

# **Criminal Justice and Immigration Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice, are published separately as Bill 130 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr David Hanson has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Criminal Justice and Immigration Bill are compatible with the Convention rights.

# Criminal Justice and Immigration Bill

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## CONTENTS

### PART 1

#### YOUTH REHABILITATION ORDERS

##### *Youth rehabilitation orders*

- 1 Youth rehabilitation orders
- 2 Breach, revocation or amendment of youth rehabilitation orders
- 3 Transfer of youth rehabilitation orders to Northern Ireland
- 4 Meaning of “the responsible officer”
- 5 Responsible officer and offender: duties in relation to the other

##### *Supplementary*

- 6 Abolition of certain youth orders and related amendments
- 7 Youth rehabilitation orders: interpretation
- 8 Isles of Scilly

### PART 2

#### SENTENCING

##### *General sentencing provisions*

- 9 Purposes etc. of sentencing: offenders aged under 18
- 10 Abolition of suspended sentences for summary offences
- 11 Restriction on imposing community sentences

##### *Custodial sentences and release*

- 12 Indeterminate sentences: determination of tariffs
- 13 Consecutive terms of imprisonment
- 14 Minimum conditions for early release under section 246(1) of the Criminal Justice Act 2003
- 15 Application of section 35(1) of the Criminal Justice Act 1991 to prisoners liable to removal from the UK
- 16 Release of prisoners after recall
- 17 Further review and release of prisoners after recall

- 18 Recall of life prisoners: abolition of requirement for recommendation by Parole Board

*Early removal of prisoners from the United Kingdom*

- 19 Removal under Criminal Justice Act 1991 (offences before 4th April 2005 etc.)  
20 Removal under Criminal Justice Act 2003

*Other sentencing provisions*

- 21 Referral orders: referral conditions

*Enforcement of sentences*

- 22 Imposition of unpaid work requirement for breach of community order  
23 Youth default orders  
24 Power to impose attendance centre requirement on fine defaulter  
25 Disclosure of information for enforcing fines

**PART 3**

APPEALS

- 26 Appeals against conviction  
27 Determination of prosecution appeals  
28 Review of sentence on reference by Attorney General

**PART 4**

HER MAJESTY'S COMMISSIONER FOR OFFENDER MANAGEMENT AND PRISONS

*The Commissioner*

- 29 Appointment etc. of Commissioner

*Complaints*

- 30 Eligible complaints: general  
31 Eligible complaints: specific requirements applicable to all complaints  
32 Treatment by Commissioner of complaints  
33 Report on the outcome of an investigation  
34 Recommendations by Commissioner

*Investigations into deaths etc.*

- 35 Investigation of deaths  
36 Reports on the outcome of a death investigation  
37 Investigations requested by the Secretary of State  
38 Reports on the outcome of an investigation under section 37

*General powers and duties*

- 39 Powers of Commissioner to obtain information etc.  
40 Exceptions etc. to Commissioner's powers under section 39

- 41 Obstruction and contempt
- 42 Working with other ombudsmen etc.
- 43 Legal and other representation

*Disclosure of information*

- 44 Disclosure of information etc.
- 45 Disclosure prejudicial to national security or contrary to public interest
- 46 Notification of matters of potential concern to the police or other authorities

*General*

- 47 Power to pay expenses
- 48 Consequential amendments relating to Part 4
- 49 The Prisons and Probation Ombudsman
- 50 Interpretation of Part 4
- 51 Power to modify certain provisions of Part 4
- 52 Power to confer new functions on Commissioner

**PART 5**

OTHER CRIMINAL JUSTICE PROVISIONS

*Alternatives to prosecution*

- 53 Alternatives to prosecution for offenders under 18
- 54 Protection for spent cautions under the Rehabilitation of Offenders Act 1974
- 55 Criminal conviction certificates and criminal record certificates

*Proceedings in magistrates' courts*

- 56 Allocation of offences triable either way etc.
- 57 Trial or sentencing in absence of accused in magistrates' courts
- 58 Extension of powers of non-legal staff

*Criminal legal aid*

- 59 Provisional grant of right to representation
- 60 Disclosure of information to enable assessment of financial eligibility
- 61 Pilot schemes

*Miscellaneous*

- 62 Compensation for miscarriages of justice
- 63 Annual report on the Criminal Justice (Terrorism and Conspiracy) Act 1998

**PART 6**

CRIMINAL LAW

*Pornography etc.*

- 64 Possession of extreme pornographic images
- 65 Exclusion of classified films etc.

- 66 Defence
- 67 Penalties etc. for possession of extreme pornographic images
- 68 Indecent photographs of children
- 69 Indecent photographs of children (Northern Ireland)
- 70 Maximum penalty for publication etc. of obscene articles

*Street offences*

- 71 Amendment to offence of loitering etc. for purposes of prostitution
- 72 Orders to promote rehabilitation
- 73 Rehabilitation of offenders: orders under section 1(2A) of the Street Offences Act 1959

*Offences relating to nuclear material and nuclear facilities*

- 74 Offences relating to the physical protection of nuclear material and nuclear facilities

*Penalty for unlawfully obtaining etc. personal data*

- 75 Imprisonment for unlawfully obtaining etc. personal data

**PART 7**

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

*Mutual recognition of financial penalties*

- 76 Requests to other member States
- 77 Procedure on receipt of certificate by Lord Chancellor
- 78 Requests from other member States
- 79 Procedure on receipt of certificate by designated officer
- 80 Recognition of financial penalties: supplemental
- 81 Interpretation of sections 76 to 80

*Mutual legal assistance in revenue matters*

- 82 Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation

**PART 8**

VIOLENT OFFENDER ORDERS

*Violent offender orders*

- 83 Violent offender orders
- 84 Qualifying offenders
- 85 Applications for violent offender orders
- 86 Making of violent offender orders
- 87 Variation, renewal or discharge of violent offender orders
- 88 Interim violent offender orders
- 89 Appeals

*Notification requirements*

- 90 Offenders subject to notification requirements
- 91 Notification requirements: initial notification
- 92 Notification requirements: changes
- 93 Notification requirements: periodic notification
- 94 Notification requirements: travel outside United Kingdom
- 95 Method of notification and related matters
- 96 Notification requirements to be complied with by parents of young offenders
- 97 Parental directions: notification requirements imposed on parents of young offenders

*Supplementary*

- 98 Offences
- 99 Supply of information to Secretary of State etc.
- 100 Supply of information by Secretary of State etc.
- 101 Information about release or transfer
- 102 Interpretation of Part 8

**PART 9**

## ANTI-SOCIAL BEHAVIOUR

*Premises closure orders*

- 103 Closure orders: premises associated with persistent disorder or nuisance

*Nuisance or disturbance on hospital premises*

- 104 Offence of causing nuisance or disturbance on NHS premises
- 105 Power to remove person causing nuisance or disturbance
- 106 Guidance about the power to remove etc.
- 107 Nuisance or disturbance on HSS premises

*Anti-social behaviour orders etc. in respect of children and young persons*

- 108 Review of anti-social behaviour orders etc.
- 109 Individual support orders

*Parenting contracts and parenting orders*

- 110 Parenting contracts and parenting orders: local authorities

**PART 10**

## POLICING

*Misconduct procedures etc.*

- 111 Police misconduct and performance procedures
- 112 Investigation of complaints of police misconduct etc.

*Financial assistance*

- 113 Financial assistance under section 57 of the Police Act 1996

*Inspection*

- 114 Inspection of police authorities

**PART 11**

## SPECIAL IMMIGRATION STATUS

- 115 Designation  
 116 “Foreign criminal”  
 117 Effect of designation  
 118 Conditions  
 119 Support  
 120 Support: supplemental  
 121 End of designation  
 122 Interpretation: general

**PART 12**

## GENERAL

- 123 Orders and regulations  
 124 Consequential etc. amendments and transitional and saving provision  
 125 Repeals and revocations  
 126 Financial provisions  
 127 Extent  
 128 Commencement  
 129 Short title

- 
- Schedule 1 – Further provisions about youth rehabilitation orders  
     Part 1 – Provisions to be included in youth rehabilitation orders  
     Part 2 – Requirements  
     Part 3 – Provisions applying where court proposes to make youth rehabilitation order  
     Part 4 – Provisions applying where court makes youth rehabilitation order etc.  
 Schedule 2 – Breach, revocation or amendment of youth rehabilitation orders  
     Part 1 – Preliminary  
     Part 2 – Breach of requirement of order  
     Part 3 – Revocation of order  
     Part 4 – Amendment of order  
     Part 5 – Powers of court in relation to order following subsequent conviction  
     Part 6 – Supplementary  
 Schedule 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
- Part 2 – Provisions relating to an order made or amended under Part 1
- Schedule 4 – Youth rehabilitation orders: consequential and related amendments
  - Part 1 – Consequential amendments
  - Part 2 – Related amendments
- Schedule 5 – Youth default orders: modification of provisions applying to youth rehabilitation orders
- Schedule 6 – Her Majesty’s Commissioner for Offender Management and Prisons
- Schedule 7 – The Commissioner’s complaints remit
  - Part 1 – The specified matters
  - Part 2 – Supplementary
- Schedule 8 – The Commissioner’s deaths remit
- Schedule 9 – Consequential amendments relating to Part 4
- Schedule 10 – Controlling authorities
- Schedule 11 – Alternatives to prosecution for persons under 18
- Schedule 12 – Protection for spent cautions under the Rehabilitation of Offenders Act 1974
- Schedule 13 – Allocation of cases triable either way etc.
- Schedule 14 – Schedule to the Street Offences Act 1959
- Schedule 15 – Offences relating to nuclear material and nuclear facilities
  - Part 1 – Amendments to Nuclear Material (Offences) Act 1983
  - Part 2 – Amendments to Customs and Excise Management Act 1979
- Schedule 16 – Grounds for refusal to enforce financial penalties
  - Part 1 – The grounds for refusal
  - Part 2 – European framework list (financial penalties)
  - Part 3 – Interpretation
- Schedule 17 – Closure orders: premises associated with persistent disorder or nuisance
- Schedule 18 – Nuisance or disturbance on HSS premises
- Schedule 19 – Police misconduct and performance procedures
  - Part 1 – Amendments to the Police Act 1996
  - Part 2 – Amendments to the Ministry of Defence Police Act 1987
  - Part 3 – Amendments to the Railways and Transport Safety Act 2003
- Schedule 20 – Investigation of complaints of police misconduct etc.
- Schedule 21 – Minor and consequential amendments
  - Part 1 – Fine defaulters
  - Part 2 – Other amendments
- Schedule 22 – Transitory, transitional and saving provisions
  - Part 1 – Youth justice
  - Part 2 – Sentencing
  - Part 3 – Other criminal justice provisions
  - Part 4 – Criminal law
  - Part 5 – International co-operation in relation to criminal justice matters
  - Part 6 – Violent offender orders
  - Part 7 – Anti-social behaviour
  - Part 8 – Special immigration status
- Schedule 23 – Repeals and revocations
  - Part 1 – Youth rehabilitation orders
  - Part 2 – Sentencing
  - Part 3 – Other criminal justice provisions



Part 4 – Criminal law

Part 5 – International co-operation in relation to criminal justice matters

Part 6 – Anti-social behaviour

Part 7 – Policing

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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 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 make provision for a new immigration status in certain cases involving criminality; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

YOUTH REHABILITATION ORDERS

*Youth rehabilitation orders*

**1 Youth rehabilitation orders**

- (1) Where a person aged under 18 is convicted of an offence, the court by or before which the person is convicted may in accordance with Schedule 1 make an order (in this Part referred to as a “youth rehabilitation order”) imposing on the person any one or more of the following requirements—
- (a) an activity requirement (see paragraphs 6 to 8 of Schedule 1),
  - (b) a supervision requirement (see paragraph 9 of that Schedule),
  - (c) in a case where the offender is aged 16 or 17 at the time of the conviction, an unpaid work requirement (see paragraph 10 of that Schedule),
  - (d) a programme requirement (see paragraph 11 of that Schedule),
  - (e) an attendance centre requirement (see paragraph 12 of that Schedule),

- 
- (f) a prohibited activity requirement (see paragraph 13 of that Schedule),
  - (g) a curfew requirement (see paragraph 14 of that Schedule),
  - (h) an exclusion requirement (see paragraph 15 of that Schedule),
  - (i) a residence requirement (see paragraph 16 of that Schedule),
  - (j) a local authority residence requirement (see paragraph 17 of that Schedule), 5
  - (k) a mental health treatment requirement (see paragraph 20 of that Schedule),
  - (l) a drug treatment requirement (see paragraph 22 of that Schedule),
  - (m) a drug testing requirement (see paragraph 23 of that Schedule), and 10
  - (n) an education requirement (see paragraph 24 of that Schedule).
- (2) A youth rehabilitation order –
- (a) may also impose an electronic monitoring requirement (see paragraph 25 of Schedule 1), and
  - (b) must do so if paragraph 2 of that Schedule so requires. 15
- (3) A youth rehabilitation order may be –
- (a) a youth rehabilitation order with intensive supervision and surveillance (see paragraph 3 of Schedule 1), or
  - (b) a youth rehabilitation order with fostering (see paragraph 4 of that Schedule). 20
- (4) But a court may only make an order mentioned in subsection (3)(a) or (b) if –
- (a) the court is dealing with the offender for an offence which is punishable with imprisonment,
  - (b) the court is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that, but for paragraph 3 or 4 of Schedule 1, a custodial sentence would be appropriate (or, if the offender was aged under 12 at the time of conviction, would be appropriate if the offender had been aged 12), and 25
  - (c) if the offender was aged under 15 at the time of conviction, the court is of the opinion that the offender is a persistent offender. 30
- (5) Schedule 1 makes further provision about youth rehabilitation orders.
- (6) This section is subject to –
- (a) sections 148 and 150 of the Criminal Justice Act 2003 (c. 44) (restrictions on community sentences etc.), and
  - (b) the provisions of Parts 1 and 3 of Schedule 1. 35
- 2 Breach, revocation or amendment of youth rehabilitation orders**
- Schedule 2 makes provision about failures to comply with the requirements of youth rehabilitation orders and about the revocation or amendment of such orders.
- 3 Transfer of youth rehabilitation orders to Northern Ireland** 40
- Schedule 3 makes provision about the transfer of youth rehabilitation orders to Northern Ireland.

#### 4 Meaning of “the responsible officer”

- (1) For the purposes of this Part, “the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, means –
- (a) in a case where the order –
    - (i) imposes a curfew requirement or an exclusion requirement but no other requirement mentioned in section 1(1), and 5
    - (ii) imposes an electronic monitoring requirement, the person who under paragraph 25(4) of Schedule 1 is responsible for the electronic monitoring required by the order;
  - (b) in a case where the only requirement imposed by the order is an attendance centre requirement, the officer in charge of the attendance centre in question; 10
  - (c) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Part on the responsible officer. 15
- (2) In this section “qualifying officer”, in relation to a youth rehabilitation order, means –
- (a) a member of a youth offending team established by a local authority for the time being specified in the order for the purposes of this section, or
  - (b) an officer of a local probation board appointed for or assigned to the local justice area for the time being so specified. 20
- (3) The Secretary of State may by order –
- (a) amend subsections (1) and (2), and
  - (b) make any other amendments of –
    - (i) this Part, or 25
    - (ii) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) (general provisions about sentencing),that appear to be necessary or expedient in consequence of any amendment made by virtue of paragraph (a).
- (4) An order under subsection (3) may, in particular, provide for the court to determine which of two or more descriptions of responsible officer is to apply in relation to any youth rehabilitation order. 30

#### 5 Responsible officer and offender: duties in relation to the other

- (1) Where a youth rehabilitation order has effect, it is the duty of the responsible officer – 35
- (a) to make any arrangements that are necessary in connection with the requirements imposed by the order,
  - (b) to promote the offender’s compliance with those requirements, and
  - (c) where appropriate, to take steps to enforce those requirements.
- (2) In subsection (1) “responsible officer” does not include a person falling within section 4(1)(a). 40
- (3) In giving instructions in pursuance of a youth rehabilitation order relating to an offender, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid –
- (a) any conflict with the offender’s religious beliefs, 45

- (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.
- (4) The Secretary of State may by order provide that subsection (3) is to have effect with such additional restrictions as may be specified in the order. 5
- (5) An offender in respect of whom a youth rehabilitation order is in force –
- (a) must keep in touch with the responsible officer in accordance with such instructions as the offender may from time to time be given by that officer, and 10
- (b) must notify the responsible officer of any change of address.
- (6) The obligation imposed by subsection (5) is enforceable as if it were a requirement imposed by the order.

### *Supplementary*

- 6 Abolition of certain youth orders and related amendments** 15
- (1) Chapters 1, 2, 4 and 5 of Part 4 of (and Schedules 3 and 5 to 7 to) the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (curfew orders, exclusion orders, attendance centre orders, supervision orders and action plan orders) cease to have effect.
- (2) Part 1 of Schedule 4 makes amendments consequential on provisions of this Part. 20
- (3) Part 2 of Schedule 4 makes minor amendments regarding other community orders which are related to the consequential amendments in Part 1 of that Schedule.
- 7 Youth rehabilitation orders: interpretation** 25
- (1) In this Part, except where the contrary intention appears –
- “accommodation provided by or on behalf of a local authority” has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 105 of that Act;
- “activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 6 of Schedule 1; 30
- “associated”, in relation to offences, is to be read in accordance with section 161(1) of the Powers of Criminal Courts (Sentencing) Act 2000;
- “attendance centre” has the meaning given by section 221(2) of the Criminal Justice Act 2003 (c. 44); 35
- “attendance centre requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 12 of Schedule 1;
- “court” (without more) does not include a service court;
- “curfew requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 14 of Schedule 1; 40
- “custodial sentence” has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;
- “detention and training order” has the same meaning as it has in that Act by virtue of section 163 of that Act;

- “drug treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 22 of Schedule 1;
- “drug testing requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 23 of Schedule 1;
- “education requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 24 of Schedule 1; 5
- “electronic monitoring requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 25 of Schedule 1;
- “exclusion requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 15 of Schedule 1; 10
- “extended activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 3 of Schedule 1;
- “fostering requirement”, in relation to a youth rehabilitation order with fostering, has the meaning given by paragraph 18 of Schedule 1;
- “guardian” has the same meaning as in the Children and Young Persons Act 1933 (c. 12); 15
- “local authority” means –
- (a) in relation to England –
    - (i) a county council,
    - (ii) a district council whose district does not form part of an area that has a county council, 20
    - (iii) a London borough council, or
    - (iv) the Common Council of the City of London in its capacity as a local authority, and
  - (b) in relation to Wales – 25
    - (i) a county council, or
    - (ii) a county borough council;
- “local authority residence requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 17 of Schedule 1; 30
- “local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
- “mental health treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 20 of Schedule 1; 35
- “programme requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 11 of Schedule 1;
- “prohibited activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 13 of Schedule 1;
- “residence requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 16 of Schedule 1; 40
- “the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, has the meaning given by section 4;
- “service court” means –
- (a) the Court Martial, 45
  - (b) the Summary Appeal Court,
  - (c) the Court Martial Appeals Court, or
  - (d) the Service Civilian Court;
- “supervision requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 9 of Schedule 1; 50

- “unpaid work requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 10 of Schedule 1;
- “youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37);
- “youth rehabilitation order” has the meaning given by section 1; 5
- “youth rehabilitation order with fostering” has the meaning given by paragraph 4 of Schedule 1;
- “youth rehabilitation order with intensive supervision and surveillance” has the meaning given by paragraph 3 of Schedule 1.
- (2) For the purposes of any provision of this Part which requires the determination of the age of a person by the court, the Secretary of State or a local authority, the person’s age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State or a local authority to be after considering any available evidence. 10
- (3) Any reference in this Part to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders. 15
- 8 Isles of Scilly**
- This Part has effect in relation to the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may by order specify. 20

## PART 2

### SENTENCING

#### *General sentencing provisions*

- 9 Purposes etc. of sentencing: offenders aged under 18**
- (1) After section 142 of the Criminal Justice Act 2003 (c. 44) insert – 25
- “142A Purposes etc. of sentencing: offenders aged under 18**
- (1) This section applies where a court is dealing with an offender aged under 18 in respect of an offence.
- (2) The court must have regard primarily to the principal aim of the youth justice system, that is, to prevent offending by children and other persons aged under 18. 30
- (3) The court must also –
- (a) have regard to the purposes of sentencing mentioned in subsection (4), so far as it is not required to do so by subsection (2), and 35
- (b) in accordance with section 44 of the Children and Young Persons Act 1933, have regard to the welfare of the offender.
- (4) Those purposes of sentencing are –
- (a) the punishment of offenders,
- (b) the reform and rehabilitation of offenders, 40
- (c) the protection of the public, and

- (d) the making of reparation by offenders to persons affected by their offences.
- (5) This section does not apply –
  - (a) to an offence the sentence for which is fixed by law,
  - (b) to an offence the sentence for which falls to be imposed under –
    - (i) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences),
    - (ii) section 29(6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon), or
    - (iii) section 226 or 228 of this Act (dangerous offenders), or
  - (c) in relation to the making under Part 3 of the Mental Health Act 1983 of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.”
- (2) In section 142 of the Criminal Justice Act 2003 (c. 44) (purposes of sentencing in relation to offenders aged 18 or over at the time of conviction) –
  - (a) in the heading, at the end insert “: offenders aged 18 or over”, and
  - (b) in subsection (2)(a) omit “at the time of conviction”.
- (3) In section 44 of the Children and Young Persons Act 1933 (c. 12) (general considerations) after subsection (1) insert –
  - “(1A) Subsection (1) of this section is subject to section 142A(2) of the Criminal Justice Act 2003 (which requires a court to have regard primarily to the principal aim of the youth justice system where it is dealing with an offender aged under 18).
  - (1B) Accordingly, in determining whether a case is one in which the court should take steps as mentioned in subsection (1), the court shall have regard primarily to the principal aim of the youth justice system (see section 37 of the Crime and Disorder Act 1998).”
- (4) In section 37 of the Crime and Disorder Act 1998 (c. 37) (aim of the youth justice system), at the end add –
  - “(3) Subsection (2) above is subject to section 142A(2) of the Criminal Justice Act 2003 (which requires a court to have regard primarily to that aim where it is dealing with an offender aged under 18).”
- 10 Abolition of suspended sentences for summary offences**
- In section 189 of the Criminal Justice Act 2003 (suspended sentences) after subsection (1) insert –
  - “(1A) Subject to subsection (1B), the power conferred by subsection (1) is not exercisable in relation to a sentence of imprisonment imposed for a summary offence.
  - (1B) Where –
    - (a) the court proposes to pass two or more sentences of imprisonment on the same occasion;
    - (b) the offences for which those sentences are to be passed include at least one summary offence and one indictable offence, and



(c) the court exercises the power conferred by subsection (1) in relation to at least one sentence passed for an indictable offence, the power conferred by subsection (1) may be exercised in relation to the sentence passed for the summary offence or offences (or any of them) being dealt with at that time.”

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## 11 Restriction on imposing community sentences

In section 148 of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences) after subsection (4) insert—

“(5) The fact that by virtue of any provision of this section—

(a) a community sentence may be passed in relation to an offence; or

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(b) particular restrictions on liberty may be imposed by a community order or youth community order,

does not require a court to pass such a sentence or to impose those restrictions.”

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### *Custodial sentences and release*

## 12 Indeterminate sentences: determination of tariffs

(1) Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (determination of tariffs in cases where the sentence is not fixed by law) is amended as follows.

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(2) In subsection (3) (determination of the appropriate part of the sentence) at the end insert—

“In Case A or Case B below, this subsection has effect subject to, and in accordance with, subsection (3C) below.”

(3) After subsection (3) insert—

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“(3A) Case A is where the court is of the opinion that the seriousness of the offence, or of the combination of the offence and one or more other offences associated with it,—

(a) is exceptional (but not such that the court proposes to make an order under subsection (4) below), and

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(b) would not be adequately reflected by the period which the court would otherwise specify under subsection (2) above.

