persons determining whether youth conditional cautions (within the meaning of Chapter 1 of Part 4) should be given and which conditions to attach to such cautions; 20
- (b) the supervision and rehabilitation of persons to whom such cautions are given;”.
- (4) After paragraph (k) insert – 25
- “(l) the provision of support for children and young persons who are subject to a violent offender order or an interim violent offender order (within the meaning of Part 9 of the Criminal Justice and Immigration Act 2008).”

*Youth Justice and Criminal Evidence Act 1999 (c. 23)* 30

- 32 The Youth Justice and Criminal Evidence Act 1999 has effect subject to the following amendments.
- 33 (1) Section 35 (child complainants and other child witnesses) is amended as follows.
- (2) In subsection (3) (offences to which section applies), in paragraph (a) – 35
- (a) before sub-paragraph (v) insert –
- “(iva) any of sections 33 to 36 of the Sexual Offences Act 1956;” and
- (b) in sub-paragraph (vi), at end insert “or any relevant superseded enactment”. 40
- (3) After that subsection insert –
- “(3A) In subsection (3)(a)(vi) “relevant superseded enactment” means –
- (a) any of sections 1 to 32 of the Sexual Offences Act 1956;
- (b) the Indecency with Children Act 1960;

- 
- (c) the Sexual Offences Act 1967;  
 (d) section 54 of the Criminal Law Act 1977.”
- 34 (1) Section 62 (meaning of “sexual offence” and other references to offences) is amended as follows.
- (2) In subsection (1) at end insert “or any relevant superseded offence”. 5
- (3) After that subsection insert –
- “(1A) In subsection (1) “relevant superseded offence” means –
- (a) rape or burglary with intent to rape;
- (b) an offence under any of sections 2 to 12 and 14 to 17 of the Sexual Offences Act 1956 (unlawful intercourse, indecent assault, forcible abduction etc.); 10
- (c) an offence under section 128 of the Mental Health Act 1959 (unlawful intercourse with person receiving treatment for mental disorder by member of hospital staff etc.);
- (d) an offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards child under 14); 15
- (e) an offence under section 54 of the Criminal Law Act 1977 (incitement of child under 16 to commit incest).”
- 35 The amendments made by paragraphs 33 and 34 are deemed to have had effect as from 1 May 2004. 20
- 36 Where an order under section 61 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (application of Part 2 of Act to service courts) makes provision as regards the application of any provision of section 35 or 62 of that Act which is amended or inserted by paragraph 33 or 34, the order may have effect in relation to times before the making of the order. 25
- Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*
- 37 The Powers of Criminal Courts (Sentencing) Act 2000 has effect subject to the following amendments.
- 38 In section 12 (absolute and conditional discharge), in subsection (1) for “section 225, 226, 227 or 228” substitute “section 225(2) or 226(2)”. 30
- 39 In section 19(4) (making of referral orders: effect on other sentencing powers) after paragraph (b) insert –
- “(ba) making an order under section 1(2A) of the Street Offences Act 1959 in respect of the offender;”
- 40 In section 24(5)(a) (first meeting: duration of contract), after “under paragraph” insert “9ZD,”. 35
- 41 In section 28(a) (offender etc. referred back to court), for “Part I” substitute “Parts 1 and 1ZA”.
- 42 In section 92 (detention under sections 90 and 91: place of detention etc.) omit subsection (3). 40
- 43 In section 116 (power to order return to prison where offence committed during original sentence) –
- (a) in subsection (1)(b) for “under Part II of the Criminal Justice Act 1991 (early release of prisoners)” substitute “under any provision of Part

- 2 of the Criminal Justice Act 1991 (early release of prisoners) other than section 33(1A)”, and
- (b) in subsection (7), for “section 84 above” substitute “section 265 of the Criminal Justice Act 2003 (restriction on consecutive sentences for released prisoners)”. 5
- 44 In section 130 (compensation orders), in subsection (2) for “section 225, 226, 227 or 228” substitute “section 225(2) or 226(2)”.
- 45 In section 146 (driving disqualification for any offence), in subsection (2) for “section 225, 226, 227 or 228” substitute “section 225(2) or 226(2)”.
- 46 In section 164 (further interpretative provisions), in subsection (3)(c) for “any of sections 225 to 228” substitute “section 225(2) or 226(2)”. 10
- 47 (1) Schedule 1 (youth offender panels: further court proceedings) is amended as follows.
- (2) In the heading for Part 1, at the end insert “: REVOCATION OF REFERRAL ORDER”. 15
- (3) In paragraphs 5(3), 9 and 14(2)(b), after “under paragraph” insert “9ZD,”.

*Criminal Justice and Court Services Act 2000 (c. 43)*

- 48 In section 1 of the Criminal Justice and Court Services Act 2000 (purposes of the Chapter) –
- (a) in subsection (1A)(a) for “authorised persons to be given assistance in” substitute “the giving of assistance to persons”, and 20
- (b) in subsection (4) for ““authorised person” and “conditional caution” have” substitute ““conditional caution” has”.

*Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564) (N.I. 2)*

- 49 In Article 10 of the Life Sentences (Northern Ireland) Order 2001 (life prisoners transferred to Northern Ireland), after paragraph (5) insert – 25
- “(6) The reference in paragraph (4)(b) to a person transferred to Northern Ireland in pursuance of a warrant under the Repatriation of Prisoners Act 1984 includes a person who is detained in Northern Ireland in pursuance of a warrant under section 4A of that Act (warrant transferring responsibility for detention and release of offender).” 30

*Crime (International Co-operation) Act 2003 (c. 32)*

- 50 In section 48(2)(b) of the Crime (International Co-operation) Act 2003 (transfer of EU etc prisoner to assist UK investigation), for the words from “having been” to the end of paragraph (b) substitute “– 35
- (a) having been transferred there, or responsibility for his detention and release having been transferred there, from the United Kingdom under the Repatriation of Prisoners Act 1984; 40
- (b) having been transferred there, or responsibility for his detention and release having been transferred there, under any similar provision or arrangement from any other country or territory.”