(3B) Case B is where the court is of the opinion that the period which it would otherwise specify under subsection (2) above would have little or no effect on time spent in custody, taking into account all the circumstances of the particular offender.

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(3C) In Case A or Case B above, in deciding the effect which the comparison required by subsection (3)(c) above is to have on reducing the period which the court determines for the purposes of subsection (3)(a) (and before giving effect to subsection (3)(b) above), the court may, instead of reducing that period by one-half,—

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(a) in Case A above, reduce it by such lesser amount (including nil) as the court may consider appropriate according to the seriousness of the offence, or

- (b) in Case B above, reduce it by such lesser amount (but not by less than one-third) as the court may consider appropriate in the circumstances.”
- (4) In subsection (4A) (no order to be made under subsection (4) in the case of certain sentences) after “No order under subsection (4) above may be made” insert “, and Case A above does not apply,”. 5
- 13 Consecutive terms of imprisonment**
- (1) Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) is amended as follows.
- (2) In section 181 (consecutive terms of imprisonment complying with section 181) after subsection (7) insert – 10
- “(7A) For the purposes of subsection (7)(a) the aggregate length of the terms of imprisonment is not to be regarded as being more than 65 weeks if the aggregate of all the custodial periods and the longest of the licence periods in relation to those terms is not more than 65 weeks.” 15
- (3) In section 264A (consecutive terms: intermittent custody) –
- (a) in subsection (3), omit the words from “and none” to the end;
- (b) in subsection (4)(b), for “the longest of the total” substitute “all the”; and
- (c) in subsection (5), for the definition of “total licence period” substitute – 20
- ““licence period” has the same meaning as in section 183(3);”.
- (4) In section 265 (restriction on consecutive sentences for released prisoners) –
- (a) in subsection (1), for “early under this Chapter” substitute “ –
- “(a) under this Chapter; or
- (b) under Part 2 of the Criminal Justice Act 1991.”; and 25
- (b) after that subsection insert –
- “(1A) Subsection (1) applies to a court sentencing a person to a term of imprisonment for offences committed before 4 April 2005 as well as for offences committed on or after that date.
- (1B) Where an intermittent custody order applies to the other sentence, the reference in subsection (1) to release under this Chapter does not include release by virtue of section 183(1)(b)(i) (periods of temporary release on licence before the custodial days specified under section 183(1)(a) have been served).” 30
- 14 Minimum conditions for early release under section 246(1) of the Criminal Justice Act 2003** 35
- In section 246(2) of the Criminal Justice Act 2003 (minimum conditions for early release of fixed-term prisoner other than intermittent custody prisoner) for paragraph (b) substitute “and
- (b) he has served – 40
- (i) at least 4 weeks of that period, and
- (ii) at least one-half of that period.”

**15 Application of section 35(1) of the Criminal Justice Act 1991 to prisoners liable to removal from the UK**

- (1) The following provisions of Part 2 of the Criminal Justice Act 1991 (c. 53) (which apply to persons sentenced for offences committed before 4th April 2005) cease to have effect – 5
- (a) section 46(1) (which makes the early release power under section 35(1) exercisable in relation to long term prisoners liable to removal without a Parole Board recommendation), and
  - (b) in section 50(2), the words from “but nothing” to the end (which exclude prisoners liable to removal from the cases in which prisoners must be released if recommended for release by the Parole Board); 10
- and, accordingly, the Parole Board (Transfer of Functions) Order 1998 (S.I. 1998/3218) applies to prisoners liable to removal as it applies to other prisoners.
- (2) In this section “prisoners liable to removal” means prisoners liable to removal from the United Kingdom (within the meaning of section 46(3) of the Criminal Justice Act 1991). 15

**16 Release of prisoners after recall**

- (1) In section 254 of the Criminal Justice Act 2003 (c. 44) (recall of prisoners while on licence) – 20
- (a) subsections (3) to (5) cease to have effect;
  - (b) in subsection (7) for “subsections (2) to (6)” substitute “this section”.
- (2) After that section insert –
- “254A Re-release after recall: offences other than specified offences**
- (1) This section applies to any person recalled under section 254, unless he is serving – 25
- (a) a sentence imposed for a specified offence, or
  - (b) an extended sentence imposed under section 227 or 228, section 58 of the Crime and Disorder Act 1998 or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000. 30
- (2) If the Secretary of State is satisfied, on recalling a person to whom this section applies, that the person will not present a risk of serious harm to the public if he is released at the end of the period of 28 days beginning with the date on which he is returned to prison, then subsection (4) applies. 35
- (3) But subsection (4) does not apply to a person who has previously been released under paragraph (b) of that subsection.
- (4) The person must –
- (a) on his return to prison, be informed that he will be released under this subsection, and 40
  - (b) at the end of the period mentioned in subsection (2), be released by the Secretary of State on licence under this Chapter (unless he has already been released under subsection (5)).

- (5) The Secretary of State may, at any time after a person to whom this section applies is returned to prison, release him again on licence under this Chapter.
- (6) The Secretary of State must not release a person under subsection (5) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison. 5
- (7) The Secretary of State must refer to the Board the case of any person to whom this section applies –
- (a) if the person makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which he is returned to prison, on the making of those representations; 10
- (b) if, at the end of that period, the person has not been released under subsection (4)(b) or (5) and has not made such representations, at that time. 15
- (8) Where on a reference under subsection (7) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.
- (9) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order. 20
- (10) The Secretary of State may by order amend the number of days for the time being specified in subsection (2) or (7)(a). 25
- (11) In subsection (1) “specified offence” has the meaning given by section 224.

**254B Re-release after recall: specified offences**

- (1) This section applies to any person recalled under section 254 who is serving a sentence imposed for a specified offence, unless he is serving an extended sentence imposed under section 227 or 228, section 58 of the Crime and Disorder Act 1998 or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000. 30
- (2) The Secretary of State may, at any time after the person is returned to prison, release him again on licence under this Chapter. 35
- (3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison.
- (4) The Secretary of State must refer to the Board the case of any person to whom this section applies – 40
- (a) if the person makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which he is returned to prison, on the making of those representations, or 45

- (b) if, at the end of that period, the person has not been released under subsection (2) and has not made such representations, at that time.
- (5) Where on a reference under subsection (4) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation. 5
- (6) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order. 10
- (7) The Secretary of State may by order amend the number of days for the time being specified in subsection (4)(a).
- (8) In subsection (1) “specified offence” has the meaning given by section 224. 15

#### **254C Re-release after recall: extended sentences**

- (1) This section applies to any person recalled under section 254 who is serving an extended sentence imposed under section 227 or 228, or section 58 of the Crime and Disorder Act 1998 or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000. 20
- (2) The Secretary of State must refer to the Board the case of any person to whom this section applies.
- (3) Where on a reference under subsection (2) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.” 25
- (3) In section 256 of that Act (further release after recall) in subsection (1) (powers of Board on a reference) for “section 254(3)” substitute “section 254A(7), 254B(4) or 254C(2)”. 30
- (4) In section 330 of that Act (orders and rules) in subsection (5)(a) (statutory instruments subject to the affirmative resolution procedure) at the appropriate place insert –  
     “section 254A(10),  
     section 254B(7),” 35

#### **17 Further review and release of prisoners after recall**

- (1) Section 256 of the Criminal Justice Act 2003 (c. 44) (further release after recall) is amended as follows.
- (2) In subsection (1) for paragraph (b) substitute –  
     “(b) determine the reference by making no recommendation as to his release.” 40
- (3) In subsection (2) omit “or (b)”.
- (4) Subsections (3) and (5) cease to have effect.

- (5) After section 256 insert –

**“256A Further review**

- (1) The Secretary of State must, not later than the first anniversary of a determination by the Board under section 256(1) or subsection (4) below, refer the person’s case to the Board. 5
- (2) The Secretary of State may, at any time before that anniversary, refer the person’s case to the Board.
- (3) The Board may at any time recommend to the Secretary of State that a person’s case be referred under subsection (2).
- (4) On a referral under subsection (1) or (2), the Board must determine the reference by – 10
- (a) recommending the person’s immediate release on licence under this Chapter,
  - (b) fixing a date for his release on licence, or
  - (c) making no recommendation as to his release.” 15

**18 Recall of life prisoners: abolition of requirement for recommendation by Parole Board**

- (1) Section 32 of the Crime (Sentences) Act 1997 (c. 43) (recall of life prisoners while on licence) is amended as follows.
- (2) For subsections (1) and (2) (power of Secretary of State to revoke licence) substitute – 20
- “(1) The Secretary of State may, in the case of any life prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.”
- (3) In subsection (3) (representations by prisoner) for “subsection (1) or (2) above” substitute “this section”. 25
- (4) In subsection (4) (reference to Parole Board by Secretary of State) for paragraphs (a) and (b) substitute “the case of a life prisoner recalled under this section”.

*Early removal of prisoners from the United Kingdom* 30

**19 Removal under Criminal Justice Act 1991 (offences before 4th April 2005 etc.)**

- (1) Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners) is amended as follows.
- (2) After section 46 insert –
- “46ZA Persons eligible for removal from the United Kingdom** 35
- (1) For the purposes of section 46A below, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Secretary of State, that the condition in subsection (2) is met.

- 
- (2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 46A below.
- (3) The person must not be one who is liable to removal from the United Kingdom.” 5
- (3) Section 46A (early removal of persons liable to removal from the United Kingdom) is amended as follows.
- (4) In subsection (1) (the power of removal) after “is liable to” insert “, or eligible for,”.
- (5) Also in subsection (1), for “at any time after he has served the requisite period” substitute “at any time in the period – 10
- (a) beginning when the person has served the requisite period (see subsection (5)), and
- (b) ending when the person has served one-half of the term.”
- (6) Subsection (2) (cases where subsection (1) does not apply) ceases to have effect. 15
- (7) In subsection (3) (purpose of removal from prison etc.) –
- (a) at the beginning of paragraph (a) insert “if liable to removal from the United Kingdom,”;
- (b) for “and” at the end of that paragraph substitute – 20
- “(aa) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and”;
- (c) at the beginning of paragraph (b) insert “in either case,”.
- (8) In subsection (5) (the requisite period) in paragraph (a) omit “three months or more but”. 25
- (9) In consequence of the amendments made by this section, the heading to section 46A becomes “Early removal of persons liable to, or eligible for, removal from United Kingdom”.
- 20 Removal under Criminal Justice Act 2003** 30
- (1) In Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) Chapter 6 (release on licence) is amended as follows.
- (2) After section 259 (persons liable to removal from the United Kingdom) insert –
- “259A Persons eligible for removal from the United Kingdom**
- (1) For the purposes of this Chapter, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Secretary of State, that the condition in subsection (2) is met. 35
- (2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 260. 40
- (3) The person must not be one who is liable to removal from the United Kingdom.”

- (3) Section 260 (early removal of prisoners liable to removal from United Kingdom) is amended as follows.
- (4) In subsection (1) (the power of removal) after “is liable to” insert “, or eligible for,”.
- (5) The following provisions cease to have effect – 5
  - (a) subsection (2) (conditions relating to time), and
  - (b) subsection (3) (cases where subsection (1) does not apply).
- (6) In subsection (4) (purpose of removal from prison etc.) – 10
  - (a) at the beginning of paragraph (a) insert “if liable to removal from the United Kingdom,”;
  - (b) for “and” at the end of that paragraph substitute – 15
    - “(aa) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and”;
  - (c) at the beginning of paragraph (b) insert “in either case,”.
- (7) For subsection (7) (meaning of “requisite custodial period”) substitute –
  - “(7) In this section “requisite custodial period” – 20
    - (a) in relation to a prisoner serving an extended sentence imposed under section 227 or 228, means one-half of the appropriate custodial term (determined by the court under that section);
    - (b) in any other case, has the meaning given by paragraph (a), (b) or (d) of section 244(3).”
- (8) In consequence of the amendments made by this section – 25
  - (a) the italic heading preceding section 259 becomes “Persons liable to, or eligible for, removal from the United Kingdom”, and
  - (b) the heading to section 260 becomes “Early removal of persons liable to, or eligible for, removal from United Kingdom”.

*Other sentencing provisions*

- 21 Referral orders: referral conditions** 30
- (1) Section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (the referral conditions) is amended as follows.
- (2) In subsection (1) – 35
  - (a) after “section 16(2) above” insert “and subsection (2) below”,
  - (b) insert “and” at the end of paragraph (a), and
  - (c) omit paragraph (c).
- (3) For subsections (1A) and (2) substitute – 40
  - “(2) For the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if – 40
    - (a) the compulsory referral conditions are not satisfied in relation to the offence;
    - (b) the offender pleaded guilty –
      - (i) to the offence; or



- (ii) if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences; and
- (c) the offender –
  - (i) has never been convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence; or
  - (ii) has been convicted by or before such a court of only one offence other than the offence and any connected offence but has never been referred to a youth offender panel under section 16 above.”
- (4) Omit subsection (5).

*Enforcement of sentences*

**22 Imposition of unpaid work requirement for breach of community order**

- (1) Part 2 of Schedule 8 to the Criminal Justice Act 2003 (c. 44) (breach of community order) is amended as follows. 15
- (2) In paragraph 9 (powers of magistrates’ court) after sub-paragraph (3) insert –
  - “(3A) Where –
    - (a) the court is dealing with the offender under sub-paragraph (1)(a), and
    - (b) the community order does not contain an unpaid work requirement,
 section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.” 20
- (3) In paragraph 10 (powers of Crown Court) after sub-paragraph (3) insert – 25
  - “(3A) Where –
    - (a) the court is dealing with the offender under sub-paragraph (1)(a), and
    - (b) the community order does not contain an unpaid work requirement,
 section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.” 30

**23 Youth default orders**

- (1) Subsection (2) applies in any case where, in respect of a person aged under 18, a magistrates’ court would, but for section 89 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (restrictions on custodial sentences), have power to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction (other than a sum ordered to be paid under section 6 of the Proceeds of Crime Act 2002 (c. 29)). 35
- (2) The magistrates’ court may, instead of proceeding under section 81 of the Magistrates’ Courts Act 1980 (enforcement of fines imposed on young offender), order the person in default to comply with – 40
  - (a) in the case of a person aged 16 or 17, an unpaid work requirement (see paragraph 10 of Schedule 1),

- (b) an attendance centre requirement (see paragraph 12 of that Schedule),  
or
  - (c) a curfew requirement (see paragraph 14 of that Schedule).
- (3) In this section (and Schedule 5) “youth default order” means an order under subsection (2). 5
- (4) Section 1(2) and paragraph 2 of Schedule 1 (power or requirement to impose electronic monitoring requirement) have effect in relation to a youth default order as they have effect in relation to a youth rehabilitation order.
- (5) Where a magistrates’ court has power to make a youth default order, it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions (if any) as it thinks just. 10
- (6) The following provisions have effect in relation to youth default orders as they have effect in relation to youth rehabilitation orders, but subject to the modifications contained in Schedule 5 – 15
  - (a) sections 4, 5 and 7,
  - (b) paragraphs 1, 10, 12, 14, 25, 26, 28, 32 and 33 of Schedule 1 (youth rehabilitation orders: further provisions),
  - (c) Schedule 2 (breach, revocation or amendment of youth rehabilitation orders), and
  - (d) Schedule 3 (transfer of youth rehabilitation orders to Northern Ireland). 20
- (7) Where a youth default order has been made for default in paying any sum –
  - (a) on payment of the whole sum to any person authorised to receive it, the order ceases to have effect, and
  - (b) on payment of a part of the sum to any such person, the total number of hours or days to which the order relates is to be taken to be reduced by a proportion corresponding to that which the part paid bears to the whole sum. 25
- (8) In calculating any reduction required by subsection (7)(b), any fraction of a day or hour is to be disregarded.
- 24 Power to impose attendance centre requirement on fine defaulter 30**
  - (1) Section 300 of the Criminal Justice Act 2003 (c. 44) (power to impose unpaid work requirement or curfew requirement on fine defaulter) is amended as follows.
  - (2) In the heading for “or curfew requirement” substitute “curfew requirement or attendance centre requirement”. 35
  - (3) In subsection (2), at the end of paragraph (b) insert “, or
    - (c) in a case where the person is aged under 25, an attendance centre requirement (as defined by section 214)”.
- 25 Disclosure of information for enforcing fines**
  - (1) Part 3 of Schedule 5 to the Courts Act 2003 (c. 39) (attachment of earnings orders and applications for benefit deductions) is amended as follows. 40

## (2) After paragraph 9 insert –

*“Disclosure of information in connection with application for benefit deductions*

- 9A (1) The designated officer for a magistrates’ court may make an information request to the Secretary of State for the purpose of facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an application for benefit deductions in respect of P. 5
- (2) An information request is a request for the disclosure of some or all of the following information – 10
- (a) P’s full name;
  - (b) P’s address (or any of P’s addresses);
  - (c) P’s date of birth;
  - (d) P’s national insurance number;
  - (e) P’s benefit status.
- (3) On receiving an information request, the Secretary of State may disclose the information requested to – 15
- (a) the officer who made the request, or
  - (b) a justices’ clerk specified in the request.

*Restrictions on disclosure*

- 9B (1) A person to whom information is disclosed under paragraph 9A(3), or this sub-paragraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an application for benefit deductions in respect of P. 20 25
- (2) A person to whom such information is disclosed commits an offence if the person – 30
- (a) discloses or uses the information, and
  - (b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph.
- (3) But it is not an offence under sub-paragraph (2) – 35
- (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or
  - (b) to disclose any information which has previously been lawfully disclosed to the public.
- (4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful. 40
- (5) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Paragraphs 9A and 9B: supplementary*

- 9C (1) This paragraph applies for the purposes of paragraphs 9A and 9B.
- (2) “Benefit status”, in relation to P, means whether or not P is in receipt of any prescribed benefit or benefits and, if so (in the case of each benefit) – 5
- (a) which benefit it is,
  - (b) where it is already subject to deductions under any enactment, the nature of the deductions concerned, and
  - (c) the amount received by P by way of the benefit, after allowing for any such deductions. 10
- (3) “Information” means information held in any form.
- (4) “Prescribed” means prescribed by regulations made by the Lord Chancellor.
- (5) Nothing in paragraph 9A or 9B authorises the making of a disclosure which contravenes the Data Protection Act 1998.” 15

**PART 3**

APPEALS

**26 Appeals against conviction**

- (1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.
- (2) In section 2 (grounds for allowing an appeal against conviction) after subsection (1) insert – 20
- “(1A) For the purposes of subsection (1)(a), a conviction is not unsafe if the Court of Appeal are satisfied that the appellant is guilty of the offence.
- (1B) Subsection (1A) does not prevent the Court of Appeal from allowing an appeal against conviction where they think that it would be incompatible with the appellant’s Convention Rights to dismiss the appeal.” 25
- (3) In section 23 (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”. 30
- (4) Before section 31 (but after the cross-heading preceding it) insert –

**“30A Evidence given after close of prosecution case**

In determining an appeal against conviction, the Court of Appeal shall not disregard any evidence solely on the ground that it was given after the judge at the appellant’s trial wrongly permitted the trial to continue after the close of the evidence for the prosecution.” 35

- (5) After section 30A (as inserted by subsection (4) above) insert –

**“30B Referral of serious misconduct to Attorney General**

If it appears to the Court of Appeal, in determining an appeal under this Part, that there has been serious misconduct by any person involved in the investigation or prosecution of the offence the Court may refer the matter to the Attorney General.”

5

**27 Determination of prosecution appeals**

In section 61 of the Criminal Justice Act 2003 (c. 44) (determination of prosecution appeal by Court of Appeal) for subsection (5) substitute –

- “(5) But the Court of Appeal may not make an order under subsection (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under subsection (4)(a) or (b).”

10

**28 Review of sentence on reference by Attorney General**

In section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) for subsection (3A) substitute –

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- “(3A) Where a reference under this section relates to an order specified in subsection (3B), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.

20

- (3B) The orders specified in this subsection are –
- (a) an order under section 269(2) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence);
  - (b) an order under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in relation to discretionary life sentences and certain other sentences).”

25

**PART 4**

HER MAJESTY’S COMMISSIONER FOR OFFENDER MANAGEMENT AND PRISONS

30

*The Commissioner*

**29 Appointment etc. of Commissioner**

- (1) There shall be a Commissioner, to be known as Her Majesty’s Commissioner for Offender Management and Prisons (referred to in this Part as “the Commissioner”).
- (2) The main functions of the Commissioner are –
  - (a) dealing with eligible complaints (see sections 30 to 34);
  - (b) investigating deaths within the deaths remit (see sections 35, 36 and 38);
  - (c) carrying out other investigations at the request of the Secretary of State (see sections 37 and 38).

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- (3) The functions of the Commissioner are performed on behalf of the Crown.
- (4) *The Secretary of State shall pay such sums towards the expenses of the Commissioner as the Secretary of State may determine.*
- (5) Schedule 6 makes further provision about the Commissioner.

*Complaints* 5

**30 Eligible complaints: general**

- (1) A complaint is eligible for the purposes of this Part if –
  - (a) it is about a matter within the complaints remit;
  - (b) it is not ineligible by virtue of section 31; and
  - (c) it is made to the Commissioner by a person entitled to make it; 10but subject to section 31 it is immaterial when the matter in question arose.
- (2) A matter is within the complaints remit if it is of a description specified in Part 1 of Schedule 7 and is not an excluded matter.
- (3) In subsection (2) “excluded matter” means –
  - (a) a matter specified under subsection (4); or 15
  - (b) a matter to which subsection (5) applies.
- (4) The Secretary of State may by order specify matters that are to be excluded matters for the purposes of subsection (2).  
The matters so specified may (without prejudice to the generality of the power) include complaints relating to events occurring at any description of applicable premises specified in the order. 20
- (5) This subsection applies to any matter which has been determined –
  - (a) by a court (whether at a trial or otherwise);
  - (b) by a tribunal specified in Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53); or 25
  - (c) by the Parole Board.
- (6) Nothing in subsection (5) affects the eligibility of a complaint about the conduct of a person in connection with the provision of a report for a court or tribunal or for the Parole Board.
- (7) An order under subsection (4) may make consequential provision (including provision modifying any Act or subordinate legislation, whenever passed or made). 30
- (8) It is for the Commissioner to determine procedures for the making of complaints (but they must not preclude the making of oral complaints).
- (9) A person is entitled to make a complaint if that person – 35
  - (a) is the relevant person in relation to the complaint; or
  - (b) where the relevant person is dead or unable to act, appears to the Commissioner to be an appropriate person to make the complaint.
- (10) In this Part “the relevant person”, in relation to a complaint about a matter within the complaints remit, is the person mentioned in the relevant paragraph of Schedule 7 as having been affected by that matter. 40

### **31 Eligible complaints: specific requirements applicable to all complaints**

- (1) Subject to subsection (3), a complaint is ineligible if the Commissioner is satisfied that any of the requirements specified in subsection (2) has not been met.
- (2) Those requirements are – 5
- (a) that a period of no more than one year has passed since the relevant person first became aware of the matters giving rise to the substance of the complaint;
  - (b) that the substance of the complaint has been communicated to the responsible authority and it has had a reasonable opportunity to deal with it; and 10
  - (c) where the responsible authority has responded to the substance of the complaint following such a communication (whether by rejecting it or by addressing it in some other way), that a period of no more than three months has passed since it did so. 15
- (3) But the Commissioner may –
- (a) waive any requirement specified in subsection (2), or
  - (b) extend any period so specified,
- if satisfied that there is good reason why that requirement or period should be waived or extended in relation to the complaint. 20
- (4) In this section “the responsible authority”, in relation to a complaint, means the controlling authority appearing to the Commissioner to have the most direct responsibility for the matters covered by the complaint.