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*Sexual Offences Act 2003 (c. 42)*

- 51 The Sexual Offences Act 2003 has effect subject to the following amendments.
- 52 (1) In section 133(1) (interpretation), in paragraph (a) of the definition of “cautioned”, for “by a police officer” substitute “(or, in Northern Ireland, cautioned by a police officer)”. 5
- (2) This paragraph extends to England and Wales and Northern Ireland only.
- 53 (1) In section 138 (orders and regulations), at the end insert –
- “(4) Orders or regulations made by the Secretary of State under this Act may – 10
- (a) make different provision for different purposes;
- (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.”
- (2) The amendment made by sub-paragraph (1), and the repeals in Part 4 of Schedule 38 of sections 86(4) and 87(6) of the Sexual Offences Act 2003 (which are consequential on that amendment), extend to England and Wales and Northern Ireland only. 15
- 54 (1) Schedule 3 (sexual offences in respect of which offender becomes subject to notification requirements) is amended as follows.
- (2) After paragraph 35 insert – 20
- “35A An offence under section 113 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender –
- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.” 25
- (3) After paragraph 92 insert –
- “92A An offence under section 113 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images) if the offender – 30
- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years.”
- (4) In paragraphs 93(1) and 93A(1) (service offences) for “35” substitute “35A”.
- (5) This paragraph extends to England and Wales and Northern Ireland only. 35

*Criminal Justice Act 2003 (c. 44)*

- 55 The Criminal Justice Act 2003 has effect subject to the following amendments.
- 56 (1) Section 23A (financial penalties) is amended as follows.
- (2) In subsection (5), for paragraphs (b) and (c) substitute – 40
- “(b) the person to whom the financial penalty is to be paid and how it may be paid.”

- (3) In subsection (6), for “to the specified officer” substitute “in accordance with the provision specified under subsection (5)(b).”
- (4) After subsection (6) insert –
- “(6A) Where a financial penalty is (in accordance with the provision specified under subsection (5)(b)) paid to a person other than a designated officer for a local justice area, the person to whom it is paid must give the payment to such an officer.” 5
- (5) Omit subsections (7) to (9).
- 57 After section 23A insert –
- “23B Variation of conditions”** 10
- A relevant prosecutor may, with the consent of the offender, vary the conditions attached to a conditional caution by –
- (a) modifying or omitting any of the conditions;
- (b) adding a condition.”
- 58 In section 25 (codes of practice) in subsection (2) after paragraph (g) insert – 15
- “(ga) the provision which may be made by a relevant prosecutor under section 23A(5)(b).”
- 59 In sections 88(3), 89(9) and 91(5) (days to be disregarded in calculating certain time periods relating to bail and custody under Part 10), before paragraph (a) insert – 20
- “(za) Saturday.”
- 60 In section 142 (purposes of sentencing), in subsection (2)(c) for “any of sections 225 to 228” substitute “section 225(2) or 226(2) of this Act”.
- 61 In section 150 (circumstances in which community sentence not available), in paragraph (d) for “any of sections 225 to 228” to the end substitute “section 225(2) or 226(2) of this Act (requirement to impose sentence of imprisonment for life or detention for life)”. 25
- 62 In section 152 (general restrictions on imposing custodial sentences), in subsection (1)(b) for “any of sections 225 to 228” substitute “section 225(2) or 226(2)”. 30
- 63 In section 153 (length of discretionary custodial sentences: general provision), in subsection (1), omit “or falling to be”.
- 64 In section 163 (general power of Crown Court to fine) for “any of sections 225 to 228” substitute “section 225(2) or 226(2)”.
- 65 In section 224 (meaning of “specified offence” etc), in subsection (3) the definition of relevant offence is omitted. 35
- 66 In section 305 (interpretation of Part 12), in subsection (4) –
- (a) for paragraphs (c) and (d) substitute –
- “(c) a sentence falls to be imposed under subsection (2) of section 225 if the court is obliged to pass a sentence of imprisonment for life under that subsection; 40
- (d) a sentence falls to be imposed under subsection (2) of section 226 if the court is obliged to pass a sentence of detention for life under that subsection;”, and

- (b) paragraph (e) is omitted.
- 67 In section 273 (life prisoners transferred to England and Wales), after subsection (4) insert—
- “(5) The reference in subsection (2)(b) above to a person who has been transferred to England and Wales in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984 includes a reference to a person who is detained in England and Wales in pursuance of a warrant under section 4A of that Act (warrant transferring responsibility for detention and release of offender).”
- 68 (1) Section 325 (arrangements for assessing etc risks posed by certain offenders) is amended as follows.
- (2) In subsection (8), for “section 326” substitute “sections 326 and 327A”.
- (3) After that subsection insert—
- “(8A) Responsible authorities must have regard to any guidance issued under subsection (8) in discharging those functions.”
- 69 In section 326(5)(a) (review of arrangements), for “and this section” substitute “, this section and section 327A”.
- 70 In section 330(5) (orders subject to the affirmative procedure) after “section 223,” insert—
- “section 227(6),  
section 228(7)”.
- 71 In Part 4 of Schedule 37, in the entry relating to the Magistrates’ Courts Act 1980, in the second column, omit the words “In section 33(1), paragraph (b) and the word “and” immediately preceding it”.
- Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (S.I. 2005/950)*
- 72 In paragraph 14 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (saving from certain provisions of the Criminal Justice Act 2003 for sentences of imprisonment of less than 12 months), for “sections 244 to 268” substitute “sections 244 to 264 and 266 to 268”.
- Terrorism Act 2006 (c. 11)*
- 73 (1) Schedule 1 to the Terrorism Act 2006 (Convention offences) is amended as follows.
- (2) In the cross-heading before paragraph 6 (offences involving nuclear material), after “*material*” add “*or nuclear facilities*”.
- (3) In paragraph 6(1), after “section 1(1)” insert “(a) to (d)”.
- (4) For paragraph 6(2) and (3) substitute—
- “(2) An offence mentioned in section 1(1)(a) or (b) of that Act where the act making the person guilty of the offence (whether done in the United Kingdom or elsewhere) —



- (a) is directed at a nuclear facility or interferes with the operation of such a facility, and
  - (b) causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material.
- (3) An offence under any of the following provisions of that Act – 5
  - (a) section 1B (offences relating to damage to environment);
  - (b) section 1C (offences of importing or exporting etc. nuclear material: extended jurisdiction);
  - (c) section 2 (offences involving preparatory acts and threats).
- (4) Expressions used in this paragraph and that Act have the same meanings in this paragraph as in that Act.” 10
- (5) After paragraph 6 insert –
  - “6A (1) Any of the following offences under the Customs and Excise Management Act 1979 –
    - (a) an offence under section 50(2) or (3) (improper importation of goods) in connection with a prohibition or restriction relating to the importation of nuclear material; 15
    - (b) an offence under section 68(2) (exportation of prohibited or restricted goods) in connection with a prohibition or restriction relating to the exportation or shipment as stores of nuclear material; 20
    - (c) an offence under section 170(1) or (2) (fraudulent evasion of duty etc.) in connection with a prohibition or restriction relating to the importation, exportation or shipment as stores of nuclear material. 25
  - (2) In this paragraph “nuclear material” has the same meaning as in the Nuclear Material (Offences) Act 1983 (see section 6 of that Act).”