### **32 Treatment by Commissioner of complaints**

- (1) This section applies where a complaint is made to the Commissioner. 25
- (2) The Commissioner shall –
- (a) consider the eligibility of the complaint, and
  - (b) unless it is rejected as being ineligible, take appropriate action to deal with the complaint.
- (3) The action which may be taken by the Commissioner to deal with the complaint is – 30
- (a) investigating the complaint, or
  - (b) taking, or facilitating the taking by another person of, any other action (such as mediation or conciliation) which the Commissioner considers may result in the resolution of the complaint, 35
- or any combination of the actions mentioned in paragraphs (a) and (b).
- (4) The Commissioner may reject a complaint as being ineligible at any time before it appears to the Commissioner to have been fully dealt with.
- (5) The Commissioner may –
- (a) decline to take, defer or stop taking, action to deal with the whole or any part of the complaint; 40
  - (b) after exercising a power under paragraph (a), decide to re-open (and take action to deal with) the whole or any part of the complaint, but only if it appears to the Commissioner that the complaint or the part concerned is or might be eligible; and 45

- (c) after rejecting the complaint, decide to re-open (and take action to deal with) the whole or any part of the complaint, but only if it appears to the Commissioner that the complaint or the part concerned is or might be eligible.
- (6) The Commissioner shall exercise the power to decline to take or to stop taking action to deal with any part of the complaint that the Commissioner decides is ineligible. 5
- (7) If the Commissioner decides –
  - (a) to reject the complaint,
  - (b) to take any step mentioned in subsection (5)(a), (b) or (c),the Commissioner shall notify the complainant (with a brief statement of the reasons for the decision) and may notify such other persons as the Commissioner thinks fit. 10
- (8) Notification under subsection (7) may be given orally.
- (9) If the complainant has died or is unable to act, the reference in subsection (7) to the complainant is to be read as a reference to the person who appears to the Commissioner to be the most appropriate person to receive the notification. 15
- (10) Subject to the provisions of this section, it is for the Commissioner to determine the procedures applicable to anything which is to be done in relation to the complaint. 20

### **33 Report on the outcome of an investigation**

- (1) If a complaint has been investigated or otherwise dealt with, the Commissioner –
  - (a) shall make a report on the outcome to the complainant; and
  - (b) may make a report on that outcome to any other person. 25
- (2) The Commissioner may –
  - (a) make a report orally;
  - (b) make different reports to different persons;
  - (c) show any person a draft of the whole or any part of a report;
  - (d) publish the whole or any part of a report. 30
- (3) But the Commissioner shall not –
  - (a) publish the name of the complainant without the complainant’s consent; or
  - (b) if the complainant is not the relevant person in relation to the complaint, publish the relevant person’s name without the consent of the complainant. 35
- (4) If the complainant has died or is unable to act –
  - (a) the report required under subsection (1)(a) shall be made to the person who appears to the Commissioner to be the most appropriate person to receive it; and
  - (b) the consent required by subsection (3)(b) may be given by any person appearing to the Commissioner to be an appropriate person to give that consent. 40



### **34 Recommendations by Commissioner**

- (1) The Commissioner may make recommendations to a controlling authority about any matter arising from a complaint which is or has been the subject of investigation by the Commissioner.
- (2) The authority must, within the period of 28 days commencing with the day on which it receives the recommendations, respond in writing to the Commissioner setting out (with reasons) what it proposes to do about them. 5
- (3) The Commissioner may report on that response to such persons as the Commissioner may think fit.
- (4) Subsections (2) to (4) of section 33 apply in relation to reports under subsection (3) above as they apply to reports required by that section. 10

*Investigations into deaths etc.*

### **35 Investigation of deaths**

- (1) The Commissioner shall carry out an investigation of every death falling within the deaths remit. 15
- (2) A death falls within the deaths remit if it is of a description specified in Schedule 8.
- (3) In carrying out the investigation, the Commissioner must aim –
  - (a) to establish the circumstances surrounding the death; and
  - (b) if the Commissioner considers it would be helpful to do so, to identify steps that should be taken for the purpose of eliminating or reducing the risk of deaths occurring under the same or similar circumstances. 20
- (4) Subject to that, it is for the Commissioner to determine the scope of, and the procedure to be applied to, the investigation.
- (5) The Commissioner may defer the whole or any part of the investigation at the request of a person who –
  - (a) is conducting a criminal investigation, and
  - (b) considers that that investigation might be adversely affected by the Commissioner’s investigation. 25
- (6) In subsection (5) “criminal investigation” means an investigation conducted by police officers or other persons with a view to ascertaining whether an offence has been committed or whether a person should be charged with an offence. 30
- (7) The Commissioner may at any time reopen the investigation of –
  - (a) a death previously investigated under this section; or
  - (b) a death previously investigated by the Prisons and Probation Ombudsman that would, if it occurred after the commencement of this section, fall within the deaths remit; 35

and a re-opened investigation shall be treated for the purposes of this Part as a separate investigation under this section.
- (8) The Commissioner may make recommendations to a controlling authority about any matter arising from an investigation. 40

- (9) Such recommendations may be made during the investigation or after its conclusion.

**36 Reports on the outcome of a death investigation**

- (1) This section applies where the Commissioner has carried out an investigation of a death under section 35. 5
- (2) The Commissioner shall make a report to –
  - (a) the Secretary of State;
  - (b) the controlling authority appearing to the Commissioner to have the most direct responsibility over the matters covered by the investigation (where that authority is not the Secretary of State); and 10
  - (c) a coroner who is holding or who is to hold an inquest into the death.
- (3) The Commissioner may also make a report to any other person the Commissioner considers should receive a report.
- (4) The Commissioner shall exercise the power under subsection (3) to ensure that a report is made to at least one person who – 15
  - (a) is a personal representative of the deceased,
  - (b) was the partner, or other relative, of the deceased at the time of the death, or
  - (c) appears to the Commissioner to have been a friend of the deceased at the time of the death. 20
- (5) The duty under subsection (4) does not apply if, after taking all reasonable steps to ascertain the identity of, and a means of contacting, a person falling within that subsection, the Commissioner is unable to comply with it.
- (6) In subsections (2) to (4) “report” means a report in writing on the outcome of the investigation. 25
- (7) The Commissioner may –
  - (a) make different reports under this section to different persons;
  - (b) show any person a draft of the whole or any part of a report to be made under this section;
  - (c) publish the whole or any part of a report made under this section; 30but the name of the deceased person must not be published under paragraph (c) without the consent of a personal representative of that person.

**37 Investigations requested by the Secretary of State**

- (1) The Secretary of State may request the Commissioner to investigate any matter mentioned in subsection (3) or (4) which is specified in the request. 35
- (2) The Secretary of State shall consult the Commissioner before making a request under this section.
- (3) A request may specify any matter relating to events which have (or may have) occurred –
  - (a) at applicable premises; 40
  - (b) while a person is in the custody of prison officers or prisoner custody officers, or under their control or escort, anywhere in the world;

- (c) in the course of exercising any function of the Secretary of State relating to prisons or persons detained in prison;
- (d) in the course of exercising any functions of a prison officer or prisoner custody officer;
- (e) in the course of the activities of a relevant contractor; 5
- (f) in the course of the activities of –
- (i) a local probation board or a provider of probation services, or
- (ii) an officer of a local probation board or an officer of a provider of probation services,
- in connection with responsibilities assumed by the board, provider or officer in relation to a person who has been charged with or convicted of an offence; 10
- (g) at immigration detention premises which are not excepted premises;
- (h) while a person is in the custody of immigration custody officers, or under their control or escort, anywhere in the world (other than immigration detention premises). 15
- (4) A request may also specify any matter the Secretary of State considers is (or may be) linked to events falling within subsection (3).
- (5) A request under this section which –
- (a) is made by virtue of subsection (3)(g) and specifies a matter relating to events which have (or may have) occurred at immigration detention premises in Scotland which are not excepted premises, or 20
- (b) is made by virtue of subsection (4) and specifies a matter which the Secretary of State considers is (or may be) linked to events which have (or may have) occurred at immigration detention premises in Scotland which are not excepted premises, 25
- shall not be made unless the Secretary of State considers that those events are (or may be) linked to a reserved matter within the meaning of the Scotland Act 1998 (c. 46).
- (6) The Secretary of State shall consult the Scottish Ministers before making a request by virtue of subsection (4) which specifies a matter which appears to involve the investigation of events which have (or may have) occurred in Scotland. 30
- (7) It is the duty of the Commissioner to investigate any matter which is the subject of a request under this section. 35
- (8) The Commissioner shall consult the Lord Advocate before investigating a matter relating to events which have (or may have) occurred in Scotland.
- (9) The Commissioner shall defer such an investigation if it appears to the Commissioner that it might adversely affect a criminal investigation, or an investigation of a death, which is being or is to be conducted by the Lord Advocate or the procurator fiscal. 40
- (10) Subject to any directions given to the Commissioner by the Secretary of State, it is for the Commissioner to determine the scope of, and the procedure to be applied to, an investigation under this section.
- (11) Subject to any such directions, the Commissioner may at any time reopen – 45
- (a) an investigation previously carried out under this section; or
- (b) an investigation carried out by the Prisons and Probation Ombudsman of matters referred to the Ombudsman by the Secretary of State (so far

- as relating to matters that could be the subject of a request under this section);
- and a re-opened investigation shall be treated for the purposes of this Part as a separate investigation under this section.
- (12) In subsection (3) – 5
- (a) the reference in paragraph (c) to the Secretary of State is to the Secretary of State having responsibility for prisons;
  - (b) the references to functions are to 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) (constabulary powers etc.)); 10
  - (c) 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); and
  - (d) 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. 15

### **38 Reports on the outcome of an investigation under section 37**

- (1) After conducting an investigation under section 37 the Commissioner shall report in writing on the outcome of the investigation to – 20
- (a) the Secretary of State; and
  - (b) such other persons (if any) as the Secretary of State may direct.
- (2) Subject to any directions given by the Secretary of State, the Commissioner may –
- (a) make different reports under this section to different persons; 25
  - (b) show any person a draft of the whole or any part of a report to be made under this section;
  - (c) publish the whole or any part of a report made under this section; but, in the case of an investigation of a death, the name of the deceased person must not be published without the consent of a personal representative of that person. 30

#### *General powers and duties*

### **39 Powers of Commissioner to obtain information etc.**

- (1) This section confers powers on the Commissioner for the purposes of any investigation under this Part. 35
- (2) The Commissioner may require a person the Commissioner thinks is able to provide information or produce a document relevant to the investigation to do so.
- (3) The Commissioner has the same powers as the High Court in relation to –
- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad); and 40
  - (b) the production of documents.

- (4) The Commissioner may also require a person to secure that access to any premises (other than premises used solely as a dwelling) is given to the Commissioner or members of the Commissioner’s staff for the purpose of inspecting the premises or any documents or other things situated on them.
- (5) Such access must be given at such reasonable times as the Commissioner may specify. 5
- (6) The Commissioner may require any person who is at the premises at those times to provide such reasonable assistance as the Commissioner may specify.
- 40 Exceptions etc. to Commissioner’s powers under section 39**
- (1) Subject to subsection (3), no person shall be compelled by virtue of this Part to give any evidence or do any other thing which that person could not be compelled to do in civil proceedings before the High Court. 10
- (2) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or provided to persons in Her Majesty’s service, whether imposed by or under any enactment or by any rule of law, applies in relation to an investigation. 15
- (3) The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or of the giving of evidence as would otherwise be allowed in legal proceedings.
- (4) No person shall be compelled or authorised by virtue of this Part – 20
- (a) to provide any information relating to proceedings of the Cabinet or of any Committee of the Cabinet; or
- (b) to produce any document relating to such proceedings.
- (5) For this purpose a certificate which – 25
- (a) is issued by the Secretary of the Cabinet with the approval of the Prime Minister, and
- (b) certifies that any information or document (or part of a document) relates to any proceedings mentioned in subsection (4),
- is conclusive of the matters certified.
- (6) In this section “investigation” means any investigation under this Part. 30
- 41 Obstruction and contempt**
- (1) The Commissioner may, if satisfied that the condition in subsection (2) is met in relation to a person, refer the matter to the High Court.
- (2) The condition is that the person – 35
- (a) has failed to comply with a requirement imposed by virtue of section 39 or has otherwise, without lawful excuse, obstructed the performance of any of the Commissioner’s functions; or
- (b) has committed an act or omission in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court. 40
- (3) The High Court may inquire into the matter referred by the Commissioner and, if satisfied that the condition in subsection (2) is met, may deal with the person concerned as if that person were in contempt of court.

## 42 Working with other ombudsmen etc.

- (1) This section applies where the Commissioner –
  - (a) forms the opinion that a matter being considered, investigated or otherwise dealt with by the Commissioner relates (in whole or part) to a matter that has been or could be dealt with by a listed person; and 5
  - (b) consults that person about that matter.
- (2) This section also applies where a listed person –
  - (a) forms the opinion that a matter being considered or dealt with by that person relates (in whole or in part) to a matter that has been or could be dealt with by the Commissioner; and 10
  - (b) consults the Commissioner about that matter.
- (3) The Commissioner and the listed person may co-operate with each other in relation to the matter.
- (4) That co-operation may include (among other things) –
  - (a) carrying out a joint investigation; 15
  - (b) preparing a joint report;
  - (c) publishing such a report.
- (5) But that co-operation may not include any of the things mentioned in subsection (4) where the listed person is the Scottish Public Services Ombudsman. 20
- (6) In this section “listed person” means –
  - The Parliamentary Commissioner for Administration
  - A Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7)
  - The Health Service Commissioner for England 25
  - The Scottish Public Services Ombudsman
  - The Children’s Commissioner for Wales
  - The Public Services Ombudsman for Wales.
- (7) The consent of the complainant (or a representative of the complainant acting in accordance with section 43) must be obtained before the Commissioner agrees to carry out a joint investigation of a complaint made under this Part with any of the following –
  - The Parliamentary Commissioner for Administration
  - A Local Commissioner under Part 3 of the Local Government Act 1974
  - The Health Service Commissioner for England. 30 35
- (8) The Secretary of State may by order amend subsection (6) or (7) by –
  - (a) adding or omitting a person or body;
  - (b) changing an entry for a person or body for the time being specified there.
- (9) Such an order may make consequential provision (including provision amending this Act, any other Act or subordinate legislation, Northern Ireland legislation or an Act of the Scottish Parliament). 40

**43 Legal and other representation**

The Commissioner may determine the circumstances under which and the extent to which persons may be represented by lawyers or other persons in connection with complaints or with investigations under section 35 or 37.

5

*Disclosure of information***44 Disclosure of information etc.**

- (1) For the purposes of this section information is protected information if it is obtained by the Commissioner (or a member of the Commissioner’s staff) –
- (a) in carrying out functions in relation to, or otherwise in connection with, a complaint; 10
  - (b) in carrying out or otherwise in connection with an investigation under section 35 or 37;
  - (c) from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c. 36); or 15
  - (d) from a listed person (within the meaning of section 42) in connection with any consultation or co-operation mentioned in that section.
- (2) Such information ceases to be protected information 70 years after it is first obtained as mentioned in subsection (1).
- (3) Protected information shall not be disclosed except – 20
- (a) for the purposes of any of the Commissioner’s functions in relation to a complaint or to matters arising in connection with it;
  - (b) in the case of information obtained in connection with an investigation, for the purposes of – 25
    - (i) an investigation under section 35 or 37, or
    - (ii) any of the Commissioner’s functions in relation to such an investigation or to matters arising in connection with it;
  - (c) for the purposes of any provision of section 42;
  - (d) for the purposes of proceedings for – 30
    - (i) an offence under the Official Secrets Act 1989 (c. 6) alleged to have been committed in relation to protected information; or
    - (ii) an offence of perjury alleged to have been committed in relation to anything being done in connection with the Commissioner’s functions;
- or for the purposes of an investigation with a view to the taking of such proceedings; 35
- (e) for the purposes of proceedings under section 41;
  - (f) to a coroner (or a person acting on behalf of a coroner) for the purposes of an inquest;
  - (g) for the purposes of an investigation of the Lord Advocate or a procurator fiscal; 40
  - (h) to Her Majesty’s Chief Inspector of Prisons for England and Wales or Her Majesty’s Chief Inspector of Probation for England and Wales, for the purposes of the exercise of any of the functions of that office;
  - (i) in the case of information to which subsection (4) applies, to the Information Commissioner; 45

- (j) in the case of information to which subsection (7) applies, to any person to whom the Commissioner thinks it should be disclosed in the public interest.
  - (4) This subsection applies to information if it appears to the Commissioner to relate to – 5
    - (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (5); or
    - (b) the commission of an offence mentioned in subsection (6).
  - (5) Those enactments are – 10
    - (a) Part 5 of the Data Protection Act 1998 (c. 29);
    - (b) section 48 of the Freedom of Information Act 2000 (c. 36);
    - (c) Part 4 of that Act.
  - (6) Those offences are offences under – 15
    - (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9;
    - (b) section 77 of the Freedom of Information Act 2000.
  - (7) This subsection applies to information if – 20
    - (a) in the opinion of the Commissioner it reveals or otherwise relates to a serious threat to the health or safety of a person; or
    - (b) it does not fall within paragraph (a) but the Commissioner is nevertheless of the opinion that it should be disclosed for the purpose of enabling such a threat to be dealt with.
  - (8) Protected information within subsection (1)(d) may not be disclosed for the purposes of a notification under section 46 unless the Commissioner has consulted the listed person in question about the making of the disclosure. 25
  - (9) No person mentioned in subsection (11) may be called upon in any proceedings to give evidence of protected information within subsection (1)(a), (b) or (d).
  - (10) Subsection (9) does not apply in relation to proceedings mentioned in subsection (3)(d) to (g). 30
  - (11) Those persons are – 35
    - (a) the Commissioner;
    - (b) a member of the Commissioner’s staff;
    - (c) a person from whom advice is obtained by virtue of paragraph 11 of Schedule 6.
  - (12) For the purposes of the law of defamation the publication of any matter by the Commissioner for purposes connected with his functions (including functions under this section) shall be absolutely privileged.
- 45 Disclosure prejudicial to national security or contrary to public interest 40**
- (1) The Secretary of State may give a notice to the Commissioner stating that the disclosure of –
    - (a) any document or information specified in the notice, or
    - (b) any description of document or information so specified,



would, in the opinion of the Secretary of State, prejudice national security or would otherwise be contrary to the public interest.

- (2) Nothing in this Part authorises or requires the Commissioner (or any member of the Commissioner’s staff) to disclose to any person or for any purpose any document or information covered by a current notice under subsection (1). 5

#### **46 Notification of matters of potential concern to the police or other authorities**

- (1) If while performing any functions the Commissioner forms the opinion –  
 (a) that there should be a criminal investigation into any matter, or  
 (b) that a controlling authority should, as a matter of urgency, take action in relation to any matter, 10  
 the Commissioner may notify the police or that authority (as the case may be) of the matter as soon as is practicable.
- (2) A notification under subsection (1) may include such information relating to the matter in question as the Commissioner thinks fit.

*General* 15

#### **47 Power to pay expenses**

- (1) Subject to subsection (3), the Commissioner may make payments (of such amounts as the Commissioner thinks fit) towards the expenses of –  
 (a) a person who has made an eligible complaint; or  
 (b) a person who provides the Commissioner with information or other assistance in relation to an eligible complaint or to an investigation under section 35 or 37. 20
- (2) The Treasury may issue guidelines in relation to –  
 (a) the circumstances under which payments under this section may be made; and  
 (b) the amounts of such payments. 25
- (3) The Commissioner must comply with any guidelines so issued.

#### **48 Consequential amendments relating to Part 4**

Schedule 9 makes consequential amendments relating to this Part.

#### **49 The Prisons and Probation Ombudsman** 30

- (1) The Prisons and Probation Ombudsman (“the Ombudsman”) has no power to act in relation to –  
 (a) any complaint made after commencement;  
 (b) any death or other matter occurring after commencement;  
 (c) any matter referred by the Secretary of State after commencement. 35
- (2) The Ombudsman shall continue to act (under the applicable terms of reference) in relation to –  
 (a) any complaint made before commencement (“an existing complaint”),  
 (b) any death occurring before commencement (“an existing death investigation”), and 40

- (c) any other matter referred to the Commissioner by the Secretary of State before commencement (“an existing referral investigation”), unless the complaint, death or matter is treated by the Commissioner as one to be dealt with under this Part by virtue of subsection (4).
- (3) The Ombudsman may re-open a completed investigation into any death or other matter referred by the Secretary of State (unless it has previously been re-opened under section 35 or 37 by the Commissioner). 5
- (4) The Commissioner may treat –
  - (a) an existing complaint (so far as relating to matters within the complaints remit) as an eligible complaint; 10
  - (b) an existing death investigation (if it relates to a death that would fall within the deaths remit if it occurred after commencement) as an investigation under section 35;
  - (c) an existing referral investigation (so far as relating to matters that could be the subject of a request under section 37) as an investigation under section 37. 15
- (5) For the purposes of any complaint, death or matter which is to any extent dealt with under this Part by virtue of subsection (4), things done by or in relation to the Ombudsman shall be treated as having been done by or in relation to the Commissioner. 20
- (6) In this section “commencement” means the commencement of this section.

## 50 Interpretation of Part 4

- (1) In this Part –
  - “applicable premises” means a prison, a young offender institution, a secure training centre or approved premises; 25
  - “the complaints remit” is to be construed in accordance with section 30(2);
  - “controlling authority” means –
    - (a) a person listed in Schedule 10; or
    - (b) any person of a description specified in an order made by the Secretary of State; 30
  - “the deaths remit” is to be construed in accordance with section 35(2);
  - “document” includes information recorded in any form;
  - “eligible complaint” has the meaning given by section 30(1);
  - “excepted premises” means any premises of a description specified in an order under subsection (2); 35
  - “events” includes any conduct or omission;
  - “immigration custody officer” means –
    - (a) a detainee custody officer;
    - (b) an officer who is performing functions conferred under section 154(5) of the Immigration and Asylum Act 1999 (c. 33); or 40
    - (c) an officer who is performing functions as a result of a contract entered into under section 156(4)(b) of that Act;
  - “immigration detention premises” means premises which are the subject of a direction under paragraph 18 of Schedule 2 to the Immigration Act 1971 (c. 77); 45
  - “prison officer” means an individual appointed to a post under section 7 of the Prison Act 1952 (c. 52);

- “prisoner custody officer” means a person who is –
- (a) a prisoner custody officer within the meaning of Part 4 of the Criminal Justice Act 1991 (c. 53); or
  - (b) a custody officer within the meaning of Part 1 of the Criminal Justice and Public Order Act 1994 (c. 33);
- “relevant contractor” has the same meaning as in section 13(9) of the Offender Management Act 2007; 5
- “the relevant person”, in relation to a complaint, has the meaning given by section 30(10);
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30). 10
- (2) The Secretary of State may by order specify descriptions of immigration detention premises which are to be excepted premises for the purposes of this Part (or, if the order so provides, for the purposes of a specified provision of this Part). 15
- (3) In this Part references to the High Court are references –
- (a) in so far as this Part extends to Scotland, to the Court of Session; and
  - (b) in so far as this Part extends to Northern Ireland, to the High Court of Northern Ireland.
- (4) References in this Part to a person being held at applicable premises mean, in the case of approved premises, a person accommodated there in pursuance of section 9(1) of the Criminal Justice and Court Services Act 2000 (c. 43). 20
- (5) In this section –
- “approved premises” has the same meaning as in Part 1 of the Criminal Justice and Court Services Act 2000; 25
  - “detainee custody officer” has the same meaning as in Part 8 of the Immigration and Asylum Act 1999 (c. 33);
  - “prison” has the same meaning as in the Prison Act 1952 (c. 52).
- 51 Power to modify certain provisions of Part 4**
- (1) The Secretary of State may by order modify Schedule 7 so as to – 30
- (a) add a description of matter to that Schedule; or
  - (b) amend or repeal any description of matter for the time being specified there.
- (2) The power in subsection (1) may not be exercised so as to have the effect of excluding any matters that fall within a description specified in Schedule 7 when this Act is passed. 35
- (3) The Secretary of State may by order modify Schedule 8 so as to –
- (a) add a description of death; or
  - (b) amend or repeal any description of death for the time being specified there. 40
- (4) The power in subsection (3) may not be exercised so as to have the effect of excluding any deaths that fall within a description specified in Schedule 8 when this Act is passed.
- (5) The Secretary of State may by order modify subsection (3) of section 37 so as to – 45

- (a) add a description of events; or
  - (b) amend or repeal any description of events for the time being specified in that subsection.
- (6) The Secretary of State may by order modify section 44 so as to –
- (a) add an exception to subsection (3); 5
  - (b) amend or repeal an exception for the time being specified in that subsection; or
  - (c) specify further circumstances in which subsection (9) does not apply.
- (7) The power in subsection (6) may not be exercised so as to have the effect of removing or limiting an exception contained in section 44(3)(a), (b) or (c) when this Act is passed. 10
- (8) An order under this section may make consequential provision (including provision modifying any Act or subordinate legislation, whenever passed or made).
- (9) Nothing in subsection (2), (4) or (7) prevents a power under this section being used to remove any provision that is spent. 15

## **52 Power to confer new functions on Commissioner**

- (1) The Secretary of State may by order make provision (whether by amending this Part or otherwise) for or in connection with –
- (a) the conferring of additional functions on the Commissioner; 20
  - (b) the conferring of functions on the Secretary of State in relation to any additional function conferred on the Commissioner.
- (2) An order under this section may make consequential provision (including provision modifying any Act or subordinate legislation, whenever passed or made). 25

## **PART 5**

### **OTHER CRIMINAL JUSTICE PROVISIONS**

#### *Alternatives to prosecution*

## **53 Alternatives to prosecution for offenders under 18**

- Schedule 11 amends the Crime and Disorder Act 1998 (c. 37) – 30
- (a) to make provision for the giving of youth conditional cautions to offenders aged 16 and 17, and
  - (b) to make minor amendments relating to reprimands and warnings under section 65 of that Act.