*Natural Environment and Rural Communities Act 2006 (c. 16)*

- 74 In paragraph 7 of Schedule 5 to the Natural Environment and Rural Communities Act 2006 (powers of wildlife inspectors extended to certain other Acts) after paragraph (d) insert – 30
- “(da) section 19XB(1) and (4) (offences in connection with enforcement powers);”.

*Police and Justice Act 2006 (c. 48)*

35

- 75 (1) The Police and Justice Act 2006 is amended as follows.
- (2) In subsection (1) of section 49 (orders and regulations) –
- (a) at the end of paragraph (a) insert “or”;
  - (b) omit paragraph (c) and the “or” preceding it.
- (3) In paragraph 30 of Schedule 1 (National Policing Improvement Agency: inspections) omit sub-paragraph (3). 40

*Armed Forces Act 2006 (c. 52)*

- 76 In paragraph 12(ah) of Schedule 2 to the Armed Forces Act 2006 (offences) –

- (a) for “and 18 to 23” substitute “, 18 to 23 and 29B to 29G”; and
- (b) for “racial or religious hatred” substitute “hatred by reference to race etc”.

*Offender Management Act 2007 (c. 21)*

- |    |   |    |
|----|---|----|
| 77 | In section 1 of the Offender Management Act 2007 (meaning of “the probation purposes”)—   | 5  |
|    | (a) in subsection (1)(b) for “authorised persons to be given assistance in” substitute “the giving of assistance to persons”, and |    |
|    | (b) in subsection (4) for ““authorised person” and “conditional caution” have” substitute ““conditional caution” has”.            | 10 |

SCHEDULE 37

Section 197

TRANSITORY, TRANSITIONAL AND SAVING PROVISIONS

PART 1

YOUTH JUSTICE

*Abolition of certain youth orders and related amendments* 15

- |   |  |    |
|---|--|----|
| 1 | (1) Section 1, subsections (1) and (2) of section 6, the amendments in Part 1 of Schedule 4 and the repeals and revocations in Part 1 of Schedule 38 do not have effect in relation to—                  |    |
|   | (a) any offence committed before they come into force, or  |    |
|   | (b) any failure to comply with an order made in respect of an offence committed before they come into force.   | 20 |
|   | (2) So far as an amendment in Part 2 of Schedule 4 relates to any of the following orders, the amendment has effect in relation to orders made before, as well as after, the amendment comes into force— |    |
|   | (a) a referral order made under the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);  | 25 |
|   | (b) a reparation order made under that Act;  |    |
|   | (c) a community order made under section 177 of the Criminal Justice Act 2003 (c. 44).   |    |

*Reparation orders* 30

- |   |   |    |
|---|---|----|
| 2 | (1) Sub-paragraph (2) applies if the amendments of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (action plan orders and reparation orders) made by paragraph 106(1) to (5) of Schedule 4 (reparation orders: court before which offender to appear or be brought) come into force before the amendments of Schedule 8 to that Act made by paragraph 62 of that Schedule. | 35 |
|   | (2) After paragraph 106(1) to (5) of Schedule 4 comes into force, and until paragraph 62 of that Schedule comes into force, paragraph 3 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 has effect as if—  |    |

- (a) in sub-paragraph (5)(a) and (c), for “the appropriate court” there were substituted “a youth court”, and
  - (b) in sub-paragraph (6), for “appropriate” there were substituted “youth”.
- (3) Sub-paragraph (4) applies if the amendments of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (action plan orders and reparation orders) made by paragraph 62 of Schedule 4 come into force before the amendments of Schedule 8 to that Act made by paragraph 106(1) to (5) of that Schedule (reparation orders: court before which offender to appear or be brought). 5 10
- (4) After paragraph 62 of Schedule 4 comes into force, and until paragraph 106(1) to (5) of that Schedule comes into force, paragraph 1 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 has effect as if –
- (a) for “an action plan order or” there were substituted “a”, and
  - (b) the words “69(8) or, as the case may be,” were omitted. 15

*Making of youth rehabilitation orders: other existing orders*

- 3 In paragraph 29(3)(c) of Schedule 1 (requirements not to conflict with other obligations), the reference to a youth rehabilitation order is to be read as including a reference to any youth community order within the meaning of section 147(2) of the Criminal Justice Act 2003 (c. 44) (as it has effect immediately before the commencement of paragraph 72 of Schedule 4 to this Act). 20

*Instructions: other existing orders*

- 4 In section 5(3)(c) (instructions not to conflict with other obligations), the reference to a youth rehabilitation order is to be read as including a reference to any youth community order within the meaning of section 147(2) of the Criminal Justice Act 2003 (as it has effect immediately before the commencement of paragraph 72 of Schedule 4 to this Act). 25

*Fine default: section 35 of the Crime (Sentences) Act 1997*

- 5 The amendments, repeals and revocations in section 6, Schedule 4 and Part 1 of Schedule 38 of provisions which are necessary to give effect to section 35 of the Crime (Sentences) Act 1997 (c. 43) (fine defaulters) do not have effect in relation to a sum ordered to be paid where –
- (a) the sum is treated as adjudged to be paid on conviction, and
  - (b) the act or omission to which the sum relates occurred, or the order was made, before the commencement of those repeals and amendments. 35

*Restrictions on imposing community sentences*

- 6 In subsection (5) of section 148 of the Criminal Justice Act 2003 (restrictions on imposing community sentences), as inserted by section 11 of this Act, the reference to a youth rehabilitation order is to be read as including a reference to any youth community order within the meaning of section 147(2) of the Criminal Justice Act 2003 (as it has effect immediately before the commencement of paragraph 72 of Schedule 4 to this Act). 40

*Attendance centre rules*

- 7 The reference in paragraph 1(2)(a)(ii) of Schedule 2 to rules made under subsection (1)(d) or (e) of section 222 of the Criminal Justice Act 2003 (c. 44) includes a reference to rules made, or having effect as if made, before the coming into force of that section under section 62(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (provision, regulation and management of attendance centres). 5

PART 2

SENTENCING

*Abolition of suspended sentences* 10

- 8 Nothing in section 10 affects the power to suspend a sentence of imprisonment under section 189(1) of the Criminal Justice Act 2003 (suspended sentences) in relation to a summary offence committed before the commencement of section 10.