## **54 Protection for spent cautions under the Rehabilitation of Offenders Act 1974** 35

- (1) Schedule 12 amends the Rehabilitation of Offenders Act 1974 (c. 53) so as to provide for the protection of spent cautions.
- (2) The provisions of Schedule 12 (and this section) extend only to England and Wales.

**55 Criminal conviction certificates and criminal record certificates**

- (1) Part 5 of the Police Act 1997 (c. 50) (certificates of criminal records) is amended as follows.
- (2) In section 112 (criminal conviction certificates)—
- (a) in the definition of “central records”, after “convictions” insert “and conditional cautions”; 5
- (b) after that definition insert—
- ““conditional caution” means a caution given under section 22 of the Criminal Justice Act 2003 (c. 44) or section 66A of the Crime and Disorder Act 1998 (c. 37), other than one that is spent for the purposes of Schedule 2 to the Rehabilitation of Offenders Act 1974 (c. 53).” 10
- (3) In section 113A(6) (criminal record certificates)—
- (a) in the definition of “exempted question”, after “a question” insert “which— 15
- “(a) so far as it applies to convictions, is a question”;
- (b) in that definition, at the end insert “; and—
- “(b) so far as it applies to cautions, is a question to which paragraph 3(3) or (4) of Schedule 2 to that Act has been excluded by an order of the Secretary of State under paragraph 4 of that Schedule;” 20
- (c) in the definition of “relevant matter”, after “caution” insert “, including a caution that is spent for the purposes of Schedule 2 to that Act”.
- (4) This section extends to England and Wales only.

*Proceedings in magistrates’ courts* 25

**56 Allocation of offences triable either way etc.**

Schedule 13 amends Schedule 3 to the Criminal Justice Act 2003 (which makes provision in relation to the allocation and other treatment of offences triable either way, and the sending of cases to the Crown Court).

**57 Trial or sentencing in absence of accused in magistrates’ courts** 30

- (1) Section 11 of the Magistrates’ Courts Act 1980 (c. 43) (non-appearance of accused) is amended as follows.
- (2) In subsection (1), for “the court may proceed in his absence” substitute “—
- (a) if the accused is under 18 years of age, the court may proceed in his absence; and 35
- (b) if the accused has attained the age of 18 years, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so.
- This is subject to subsections (2), (2A), (3) and (4).”
- (3) After subsection (2) insert— 40
- “(2A) The court shall not proceed in the absence of the accused if it considers that there is an acceptable reason for his failure to appear.”

- (4) After subsection (3) insert –
- “(3A) But where a sentence or order of a kind mentioned in subsection (3) is imposed or given in the absence of the offender, the offender must be brought before the court before being taken to a prison or other institution to begin serving his sentence (and the sentence or order is not to be regarded as taking effect until he is brought before the court).” 5
- (5) After subsection (4) insert –
- “(5) Nothing in this section requires the court to enquire into the reasons for the accused’s failure to appear before deciding whether to proceed in his absence. 10
- (6) The court shall state in open court its reasons for not proceeding under this section in the absence of an accused who has attained the age of 18 years; and the court shall cause those reasons to be entered in its register of proceedings.”
- (6) Section 13(5) of that Act (non-appearance of accused: issue of warrant) ceases to have effect. 15

## 58 Extension of powers of non-legal staff

- (1) Section 7A of the Prosecution of Offences Act 1985 (c. 23) (powers of non-legal staff) is amended as follows.
- (2) In subsection (2)(a) (powers of designated non-legal staff) – 20
- (a) in sub-paragraph (ii), omit “other than trials”;
- (b) after sub-paragraph (ii) insert –
- “(iii) the conduct of applications or other proceedings relating to preventative civil orders;
- (iv) the conduct of proceedings (other than criminal proceedings) in, or in connection with, the discharge of functions assigned to the Director under section 3(2)(g) above.” 25
- (3) For subsection (5) (interpretation) substitute –
- “(5) In this section – 30
- “bail in criminal proceedings” has the same meaning as in the Bail Act 1976 (see section 1 of that Act);
- “preventative civil orders” means –
- (a) orders within section 3(2)(fa) to (fe) above;
- (b) orders under section 5 or 5A of the Protection from Harassment Act 1997 (restraining orders); 35
- (c) orders under section 8 of the Crime and Disorder Act 1998 (parenting orders); or
- (d) other orders that may be made by a magistrates’ court in proceedings in respect of a person who has been convicted of an offence where the proceedings – 40
- (i) are not criminal proceedings, but
- (ii) are referable to that conviction.”
- (4) Omit subsection (6) (powers not applicable to offences triable only on indictment etc.). 45

- (5) In section 15 of that Act (interpretation of Part 1) in subsection (4) (provisions for the purposes of which binding over proceedings are to be taken to be criminal proceedings) for “and 7(1)” substitute “, 7(1) and 7A”.

*Criminal legal aid*

- 59 Provisional grant of right to representation** 5
- (1) Part 1 of the Access to Justice Act 1999 (c. 22) is amended as follows.
- (2) In section 14(1) (representation) –
- (a) after “criminal proceedings” insert “and about the provisional grant of a right to representation in prescribed circumstances”;
- (b) after “granted” insert “, or provisionally granted,”. 10
- (3) In section 15(1) (selection of representative) after “granted” insert “, or provisionally granted,”.
- (4) In section 25(9) (orders, regulations and directions subject to affirmative resolution procedure) for “paragraph 2A” substitute “paragraph 1A, 2A,”.
- (5) In section 26 (interpretation) after the definition of “representation” insert – 15
- “and, for the purposes of the definition of “representation”, “proceedings” includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation concerned.”
- (6) After paragraph 1 of Schedule 3 (individuals to whom right may be granted) insert – 20
- “Individuals to whom right may be provisionally granted*
- 1A (1) Regulations may provide that, in prescribed circumstances, and subject to any prescribed conditions, a right to representation may be provisionally granted to an individual where – 25
- (a) the individual is involved in an investigation which may result in criminal proceedings, and
- (b) the right is so granted for the purposes of criminal proceedings that may result from the investigation.
- (2) Regulations under sub-paragraph (1) may, in particular, make provision about – 30
- (a) the stage in an investigation at which a right to representation may be provisionally granted;
- (b) the circumstances in which a right which has been so granted – 35
- (i) is to become, or be treated as if it were, a right to representation under paragraph 1, or
- (ii) is to be, or may be, withdrawn.”
- (7) In paragraph 2A of Schedule 3 (grant of right by Commission) at the end of sub-paragraph (1)(b) insert – 40
- “(c) provide that any provisional grant of a right to representation, or any withdrawal of a right so granted, in

- accordance with regulations under paragraph 1A is to be made by the Commission.”
- (8) In paragraph 3A(1) of Schedule 3 (form of the grant of a right to representation) after “grant” insert “, or provisional grant,”.
- (9) In paragraph 3B of Schedule 3 (financial eligibility) – 5
- (a) in sub-paragraph (1) –
- (i) after “grant” insert “, or provisionally grant,”,
- (ii) after “granted” insert “, or provisionally granted,”;
- (b) in sub-paragraph (2)(a), after “granted” insert “, or provisionally granted,”. 10
- (10) In paragraph 4 of Schedule 3 (appeals) at the end insert –
- “This paragraph does not apply in relation to any right to representation granted in accordance with paragraph 1A.”
- (11) In paragraph 5 of Schedule 3 (criteria for grant of right) –
- (a) in sub-paragraph (1), after “grant” insert “, or provisionally grant,”; 15
- (b) after sub-paragraph (2) insert –
- “(2A) For the purposes of sub-paragraph (2), “proceedings” includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation in which the individual is involved.”; 20
- (c) in sub-paragraph (4), after “grant” insert “, or provisional grant,”.

## 60 Disclosure of information to enable assessment of financial eligibility

- (1) The Access to Justice Act 1999 (c. 22) is amended as follows.
- (2) In section 25(9) (orders, regulations and directions subject to affirmative resolution procedure), for “or 4” substitute “4 or 6”. 25
- (3) In Schedule 3 (criminal defence service: right to representation), after paragraph 5 insert –
- “Information requests*
- 6 (1) The relevant authority may make an information request to –
- (a) the Secretary of State, or 30
- (b) the Commissioners,
- for the purpose of facilitating the making of a decision by the authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.
- (2) An information request made to the Secretary of State is a request for the disclosure of some or all of the following information – 35
- (a) the individual’s full name;
- (b) the individual’s address;
- (c) the individual’s date of birth;
- (d) the individual’s national insurance number; 40
- (e) the individual’s benefit status;
- (f) information of any description specified in regulations.



- (3) An information request made to the Commissioners is a request for the disclosure of some or all of the following information –
- (a) whether or not the individual is employed;
  - (b) the name and address of the employer (if the individual is employed);
  - (c) the individual’s national insurance number;
  - (d) information of any description specified in regulations made with the agreement of the Commissioners.
- (4) The information that may be specified under subsection (3)(d) includes, in particular, information relating to the individual’s income (as defined in the regulations) for a period so specified.
- (5) On receiving an information request, the Secretary of State or (as the case may be) the Commissioners may disclose the information requested to the relevant authority.

*Restrictions on disclosure* 15

- 7 (1) A person to whom information is disclosed under paragraph 6(5), or this sub-paragraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the relevant authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual. 20
- (2) A person to whom such information is disclosed commits an offence if the person –
- (a) discloses or uses the information, and
  - (b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph. 25
- (3) But it is not an offence under sub-paragraph (2) –
- (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or
  - (b) to disclose any information which has previously been lawfully disclosed to the public. 30
- (4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful. 35
- (5) A person guilty of an offence under sub-paragraph (2) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both; 40
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (6) In sub-paragraph (5)(b) 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. 45

- (7) Nothing in section 20 applies in relation to the disclosure of information to which sub-paragraph (1) applies.

*Paragraphs 6 and 7: supplementary*

- 8 (1) This paragraph applies for the purposes of paragraphs 6 and 7.
- (2) “Benefit status”, in relation to an individual, means whether or not the individual is in direct or indirect receipt of any prescribed benefit or benefits and, if so (in the case of each benefit) –
- (a) which benefit the individual is so receiving, and
  - (b) (in prescribed cases) the amount the individual is so receiving by way of the benefit.
- (3) “The Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.
- (4) “Information” means information held in any form.
- (5) Nothing in paragraph 6 or 7 authorises the making of a disclosure which contravenes the Data Protection Act 1998.”

**61 Pilot schemes**

- (1) The Access to Justice Act 1999 (c. 22) is amended as follows.
- (2) In section 17A (contribution orders) omit subsection (5) (piloting of regulations).
- (3) After section 18 insert –

**“18A Pilot schemes**

- (1) This section applies to the following instruments –
- (a) any order under section 14 or paragraph 5 of Schedule 3,
  - (b) any regulations under section 12, 13, 15, 17 or 17A or any of paragraphs 1A to 5 of Schedule 3, and
  - (c) any regulations under section 22(5) having effect in relation to the Criminal Defence Service.
- (2) Any instrument to which this section applies may be made so as to have effect for a specified period not exceeding 12 months.
- (3) But if the Lord Chancellor thinks that it is necessary or expedient for either of the purposes in subsection (4), the period specified in the instrument –
- (a) may in the first instance be a period not exceeding 18 months;
  - (b) may be varied so as to become a period not exceeding 18 months.
- (4) The purposes are –
- (a) ensuring the effective operation of the instrument;
  - (b) co-ordinating the operation of the instrument with the operation of any other provision made under an enactment relating to any aspect of the criminal justice system.

- (5) The period for the time being specified in an instrument to which this section applies may also be varied so that the instrument has effect for such further period as the Lord Chancellor thinks necessary for the purpose of securing that it remains in operation until the coming into force of any order or regulations made under the same provision of this Act that will have effect – 5
- (a) generally, or
  - (b) for purposes wider than those for which the instrument has effect.
- (6) In the following provisions of this section “pilot scheme” means any instrument which, in accordance with subsections (2) to (5), is to have effect for a limited period. 10
- (7) A pilot scheme may provide that its provisions are to apply only in relation to – 15
- (a) one or more specified areas or localities;
  - (b) one or more specified descriptions of court;
  - (c) one or more specified offences or descriptions of offence;
  - (d) one or more specified classes of person;
  - (e) persons selected – 20
    - (i) by reference to specified criteria; or
    - (ii) on a sampling basis.
- (8) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period (or that period as varied under subsection (3)(b) or (5)).
- (9) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.” 25
- (4) In section 25 (regulations, orders and directions) after subsection (9A) insert –
- “(9B) No order or regulations which, by virtue of section 18A, is or are to have effect for a limited period shall be made unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.” 30

*Miscellaneous*

**62 Compensation for miscarriages of justice**

- (1) The Criminal Justice Act 1988 (c. 33) has effect subject to the following amendments. 35
- (2) Section 133 (compensation for miscarriages of justice) is amended as follows.
- (3) At the end of subsection (2) (compensation only payable if application for compensation is made) 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. 40
- (2A) 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.”

- (4) For subsection (4A) substitute –  
“(4A) Section 133A applies in relation to the assessment of the amount of the compensation.”
- (5) After subsection (5) (meaning of “reversed” in relation to a conviction) insert –  
“(5A) But in a case where – 5  
(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 this section 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. 10  
(5B) In subsection (5A) above any reference to a retrial includes a reference to proceedings held following the remission of a matter to a magistrates’ court by the Crown Court under section 48(2)(b) of the Supreme Court Act 1981.” 15
- (6) In subsection (6) (meaning of suffering punishment as a result of conviction) after “this section” insert “and section 133A”.
- (7) After section 133 insert –  
**“133A Miscarriages of justice: amount of compensation 20**  
(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 133 for a miscarriage of justice.  
(2) In assessing so much of any compensation payable under section 133 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to – 25  
(a) the seriousness of the offence of which the person was convicted and the severity of the punishment suffered as a result of the conviction, and  
(b) the conduct of the investigation and prosecution of the offence. 30  
(3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 133 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following –  
(a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and 35  
(b) any other convictions of the person and any punishment suffered as a result of 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 133 is to be a nominal amount only. 40

- (5) The total amount of compensation payable to or in respect of a person under section 133 for a particular miscarriage of justice must not exceed the overall compensation limit.  
That limit is £500,000.
- (6) The total amount of compensation payable under section 133 for a person’s loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.  
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. 5  
10
- (7) The Secretary of State may by order made by statutory instrument 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.
- (8) No order may be made under subsection (7) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.” 15
- (8) In section 172 (extent) in subsection (3) (provisions extending to Northern Ireland as well as England and Wales) after “section 133;” insert –  
“section 133A;”. 20
- (9) This section extends to England and Wales and Northern Ireland.
- 63 Annual report on the Criminal Justice (Terrorism and Conspiracy) Act 1998**
- (1) Section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40) (requirement for annual report on working of the Act) ceases to have effect.
- (2) The following provisions, namely – 25  
(a) subsection (1), and  
(b) the repeal of section 8 of that Act in Part 3 of Schedule 23,  
extend to England and Wales and Northern Ireland.

## PART 6

### CRIMINAL LAW 30

#### *Pornography etc.*

- 64 Possession of extreme pornographic images**
- (1) It is an offence for a person to be in possession of an extreme pornographic image.
- (2) An “extreme pornographic image” is an image which is both – 35  
(a) pornographic, and  
(b) an extreme image.
- (3) An image is “pornographic” if it appears to have been produced solely or principally for the purpose of sexual arousal.

- 
- (4) Where an image forms part of a series of images, the question whether the image appears to have been so produced is to be determined by reference to –
- (a) the image itself, and
  - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images. 5
- (5) So, for example, where –
- (a) an image forms an integral part of a narrative constituted by a series of images, and
  - (b) it appears that the series of images as a whole was not produced solely or principally for the purpose of sexual arousal, 10
- the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.
- (6) An “extreme image” is an image of any of the following –
- (a) an act which threatens or appears to threaten a person’s life, 15
  - (b) an act which results in or appears to result (or be likely to result) in serious injury to a person’s anus, breasts or genitals,
  - (c) an act which involves or appears to involve sexual interference with a human corpse,
  - (d) a person performing or appearing to perform an act of intercourse or oral sex with an animal, 20
- where (in each case) any such act, person or animal depicted in the image is or appears to be real.
- (7) In this section “image” means –
- (a) a moving or still image (produced by any means); or 25
  - (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).
- (8) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).
- (9) Proceedings for an offence under this section may not be instituted – 30
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- 65 Exclusion of classified films etc. 35**
- (1) Section 64 does not apply to excluded images.
- (2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image is not an “excluded image” if –
- (a) it is contained in a recording of an extract from a classified work, and 40
  - (b) it appears that the image was extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.
- (4) Where an extracted image is one of a series of images contained in the recording, the question whether the image appears to have been extracted as mentioned in subsection (3)(b) is to be determined by reference to – 45

- (a) the image itself, and  
 (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;  
 and section 64(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic. 5
- (5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—  
 (a) a defect caused for technical reasons or by inadvertence on the part of any person, or 10  
 (b) the inclusion in the recording of any extraneous material (such as advertisements),  
 is to be disregarded.
- (6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 64 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it. 15
- (7) In this section—  
 “classified work” means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section); 20  
 “classification certificate” and “video work” have the same meanings as in the Video Recordings Act 1984 (c. 39);  
 “designated authority” means an authority which has been designated by the Secretary of State under section 4 of that Act; 25  
 “extract” includes an extract consisting of a single image;  
 “image” and “pornographic” have the same meanings as in section 64;  
 “recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means). 30
- (8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

## 66 Defence

- (1) Where a person is charged with an offence under section 64, it is a defence for the person to prove any of the matters mentioned in subsection (2). 35
- (2) The matters are—  
 (a) that the person had a legitimate reason for being in possession of the image concerned;  
 (b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image; 40  
 (c) that the person—  
 (i) was sent the image concerned without any prior request having been made by or on behalf of the person, and  
 (ii) did not keep it for an unreasonable time.
- (3) In this section “extreme pornographic image” and “image” have the same meanings as in section 64. 45

## 67 Penalties etc. for possession of extreme pornographic images

- (1) This section has effect where a person is guilty of an offence under section 64.
- (2) Except where subsection (3) applies to the offence, the offender is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both; 5
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine or both.
- (3) If the offence relates to an image that does not depict any act within section 64(6)(a) or (b), the offender is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both; 10
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) In subsection (2)(a) or (3)(a) “the relevant period” means—
  - (a) in relation to England and Wales, 12 months; 15
  - (b) in relation to Northern Ireland, 6 months.
- (5) In Schedule 3 to the Sexual Offences Act 2003 (c. 42) (sexual offences in respect of which an offender becomes subject to the notification requirements of Part 2), after paragraph 35 insert—

“35A An offence under section 64 of the Criminal Justice and Immigration Act 2007 (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.” 20
- (6) In subsection (5) the reference to Schedule 3 to the Sexual Offences Act 2003 is a reference to that Schedule as it applies in relation to England and Wales and Northern Ireland. 25

## 68 Indecent photographs of children

- (1) The Protection of Children Act 1978 (c. 37) is amended as follows. 30
- (2) In section 1B(1)(b) (exception for members of the Security Service)—
  - (a) after “Security Service” insert “or the Secret Intelligence Service”;
  - (b) for “the Service” substitute “that Service”.
- (3) After section 7(4) (meaning of photograph), insert—

“(4A) References to a photograph also include—

  - (a) a tracing or other image, whether made by electronic or other means (of whatever nature)—
    - (i) which is not itself a photograph or pseudo-photograph, but
    - (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and 40



- (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);  
and subsection (8) applies in relation to such an image as it applies in relation to a pseudo-photograph.” 5
- (4) In section 7(9)(b) (meaning of indecent pseudo-photograph), for “a pseudo-photograph” substitute “an indecent pseudo-photograph”.
- 69 Indecent photographs of children (Northern Ireland)**
- (1) The Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) is amended as follows. 10
- (2) In article 2(2) (interpretation) in paragraph (b) of the definition of “indecent pseudo-photograph”, for “a pseudo-photograph” substitute “an indecent pseudo-photograph”.
- (3) After article 2(2) insert –
- “(2A) In this Order, references to a photograph also include – 15
- (a) a tracing or other image, whether made by electronic or other means (of whatever nature) –
- (i) which is not itself a photograph or pseudo-photograph, but 20
- (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a); 25
- and paragraph (3)(c) applies in relation to such an image as it applies in relation to a pseudo-photograph.”
- (4) In article 3A(1)(b) (exception for members of the Security Service) –
- (a) after “Security Service” insert “or the Secret Intelligence Service”; 30
- (b) for “the Service” substitute “that Service”.
- 70 Maximum penalty for publication etc. of obscene articles**
- In section 2(1)(b) of the Obscene Publications Act 1959 (c. 66) (maximum penalty on indictment for publication etc. of obscene articles) for “three years” substitute “five years”.
- Street offences* 35
- 71 Amendment to offence of loitering etc. for purposes of prostitution**
- (1) The Street Offences Act 1959 (c. 57) is amended as follows.
- (2) In subsection (1) of section 1 (loitering or soliciting for purposes of prostitution) –
- (a) for “common prostitute” substitute “person”; and 40
- (b) after “female)” insert “persistently”.

- (3) In subsection (4) of that section, after “section” insert “ –
- (a) conduct is persistent if it takes place on two or more occasions in any period of three months;
  - (b) any reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute;
  - (c) ”.
- (4) Section 2 (application to court by person cautioned for loitering or soliciting) ceases to have effect.