*Release and recall of prisoners* 15

- 9 Nothing in the amendments made by section 26 affects the operation of Part 2 of the Criminal Justice Act 1991 (c. 53) in relation to a long-term prisoner within the meaning of that Part who (for the purposes of that Part) has served one-half of his sentence before the commencement of that section.
- 10 The amendments made by subsections (3) and (5) of section 28 do not apply in relation to any person who is released on licence under section 36(1) of the Criminal Justice Act 1991 before the commencement of section 28. 20
- 11 The amendment made by subsection (1) of section 32 applies in relation to any person who is recalled under section 254(1) of the Criminal Justice Act 2003 on or after the commencement of section 32 but it is immaterial when the person was released on licence under Part 2 of the Criminal Justice Act 1991. 25

*Fine defaulters*

- 12 (1) Section 39 and Schedule 5 do not apply – 30
- (a) in relation to a sum adjudged to be paid by a conviction if the offence was committed before the commencement of that section, or
- (b) where a sum ordered to be paid is treated as adjudged to be paid by a conviction, if the act or omission to which the sum relates occurred, or the order was made, before the commencement of that section.
- (2) Section 40 and paragraph 2(4) and (6) of Schedule 36 do not apply – 35
- (a) in relation to a sum adjudged to be paid by a conviction if the offence was committed before the commencement of that section, or
- (b) where a sum ordered to be paid is treated as adjudged to be paid by a conviction, if the act or omission to which the sum relates occurred, or the order was made, before the commencement of that section. 40

PART 3

APPEALS

*Appeals against conviction etc.*

- 13 (1) The amendments made by sections 42 and 44 apply in relation to an appeal under Part 1 of the Criminal Appeal Act 1968 (c. 19) if the proceedings on appeal begin on or after the date on which those sections come into force. 5
- (2) For the purposes of this paragraph, the proceedings on appeal begin –
- (a) if the appellant appeals with leave of the Court of Appeal, on the date the application for leave is served on the Crown Court officer,
  - (b) if the judge of the court of trial grants a certificate that the case is fit for appeal – 10
    - (i) on the date the application for the certificate is served on the Crown Court officer or, in the case of an oral application, on the date the application is made to the judge, or
    - (ii) in a case where a certificate is granted without any application being made, on the date the certificate is granted, or 15
  - (c) if the Criminal Cases Review Commission refer the case to the Court of Appeal under Part 2 of the Criminal Appeal Act 1995 (c. 35), on the date the reference is made. 20
- (3) In this paragraph, references to service on the Crown Court officer are to be read in accordance with the Criminal Procedure Rules 2005 (S.I. 2005/384).
- 14 (1) The amendments made by sections 43 and 45 apply in relation to an appeal under Part 1 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) if the proceedings on appeal begin on or after the date on which those sections come into force. 25
- (2) For the purposes of this paragraph, the proceedings on appeal begin –
- (a) if the appellant appeals with leave of the Court of Appeal, on the date the application for leave is served on the proper officer,
  - (b) if leave to appeal is not required, on the date notice of appeal is served on the proper officer, 30
  - (c) if the judge of the court of trial grants a certificate that the case is fit for appeal –
    - (i) on the date the application for the certificate is made to the court of trial or lodged with the proper officer, or 35
    - (ii) in a case where a certificate is granted without any application being made, on the date the certificate is granted, or
  - (d) if the Criminal Cases Review Commission refer the case to the Court of Appeal under Part 2 of the Criminal Appeal Act 1995, on the date the reference is made. 40
- (3) In this paragraph, “the proper officer” has the same meaning as in the Criminal Appeal (Northern Ireland) Rules 1968 (S.R & O (N.I.) 1968/218).

*Prosecution appeals*

- 15 (1) The amendment made by section 46 applies in relation to an appeal under Part 9 of the Criminal Justice Act 2003 (c. 44) if the proceedings on appeal begin on or after the date on which that section comes into force.
- (2) For the purposes of this paragraph, the proceedings on appeal begin – 5
- (a) if the prosecution appeals with leave of the Crown Court judge, on the date the application for leave is served on the Crown Court officer or, in the case of an oral application, on the date the application is made, or
- (b) if the prosecution appeals with leave of the Court of Appeal, on the date the application for leave is served on the Crown Court officer. 10
- (3) In this paragraph, references to service on the Crown Court officer are to be read in accordance with the Criminal Procedure Rules 2005 (S.I.2005/384).
- 16 (1) The amendment made by section 47 applies in relation to an appeal under Part IV of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I.9)) if the proceedings on appeal begin on after the date on which that section comes into force. 15
- (2) For the purposes of this paragraph, the proceedings on appeal begin –
- (a) if the prosecution appeals with leave of the Crown Court judge, on the date the application for leave is made, 20
- (b) if the prosecution appeals with leave of the Court of Appeal, on the date the application for leave is served on the proper officer, or
- (c) if leave to appeal is not required, on the date the prosecution informs the Crown Court judge that it intends to appeal.
- (3) In this paragraph, “the proper officer” has the same meaning as in the Criminal Appeal (Prosecution Appeals) Rules (Northern Ireland) 2005 (S.R (N.I.) 2005/159). 25

PART 4

OTHER CRIMINAL JUSTICE PROVISIONS

*Alternatives to prosecution for offenders under 18* 30

- 17 The amendments made by Schedule 18 do not apply in relation to offences that are committed wholly or partly before the commencement of section 98.

*Protection for spent cautions under Rehabilitation of Offenders Act 1974*

- 18 (1) Subject to the following provisions of this paragraph, the Rehabilitation of Offenders Act 1974 (c. 53) (as amended by Schedule 19 to this Act) applies to cautions given before the commencement date as it applies to cautions given on or after that date. 35
- (2) A caution given before the commencement date shall be regarded as a spent caution at a time determined in accordance with sub-paragraphs (3) to (8).
- (3) A caution other than a conditional caution (as defined in section 8A(2)(a) of the 1974 Act) shall be regarded as a spent caution on the commencement date. 40

- (4) If the period of three months from the date on which a conditional caution was given ends on or before the commencement date, the caution shall be regarded as a spent caution on the commencement date unless sub-paragraph (7) applies.
- (5) If the period of three months from the date on which a conditional caution was given ends after the commencement date, the caution shall be regarded as a spent caution at the end of that period of three months unless sub-paragraph (7) applies. 5
- (6) Sub-paragraph (7) applies if –
- (a) before the date on which the caution would be regarded as a spent caution in accordance with sub-paragraph (4) or (5) (“the relevant date”), the person concerned is convicted of the offence in respect of which the caution was given, and 10
- (b) the rehabilitation period for the offence ends after the relevant date.
- (7) The caution shall be regarded as a spent caution at the end of the rehabilitation period for the offence. 15
- (8) If, on or after the date on which the caution becomes regarded as a spent caution in accordance with sub-paragraph (4) or (5), the person concerned is convicted of the offence in respect of which the caution was given –
- (a) the caution shall be treated for the purposes of Schedule 2 to the 1974 Act as not having become spent in relation to any period before the end of the rehabilitation period for the offence, and 20
- (b) the caution shall be regarded as a spent caution at the end of that rehabilitation period.
- (9) In this paragraph, “the commencement date” means the date on which section 99 comes into force. 25
- 19 In the application of subsection (7) of section 9A of the Rehabilitation of Offenders Act 1974 (c. 53) (as inserted by paragraph 4 of Schedule 19) to offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference to 51 weeks is to be read as a reference to 6 months. 30

*Extension of powers of non-legal staff*

- 20 A designation made under section 7A of the Prosecution of Offences Act 1985 (c. 23) (powers of non-legal staff) which has effect immediately before the date on which section 105 comes into force continues to have effect on and after that date as if made under section 7A as amended by that section. 35

*Compensation for miscarriages of justice*

- 21 (1) Section 111(3) has effect in relation to any application for compensation made in relation to –
- (a) a conviction which is reversed, and 40
- (b) a pardon which is given,  
on or after the commencement date.
- (2) Section 111(4), (6) and (7) have effect in relation to –
- (a) any application for compensation made on or after the commencement date, and 45

- (b) any application for compensation made before that date in relation to which the question whether there is a right to compensation has not been determined before that date by the Secretary of State under section 133(3) of the 1988 Act.
- (3) Section 111(5) has effect in relation to any conviction quashed on an appeal out of time in respect of which an application for compensation has not been made before the commencement date. 5
- (4) Section 111(5) so has effect whether a conviction was quashed before, on or after the commencement date.
- (5) In the case of— 10
- (a) a conviction which is reversed, or
- (b) a pardon which is given,
- before the commencement date but in relation to which an application for compensation has not been made before that date, any such application must be made before the end of the period of 2 years beginning with that date. 15
- (6) But the Secretary of State may direct that an application for compensation in relation to a case falling within sub-paragraph (5) which is made after the end of that period is to be treated as if it had been made before the end of that period if the Secretary of State considers that there are exceptional circumstances which justify doing so. 20
- (7) In this paragraph—
- “the 1988 Act” means the Criminal Justice Act 1988 (c. 33);
- “application for compensation” means an application for compensation made under section 133(2) of the 1988 Act; 25
- “the commencement date” means the date on which section 111 comes into force;
- “reversed” has the same meaning as in section 133 of the 1988 Act (as amended by section 111(5)).

PART 5 30

CRIMINAL LAW

*Penalties for possession of extreme pornographic images*

- 22 In section 116(4)(a) the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44). 35

*Indecent photographs of children*

- 23 (1) Section 118(3) applies in relation to things done as mentioned in—
- (a) section 1(1) of the Protection of Children Act 1978 (c. 37) (offences relating to indecent photographs of children), or
- (b) section 160(1) of the Criminal Justice Act 1988 (offence of possession of indecent photographs of children), 40
- after the commencement of section 118.
- (2) Section 119(3) applies in relation to things done as mentioned in—



- (a) article 3(1) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (offences relating to indecent photographs of children), or
  - (b) article 15(1) of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (offence of possession of indecent photographs of children),
- after the commencement of section 119. 5

*Maximum penalty for publication etc. of obscene articles*

- 24 Section 120 does not apply to offences committed before the commencement of that section. 10

*Loitering etc. for purposes of prostitution*

- 25 In determining for the purposes of section 1 of the Street Offences Act 1959 (c. 57) (as amended by section 123) whether a person's conduct is persistent, any conduct that takes place before the commencement of section 123 is to be disregarded. 15

*Offences relating to nuclear material and nuclear facilities*

- 26 The new section 2 inserted into the Nuclear Material (Offences) Act 1983 (c. 18) by paragraph 4 of Schedule 27 and the repeal in Part 5 of Schedule 38 of section 14 of the Terrorism Act 2006 (c. 11) do not apply in relation to anything done before the date on which Schedule 27 comes into force. 20

*Reasonable force for purposes of self-defence etc.*

- 27 (1) Section 128 applies whether the alleged offence took place before, or on or after, the date on which that section comes into force.
- (2) But that section does not apply in relation to—
- (a) any trial on indictment where the arraignment took place before that date, or
  - (b) any summary trial which began before that date,
- or in relation to any proceedings in respect of any trial within paragraph (a) or (b). 25
- (3) Where the alleged offence is a service offence, that section similarly does not apply in relation to—
- (a) any proceedings before a court where the arraignment took place before that date, or
  - (b) any summary proceedings which began before that date,
- or in relation to any proceedings in respect of any proceedings within paragraph (a) or (b). 30
- (4) For the purposes of sub-paragraph (3) summary proceedings are to be regarded as beginning when the hearing of the charge, or (as the case may be) the summary trial of the charge, begins. 35
- (5) In this paragraph—
- “service offence” means—
- (a) any offence against any provision of Part 2 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), Part 2 of the Air Force Act 1955
- 40

(3 & 4 Eliz. 2 c. 19) or Part 1 of the Naval Discipline Act 1957 (c. 53); or

(b) any offence under Part 1 of the Armed Forces Act 2006 (c. 52);  
 “summary proceedings” means summary proceedings conducted by a commanding officer or appropriate superior authority.

5

*Imprisonment for unlawfully obtaining etc. personal data*

28 The amendments made by section 129 do not apply in relation to an offence committed before the commencement of that section.

PART 6

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS 10

*Mutual recognition of financial penalties*

29 (1) The amendments made by subsection (1) of section 130, and subsection (2) of that section, do not apply in relation to financial penalties (within the meaning of that section) imposed before that section comes into force.