**72 Orders to promote rehabilitation** 10

- (1) The Street Offences Act 1959 (c. 57) is amended as follows.
- (2) In section 1 (loitering or soliciting for purposes of prostitution) after subsection (2) insert –
- “(2A) The court may deal with a person convicted of an offence under this section by making an order under this subsection requiring the offender to attend three meetings with the person for the time being specified in the order (“the supervisor”) or with such other person as the supervisor may direct. 15
- (2B) The purpose of an order under subsection (2A) is to promote the offender’s rehabilitation by assisting the offender, through attendance at those meetings, to – 20
- (a) address the causes of the conduct constituting the offence; and
  - (b) find ways to cease engaging in such conduct in the future.
- (2C) Where the court is dealing with an offender who is already subject to an order under subsection (2A) (“the original order”), the court may not make a further order under that subsection unless it first revokes the original order. 25
- (2D) If the court makes an order under subsection (2A) it may not impose any other penalty in respect of the offence.”
- (3) After section 1 insert – 30

**“1A Orders under section 1(2A): supplementary**

- (1) This section applies where a court proposes to make an order under subsection (2A) of section 1 in relation to a person convicted of an offence under that section (“the offender”).
- (2) The order may not be made unless a suitable person has agreed to act as supervisor in relation to the offender. 35
- (3) In subsection (2) “suitable person” means a person appearing to the court to have appropriate qualifications or experience for helping the offender to make the best use of the meetings for the purpose mentioned in section 1(2B). 40
- (4) The order must specify –
- (a) a date (not more than six months after the date of the order) by which the meetings required by the order must take place;

- 
- (b) the local justice area in which the offender resides or will reside while the order is in force.
- (5) The meetings required by the order shall take place at such times and places as the supervisor may determine and shall be of such duration as he may determine. 5
- (6) It is the duty of the supervisor –
- (a) to make any arrangements that are necessary to enable the meetings required by the order to take place; and
- (b) once the order has been complied with, to notify the court which made the order of that fact. 10
- (7) The court making the order must forthwith provide copies of it to the offender and the supervisor.
- (8) Subsection (9) applies where –
- (a) the order is made by the Crown Court, or
- (b) the order is made by a magistrates’ court but specifies a local justice area for which the court making the order does not act. 15
- (9) The court must provide to a magistrates’ court acting for the local justice area specified in the order –
- (a) a copy of the order, and
- (b) any documents and information relating to the case that it considers likely to be of assistance to that court in the exercise of any functions in relation to the order. 20
- (10) An order under section 1(2A) (other than an order that is revoked under section 1(2C) or under the Schedule to this Act) ceases to be in force – 25
- (a) at the end of the day on which the supervisor notifies the court that the order has been complied with, or
- (b) at the end of the day specified in the order under subsection (4)(a),
- whichever first occurs. 30
- (11) The Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.”
- (4) At the end of the Act insert the Schedule set out in Schedule 14 to this Act.
- 73 Rehabilitation of offenders: orders under section 1(2A) of the Street Offences Act 1959** 35
- (1) The Rehabilitation of Offenders Act 1974 (c. 53) is amended as follows.
- (2) In section 5 (rehabilitation periods for particular sentences) after subsection (4C) insert –
- “(4D) The rehabilitation period applicable to an order under section 1(2A) of the Street Offences Act 1959 shall be six months from the date of conviction for the offence in respect of which the order is made.” 40
- (3) In section 6 of that Act (the rehabilitation period applicable to a conviction)

after subsection (3) insert –

- “(3A) Without prejudice to subsection (2), where –
- (a) an order is made under section 1(2A) of the Street Offences Act 1959 in respect of a conviction,
  - (b) after the end of the rehabilitation period applicable to the conviction the offender is dealt with again for the offence for which that order was made, and
  - (c) the rehabilitation period applicable to the conviction in accordance with subsection (2) (taking into account any sentence imposed when so dealing with the offender) ends later than the rehabilitation period previously applicable to the conviction,
- the offender shall be treated for the purposes of this Act as not having become a rehabilitated person in respect of that conviction, and that conviction shall for those purposes be treated as not having become spent, in relation to any period falling before the end of the new rehabilitation period.”
- (4) The amendments made by this section extend to England and Wales only.

*Offences relating to nuclear material and nuclear facilities*

**74 Offences relating to the physical protection of nuclear material and nuclear facilities** 20

- (1) Part 1 of Schedule 15 amends the Nuclear Material (Offences) Act 1983 (c. 18) to create –
- (a) further offences relating to the physical protection of nuclear material, and
  - (b) offences relating to the physical protection of nuclear facilities, and makes other amendments to that Act.
- (2) Part 2 of that Schedule makes related amendments to the Customs and Excise Management Act 1979 (c. 2).

*Penalty for unlawfully obtaining etc. personal data* 30

**75 Imprisonment for unlawfully obtaining etc. personal data**

- (1) Section 60 of the Data Protection Act 1998 (c. 29) (penalties for offences under Act) is amended as follows.
- (2) In subsection (2) (offences under Act punishable by fine) for “other than section 54A” substitute “other than sections 54A and 55”.
- (3) After subsection (3) insert –
- “(3A) A person guilty of an offence under section 55 is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

- (3B) In the application of subsection (3A)(a) –
- (a) in England and Wales, in relation to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (increase in sentencing powers of magistrates’ court from 6 to 12 months for certain offences triable either way), 5
  - (b) in Scotland, until the commencement of section 45(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (increase in sentencing powers from 6 to 12 months), and
  - (c) in Northern Ireland, 10
- the reference to 12 months is to be read as a reference to 6 months.”

## PART 7

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

#### *Mutual recognition of financial penalties*

- 76 Requests to other member States** 15
- (1) In Schedule 5 to the Courts Act 2003 (c. 39) (collection of fines and other sums imposed on conviction) in paragraph 38 (the range of further steps available against defaulters) –
- (a) after sub-paragraph (1)(e) insert –
    - “(f) subject to sub-paragraph (4), issuing a certificate requesting enforcement under the Framework Decision on financial penalties;” and 20
  - (b) after sub-paragraph (3) insert –
    - “(4) A certificate requesting enforcement under the Framework Decision on financial penalties may only be issued where – 25
      - (a) the sum due is a financial penalty within the meaning of section 76 of the Criminal Justice and Immigration Act 2007, and
      - (b) it appears to the fines officer or the court that P is normally resident, or has property or income, in a member State other than the United Kingdom. 30
- (5) In this paragraph, references to a certificate requesting enforcement under the Framework Decision on financial penalties are to be construed in accordance with section 81(2) of the Criminal Justice and Immigration Act 2007.” 35
- (2) The designated officer for a magistrates’ court may issue a certificate requesting enforcement under the Framework Decision on financial penalties where –
- (a) a person is required to pay a financial penalty,
  - (b) the penalty is not paid in full within the time allowed for payment, 40
  - (c) there is no appeal outstanding in relation to the penalty,
  - (d) Schedule 5 to the Courts Act 2003 does not apply in relation to the enforcement of the penalty, and

- (e) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.
- (3) For the purposes of subsection (2)(c), there is no appeal outstanding in relation to a financial penalty if – 5
  - (a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or
  - (b) such an appeal has been brought but the proceedings on appeal have been concluded.
- (4) Where the person required to pay the financial penalty is a body corporate, subsection (2)(e) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom. 10
- (5) In this section, “financial penalty” means – 15
  - (a) a fine imposed on the person’s conviction of an offence;
  - (b) any sum payable under a compensation order (within the meaning of section 130(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6));
  - (c) a surcharge under section 161A of the Criminal Justice Act 2003 (c. 44); 20
  - (d) any sum payable under any such order as is mentioned in paragraphs 1 to 9 of Schedule 9 to the Administration of Justice Act 1970 (c. 31) (orders for payment of costs);
  - (e) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor. 25

## 77 Procedure on receipt of certificate by Lord Chancellor

- (1) This section applies where –
  - (a) a magistrates’ court or a fines officer has, under paragraph 39(3)(b) or 40 of Schedule 5 to the Courts Act 2003 (c. 39), issued a certificate requesting enforcement under the Framework Decision on financial penalties, or 30
  - (b) the designated officer for a magistrates’ court has issued such a certificate under section 76(2) of this Act.
- (2) The fines officer (in the case of a certificate issued by the officer) or the designated officer for the magistrates’ court (in any other case) must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty. 35
- (3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income. 40
- (4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in England and Wales except in accordance with provision made by order by the Lord Chancellor. 45

- (5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

**78 Requests from other member States** 5

- (1) This section applies where the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor –
- (a) a certificate requesting enforcement under the Framework Decision on financial penalties, and
  - (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates. 10
- (2) If the certificate is given to the Lord Chancellor because the person required to pay the financial penalty is normally resident in England and Wales, the Lord Chancellor must give the documents mentioned in subsection (1) to the designated officer for the local justice area in which it appears that the person is normally resident. 15
- (3) If the certificate is given to the Lord Chancellor because the person required to pay the financial penalty has property or income in the United Kingdom, the Lord Chancellor may give the documents mentioned in subsection (1) to the designated officer for such local justice area as appears appropriate. 20
- (4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the designated officer a notice –
- (a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 80(1)), and
  - (b) giving reasons for that opinion. 25
- (5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if –
- (a) the reference to the person being normally resident in England and Wales were a reference to the person having its registered office in England and Wales, and
  - (b) the reference to the local justice area in which it appears that the person is normally resident were a reference to the local justice area in which it appears that the person has its registered office. 30
- (6) In this section and section 79 –
- (a) “decision” has the meaning given by Article 1 of the Framework Decision on financial penalties (except in section 79(4));
  - (b) “financial penalty” has the meaning given by that Article. 35

**79 Procedure on receipt of certificate by designated officer**

- (1) This section applies where the Lord Chancellor gives the designated officer for a local justice area – 40
- (a) a certificate requesting enforcement under the Framework Decision on financial penalties,
  - (b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and
  - (c) a notice under section 78(4). 45

- 
- (2) The designated officer must refer the matter to a magistrates' court acting for that area.
- (3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 80(1)).
- (4) The designated officer must inform the Lord Chancellor of the decision of the magistrates' court. 5
- (5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.
- (6) The enactments specified in subsection (7) apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4). 10
- (7) The enactments specified in this subsection are—
- (a) Part 3 of the Magistrates' Courts Act 1980 (c. 43) (satisfaction and enforcement); 15
  - (b) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc. and discharge of fines etc. by unpaid work);
  - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made under the enactments specified in paragraphs (a) and (b). 20
- (8) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.
- 80 Recognition of financial penalties: supplemental** 25
- (1) Schedule 16 specifies the grounds for refusal for the purposes of sections 78(4)(a) and 79(3) and (5).
- (2) The Lord Chancellor may by order make further provision for or in connection with giving effect to the Framework Decision on financial penalties.
- (3) An order under subsection (2) may in particular— 30
- (a) modify the enactments specified in section 79(7) in their application to financial penalties by virtue of section 79(6), and
  - (b) amend, repeal or revoke any provision of— 35
    - (i) any Act (including any Act passed in the same Session as this Act);
    - (ii) subordinate legislation (within the meaning of the Interpretation Act 1978) made before the passing of this Act.
- 81 Interpretation of sections 76 to 80**
- (1) In sections 76 to 80— 40
- “central authority”, in relation to a member State, means an authority designated by the State as a central authority for the purposes of the Framework Decision on financial penalties;



“competent authority”, in relation to a member State, means an authority designated by the State as a competent authority for the purposes of that Decision;

“the Framework Decision on financial penalties” means the Framework Decision of the Council of the European Union made on 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA). 5

- (2) References in those sections to a certificate requesting enforcement under the Framework Decision on financial penalties are references to such a certificate as is provided for by article 4 of that Decision. 10

*Mutual legal assistance in revenue matters*

**82 Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation**

- (1) In section 27(1) of the Crime (International Co-operation) Act 2003 (c. 32) (exercise of powers by others) – 15
- (a) in paragraph (a), for “Commissioners of Customs and Excise” substitute “Commissioners for Revenue and Customs”; and
  - (b) in paragraph (b), for “a customs officer” substitute “an officer of Revenue and Customs”.
- (2) Paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (power under section 27(1) not applicable to former inland revenue matters etc.) ceases to have effect. 20

**PART 8**

VIOLENT OFFENDER ORDERS

*Violent offender orders* 25

**83 Violent offender orders**

- (1) A violent offender order is an order made in respect of a qualifying offender which – 30
- (a) contains such prohibitions, restrictions or conditions as the court making the order considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender, and
  - (b) has effect for a period of at least 2 years specified in the order (unless renewed or discharged under section 87).
- (2) For the purposes of this Part any reference to protecting the public from the risk of serious violent harm caused by a person is a reference to protecting – 35
- (a) the public in the United Kingdom, or
  - (b) any particular members of the public in the United Kingdom, from the risk of serious physical or psychological harm caused by that person committing one or more specified offences.
- (3) In this Part “specified offence” means – 40
- (a) manslaughter;

- (b) an offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder);
- (c) an offence under section 18 of that Act (wounding with intent to cause grievous bodily harm);
- (d) an offence under section 20 of that Act (malicious wounding); or 5
- (e) attempting to commit murder or conspiracy to commit murder.

#### 84 Qualifying offenders

- (1) In this Part “qualifying offender” means a person within subsection (2) or (4).
- (2) A person is within this subsection if (whether before or after the commencement of this Part) – 10
  - (a) the person has been convicted of a specified offence and given a custodial sentence of at least 12 months for the offence,
  - (b) the person has been found not guilty of a specified offence by reason of insanity and subsection (3) applies, or
  - (c) the person has been found to be under a disability and to have done the act charged in respect of a specified offence and subsection (3) applies. 15
- (3) This subsection applies in the case of a person within (2)(b) or (2)(c) if the court made in respect of the offence –
  - (a) a hospital order (with or without a restriction order), or
  - (b) a supervision order. 20
- (4) A person is within this subsection if, under the law in force in a country outside England and Wales (and whether before or after the commencement of this Part) –
  - (a) the person has been convicted of a relevant offence and sentenced for the offence to a period of imprisonment or other detention of at least 12 months, 25
  - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person was not guilty by reason of insanity, and has made in respect of the offence an order equivalent to one mentioned in subsection (3), or 30
  - (c) such a court has, in respect of a relevant offence, made a finding equivalent to a finding that the person was under a disability and did the act charged in respect of the offence, and has made in respect of the offence an order equivalent to one mentioned in subsection (3).
- (5) In subsection (4) “relevant offence” means an act which – 35
  - (a) constituted an offence under the law in force in the country concerned, and
  - (b) would have constituted a specified offence if it had been done in England and Wales.
- (6) An act punishable under the law in force in a country outside England and Wales constitutes an offence under that law for the purposes of subsection (5) however it is described in that law. 40
- (7) Subject to subsection (8), on an application under section 85 the condition in subsection (5)(b) (where relevant) is to be taken as met in relation to the person to whom the application relates (“P”) unless, not later than rules of court may provide, P serves on the applicant a notice – 45

- (a) denying that, on the facts as alleged with respect to the act in question, the condition is met,
  - (b) giving the reasons for denying that it is met, and
  - (c) requiring the applicant to prove that it is met.
- (8) If the court thinks fit, it may permit P to require the applicant to prove that the condition is met even though no notice has been served under subsection (7). 5

## 85 Applications for violent offender orders

- (1) A chief officer of police may by complaint to a magistrates' court apply for a violent offender order to be made in respect of a person –
- (a) who resides in the chief officer's police area, or 10
  - (b) who the chief officer believes is in, or is intending to come to, that area, if it appears to the chief officer that the conditions in subsection (2) are met.
- (2) The conditions are –
- (a) that the person is a qualifying offender, and
  - (b) that the person has, since the appropriate date, acted in such a way as to give reasonable cause to believe that it is necessary for a violent offender order to be made in respect of the person. 15
- (3) An application under this section may be made to any magistrates' court whose commission area includes –
- (a) any part of the applicant's police area, or 20
  - (b) any place where it is alleged that the person acted in such a way as is mentioned in subsection (2)(b).
- (4) The Secretary of State may by order make provision –
- (a) for applications under this section to be made by such persons or bodies as are specified or described in the order; 25
  - (b) specifying cases or circumstances in which applications may be so made;
  - (c) for provisions of this Part to apply, in relation to the making of applications (or cases where applications are made) by any such persons or bodies, with such modifications as are specified in relation to them in the order. 30
- (5) In this Part "the appropriate date" means the date (or, as the case may be, the first date) on which the person became a person within any of paragraphs (a) to (c) of section 84(2) or (4), whether that date fell before or after the commencement of this Part. 35

## 86 Making of violent offender orders

- (1) A magistrates' court may make a violent offender order in respect of the person to whom an application under section 85 relates ("P") if it is satisfied that the conditions in subsection (2) are met.
- (2) The conditions are – 40
- (a) that P is a qualifying offender,
  - (b) that P has, since the appropriate date, acted in such a way as to make it necessary to make a violent offender order for the purpose of protecting the public from the risk of serious violent harm caused by P.

- (3) When deciding whether it is necessary to make such an order for that purpose, the court must have regard to whether P would, at any time when such an order would be in force, be subject under any other enactment to any measures that would operate to protect the public from the risk of such harm.
- (4) A violent offender order may not be made so as to come into force at any time when P – 5
- (a) is subject to a custodial sentence imposed in respect of any offence,
  - (b) is on licence for part of the term of such a sentence, or
  - (c) is subject to a hospital order or a supervision order made in respect of any offence. 10
- (5) But such an order may be applied for, and made, at such a time.

### 87 Variation, renewal or discharge of violent offender orders

- (1) A person within subsection (2) may by complaint apply to the appropriate magistrates' court for an order varying, renewing or discharging a violent offender order. 15
- (2) The persons are –
- (a) the offender,
  - (b) the chief officer of police who applied for the order,
  - (c) (if different) the chief officer of police for the area in which the offender resides, and 20
  - (d) (if different) a chief officer of police who believes that the offender is in, or is intending to come to, his police area.
- (3) The “appropriate magistrates’ court” means the magistrates’ court that made the order or (if different) – 25
- (a) a magistrates’ court for the area in which the offender resides, or
  - (b) where the application under this section is made by a chief officer of police, any magistrates’ court whose commission area includes any part of the chief officer’s police area.
- (4) On an application under this section the appropriate magistrates’ court may, after hearing – 30
- (a) the applicant, and
  - (b) any other persons mentioned in subsection (2) who wish to be heard, make such order varying, renewing or discharging the violent offender order as the court considers appropriate.
- But this is subject to subsections (5) and (6). 35
- (5) A violent offender order may only be –
- (a) renewed, or
  - (b) varied so as to impose additional prohibitions, restrictions or conditions on the offender, 40
- if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by the offender (and any renewed or varied order may contain only such prohibitions, restrictions or conditions as the court considers necessary for this purpose).
- (6) The court may not discharge the violent offender order before the end of the period of 2 years beginning with the date on which it comes into force unless consent to its discharge is given by the offender and – 45

- (a) where the application under this section is made by a chief officer of police, by that chief officer, or
- (b) where the application is made by the offender, by the chief officer of police for the area in which the offender resides.

**88 Interim violent offender orders**

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- (1) This section applies where an application under section 85 (“the main application”) has not yet been determined.
- (2) An application for an order under this section (“an interim violent offender order”) may be made –
  - (a) by the complaint by which the main application is made, or 10
  - (b) if the main application has already been made to a court, by means of a further complaint made to that court by the person making the main application.
- (3) If the court –
  - (a) is satisfied that the person to whom the main application relates is a qualifying offender, and 15
  - (b) considers it just to do so,
 the court may make an interim violent offender order in respect of the person containing such prohibitions, restrictions or conditions as the court considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by that person. 20
- (4) But an interim violent offender order may not be made so as to come into force at any time when the person –
  - (a) is subject to a custodial sentence for any offence,
  - (b) is on licence for part of the term of such a sentence, or 25
  - (c) is subject to a hospital order or a supervision order made in respect of any offence.
- (5) Such an order has effect, unless renewed, only for such fixed period of not more than 4 weeks as may be specified in the order.
- (6) Such an order – 30
  - (a) may be renewed (on one or more occasions) for a period of not more than 4 weeks from the time when it would otherwise cease to have effect; and
  - (b) ceases to have effect (if it has not already done so) at the appropriate time. 35
- (7) “The appropriate time” means –
  - (a) if the court grants the main application, the time when a violent offender order made in pursuance of it comes into force;
  - (b) if the court decides not to grant the main application or it is withdrawn, the time when the court so decides or the application is withdrawn. 40
- (8) Section 87 applies to an interim violent offender order as it applies to a violent offender order, but with the omission of subsection (6).

**89 Appeals**

- (1) A person in respect of whom –

- (a) a violent offender order, or
  - (b) an interim violent offender order,
- has been made may appeal to the Crown Court against the making of the order.
- (2) Such a person may also appeal to the Crown Court against –
    - (a) the making of an order under section 87, or 5
    - (b) any refusal to make such an order.
  - (3) On an appeal under this section, the Crown Court –
    - (a) may make such orders as may be necessary to give effect to its determination of the appeal; and
    - (b) may also make such incidental or consequential orders as appear to it 10 to be just.
  - (4) For the purposes of section 87(3) an order made by the Crown Court on an appeal made by virtue of subsection (1) or (2) is to be treated as if made by the court from which the appeal was brought.

*Notification requirements* 15

**90 Offenders subject to notification requirements**

- (1) References in this Part to an offender subject to notification requirements are references to an offender who is for the time being subject to –
  - (a) a violent offender order, or
  - (b) an interim violent offender order, 20which is in force under this Part.
- (2) Subsection (1) has effect subject to section 93(5) (which excludes from section 93 an offender subject to an interim violent offender order).

**91 Notification requirements: initial notification**

- (1) An offender subject to notification requirements must notify the required information to the police within the period of 3 days beginning with the date on which –
  - (a) the violent offender order, or
  - (b) the interim violent offender order,comes into force in relation to the offender (“the relevant date”). 30
- (2) The “required information” is the following information about the offender –
  - (a) date of birth;
  - (b) national insurance number;
  - (c) name on the relevant date or, if the offender used two or more names on that date, each of those names; 35
  - (d) home address on the relevant date;
  - (e) name on the date on which the notification is given or, if the offender used two or more names on that date, each of those names;
  - (f) home address on the date on which the notification is given;
  - (g) the address of any other premises in the United Kingdom at which on 40 that date the offender regularly resides or stays.

- (3) When determining the period of 3 days mentioned in subsection (1), there is to be disregarded any time when the offender is –
- (a) remanded in or committed to custody by an order of a court;
  - (b) serving a sentence of imprisonment or a term of service detention;
  - (c) detained in a hospital; or
  - (d) outside the United Kingdom.
- (4) In this Part “home address” means in relation to the offender –
- (a) the address of the offender’s sole or main residence in the United Kingdom, or
  - (b) if the offender has no such residence, the address or location of a place in the United Kingdom where the offender can regularly be found or, if there is more than one such place, such one of them as the offender selects.