(2) Section 132 does not apply in relation to financial penalties (within the meaning of that section) imposed before that section comes into force. 15

(3) Section 134 does not apply in relation to financial penalties (within the meaning of that section) imposed before that section comes into force.

(4) Section 137 does not apply in relation to financial penalties (within the meaning of that section) imposed before that section comes into force. 20

*Repatriation of prisoners*

30 The amendment made by section 143 does not apply to warrants under section 1 of the Repatriation of Prisoners Act 1984 issued before the commencement of that section.

PART 7 25

VIOLENT OFFENDER ORDERS

*Penalties for offences*

31 In section 164(7)(a) in its application in relation to England and Wales the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44). 30

PART 8

ANTI-SOCIAL BEHAVIOUR

*Review of anti-social behaviour orders etc.*

32 (1) The amendments made by section 174 do not apply in relation to an anti-social behaviour order, or a section 1B or 1C order, made more than 9 months before the day on which that section comes into force, unless the 35

order has been varied by a further order made no more than 9 months before that day.

- (2) In sub-paragraph (1) “section 1B or 1C order” means an order under section 1B or section 1C of the Crime and Disorder Act 1998 (c. 37).

*Individual support orders* 5

- 33 (1) The amendments made by section 175 do not apply in relation to an anti-social behaviour order, or a section 1B or 1C order, made more than 9 months before the day on which that section comes into force, unless the order has been varied by a further order made no more than 9 months before that day. 10

- (2) In sub-paragraph (1) “section 1B or 1C order” means an order under section 1B or section 1C of the Crime and Disorder Act 1998.

PART 9

POLICE

*Police misconduct and performance procedures* 15

- 34 (1) This paragraph applies if paragraphs 7, 8(3), 15 and 16 of Schedule 32 come into force before the relevant provisions of the Legal Services Act 2007 come into force.

- (2) Until the relevant provisions of the Legal Services Act 2007 come into force – 20

- (a) section 84 of the Police Act 1996 (c. 16) (as substituted by paragraph 7 of that Schedule and as referred to in the subsection (4) of section 85 of that Act substituted by paragraph 8(3) of that Schedule) has effect as if, in subsection (4), for the definition of “relevant lawyer” there were substituted – 25

““relevant lawyer” means counsel or a solicitor;” and

- (b) section 4 of the Ministry of Defence Police Act 1987 (c. 4) (as substituted by paragraph 15 of that Schedule and as referred to in subsection (6) of the section 4A of that Act substituted by paragraph 16 of that Schedule) has effect as if, in subsection (4), for the definition of “relevant lawyer” there were substituted – 30

““relevant lawyer” means counsel or a solicitor;”.

- (3) In this paragraph “the relevant provisions of the Legal Services Act 2007” means the provisions of that Act which provide, for the purposes of that Act, for a person to be an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act). 35

PART 10

SPECIAL IMMIGRATION STATUS

*Conditions on designated persons* 40

- 35 In the application of section 184 to England and Wales in relation to an offence committed before the commencement of section 281(5) of the

Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference in section 184(6)(b) to 51 weeks is to be read as a reference to six months.

PART 11

MISCELLANEOUS

5

*Persistent sales of tobacco to persons under 18*

36 The new sections 12A and 12B inserted into the Children and Young Persons Act 1933 (c. 12) by section 194 do not apply where any of the offences mentioned in those new sections were committed before the commencement of that section.

10

*Sexual offences*

37 The amendment made by sub-paragraph (1) of paragraph 53 of Schedule 36 is not to be read as affecting the validity of any supplementary, incidental, consequential, transitional, transitory or saving provisions included in orders or regulations made by the Secretary of State under the Sexual Offences Act 2003 (c. 42) before the commencement of that sub-paragraph.

15

SCHEDULE 38

Section 198

REPEALS AND REVOCATIONS

PART 1

YOUTH REHABILITATION ORDERS

20

<i>Title</i>	<i>Extent of repeal or revocation</i>	
Children and Young Persons Act 1933 (c. 12)	In section 34(7), the words “section 163 of the Powers of Criminal Courts (Sentencing) Act 2000 or”. In section 49 –	25
	(a) in subsection (4A), paragraph (d) (but not the word “and” immediately following it); (b) in subsection (13)(c), sub-paragraph (i) together with the word “and” immediately following it.	30
Social Work (Scotland) Act 1968 (c. 49)	In section 94(1), in the definition of “supervision order”, the words “the Powers of Criminal Courts (Sentencing) Act 2000 or”.	
Children and Young Persons Act 1969 (c. 54)	Section 25. In section 70(1), the definition of “supervision order”.	35
Northern Ireland (Modification of Enactments – No. 1) Order 1973 (S.I. 1973/2163)	In Schedule 1, the entry relating to section 25(2) of the Children and Young Persons Act 1969.	40



<i>Title</i>	<i>Extent of repeal or revocation</i>	
Criminal Justice Act 1991 (c. 53)	In paragraph 11 of Schedule 3— (a) in sub-paragraph (2)(a), the words “under section 177 of the Criminal Justice Act 2003”; (b) in sub-paragraph (4), the words “under section 177 of the Criminal Justice Act 2003”. In Schedule 11, paragraph 3.	5
Children (Prescribed Orders – Northern Ireland, Guernsey and Isle of Man) Regulations 1991 (S.I. 1991/ 2032)	In regulation 8(1)— (a) sub-paragraph (a)(ii); (b) sub-paragraph (b)(i), (ii), (iv) and (v); (c) sub-paragraph (c)(ii) and (iii).	10
Prisoners (Return to Custody) Act 1995 (c. 16)	Section 2(2).	15
Children (Northern Ireland Consequential Amendments) Order 1995 (S.I. 1995/ 756)	Article 7(2) and (3).	
Crime and Disorder Act 1998 (c. 37)	In section 38(4)— (a) paragraph (g); (b) in paragraph (h), the words “or a supervision order”. In Schedule 8, paragraph 13(1).	20
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	Chapters 1, 2, 4 and 5 of Part 4. In section 74(3)(a), the words “or with the requirements of any community order or any youth community order to which he may be subject”. In section 75, the words “action plan orders and” and “so far as relating to reparation orders”. In section 137(2)— (a) paragraphs (a) to (c); (b) in paragraph (d), the words “action plan order or”. In section 159, the words “paragraph 3(1), 10(6) or 18(1) of Schedule 3 to this Act,” “paragraph 1(1) of Schedule 5 to this Act,” and “paragraph 7(2) of Schedule 7 to this Act, or”. In section 160— (a) subsection (2); (b) in subsection (3)(a), “40(2)(a)”; (c) subsection (5).	25  30  35  40