## 92 Notification requirements: changes

- (1) An offender subject to notification requirements must notify to the police –
- (a) the required new information, and
  - (b) the information mentioned in section 91(2),
- within the period of 3 days beginning with the date on which any notifiable event occurs.
- (2) A “notifiable event” means –
- (a) the use by the offender of a name which has not been notified to the police under section 91 or this section;
  - (b) any change of the offender’s home address;
  - (c) the expiry of any qualifying period during which the offender has resided or stayed at any premises in the United Kingdom the address of which has not been notified to the police under section 91 or this section, or
  - (d) the release of the offender from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital.
- (3) The “required new information” is –
- (a) the name referred to in subsection (2)(a),
  - (b) the new home address (see subsection (2)(b)),
  - (c) the address of the premises referred to in subsection (2)(c), or
  - (d) the fact that the offender has been released as mentioned in subsection (2)(d),
- as the case may be.
- (4) A notification under subsection (1) may be given before the notifiable event occurs, but in that case the offender must also specify the date when the event is expected to occur.
- (5) If a notification is given in accordance with subsection (4) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).
- (6) If a notification is given in accordance with subsection (4) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified –
- (a) the notification does not affect the duty imposed by subsection (1), and

- (b) the offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.
- (7) Section 91(3) applies to the determination of –
  - (a) any period of 3 days for the purposes of subsection (1), or 5
  - (b) any period of 6 days for the purposes of subsection (6),as it applies to the determination of the period of 3 days mentioned in section 91(1).
- (8) In this section “qualifying period” means –
  - (a) a period of 7 days, or 10
  - (b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

### 93 Notification requirements: periodic notification

- (1) An offender subject to notification requirements must, within the period of one year after each notification date, notify to the police the information mentioned in section 91(2), unless the offender has already given a notification under section 92(1) within that period. 15
- (2) A “notification date” means, in relation to the offender, the date of any notification given by the offender under section 91(1) or 92(1) or subsection (1) above. 20
- (3) Where the period mentioned in subsection (1) would (apart from this subsection) end while subsection (4) applies, that period is to be treated as continuing until the end of the period of 3 days beginning with the date on which subsection (4) first ceases to apply.
- (4) This subsection applies if the offender is – 25
  - (a) remanded in or committed to custody by an order of a court,
  - (b) serving a sentence of imprisonment or a term of service detention,
  - (c) detained in a hospital, or
  - (d) outside the United Kingdom.
- (5) Nothing in this section applies to an offender who is subject to an interim violent offender order. 30

### 94 Notification requirements: travel outside United Kingdom

- (1) The Secretary of State may by regulations make provision with respect to offenders subject to notification requirements, or any description of such offenders – 35
  - (a) requiring such persons, before they leave the United Kingdom, to give in accordance with the regulations a notification under subsection (2);
  - (b) requiring such persons, if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3). 40
- (2) A notification under this subsection must disclose –
  - (a) the date on which the offender proposes to leave the United Kingdom;



- (b) the country (or, if there is more than one, the first country) to which the offender proposes to travel and the proposed point of arrival (determined in accordance with the regulations) in that country;
- (c) any other information prescribed by the regulations which the offender holds about the offender’s departure from or return to the United Kingdom, or about the offender’s movements while outside the United Kingdom. 5
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offender’s return to the United Kingdom.
- 95 Method of notification and related matters 10**
- (1) An offender gives a notification to the police under section 91(1), 92(1) or 93(1) by –
- (a) attending at any police station in the offender’s local police area, and
- (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station. 15
- (2) An offender giving a notification under section 92(1) –
- (a) in relation to a prospective change of home address, or
- (b) in relation to such premises as are mentioned in section 92(2)(c), may also give the notification at a police station that would fall within subsection (1)(a) above if the change of home address had already occurred or (as the case may be) the premises in question were the offender’s home address. 20
- (3) Any notification given in accordance with this section must be acknowledged; and the acknowledgement must be –
- (a) in writing, and
- (b) in such form as the Secretary of State may direct. 25
- (4) Where a notification is given under section 91(1), 92(1) or 93(1), the offender must, if requested to do so by the police officer or other person mentioned in subsection (1)(b) above, allow that officer or person to –
- (a) take the offender’s fingerprints,
- (b) photograph any part of the offender, or
- (c) do both of those things, 30
- in order to verify the offender’s identity.
- (5) In this section –
- “local police area”, in relation to the offender, means – 35
- (a) the police area in England and Wales in which the home address is situated,
- (b) in the absence of a home address in England and Wales, the police area in England and Wales in which the home address last notified is situated, or 40
- (c) in the absence of such a home address and any such notification, the police area in which the court that made the violent offender order (or, as the case may be, the interim violent offender order) is situated;
- “photograph” includes any process by means of which an image may be produced. 45

**96 Notification requirements to be complied with by parents of young offenders**

- (1) This section applies where –
  - (a) a violent offender order, or
  - (b) an interim violent offender order,is made in respect of an offender who is under 18 at the time when the order is made (“the young offender”). 5
- (2) The court making the order may direct that subsection (3) applies in respect of an individual having parental responsibility for the young offender (“the parent”).
- (3) Where this subsection applies – 10
  - (a) the obligations that would (apart from this subsection) be imposed on the young offender by or under sections 91 to 94 are to be treated instead as obligations of the parent, and
  - (b) the parent must ensure that the young offender accompanies the parent to the police station on each occasion when a notification is being given. 15
- (4) A direction under subsection (2) takes immediate effect and applies –
  - (a) until the young offender attains the age of 18, or
  - (b) for such shorter period as the court may direct at the time when it gives the direction under subsection (2).
- (5) A chief officer of police may, by complaint to any magistrates’ court whose commission area includes any part of the chief officer’s police area, apply for a direction under subsection (2) in respect of an offender subject to notification requirements – 20
  - (a) who resides in that police area, or who the chief officer believes is in or is intending to come to that police area, and 25
  - (b) who the chief officer believes is under 18.
- (6) For this purpose the reference in subsection (2) to the court making the order is to be read as a reference to the court referred to in subsection (5).

**97 Parental directions: notification requirements imposed on parents of young offenders** 30

- (1) This section applies where a direction has been given by a magistrates’ court under section 96.
- (2) A person within subsection (2) may, by complaint to that court, apply for an order varying, renewing or discharging the direction.
- (3) The persons are – 35
  - (a) the young offender;
  - (b) the parent;
  - (c) the chief officer of police for the police area in which the young offender resides;
  - (d) a chief officer of police who believes that the young offender is in, or is intending to come to, the chief officer’s police area; 40
  - (e) where the direction was made on an application under section 96(5), the chief officer of police who made the application.
- (4) On an application under subsection (1) the court, after hearing –

- (a) the applicant, and
  - (b) any other persons within subsection (3) who wish to be heard,
- may make such order varying, renewing or discharging the direction as the court considers appropriate.

*Supplementary*

5

**98 Offences**

- (1) If a person fails, without reasonable excuse, to comply with any prohibition, restriction or condition contained in—
  - (a) a violent offender order, or
  - (b) an interim violent offender order,
 the person commits an offence. 10
- (2) If a person fails, without reasonable excuse, to comply with—
  - (a) section 91(1), 92(1) or (6)(b), 93(1), 95(4) or 96(3)(b), or
  - (b) any requirement imposed by regulations made under section 94(1),
 the person commits an offence. 15
- (3) If a person notifies to the police, in purported compliance with—
  - (a) section 91(1), 92(1) or 93(1), or
  - (b) any requirement imposed by regulations made under section 94(1),
 any information which the person knows to be false, the person commits an offence. 20
- (4) As regards an offence under subsection (2), so far as it relates to non-compliance with—
  - (a) section 91(1), 92(1) or 93(1), or
  - (b) any requirement imposed by regulations made under section 94(1),
 a person commits such an offence on the first day on which the person first fails, without reasonable excuse, to comply with the provision mentioned in paragraph (a) or (as the case may be) the requirement mentioned in paragraph (b), and continues to commit it throughout any period during which the failure continues. 25
- (5) But a person must not be prosecuted under subsection (2) more than once in respect of the same failure. 30
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.35
- (7) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

**99 Supply of information to Secretary of State etc.**

40

- (1) This section applies to information notified to the police under section 91(1), 92(1) or 93(1).

- (2) A chief officer of police may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to –
- (a) the Secretary of State, or
  - (b) a person providing services to the Secretary of State in connection with a relevant function,
- for use for the purpose of verifying the information. 5
- (3) In relation to information supplied to any person under subsection (2), the reference to verifying the information is a reference to –
- (a) checking its accuracy by comparing it with information held – 10
    - (i) where the person is the Secretary of State, by that person in connection with the exercise of a relevant function, or
    - (ii) where the person is within subsection (2)(b), by that person in connection with the provision of services as mentioned there, and 15
  - (b) compiling a report of that comparison.
- (4) Subject to subsection (5), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising).
- (5) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998 (c. 29). 20
- (6) This section does not affect any power to supply information that exists apart from this section.
- (7) In this section “relevant function” means –
- (a) a function relating to social security, child support, employment or training, 25
  - (b) a function relating to passports, or
  - (c) a function under Part 3 of the Road Traffic Act 1988 (c. 52).

#### **100 Supply of information by Secretary of State etc.**

- (1) A report compiled under section 99 may be supplied to a chief officer of police by – 30
- (a) the Secretary of State, or
  - (b) a person within section 99(2)(b).
- (2) Such a report may contain any information held – 35
- (a) by the Secretary of State in connection with the exercise of a relevant function, or
  - (b) by a person within section 99(2)(b) in connection with the provision of services as mentioned there.
- (3) Where such a report contains information within subsection (2), the chief officer to whom it is supplied – 40
- (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part, and
  - (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose. 45

- (4) Subsections (4) to (7) of section 99 apply in relation to this section as they apply in relation to section 99.

### 101 Information about release or transfer

- (1) This section applies to an offender subject to notification requirements who is – 5
- (a) serving a sentence of imprisonment or a term of service detention, or
  - (b) detained in a hospital.
- (2) The Secretary of State may by regulations make provision requiring the person who is responsible for such an offender to give notice to specified persons – 10
- (a) of the fact that that person has become responsible for the offender; and
  - (b) of any occasion when –
    - (i) the offender is released, or
    - (ii) a different person is to become responsible for the offender.
- (3) In subsection (2) “specified persons” means persons specified, or of a description specified, in the regulations. 15
- (4) The regulations may make provision for determining who is to be taken for the purposes of this section as being responsible for an offender.

### 102 Interpretation of Part 8

- (1) In this Part – 20
- “the appropriate date” has the meaning given by section 85(5);
  - “country” includes territory;
  - “custodial sentence” has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
  - “home address” has the meaning given by section 91(4);
  - “hospital order” has the meaning given in section 37 of the Mental Health Act 1983 (c. 20); 25
  - “interim violent offender order” means an order made under section 88;
  - “the offender”, in relation to a violent offender order or an interim violent offender order, means the person in respect of whom the order is made;
  - “qualifying offender” has the meaning given by section 84(1); 30
  - “restriction order” has the meaning given in section 41 of the Mental Health Act 1983;
  - “specified offence” has the meaning given by section 83(3);
  - “supervision order” has the meaning given by Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84); 35
  - “violent offender order” has the meaning given by section 83(1).
- (2) References in this Part to protecting the public from the risk of serious violent harm caused by a person are to be read in accordance with section 83(2).
- (3) References in this Part to an offender subject to notification requirements are to be read in accordance with section 90. 40
- (4) The following expressions have the same meanings as in Part 2 of the Sexual Offences Act 2003 (c. 42) (notifications and orders) –
- “detained in a hospital” (see sections 133 and 135 of that Act);

“parental responsibility” (see section 133 of that Act);  
“sentence of imprisonment” (see section 131 of that Act);  
“term of service detention” (see section 133(1) of that Act);  
and references to a person having been found to be under a disability and to have done the act charged are to be read in accordance with section 135 of that Act. 5

## PART 9

### ANTI-SOCIAL BEHAVIOUR

#### *Premises closure orders*

#### **103 Closure orders: premises associated with persistent disorder or nuisance 10**

Schedule 17 inserts a new Part 1A into the Anti-social Behaviour Act 2003 (c. 38) which makes provision about the issue of closure notices and the making of closure orders in respect of premises associated with persistent disorder or nuisance.

*Nuisance or disturbance on hospital premises 15*

#### **104 Offence of causing nuisance or disturbance on NHS premises**

- (1) A person commits an offence if—
- (a) the person causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work, 20
  - (b) the person refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and
  - (c) the person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself. 25
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) For the purposes of this section—
- (a) a person ceases to be on NHS 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 30
  - (b) a person is not on NHS 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 section— 35
- “hospital grounds” means land in the vicinity of a hospital and associated with it,
  - “NHS premises” means—
- (a) any hospital vested in, or managed by, a relevant English NHS body, 40

- (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, a relevant English NHS body), and
- (c) the hospital grounds,
- “NHS staff member” means a person employed by a relevant English NHS body or otherwise working for it (whether as or on behalf of a contractor, as a volunteer or otherwise), 5
- “relevant English NHS body” means –
- (a) a National Health Service trust (see section 25 of the National Health Service Act 2006 (c. 41)), all or most of whose hospitals, establishments and facilities are situated in England, 10
- (b) a Primary Care Trust (see section 18 of that Act), or
- (c) an NHS foundation trust (see section 30 of that Act), and
- “vehicle” includes an air ambulance.
- 105 Power to remove person causing nuisance or disturbance** 15
- (1) If a constable reasonably suspects that a person is committing or has committed an offence under section 104, the constable may remove the person from the NHS premises concerned.
- (2) If an authorised officer reasonably suspects that a person is committing or has committed an offence under section 104, the authorised officer may – 20
- (a) remove the person from the NHS premises concerned, or
- (b) authorise an NHS staff member to do so.
- (3) Any person removing another person from NHS premises under this section may use reasonable force (if necessary).
- (4) An authorised officer cannot remove a person under this section 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 section –
- “authorised officer” means any NHS staff member authorised by a relevant English NHS body to exercise the powers conferred on an authorised officer by this section, and
- “NHS premises”, “NHS staff member” and “relevant English NHS body” have the same meaning as in section 104. 35
- 106 Guidance about the power to remove etc.**
- (1) The Secretary of State may from time to time prepare and publish guidance to relevant English NHS bodies and authorised officers about the powers in section 105. 40
- (2) Such guidance may, in particular, relate to –
- (a) the authorisation by relevant English NHS bodies of authorised officers,
- (b) the authorisation by authorised officers of NHS staff members to remove persons under section 105, 45

- (c) training requirements for authorised officers and NHS staff members authorised by them to remove persons under section 105,
  - (d) matters that may be relevant to a consideration by authorised officers for the purposes of section 105 of whether offences are being, or have been, committed under section 104, 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 section 105, 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 NHS premises are aware of the offence in section 104 and the powers of removal in section 105, or 15
  - (i) the keeping of records.
- (3) Before publishing guidance under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) A relevant English NHS body and an authorised officer must have regard to any guidance published under this section when exercising functions under, or in connection with, section 105. 20
- (5) In this section –  
“authorised officer” has the same meaning as in section 105, and  
“NHS premises”, “NHS staff member” and “relevant English NHS body” have the same meaning as in section 104. 25

## 107 Nuisance or disturbance on HSS premises

Schedule 18 makes provision for Northern Ireland corresponding to the provision made for England by sections 104 to 106.

*Anti-social behaviour orders etc. in respect of children and young persons*

## 108 Review of anti-social behaviour orders etc. 30

- (1) In Part 1 of the Crime and Disorder Act 1998 (c. 37) (prevention of crime and disorder) after section 1I insert –

### “1J Review of orders under sections 1, 1B and 1C

- (1) This section applies where – 35
- (a) an anti-social behaviour order,
  - (b) an order under section 1B, or
  - (c) an order under section 1C,
- has been made in respect of a person under the age of 17.
- (2) If – 40
- (a) the person subject to the order will be under the age of 18 at the end of a period specified in subsection (3) (a “review period”), and
  - (b) the term of the order runs until the end of that period or beyond,



then before the end of that period a review of the operation of the order shall be carried out.

- (3) The review periods are –
- (a) the period of 12 months beginning with –
    - (i) the day on which the order was made, or 5
    - (ii) if during that period there is a supplemental order (or more than one), the date of the supplemental order (or the last of them);
  - (b) a period of 12 months beginning with –
    - (i) the day after the end of the previous review period, or 10
    - (ii) if during that period there is a supplemental order (or more than one), the date of the supplemental order (or the last of them).
- (4) In subsection (3) “supplemental order” means –
- (a) a further order varying the order in question; 15
  - (b) an individual support order made in relation to the order in question on an application under section 1AA(1A).
- (5) Subsection (2) does not apply in relation to any review period if the order is discharged before the end of that period.
- (6) A review under this section shall include consideration of – 20
- (a) the extent to which the person subject to the order has complied with it;
  - (b) the adequacy of any support available to the person to help him comply with it;
  - (c) any matters relevant to the question whether an application 25 should be made for the order to be varied or discharged.
- (7) Those carrying out or participating in a review under this section shall have regard to any guidance issued by the Secretary of State when considering –
- (a) how the review should be carried out; 30
  - (b) what particular matters should be dealt with by the review;
  - (c) what action (if any) it would be appropriate to take in consequence of the findings of the review.

#### **1K Responsibility for, and participation in, reviews under section 1J**

- (1) A review under section 1J of an anti-social behaviour order or an order under section 1B shall be carried out by the relevant authority that applied for the order. 35
- (2) A review under section 1J of an order under section 1C shall be carried out –
- (a) (except where paragraph (b) applies) by the appropriate chief officer of police; 40
  - (b) where a relevant authority is specified under section 1C(9ZA), by that authority.
- (3) A local authority, in carrying out a review under section 1J, shall act in co-operation with the appropriate chief officer of police; and it shall be 45

- the duty of that chief officer to co-operate in the carrying out of the review.
- (4) The chief officer of police of a police force, in carrying out a review under section 1J, shall act in co-operation with the appropriate local authority; and it shall be the duty of that local authority to co-operate in the carrying out of the review. 5
- (5) A relevant authority other than a local authority or chief officer of police, in carrying out a review under section 1J, shall act in co-operation with— 10
- (a) the appropriate local authority, and
- (b) the appropriate chief officer of police;
- and it shall be the duty of that local authority and that chief officer to co-operate in the carrying out of the review.
- (6) A chief officer of police or other relevant authority carrying out a review under section 1J may invite the participation in the review of a person or body not required by subsection (3), (4) or (5) to co-operate in the carrying out of the review. 15
- (7) In this section—
- “the appropriate chief officer of police” means the chief officer of police of the police force maintained for the police area in which the person subject to the order resides or appears to reside; 20
- “the appropriate local authority” means the council for the local government area (within the meaning given in section 1(12)) in which the person subject to the order resides or appears to reside.” 25
- (2) In section 1(1A) of that Act (meaning of “relevant authority”) for “1CA, 1E and 1F” substitute “1C, 1CA, 1E, 1F and 1K”.
- (3) In section 1C of that Act (orders on conviction in criminal proceedings) after section (9) insert—
- “(9ZA) An order under this section made in respect of a person under the age of 17, or an order varying such an order, may specify a relevant authority (other than the chief officer of police mentioned in section 1K(2)(a)) as being responsible for carrying out a review under section 1J of the operation of the order.” 30
- 109 Individual support orders** 35
- (1) In section 1AA of the Crime and Disorder Act 1998 (c. 37) (individual support orders) for subsection (1) and the words in subsection (2) before paragraph (a) substitute—
- “(1) This section applies where a court makes an anti-social behaviour order in respect of a defendant who is a child or young person when that order is made. 40
- (1A) This section also applies where—
- (a) an anti-social behaviour order has previously been made in respect of such a defendant;

- (b) an application is made by complaint to the court which made that order, by the relevant authority which applied for it, for an order under this section; and
- (c) at the time of the hearing of the application—
- (i) the defendant is still a child or young person, and 5
  - (ii) the anti-social behaviour order is still in force.
- (1B) The court must consider whether the individual support conditions are fulfilled and, if satisfied that they are, must make an individual support order.
- (2) An individual support order is an order which— 10
- (2) In subsection (3)(a) of that section, for the words after “the kind of behaviour which led to” substitute “the making of—
- (i) the anti-social behaviour order, or
  - (ii) an order varying that order (in a case where the variation is made as a result of further anti-social behaviour by the defendant);” 15
- (3) In subsection (5) of that section, for “which led to the making of the anti-social behaviour order” substitute “mentioned in subsection (3)(a) above”.
- (4) In section 1(1A) of that Act (meaning of “relevant authority”) after “and sections” insert “1AA,” 20
- (5) In section 1AB of that Act (which makes further provision about individual support orders) after subsection (5) insert—
- “(5A) The period specified as the term of an individual support order made on an application under section 1AA(1A) above must not be longer than the remaining part of the term of the anti-social behaviour order as a result of which it is made.” 25
- (6) In section 1B of that Act (orders in county court proceedings) after subsection (7) insert—
- “(8) Sections 1AA and 1AB apply in relation to orders under this section, with any necessary modifications, as they apply in relation to anti-social behaviour orders. 30
- (9) In their application by virtue of subsection (8), sections 1AA(1A)(b) and 1AB(6) have effect as if the words “by complaint” were omitted.”
- (7) In section 1C of that Act (orders on conviction in criminal proceedings) after subsection (9A) insert— 35
- “(9AA) Sections 1AA and 1AB apply in relation to orders under this section, with any necessary modifications, as they apply in relation to anti-social behaviour orders.
- (9AB) In their application by virtue of subsection (9AA), sections 1AA(1A)(b) and 1AB(6) have effect as if the words “by complaint” were omitted. 40
- (9AC) In its application by virtue of subsection (9AA), section 1AA(1A)(b) has effect as if the reference to the relevant authority which applied for the anti-social behaviour order were a reference to the chief officer of police, or other relevant authority, responsible under section 1K(2)(a) or (b) for carrying out a review of the order under this section.” 45

*Parenting contracts and parenting orders*

**110 Parenting contracts and parenting orders: local authorities**

- (1) Part 3 of the Anti-social Behaviour Act 2003 (c. 38) (parental responsibilities) is amended as follows.
- (2) In section 29(1) (interpretation) in the definition of “local authority” for paragraphs (b) and (c) substitute –  
“(aa) a district council in England;” 5
- (3) In section 26B (parenting orders: registered social landlords) –
  - (a) in subsection (8), after “the local authority” insert “(or, if subsection (8A) applies, each local authority);” 10
  - (b) after that subsection insert –  
“(8A) This subsection applies if the place where the child or young person resides or appears to reside is within the area of a county council and within the area of a district council.”;
  - (c) in subsection (10)(a), after “the local authority” insert “(or authorities)”. 15
- (4) In section 27 (parenting orders: supplemental) for subsection (3A) substitute –  
“(3A) Proceedings for an offence under section 9(7) of the 1998 Act (parenting orders: breach of requirement etc.) as applied by subsection (3)(b) above may be brought by any of the following local authorities –
  - (a) the local authority that applied for the order, if the child or young person, or the person alleged to be in breach, resides or appears to reside in that authority’s area; 20
  - (b) the local authority of the child or young person, if that child or young person does not reside or appear to reside in the area of the local authority that applied for the order; 25
  - (c) the local authority of the person alleged to be in breach, if that person does not reside or appear to reside in the area of the local authority that applied for the order.
- (3B) For the purposes of subsection (3A)(b) and (c) –
  - (a) an individual’s local authority is the local authority in whose area the individual resides or appears to reside; but 30
  - (b) if the place where an individual resides or appears to reside is within the area of a county council and within the area of a district council, a reference to that individual’s local authority is to be read as a reference to either of those authorities.” 35

**PART 10**

POLICING

*Misconduct procedures etc.*

**111 Police misconduct and performance procedures**

- (1) Part 1 of Schedule 19 – 40
  - (a) amends the Police Act 1996 (c. 16) to make provision for or in connection with disciplinary and other proceedings in respect of the

	conduct and performance of members of police forces and special constables, and	
	(b) makes other minor amendments to that Act.	
(2)	Part 2 of that Schedule makes equivalent amendments to the Ministry of Defence Police Act 1987 (c. 4) for the purposes of the Ministry of Defence Police.	5
(3)	Part 3 of that Schedule makes equivalent amendments to the Railways and Transport Safety Act 2003 (c. 20) for the purposes of the British Transport Police.	
<b>112</b>	<b>Investigation of complaints of police misconduct etc.</b>	<b>10</b>
	Schedule 20 amends Schedule 3 to the Police Reform Act 2002 (c. 30) to make further provision about the investigation of complaints of police misconduct and other matters.	
	<i>Financial assistance</i>	
<b>113</b>	<b>Financial assistance under section 57 of the Police Act 1996</b>	<b>15</b>
(1)	<i>After section 57(1) of the Police Act 1996 (c. 16) (common services: power for Secretary of State to provide and maintain etc. organisations, facilities and services which promote the efficiency or effectiveness of police) insert –</i>	
	“(1A) <i>The power conferred by subsection (1) includes power to give financial assistance to any person in connection with the provision or maintenance of such organisations, facilities and services as are mentioned in that subsection.</i>	20
	(1B) <i>Financial assistance under subsection (1) –</i>	
	(a) <i>may, in particular, be given in the form of a grant, loan or guarantee or investment in a body corporate; and</i>	
	(b) <i>may be given subject to terms and conditions determined by the Secretary of State;</i>	25
	<i>but any financial assistance under that subsection other than a grant requires the consent of the Treasury.</i>	
	(1C) <i>Terms and conditions imposed under subsection (1B)(b) may include terms and conditions as to repayment with or without interest.</i>	30
	(1D) <i>Any sums received by the Secretary of State by virtue of terms and conditions imposed under that subsection are to be paid into the Consolidated Fund.”</i>	
(2)	Any loan made by the Secretary of State by virtue of section 57 of the Police Act 1996 and outstanding on the day on which this Act is passed is to be treated as if it were a loan made in accordance with that section as amended by subsection (1) above.	35
	<i>Inspection</i>	
<b>114</b>	<b>Inspection of police authorities</b>	
	In section 54 of the Police Act 1996 (appointment and functions of inspectors of	

constabulary) for subsection (2A) substitute –

- “(2A) The inspectors of constabulary may carry out an inspection of, and report to the Secretary of State on, a police authority’s performance of its functions or of any particular function or functions (including in particular its compliance with the requirements of Part 1 of the Local Government Act 1999 (best value)).” 5

## PART 11

### SPECIAL IMMIGRATION STATUS

#### 115 Designation

- (1) The Secretary of State may designate a person who satisfies Condition 1 or 2 (subject to subsections (4) and (5)). 10
- (2) Condition 1 is that the person –
- (a) is a foreign criminal within the meaning of section 116, and
  - (b) is liable to deportation, but cannot be removed from the United Kingdom because of section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention). 15
- (3) Condition 2 is that the person is a member of the family of a person who satisfies Condition 1.
- (4) A person who has the right of abode in the United Kingdom may not be designated. 20
- (5) The Secretary of State may not designate a person if the Secretary of State thinks that an effect of designation would breach –
- (a) the United Kingdom’s obligations under the Refugee Convention, or
  - (b) the person’s rights under the Community treaties.