Title	Extent of repeal or revocation
<p>Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) – <i>cont.</i></p>	<p>In section 163, the definitions of –</p> <ul style="list-style-type: none"> <li>(a) “action plan order”;</li> <li>(b) “affected person”;</li> <li>(c) “attendance centre”;</li> <li>(d) “attendance centre order”;</li> <li>(e) “community sentence”;</li> <li>(f) “curfew order”;</li> <li>(g) “exclusion order”;</li> <li>(h) “supervision order”;</li> <li>(i) “supervisor”;</li> <li>(j) “youth community order”;</li> </ul> <p>and paragraphs (a), (aa) and (f) of the definition of “responsible officer”.</p> <p>Schedules 3 and 5 to 7.</p> <p>In Schedule 8 –</p> <ul style="list-style-type: none"> <li>(a) in the heading, the words “action plan orders and”;</li> <li>(b) paragraph 1 and the heading preceding that paragraph;</li> <li>(c) in the cross-heading before paragraph 2, the words “action plan order or”;</li> <li>(d) in paragraph 2 –                             <ul style="list-style-type: none"> <li>(i) in sub-paragraph (2), in paragraph (a), sub-paragraphs (ii) and (iii) and in paragraphs (b) and (c) the words “action plan order or”;</li> <li>(ii) in sub-paragraphs (5) and (7), the words “action plan order or”;</li> <li>(iii) in sub-paragraph (8), the words “or action plan order” in both places;</li> </ul> </li> <li>(d) paragraphs 3 and 4;</li> <li>(e) in the cross-heading before paragraph 5, the words “action plan order or”;</li> <li>(f) in paragraph 5(1)(a), the words “action plan order or”;</li> <li>(g) in paragraph 6(9)(a), (b) and (c), the words “action plan order or”.</li> </ul> <p>In Schedule 9, paragraphs 1, 2(2), (3)(a) and (4), 28(2), 33, 34(b), 39, 41, 42, 49, 80, 93(a), 126(b), 127, 129, 131 and 132.</p> <p>In Schedule 10, paragraphs 4 to 6 and 12 to 15.</p> <p>In Schedule 11, paragraphs 4(1)(a), (2) and (3) and 5.</p>
<p>Care Standards Act 2000 (c. 14)</p>	<p>In Schedule 4, paragraph 28(3).</p>
<p>Criminal Justice and Court Services Act 2000 (c. 43)</p>	<p>Section 46.                      Section 52.                      Section 70(5).</p>

<i>Title</i>	<i>Extent of repeal or revocation</i>	
Criminal Justice and Court Services Act 2000 (c. 43) – <i>cont.</i>	In Schedule 7 –	
	(a) in paragraph 4(2), in the entry relating to the Powers of Criminal Courts (Sentencing) Act 2000, the entries beginning “sections 63(1)(b)” and “in section 69”;	5
	(b) paragraphs 37(b), 69, 163, 164, 174, 175 and 192;	
	(c) in paragraph 196, paragraphs (a), (b), (c)(i) and (iii) and (d);	10
	(d) in paragraph 197 – (i) paragraph (a); (ii) paragraph (d); (iii) in paragraph (f), the definitions of “affected person” and “exclusion order”; (iv) paragraph (g)(i);	15
	(e) paragraphs 201, 202(2) and 204.	
Anti-social Behaviour Act 2003 (c. 38)	Section 88. Schedule 2.	20
Criminal Justice Act 2003 (c. 44)	In section 147, subsections (1)(b) and (2). In section 148 –	
	(a) in subsection (2), the words “which consists of or includes a community order”;	25
	(b) subsection (3). In section 156(2), “or (3)(a)”.	
	In section 176, the definition of “youth community order”.	30
	In section 197(1)(b), the words “the offender is aged 18 or over and”.	
	Section 199(4). Section 211(5).	
	In section 221(2), paragraph (b) together with the word “or” immediately preceding it.	35
	Section 279. In Schedule 8, paragraphs 12, 15 and 17(5). Schedule 24.	
	In Schedule 32, paragraphs 2(2), 8(2)(a), 14, 64(3)(a)(ii), 70(5)(a) and (7), 73, 89(2), 95 to 105, 106(2), 107, 122, 123(3), (5) and (8), 125, 127, 128, 129, 131(3) and 138.	40



PART 2

SENTENCING

<i>Title</i>	<i>Extent of repeal or revocation</i>	
Criminal Justice Act 1991 (c. 53)	In section 45 –	
	(a) in subsection (3), subsection (2) of the substituted text, and	5
	(b) subsection (4).	
	Section 46(1).	
	In section 46A –	
	(a) in subsection (1), the words “Subject to subsection (2) below,”;	10
	(b) subsection (2);	
	(c) subsection (8).	
Crime (Sentences) Act 1997 (c. 43)	In section 50(2), the words from “but nothing” to the end.	15
	In section 31(1), “(1) or (2)”.	
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 5, in paragraph 7, the words “the corresponding subsection of”.	
	In section 17 –	
	(a) in subsection (1), paragraph (c) together with the word “and” immediately preceding it;	20
Criminal Justice Act 2003 (c. 44)	(b) subsection (5).	
	Section 92(3).	
	In section 142(2)(a), the words “at the time of conviction”.	25
	In section 153(1), the words “or falling to be”.	
	In section 224(3), the definition of “relevant offence”.	
	In section 227(1)(a), the words “, other than a serious offence,”.	30
	In section 228 –	
	(a) in subsection (1)(b)(ii), the words from “or by section 226(3)” to the end, and	
	(b) subsection (3)(a) and the word “and” immediately following it.	35
	In section 229 –	
	(a) in subsection (2) the words from the beginning to “18”, and	
(b) subsections (3) and (4).	40	
Section 234.		
In section 247 –		
(a) in subsection (2), the word “and” (at the end of paragraph (a)) and paragraph (b), and	45	
(b) subsections (3), (4), (5) and (6).		
Section 254(3) to (5).		
In section 256 –		
(a) in subsection (2), “or (b)”;		
(b) subsections (3) and (5).	50	



<i>Title</i>	<i>Extent of repeal</i>	
Judicature (Northern Ireland) Act 1978 (c. 23)	In section 49 – (a) in subsection (2), the words from “or, where subsection (3) applies” to the end; (b) subsection (3).	5
Criminal Appeal (Northern Ireland) Act 1980 (c. 47)	Section 10(6).	
Mental Health Act 1983 (c. 20)	In Schedule 4, paragraph 23(d)(ii).	
Criminal Justice Act 1988 (c. 33)	In section 36(9), the word “and” at the end of paragraph (ab).	10
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In section 155 – (a) in subsection (1), the words from “or, where subsection (2) below applies” to the end; (b) subsections (2) and (3).	15
Criminal Justice Act 2003 (c. 44)	Section 272(1).	