#### 116 “Foreign criminal” 25

- (1) For the purposes of section 115 “foreign criminal” means a person who –
- (a) is not a British citizen, and
  - (b) satisfies any of the following Conditions.
- (2) Condition 1 is that section 72(2)(a) and (b) or (3)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (c. 41) applies to the person (Article 33(2) of the Refugee Convention: imprisonment for at least two years). 30
- (3) Condition 2 is that –
- (a) section 72(4)(a) or (b) of that Act applies to the person (person convicted of specified offence), and
  - (b) the person has been sentenced to a period of imprisonment. 35
- (4) Condition 3 is that Article 1F of the Refugee Convention applies to the person (exclusions for criminals, &c.).
- (5) Section 72(6) of that Act (rebuttal of presumption under section 72(2) to (4)) has no effect in relation to Condition 1 or 2.
- (6) Section 72(7) of that Act (non-application pending appeal) has no effect in relation to Condition 1 or 2. 40

**117 Effect of designation**

- (1) A designated person does not have leave to enter or remain in the United Kingdom.
- (2) For the purposes of a provision of the Immigration Acts and any other enactment which concerns or refers to immigration or nationality (including any provision which applies or refers to a provision of the Immigration Acts or any other enactment about immigration or nationality) a designated person –
- (a) is a person subject to immigration control,
  - (b) is not to be treated as an asylum-seeker or a former asylum-seeker, and
  - (c) is not in the United Kingdom in breach of the immigration laws.
- (3) Despite subsection (2)(c), time spent in the United Kingdom as a designated person may not be relied on by a person for the purpose of an enactment about nationality.
- (4) A designated person –
- (a) shall not be deemed to have been given leave in accordance with paragraph 6 of Schedule 2 to the Immigration Act 1971 (c. 77) (notice of leave or refusal), and
  - (b) may not be granted temporary admission to the United Kingdom under paragraph 21 of that Schedule.
- (5) Sections 119 and 120 make provision about support for designated persons and their dependants.

**118 Conditions**

- (1) The Secretary of State or an immigration officer may by notice in writing impose a condition on a designated person.
- (2) A condition may relate to –
- (a) residence,
  - (b) employment or occupation, or
  - (c) reporting to the police, the Secretary of State or an immigration officer.
- (3) Section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (electronic monitoring) shall apply in relation to conditions imposed under this section as it applies to restrictions imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (with a reference to the Immigration Acts being treated as including a reference to this section).
- (4) Section 69 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (reporting restrictions: travel expenses) shall apply in relation to conditions imposed under subsection (2)(c) above as it applies to restrictions imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971.
- (5) A person who without reasonable excuse fails to comply with a condition imposed under this section commits an offence.
- (6) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to –
- (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a period not exceeding 51 weeks, or
  - (c) both.

- (7) A provision of the Immigration Act 1971 (c. 77) which applies in relation to an offence under any provision of section 24(1) of that Act (illegal entry, &c.) shall also apply in relation to the offence under subsection (5) above.
- (8) In the application of this section to Scotland or Northern Ireland the reference in subsection (6)(b) to 51 weeks shall be treated as a reference to six months. 5

## 119 Support

- (1) Part VI of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seekers) shall apply in relation to designated persons and their dependants as it applies in relation to asylum-seekers and their dependants.
- (2) But the following provisions of that Part shall not apply – 10
  - (a) section 96 (kinds of support),
  - (b) section 97(1)(b) (desirability of providing accommodation in well-supplied area),
  - (c) section 100 (duty to co-operate in providing accommodation),
  - (d) section 101 (reception zones), 15
  - (e) section 108 (failure of sponsor to maintain),
  - (f) section 111 (grants to voluntary organisations), and
  - (g) section 113 (recovery of expenditure from sponsor).
- (3) Support may be provided under section 95 of the 1999 Act as applied by this section – 20
  - (a) by providing accommodation appearing to the Secretary of State to be adequate for a person’s needs;
  - (b) by providing what appear to the Secretary of State to be essential living needs;
  - (c) in other ways which the Secretary of State thinks necessary to reflect 25 exceptional circumstances of a particular case.
- (4) Support by virtue of subsection (3) may not be provided wholly or mainly by way of cash unless the Secretary of State thinks it appropriate because of exceptional circumstances.
- (5) Section 4 of the 1999 Act (accommodation) shall not apply in relation to designated persons. 30
- (6) A designated person shall not be treated –
  - (a) as a person subject to immigration control, for the purposes of section 119(1)(b) of the 1999 Act (homelessness: Scotland and Northern Ireland), or 35
  - (b) as a person from abroad who is not eligible for housing assistance, for the purposes of section 185(4) of the Housing Act 1996 (c. 52) (housing assistance).

## 120 Support: supplemental

- (1) A reference in an enactment to Part VI of the 1999 Act or to a provision of that Part includes a reference to that Part or provision as applied by section 119 above; and for that purpose – 40
  - (a) a reference to section 96 shall be treated as including a reference to section 119(3) above,



- (b) a reference to a provision of section 96 shall be treated as including a reference to the corresponding provision of section 119(3), and
- (c) a reference to asylum-seekers shall be treated as including a reference to designated persons.
- (2) A provision of Part VI of the 1999 Act which requires or permits the Secretary of State to have regard to the temporary nature of support shall be treated, in the application of Part VI by virtue of section 119 above, as requiring the Secretary of State to have regard to the nature and circumstances of support by virtue of that section. 5
- (3) Rules under section 104 of the 1999 Act (appeals) shall have effect for the purposes of Part VI of that Act as it applies by virtue of section 119 above. 10
- (4) Any other instrument under Part VI of the 1999 Act –
- (a) may make provision in respect of that Part as it applies by virtue of section 119 above, as it applies otherwise than by virtue of that section, or both, and 15
- (b) may make different provision for that Part as it applies by virtue of section 119 above and as it applies otherwise than by virtue of that section.
- (5) In the application of paragraph 9 of Schedule 8 to the 1999 Act (regulations: notice to quit accommodation) the reference in paragraph (2)(b) to the determination of a claim for asylum shall be treated as a reference to ceasing to be a designated person. 20
- (6) The Secretary of State may by order repeal, modify or disapply (to any extent) section 119(4).
- (7) An order under section 10 of the Human Rights Act 1998 (c. 42) (power to remedy incompatibility) which amends a provision mentioned in subsection (6) of section 119 above may amend or repeal that subsection. 25

## 121 End of designation

- (1) Designation lapses if the designated person –
- (a) is granted leave to enter or remain in the United Kingdom, 30
- (b) is notified by the Secretary of State or an immigration officer of a right of residence in the United Kingdom by virtue of the Community treaties,
- (c) leaves the United Kingdom, or
- (d) is made the subject of a deportation order under section 5 of the Immigration Act 1971 (c. 77). 35
- (2) After designation lapses support may not be provided by virtue of section 119, subject to the following exceptions.
- (3) Exception 1 is that, if designation lapses under subsection (1)(a) or (b), support may be provided in respect of a period which – 40
- (a) begins when the designation lapses, and
- (b) ends on a date determined in accordance with an order of the Secretary of State.
- (4) Exception 2 is that, if designation lapses under subsection (1)(d), support may be provided in respect of – 45

- (a) any period during which an appeal against the deportation order may be brought (ignoring any possibility of an appeal out of time with permission),
- (b) any period during which an appeal against the deportation order is pending, and 5
- (c) after an appeal ceases to be pending, such period as the Secretary of State may specify by order.

## 122 Interpretation: general

- (1) This section applies to sections 115 to 121.
- (2) A reference to a designated person is a reference to a person designated under section 115. 10
- (3) “Family” shall be construed in accordance with section 5(4) of the Immigration Act 1971 (c. 77) (deportation: definition of “family”).
- (4) “Right of abode in the United Kingdom” has the meaning given by section 2 of that Act. 15
- (5) “The Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (6) “Period of imprisonment” shall be construed in accordance with section 72(11)(b)(i) and (ii) of the Nationality, Immigration and Asylum Act 2002 (c. 41). 20
- (7) A voucher is not cash.
- (8) A reference to a pending appeal has the meaning given by section 104(1) of that Act.
- (9) A reference in an enactment to the Immigration Acts includes a reference to sections 115 to 121. 25

## PART 12

### GENERAL

## 123 Orders and regulations

- (1) Orders or regulations made by the Secretary of State or the Lord Chancellor under this Act are to be made by statutory instrument. 30
- (2) Any such orders or regulations –
  - (a) may make provision generally or only for specified cases or circumstances;
  - (b) may make different provision for different cases, circumstances or areas; 35
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (3) A statutory instrument containing –
  - (a) an order under section 4(3),
  - (b) an order under section 30(3), 40
  - (c) an order under section 50(2),

- (d) an order under section 51(1), (3) or (5),
  - (e) an order under section 52,
  - (f) an order under section 80(3)(b) which amends or repeals any provision of an Act,
  - (g) regulations under section 94, 5
  - (h) an order under section 120(6),
  - (i) an order under section 124(3) which amends or repeals any provision of an Act,
  - (j) an order under paragraph 26 or 34 of Schedule 1,
  - (k) an order under paragraph 25 of Schedule 2, or 10
  - (l) an order under paragraph 6 of Schedule 5,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing any other order or regulations under this Act other than – 15
    - (a) an order under section 128,
    - (b) an order under paragraph 25(5) of Schedule 1, or
    - (c) an Order in Council under paragraph 9 of Schedule 15,
 is subject to annulment in pursuance of a resolution of either House of Parliament. 20
  - (5) An order under section 128(4) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

#### **124 Consequential etc. amendments and transitional and saving provision**

- (1) Schedule 21 contains minor and consequential amendments.
- (2) Schedule 22 contains transitory, transitional and saving provisions. 25
- (3) The Secretary of State may by order make –
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
 as the Secretary of State considers appropriate for the general purposes, or any particular purposes, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act. 30
- (4) An order under subsection (3) may, in particular –
  - (a) provide for any provision of this Act which comes into force before another provision has come into force to have effect, until that other provision has come into force, with specified modifications, and 35
  - (b) amend, repeal or revoke any provision of –
    - (i) any Act (including this Act and any Act passed in the same Session as this Act);
    - (ii) subordinate legislation made before the passing of this Act;
    - (iii) Northern Ireland legislation; and 40
    - (iv) any instrument made, before the passing of this Act, under Northern Ireland legislation.
- (5) Nothing in this section limits the power under section 128(6) to include provision for transitory, transitional or saving purposes in an order under that section. 45

- (6) The amendments that may be made by virtue of subsection (4)(b) are in addition to those made by or which may be made under any other provision of this Act.
- (7) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30). 5

## 125 Repeals and revocations

Schedule 23 contains repeals and revocations, including repeals of spent enactments.

## 126 Financial provisions

*There is to be paid out of money provided by Parliament –*

- (a) *any expenditure incurred by virtue of this Act by a Minister of the Crown; and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.* 10

## 127 Extent

- (1) Subject as follows, this Act extends to England and Wales only. 15
- (2) The following provisions of this Act extend to England and Wales, Scotland and Northern Ireland –
- (a) Part 4 so far as relating to –
- (i) complaints about matters mentioned in paragraphs 6 and 7 of Schedule 7; 20
- (ii) requests under section 37 which are made by virtue of subsection (3) of that section and specify matters relating to events which have (or may have) occurred as mentioned in paragraph (g) or (h) of that subsection; or
- (iii) requests under section 37 which are made by virtue of subsection (4) of that section and specify matters which the Secretary of State considers are (or may be) linked to such events; 25
- (b) Part 11;
- (c) this Part (subject to subsection (5)). 30
- (3) The following provisions of this Act extend to England and Wales and Northern Ireland –
- (a) section 3 and Schedule 3;
- (b) section 23(3) and (6)(d) and paragraph 7 of Schedule 5;
- (c) Part 4 so far as relating to deaths falling within paragraphs 4 to 6 of Schedule 8; 35
- (d) sections 62 to 67;
- (e) paragraph 7(4) of Schedule 21.
- (4) The following provisions of this Act extend to Northern Ireland only –
- (a) section 69; 40
- (b) section 107 and Schedule 18.

- (5) Except as otherwise provided by this Act, an amendment or repeal of any enactment by any provision of this Act extends to the part or parts of the United Kingdom to which the enactment extends.

## 128 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed – 5
- (a) section 56, Schedule 13, paragraph 17 of Schedule 21 and the repeals in Part 3 of Schedule 23 relating to –
    - (i) paragraphs 13 and 22 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), and 10
    - (ii) Part 4 of Schedule 37 to that Act;
  - (b) section 113;
  - (c) section 123;
  - (d) section 124(3) to (7);
  - (e) sections 126 and 127; 15
  - (f) this section;
  - (g) section 129.
- (2) The following provisions of this Act come into force at the end of the period of 2 months beginning with the day on which it is passed –
- (a) section 63 and the related repeal in Part 3 of Schedule 23; 20
  - (b) section 68 and paragraph 5 of Schedule 21;
  - (c) section 69 and paragraph 6 of Schedule 21.
- (3) The following provisions come into force on such day as the Lord Chancellor may by order appoint –
- (a) section 12; 25
  - (b) section 25;
  - (c) sections 59 to 61;
  - (d) sections 76 to 81 and Schedule 16.
- (4) Section 107 and Schedule 18 come into force on such day as the Department of Health, Social Services and Public Safety may by order appoint. 30
- (5) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (6) An order under any of subsections (3) to (5) may –
- (a) appoint different days for different purposes and in relation to different areas; 35
  - (b) make such provision as the person making the order considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision falling within that subsection.

## 129 Short title

40

This Act may be cited as the Criminal Justice and Immigration Act 2007.

## 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), and
  - (k) paragraph 24(4) (education requirement). 20

*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
  - (b) imposes an exclusion requirement. 25
- (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
  - (b) the court is prevented by paragraph 25(3) or (6) from including such a requirement in the order. 30
- (3) Subsection (2)(a) of section 1 has effect subject to paragraph 25(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.
- (3) Such an activity requirement is referred to in this Part of this Act as “an extended activity requirement”. 5
- (4) A youth rehabilitation order which imposes an extended activity requirement must also impose –
- (a) a supervision requirement, and
  - (b) a curfew requirement (and, accordingly, if so required by paragraph 2, an electronic monitoring requirement). 10
- (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.
- (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 20
  - (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. 25
- (3) But a court may not impose a fostering requirement unless –
- (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. 30
- (4) A youth rehabilitation order which imposes a fostering requirement must also impose a supervision requirement.
- (5) This paragraph has effect subject to paragraphs 18(7) and 19 (pre-conditions to imposing fostering requirement). 35
- (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).

*Intensive supervision and surveillance and fostering: further provisions* 40

- 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

- (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). 5

## 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 – 10
- (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; 15
  - (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. 20
- (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 – 25
- (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 30
  - (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). 35
- (4) Where the order requires the offender to participate in a residential exercise, it must specify, in relation to the exercise – 40
- (a) a place, or
  - (b) an activity.
- (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) – 45
    - (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
- (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, 5
- 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)* 10
- 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. 15
- (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 – 20
- (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 25
- (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 30
- (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* 35
- 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 40
- (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), 45

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.

- (3) A court may not include an activity requirement in a youth rehabilitation order unless – 5
- (a) it has consulted a member of a youth offending team or an officer of a local probation board,
  - (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. 10
- (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. 15

#### *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. 20

#### *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. 25
- (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 – 30
- (a) not less than 40, and
  - (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 35
  - (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. 40
- (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 45

specified in the order such work at such times as the responsible officer may specify in instructions.

- (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. 5
- (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* 10

- 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.
- (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. 15
- (3) A court may not include a programme requirement in a youth rehabilitation order unless – 20
- (a) the programme which the court proposes to specify in the order has been recommended to the court by –
- (i) a member of a youth offending team, or
- (ii) an officer of a local probation board, as being suitable for the offender, and 25
- (b) the court is satisfied that the programme is available at the place or places proposed to be specified.
- (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. 30
- (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 35
- (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 an attendance centre specified in the order for such number of hours as may be so specified. 40
- (2) The aggregate number of hours for which the offender may be required to attend at an attendance centre – 45

- (a) if the offender is aged 14 or over at the time of conviction, must be—
    - (i) not less than 12, and
    - (ii) not more than 36;
  - (b) if the offender is aged under 14 at the time of conviction, must not be more than 18. 5
- (3) A court may not include an attendance centre requirement in a youth rehabilitation order unless it—
  - (a) has been notified by the Secretary of State that—
    - (i) an attendance centre is available for persons of the offender’s description, and 10
    - (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.
- (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. 15
- (5) The subsequent hours are to be fixed by the officer in charge of the centre—
  - (a) in accordance with arrangements made by the responsible officer, and
  - (b) having regard to the offender’s circumstances. 20
- (6) An offender may not be required under this paragraph to attend at an attendance centre—
  - (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—
  - (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. 30

*Prohibited activity requirement*

- 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. 35
- (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 40
  - (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). 45

*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.
- (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. 5
- (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. 10
- (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).

*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.
- (2) The period specified must not be more than 3 months.
- (3) An exclusion requirement— 20
- (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.

*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— 25
- (a) with an individual specified in the order, or
- (b) at a place specified in the order. 30
- (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.
- (3) In this paragraph, a residence requirement falling within sub-paragraph (1)(b) is referred to as “a place of residence requirement”. 35
- (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) 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. 40

- (6) Before making a youth rehabilitation order containing a place of residence requirement, the court must consider the home surroundings of the offender.
- (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 –
  - (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* 10

- 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. 15
- (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.
- (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 – 20
  - (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. 25
- (4) A court may not include a local authority residence requirement in a youth rehabilitation order unless it has consulted –
  - (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. 30
- (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.
- (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 – 35
  - (a) not be longer than 6 months, and
  - (b) not include any period after the offender has reached the age of 18.

*Fostering requirement* 40

- 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.
- (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 – 45

- (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
- (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). 5
- (4) The authority so specified must be the local authority in whose area the offender resides or is to reside.
- (5) If at any time during the period specified under sub-paragraph (1), the responsible officer notifies the offender – 10
- (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, 15
- 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.
- (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. 20
- (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. 25
- (8) In this paragraph, “local authority foster parent” has the same meaning as it has in the Children Act 1989.

*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 – 30
- (a) the offender was legally represented at the relevant time in court, or
- (b) either of the conditions in sub-paragraph (2) is satisfied.
- (2) Those conditions are – 35
- (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. 40
- (3) In this paragraph –
- “the proceedings” means –
- (a) the whole proceedings, or 45

- (b) the part of the proceedings relating to the imposition of the local authority residence requirement or the fostering requirement;

“the relevant time” means the time when the court is considering whether to impose that requirement.

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*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.

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(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 –

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(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;

20

(b) treatment as a non-resident patient at such institution or place as may be specified in the order;

(c) treatment by or under the direction of such registered medical practitioner or chartered psychologist (or both) as may be so specified;

25

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 –

(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 –

30

- (i) is such as requires and may be susceptible to treatment, but
- (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

35

(c) where the offender is aged 14 or over at the time the requirement is imposed, the offender has expressed willingness to comply with the requirement.

40

(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.

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(5) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 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.

- (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. 5

*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 – 10
- (a) is not specified in the youth rehabilitation order, and
- (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, 15
- the medical practitioner or psychologist may make arrangements for the offender to be treated accordingly.
- (2) Such arrangements as are mentioned in sub-paragraph (1) may only be made – 20
- (a) with the consent of the offender, or
- (b) if the offender is aged under 14 when they are made, with the consent of the offender’s parent or guardian.
- (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. 25
- (4) Where any such arrangements as are mentioned in sub-paragraph (1) are made for the treatment of an offender – 30
- (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. 35

*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 (“the treatment provider”), with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs. 40
- (2) A court may not include a drug treatment requirement in a youth rehabilitation order unless it is satisfied – 45

- (a) that the offender is dependent on, or has a propensity to misuse, drugs, and
  - (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 –
  - (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,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,
  - (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),
  - (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) where the offender is aged 14 or over at the time that the requirement is imposed, the offender has expressed willingness to comply with the requirement.
- (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.
- (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  
“the treatment provider” has the meaning given by that sub-paragraph.
- (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,
- (b) the order also imposes a drug treatment requirement, and
  - (c) the offender –
    - (i) was aged 14 or over at the time of conviction, and 5
    - (ii) has expressed willingness to comply with the requirement.
- (4) A youth rehabilitation order which imposes a drug testing requirement –
- (a) must specify for each month the minimum number of occasions on which samples are to be provided, and
  - (b) may specify – 10
    - (i) times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided, and
    - (ii) descriptions of the samples which may be so required.
- (5) A youth rehabilitation order which imposes a drug testing requirement 15  
 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.

*Education requirement*

- 24 (1) In this Part of this Act “education requirement”, in relation to a youth 20  
 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 25  
 for the offender’s education –
- (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 30  
 authority for the area in which the offender resides or is to reside.
- (4) A court may not include an education requirement in a youth rehabilitation 30  
 order unless –
- (a) it has consulted the local education authority proposed to be 35  
 specified in the order with regard to the proposal to include the requirement, and
  - (b) it is satisfied – 35
    - (i) that, in the view of that local education authority, 40  
 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
    - (ii) that, having regard to the circumstances of the case, the 40  
 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 45  
 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.

- (6) In this paragraph, “local education authority” and “parent” have the same meanings as in the Education Act 1996 (c. 56).

*Electronic monitoring requirement*

- 25 (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), 15
- of the time when the period is to begin.
- (3) Where –
- (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 – 30
- (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available –
    - (i) in the local justice area proposed to be specified in the order, and 35
    - (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  - (b) is satisfied that the necessary provision can be made under the arrangements currently available. 40
- (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. 45

<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 centre requirement.	The attendance centre which the court proposes to specify in the order.	

*Power to amend limits*

- 26 (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*

- 27 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.*

- 28 (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*

- 29 (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*

- 30 (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 29(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*

- 31 (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*

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

*Provision of copies of orders*

- 33 (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) Where a local authority has parental responsibility for an offender aged under 14 who is – 10
- (a) in its care, or
  - (b) provided with accommodation by it in the exercise of any social services functions,
- the reference in sub-paragraph (1) to the offender’s parent or guardian is to be read as a reference to that authority. 15
- (3) In sub-paragraph (2) –
- “parental responsibility” has the same meaning as in the Children Act 1989 (c. 41), and
  - “social services functions”, in relation to a local authority, has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42). 20
- (4) Sub-paragraph (5) applies where a youth rehabilitation order –
- (a) is made by the Crown Court, or
  - (b) is made by a magistrates’ court which does not act in the local justice area specified in the order. 25
- (5) The court making the order must –
- (a) provide to the magistrates’ court acting in the local justice area specified in the order –
    - (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 30
  - (b) provide a copy of the order to the local probation board acting for that area. 35
- (6) 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. 40

<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.