PART 4

OTHER CRIMINAL JUSTICE PROVISIONS

<i>Title</i>	<i>Extent of repeal</i>	
Children and Young Persons Act 1969 (c. 54)	Section 23AA(4)(a).	20
Bail Act 1976 (c. 63)	Section 3AA(6) to (10) and (12).	
Magistrates’ Courts Act 1980 (c. 43)	Section 13(5). Section 24(1B).	
Prosecution of Offences Act 1985 (c. 23)	In section 7A – (a) in subsection (2)(a)(ii), the words “other than trials”; (b) subsection (6).	25
Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40)	Section 8.	30
Access to Justice Act 1999 (c. 22)	Section 17A(5).	
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In section 3 – (a) in subsection (2), paragraph (b) and the word “or” immediately preceding it; (b) in subsection (5), in paragraph (b), the words “paragraph (b) and”.	35
Sexual Offences Act 2003 (c. 42)	Section 86(4). Section 87(6).	
Criminal Justice Act 2003 (c. 44)	Section 23A(7) to (9). In Schedule 3, paragraphs 13, 22 and 57(2). In Schedule 36, paragraph 50.	40

<i>Title</i>	<i>Extent of repeal</i>	
Criminal Justice Act 2003 (c. 44) – <i>cont.</i>	In Part 4 of Schedule 37, in the entry relating to the Magistrates’ Courts Act 1980, in the second column, the words “In section 33(1), paragraph (b) and the word “and” immediately preceding it”.	5

## PART 5

## CRIMINAL LAW

<i>Title</i>	<i>Extent of repeal</i>	
Street Offences Act 1959 (c. 57)	Section 2.	10
Magistrates’ Courts Act 1980 (c. 43)	In Schedule 7, paragraph 30.	
Nuclear Material (Offences) Act 1983 (c. 18)	Section 1(2). In section 6(1), the words “in this Act”.	
Public Order Act 1986 (c. 64)	Section 29B(3). In section 29H –	15
	(a) in subsection (1), the words “in England and Wales”;	
	(b) subsection (2). In section 29I –	20
	(a) in subsection (2)(a), the words “in the case of an order made in proceedings in England and Wales,”;	
	(b) subsections (2)(b) and (4). In section 29L(1) and (2), the words “in England and Wales”.	25
Sexual Offences Act 2003 (c. 42)	In Schedule 1, paragraph 3. In Schedule 2, in paragraph 1(d), the words “in relation to a photograph or pseudo-photograph showing a child under 16”.	30
Terrorism Act 2006 (c. 11)	Section 14.	

## PART 6

## INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

<i>Title</i>	<i>Extent of repeal</i>	
Commissioners for Revenue and Customs Act 2005 (c. 11)	In Schedule 2, paragraph 14.	35
Repatriation of Prisoners Act 1984 (c. 47)	In section 1(4)(b) the words “under this Act”. Section 3(10). In section 8(1) the word “and” after the definition of “order”.	40
Police and Justice Act 2006 (c.48)	Section 44(4).	

PART 7

ANTI-SOCIAL BEHAVIOUR

<i>Title</i>	<i>Extent of repeal</i>	
Police and Justice Act 2006 (c. 48)	In Schedule 14, paragraph 55(5).	5

PART 8

POLICING

<i>Title</i>	<i>Extent of repeal</i>	
Police Act 1996 (c. 16)	In section 50(4), the words “, subject to subsection (3)(b),”. In section 54(2), the words “and the Central Police Training and Development Authority”. In section 97 –	10
	(a) in subsection (6), in each of paragraphs (b) and (c), the words “or is required to resign as an alternative to dismissal”;	15
	(b) in subsection (7), the words “, or required to resign as an alternative to dismissal.”.	
	In Schedule 6, paragraph 6.	20
Greater London Authority Act 1999 (c. 29)	In Schedule 27, paragraphs 95 and 107.	
Criminal Justice and Police Act 2001 (c. 16)	In section 125 –	
	(a) subsections (3) and (4);	
	(b) in subsection (5), paragraph (b), together with the word “and” immediately preceding it.	25
Police Reform Act 2002 (c. 30)	In Schedule 3 –	
	(a) paragraphs 20A(8), 20B(5) and 20E(5);	
	(b) paragraph 20G together with the cross heading immediately preceding it;	30
	(c) in paragraphs 21A(5) and 24B(2), the words from “(and the other provisions” to the end;	
	(d) paragraph 22(1)(c) (together with the word “or” immediately preceding it);	35
	(e) in paragraph 25, the word “and” immediately after each of subparagraphs (2)(b), (3)(b) and (5)(b).	
Railways and Transport Safety Act 2003 (c. 20)	Section 43.	40
Police and Justice Act 2006 (c. 48)	In section 49(1), paragraph (c) together with the word “or” immediately preceding it. In Schedule 1, paragraph 30(3). In Schedule 2, paragraph 19.	45

*Title*

*Extent of repeal*

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Legal Services Act 2007 (c. 29)

In Schedule 21, paragraphs 73 and 119.

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# Criminal Justice and Immigration Bill

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A

## B I L L

To make further provision about criminal justice (including provision about the police) and dealing with offenders and defaulters; to provide for the establishment and functions of Her Majesty's Commissioner for Offender Management and Prisons and the Northern Ireland Commissioner for Prison Complaints and to make further provision about the management of offenders; to amend the criminal law; to make further provision for combatting crime and disorder; to make provision about the mutual recognition of financial penalties; to amend the Repatriation of Prisoners Act 1984; to make provision for a new immigration status in certain cases involving criminality; to amend section 127 of the Criminal Justice and Public Order Act 1994 and to confer power to suspend the operation of that section; and for connected purposes.

*Brought from the Commons on 9th January 2008*

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*Ordered to be Printed, 9th January 2008*

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