45



<i>Requirement</i>	<i>Person to whom copy of requirement is to be given</i>	
An activity requirement specifying an activity under paragraph 6(1)(b).	The person in charge of that activity.	5
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).	10
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.	15
A residence requirement requiring residence with an individual.	The individual specified under paragraph 16(1)(a).	20
A place of residence requirement (within the meaning of paragraph 16) relating to residence in an institution.	The person in charge of the institution.	25
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.	30
A drug treatment requirement.	The treatment provider specified under paragraph 22(1).	35
A drug testing requirement.	The treatment provider specified under paragraph 22(1).	
An education requirement.	The local education authority specified under paragraph 24(2).	40

<i>Requirement</i>	<i>Person to whom copy of requirement is to be given</i>	
An electronic monitoring requirement.	Any person who by virtue of paragraph 25(4) will be responsible for the electronic monitoring. Any person without whose consent the requirement could not have been included in the order.	5

*Power to provide for court review of orders*

- 34 (1) The Secretary of State may by order – 10
- (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 15
  - (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. 20
- (3) An order under this paragraph may repeal or amend any provision of –
- (a) this Part of this Act, or
  - (b) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (general provisions about sentencing). 25

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

- 35 (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). 30
- (2) In sub-paragraph (1), “further proceedings”, in relation to a youth rehabilitation order, means proceedings –
- (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. 35

SCHEDULE 2

Section 2

BREACH, REVOCATION OR AMENDMENT OF YOUTH REHABILITATION ORDERS

PART 1

PRELIMINARY

- Interpretation* 5
- 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.
- (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 – 10
- (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 (c. 44) (“attendance centre rules”), and 15
- (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 –
- (i) with a requirement imposed by the order, or
- (ii) if the order imposes an attendance centre requirement, with attendance centre rules. 20
- (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 25
- (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.
- 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 – 30
- (a) if it was made on an appeal from a magistrates’ court, as having been made by a magistrates’ court;
- (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. 35

PART 2

BREACH OF REQUIREMENT OF ORDER

*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 40

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.

- (2) A warning under this paragraph must –
- (a) describe the circumstances of the failure, 5
  - (b) state that the failure is unacceptable, and
  - (c) state that the offender will be liable to be brought before a court –
    - (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 10
    - (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.
- (3) The responsible officer must, as soon as practicable after the warning has been given, record that fact. 15
- (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.

*Breach of order* 20

- 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 25
  - (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). 30
- (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 35
  - (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.
- (3) In this paragraph, “warned period” has the same meaning as in paragraph 3.

*Issue of summons or warrant by justice of the peace* 40

- 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 45

- (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.
- (2) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought—
- (a) if the youth rehabilitation order was made by the Crown Court and does not include a direction under paragraph 35 of Schedule 1, before the Crown Court, and 5
- (b) in any other case, before the appropriate court.
- (3) In sub-paragraph (2), “appropriate court” means—
- (a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and 10
- (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—
- (a) the local justice area in which the offender resides, or 15
- (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.
- (6) If the summons required the offender to appear before the Crown Court, the Crown Court may— 20
- (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
- (b) in any case, issue a warrant for the arrest of the offender. 25
- (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—
- (a) an offender appears or is brought before a youth court or other magistrates' court under paragraph 5, and 30
- (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.
- (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)— 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; 40
- (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—
- (i) in addition to, or
- (ii) in substitution for, 45
- 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).
- (3) Sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9). 5
- (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.
- (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. 10
- (6) Any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 31(1) of Schedule 1.
- (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”. 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.
- (9) Where – 25
- (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, 30
- 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) Where – 35
- (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. 40
- (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.
- (12) Sub-paragraphs (13) to (15) apply where –
- (a) the court is dealing with the offender under sub-paragraph (2)(c), and 45

- (b) the offender has wilfully and persistently failed to comply with a youth rehabilitation order.
- (13) The court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b). 5
- (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, 10
- 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).
- (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 15
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment, 20
- 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). 25

*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 35 of Schedule 1, and
- (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). 30
- (2) The court may instead—
- (a) commit offender in custody, or
- (b) release the offender on bail, 35
- 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 40
- (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.

*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. 5
- (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) – 10
- (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 – 15
    - (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. 20
- (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. 25
- (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 31(1) of Schedule 1. 30
- (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, 35
- 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 – 40
- (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 45



- (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. 5
- (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.
- (11) Sub-paragraphs (12) to (14) apply where – 10
- (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).
- (12) The court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b). 15
- (13) If –
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and 20
- (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). 25
- (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, 30
- 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. 35
- (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 – 40
- (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 45

by that requirement if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

*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). 5
- (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 – 10
- (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 that sub-paragraph, 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 (2) (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. 15

PART 3

REVOCATION OF ORDER

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

- 11 (1) This paragraph applies where – 20
- (a) a youth rehabilitation order is in force in respect of any offender,
  - (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 35 of Schedule 1, and 25
  - (c) the offender or the responsible officer makes an application to the appropriate court under this sub-paragraph.
- (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 – 30
- (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 appropriate court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it). 35
- (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). 40
- (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.

- (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. 5
- (8) In this paragraph, “the appropriate court” means – 10
- (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. 15

*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 20
- (ii) does not contain a direction under paragraph 35 of Schedule 1, and
- (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 – 25
- (a) revoke the order, or
- (b) both –
- (i) revoke the order, and 30
- (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.
- (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). 35
- (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.
- (5) No application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending. 40
- (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. 45

PART 4

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, 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 35 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. 10
- (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 15
  - (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. 20
- (4) The appropriate court may by order amend the youth rehabilitation order –
- (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. 25
- (5) Sub-paragraph (4) is subject to paragraph 16.
- (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 30
  - (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.

*Amendment by Crown Court*

- 14 (1) This paragraph applies where –
- (a) a youth rehabilitation order is in force in respect of an offender, 35
  - (b) the order –
    - (i) was made by the Crown Court, and
    - (ii) does not contain a direction under paragraph 35 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. 40

- (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
  - (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 –
- (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.

*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 –
- (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).
- (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).
- (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 –
- (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.

*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 31(1) of Schedule 1.
- (2) Where – 5
- (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, 10
- 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) Where the offender is aged 14 or over, the court may not under paragraph 13(4) or 14(4) impose – 15
- (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. 20
- (4) If an offender who is aged 14 or over 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 – 25
- (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). 30
- (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*

- 17 Where –
- (a) a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender, and 35
  - (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, 40
- the court may, in relation to the order, extend the period of 12 months specified in paragraph 10(6) of Schedule 1.

PART 5

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 5
  - (b) the offender is convicted of an offence (the “further offence”) by a youth court or other magistrates’ court (“the convicting court”).
- (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 10
    - (ii) was made by the Crown Court and contains a direction under paragraph 35 of Schedule 1, and
  - (b) the convicting court is dealing with the offender for the further offence.
- (3) The convicting court may revoke the order. 15
- (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). 20
- (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.
- (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. 25
- (7) A person sentenced under sub-paragraph (4) for an offence may appeal to the Crown Court against the sentence.
- (8) Sub-paragraph (9) applies where – 30
- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 35 of Schedule 1, and
  - (b) the convicting court would, but for that sub-paragraph, deal with the offender for the further offence.
- (9) The convicting court may, instead of proceeding under sub-paragraph (3) – 35
- (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 35 of Schedule 1. 40
- (11) The convicting court may –
- (a) commit the offender in custody, or

- (b) release the offender on bail,  
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.

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*Powers of Crown Court following subsequent conviction*

- 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.
- (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.
- (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.
- (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.

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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 –
  - (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.
- (2) Sub-paragraph (1) does not apply where a court proposes to make an order –

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- (a) revoking a youth rehabilitation order,
- (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or
- (c) substituting a new local justice area or place for one specified in a youth rehabilitation order. 5

### *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”). 10
- (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
  - (b) must within that period bring the offender before a magistrates’ court. 15
- (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.
- (4) A person who is detained under arrangements made under sub-paragraph (2)(a) is deemed to be in legal custody. 20
- (5) In sub-paragraph (2)(a) “place of safety” has the same meaning as in the Children and Young Persons Act 1933.
- (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. 25
- (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 30
  - (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.
- (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) –
- (a) the words “issued by the Crown Court” were omitted, and
  - (b) the reference to section 81(5) of the Supreme Court Act 1981 were a reference to sub-paragraph (2)(b). 35
- (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 –
- (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. 40
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- (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.

*Adjournment of proceedings* 5

- 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.
- (2) The court may adjourn the hearing, and, where it does so, may –
- (a) direct that the offender be released forthwith, or 10
  - (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. 15
- (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 20
  - (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. 25
- (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 30
  - (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* 35

- 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. 40

*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,
- (b) provide a copy of the revoking or amending order to the responsible officer, 5
- (c) in the case of an amending order which substitutes a new local justice area, provide copies of the amending order to –
- (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 33(6) 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, 10
- (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 15
- (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. 20
- (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. 25
- (3) In this paragraph “proper officer” means –
- (a) in relation to a magistrates’ court, the designated officer for the court, and 30
- (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 –
- (a) the period of 18 months specified in the provision, or 35
- (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.

## 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 5

*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. 10
- (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 15
  - (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). 20
- (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. 25
- (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
  - (b) provision can be made for the offender to comply with the requirement under those arrangements. 30
- (6) The requirements referred to in sub-paragraphs (2)(a) and (5) are –
- (a) an activity requirement (including an extended activity requirement);
  - (b) an unpaid work requirement;
  - (c) a programme requirement;
  - (d) an attendance centre requirement;
  - (e) a mental health treatment requirement; 40
  - (f) a drug treatment requirement;
  - (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.

*Amendment of youth rehabilitation order where offender resides or proposes to reside in Northern Ireland* 5

- 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. 10
- (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—
- (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 15
- (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). 20
- (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. 25
- (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 30
- (b) provision can be made for the offender to comply with the requirement under those arrangements. 35
- (6) The requirements referred to in sub-paragraphs (2)(a) and (5) are—
- (a) an activity requirement (including an extended activity requirement);
- (b) an unpaid work requirement;
- (c) a programme requirement; 40
- (d) an attendance centre requirement;
- (e) a mental health treatment requirement;
- (f) a drug treatment requirement;
- (g) a drug testing requirement;
- (h) an education requirement; 45
- (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.

*Further provisions regarding the making or amending of youth rehabilitation orders under paragraphs 1 or 2* 5

- 3 A youth rehabilitation order made or amended in accordance with paragraph 1 or 2 must –
- (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 10
  - (b) specify as the corresponding order for the purposes of this Schedule an order that may be made by a court in Northern Ireland, and paragraph 32 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 – 15
- (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 20
  - (c) its own powers under Part 2 of this Schedule.
- (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 25
  - (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;
- and sub-paragraphs (1) to (5) of paragraph 33 of Schedule 1 (provision of copies of orders) do not apply. 30
- (3) The persons referred to in sub-paragraph (2)(a) are –
- (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, or 35
    - (iii) if a local authority in England or Wales has parental responsibility for the offender and the offender is in its care or is provided with accommodation by it in the exercise of any social services functions, the local authority, 40
  - (c) the body which is to make suitable arrangements for the offender’s supervision under the order, and
  - (d) the home court.
- (4) In sub-paragraph (3)(b)(ii) – 45
- (a) “authority” has the meaning given by Article 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),

- (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 sub-paragraph (3)(b)(iii) –
- (a) “social services functions”, in relation to a local authority, has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42), and 5
- (b) “parental responsibility” has the same meaning as in the Children Act 1989 (c. 41).
- (6) In this paragraph, “home court” has the meaning given by paragraph 8. 10

*Modifications to Part 1*

- 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 – 15
- (a) in paragraph 8(3)(a) (activity requirement: further provisions), the words “a member of a youth offending team or”,
- (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), 20
- (c) paragraph 16(7) (residence requirement: restriction on requiring residence at hostel or institution), and
- (d) paragraphs 18(7), 22(4)(a), 23(3)(a) and 25(6) and (7) (availability of arrangements in local area: fostering requirement, drug treatment and testing requirements and electronic monitoring requirement). 25
- (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)).
- (4) In paragraph 20 of that Schedule (mental health treatment requirement), for sub-paragraph (2)(a) there is substituted – 30
- “(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));” 35
- (5) In paragraphs 24 (education requirement) and 33(6) (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 24) has effect as a reference to an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)). 40 45
- (6) In paragraph 25 of that Schedule (electronic monitoring requirements: common provisions) sub-paragraph (5) is omitted.

(7) Paragraph 35 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.

(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. 5

#### *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). 10

### PART 2

PROVISIONS RELATING TO AN ORDER MADE OR AMENDED UNDER PART 1 15

#### *Application of this Part*

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 – 20  
 "corresponding order" means the order specified under paragraph 3(b);  
 "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 25  
 (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; 30  
 "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;  
 "the relevant court in England or Wales" means –  
 (a) the court in England and Wales which made or which last amended the order, or 35  
 (b) if the order was made by the Crown Court and includes a direction under paragraph 35 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. 40



*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.

(2) Sub-paragraph (1) is subject to paragraphs 12 to 16. 5

*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.

*Direction by Crown Court in Northern Ireland that proceedings in Northern Ireland be before a court of summary jurisdiction* 10

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),

(b) any power to deal with the offender for the offence in respect of which the order was made, and 25

(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
- (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. 5

*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 10
- (b) exercise any power which it could exercise in respect of the youth rehabilitation order if the offender resided in England or Wales, 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. 15
- 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.
- (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). 20

*Power to amend provisions of Schedule in consequence of changes to the law in Northern Ireland* 25

- 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.
- (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. 30

SCHEDULE 4

Section 6

YOUTH REHABILITATION ORDERS: CONSEQUENTIAL AND RELATED AMENDMENTS

PART 1 35

CONSEQUENTIAL AMENDMENTS

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

- 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”.
- (3) After subsection (7A) insert – 5
- “(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 2007, 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.” 10
- 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 –
- “(c) proceedings in a magistrates’ court under Schedule 2 to the Criminal Justice and Immigration Act 2007 (proceedings for breach, revocation or amendment of youth rehabilitation orders); 15
- (d) proceedings on appeal from a magistrates’ court arising out of any proceedings mentioned in paragraph (c) (including proceedings by way of case stated).” 20
- (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 2007 (proceedings for breach, revocation or amendment of youth rehabilitation orders)”. 25
- (5) In subsection (13), omit paragraph (c)(i).

*Criminal Appeal Act 1968 (c. 19)*

- 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 – 30
- “(b) having been given a suspended sentence or made the subject of –
- (i) an order for conditional discharge, 35
- (ii) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2007, or
- (iii) a community order within the meaning of Part 12 of the Criminal Justice Act 2003,
- appears or is brought before the Crown Court to be further dealt with for the offence.” 40

*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 2007;”.
- 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 2007;”.

5

*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.* 10
- 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* 15
- (b) *after that paragraph, insert –*  
 “(xxii) *Part 1 of the Criminal Justice and Immigration Act 2007;*”.
- 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 –* 20  
 “(xxii) *Part 1 of the Criminal Justice and Immigration Act 2007;*”.

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

- 11 *The Children and Young Persons Act 1969 has effect subject to the following amendments.* 25
- 12 (1) Section 32 (detention of absentees) is amended as follows.
- (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 2007”, 30
- (b) in paragraph (b)(i), for “under paragraph 5 of Schedule 6 to that Act” substitute “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 2007)”, and
- (c) in paragraph (b)(ii), for “paragraph 7(5) of Schedule 7 to that Act” substitute “paragraph 21 of Schedule 2 to that 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 2007; 40
- (b) the authority specified under paragraph 17(5) of Schedule 1 to the Criminal Justice and Immigration Act 2007;
- (c) the authority designated under paragraph 21(10) of Schedule 2 to the Criminal Justice and Immigration Act 2007; 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 5
- (b) is absent, without the consent of the responsible officer (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2007), 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. 10
- (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 2007 may direct, 15
- at that local authority’s expense.”
- (5) In subsection (2), for “or (1A)” substitute “, (1A) or (1D)”.
- (6) In subsection (2A), for “or (1A)(a) or (b)(i) or (ii)” substitute “, (1A)(a) or (b)(i) or (ii) or (1D)”.
- (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)”.
- 13 In section 70(1) (interpretation)—
- (a) omit the definition of “supervision order”, and
- (b) 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 2007 (see section 1 of that Act);”.
- 30
- Rehabilitation of Offenders Act 1974 (c. 53)*
- 14 The Rehabilitation of Offenders Act 1974 has effect subject to the following amendments. 35
- 15 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 2007;”.
- 16 In section 7(2)(d) (limitations on rehabilitation under this Act, etc.), for “supervision order under the Powers of Criminal Courts (Sentencing) Act 2000” substitute “youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2007”.
- 40

*Bail Act 1976 (c. 63)*

- 17 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 – 5
    - “(a) Schedule 2 to the Criminal Justice and Immigration Act 2007 (breach, revocation or amendment of youth rehabilitation orders), or”.

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

- 18 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). 10

*Contempt of Court Act 1981 (c. 49)*

- 19 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). 15

*Criminal Justice Act 1982*

- 20 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. 20
- 21 (1) Paragraph 7 (transfer to England and Wales) is amended as follows.
- (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 2007”. 25
- (3) In sub-paragraph (2)(b) –
- (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)”. 30
- (4) In sub-paragraph (3) –
- (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”. 35
- (5) After sub-paragraph (3) insert –
- “(4) A youth community service order made or amended in accordance with this paragraph shall – 40

- 
- (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
- (b) require –
- (i) the local probation board for that area established under section 4 of the Criminal Justice and Court Services Act 2000, or 5
  - (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, 10
- 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 2007.” 15
- 22 (1) Paragraph 9 (general provision) is amended as follows.
- (2) In sub-paragraph (3) –
- (a) in paragraph (a) – 20
    - (i) for “a community service order” substitute “an adult community service order”;
    - (ii) omit “under section 177 of the Criminal Justice Act 2003”;
    - (iii) for “of that Act” substitute “of the Criminal Justice Act 2003”, and 25
  - (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 2007 shall apply accordingly;”. 30
- (3) In sub-paragraph (4)(a) –
- (a) after “community orders” insert “or youth rehabilitation orders”, and 35
  - (b) omit “(within the meaning of Part 12 of the Criminal Justice Act 2003)”. 35
- (4) In sub-paragraph (5) –
- (a) after “community order” insert “or youth rehabilitation order”, and 40
  - (b) omit “(within the meaning of Part 12 of the Criminal Justice Act 2003)”. 40
- (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 45
  - (c) in paragraph (b)(i), after “2003” insert “or, as the case may be, Part 1 of the Criminal Justice and Immigration Act 2007”. 45

23 After that paragraph insert –

*“Community service orders relating to persons residing in England and Wales:  
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; 5

“community order” means an order made under section 177 of the Criminal Justice Act 2003; 10

“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;

“youth rehabilitation order” means an order made under section 1 of the Criminal Justice and Immigration Act 2007.” 15

*Mental Health Act 1983 (c. 20)*

24 In section 37(8) of the Mental Health Act 1983 (powers of courts to order hospital admission or guardianship) – 20

(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 2007)”, and

(b) in paragraph (c), omit the words “a supervision order (within the meaning of that Act) or”. 25

*Child Abduction Act 1984 (c. 37)*

25 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), 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 2007”, and 30

(b) in paragraph (b), after “1969” insert “or paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2007”.

*Prosecution of Offences Act 1985 (c. 23)*

26 (1) Section 19 of the Prosecution of Offences Act 1985 (provision for orders as to costs in other circumstances) is amended as follows. 35

(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 – 40

“(3C) For the purposes of subsection (3B)(b)(i) –

“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	
	(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 2007;	5
	“youth rehabilitation order” has the same meaning as in Part 1 of the Criminal Justice and Immigration Act 2007.”	10
 <i>Children Act 1989 (c. 41)</i>		
27	The Children Act 1989 has effect subject to the following amendments.	
28	(1) Section 21 (provision of accommodation for children in police protection or detention or on remand, etc.) is amended as follows.	
	(2) In subsection (2)(c) –	15
	(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	
	(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 2007 (breach etc. of youth rehabilitation orders); or	20
	(iii) the subject of a youth rehabilitation order imposing a local authority residence requirement or a youth rehabilitation order with fostering.”.	25
	(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 2007 (see section 7 of that Act) –	30
	“local authority residence requirement”;	
	“youth rehabilitation order”;	
	“youth rehabilitation order with fostering”.	35
29	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 2007; or”.	40
30	In section 105(6) (interpretation) –	
	(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 2007; or”.	45

- 31 (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 2007 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 2007)”, and
- (b) in sub-paragraph (2), after “direction” (in the second place it occurs) insert “or instruction”.

*Criminal Justice Act 1991 (c. 53)* 15

- 32 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.
- 33 (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;”.
- 34 (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
- (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—
- (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 2007 shall apply accordingly.”
- (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;”;
- (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”,
- (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 2007”.
- (6) In sub-paragraph (5)—
- (a) after “2003” insert “or, as the case may be, Part 1 of the Criminal Justice and Immigration Act 2007”, and
- (b) in paragraph (b), after “local probation board” insert “or, as the case may be, member of a youth offending team”.
- (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;
- “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 2007.”

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

- 35 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 2007 (youth rehabilitation orders: breach etc.)”.

*Education Act 1996 (c. 56)*

- 36 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 2007”. 5

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

- 37 The Crime and Disorder Act 1998 has effect subject to the following amendments. 10
- 38 In section 38(4) (local provision of youth justice services) –
- (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 meaning of Part 1 of the Criminal Justice and Immigration Act 2007); 15
    - (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);” 20
  - (c) omit paragraph (g), and
  - (d) in paragraph (h), omit “or a supervision order”.
- 39 In Schedule 8 (minor and consequential amendments), in paragraph 13(2), for “that section” substitute “section 10 of that Act”. 25

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

- 40 The Powers of Criminal Courts (Sentencing) Act 2000 has effect subject to the following amendments.
- 41 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”. 30
- 42 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.” 35
  - (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. 40
    - (4B) Where a youth rehabilitation order is revoked under subsection (4A), paragraph 24 of Schedule 2 to the Criminal Justice and Immigration Act 2007 (breach, revocation or

- amendment of youth rehabilitation order) applies to the revocation.”
- 43 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”. 5
- 44 In section 75 (breach, revocation and amendment of reparation orders) omit “action plan orders and” and “so far as relating to reparation orders”.
- 45 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”. 10
- 46 In section 137(2) (power to order parent or guardian to pay fine, costs, compensation or surcharge) –
- (a) after “under –” insert –
- “(za) paragraph 6(2)(a) or 8(2)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2007 (breach of youth rehabilitation order),”, and 15
- (b) omit paragraphs (a) to (c), and
- (c) in paragraph (d) omit “action plan order or”.
- 47 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”. 20
- 48 In section 159 (execution of process between England and Wales and Scotland) –
- (a) after “Schedule 1 to this Act,” insert “or”, 25
- (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”.
- 49 (1) Section 160 (rules and orders) is amended as follows.
- (2) Omit subsection (2). 30
- (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).”
- (4) Omit subsection (5).
- 50 In section 163 (general definitions) – 35
- (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”,
- (b) in the definition of “responsible officer”, omit paragraphs (a), (aa) and (f), and 40
- (c) at the end add –
- ““youth rehabilitation order” has the meaning given by section 1(1) of the Criminal Justice and Immigration Act 2007.” 45

- 51 (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”.
- (3) In the cross-heading before paragraph 2, omit “action plan order or”.
- (4) In paragraph 2— 5
- (a) in sub-paragraph (1), for “an action plan order or” substitute “a”,
- (b) in sub-paragraph (2)—
- (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”, 10  
and
- (d) in sub-paragraph (8), omit “or action plan order” in both places where it occurs.
- (5) Omit paragraphs 3 and 4.
- (6) In the cross-heading before paragraph 5, omit “action plan order or”. 15
- (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 or”, 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”. 20
- (9) In paragraph 7(b), for “an action plan order or” substitute “a”.
- 52 In Schedule 10 (transitory modifications), omit paragraphs 4 to 6 and 12 to 15.
- 53 In Schedule 11 (transitional provisions)— 25
- (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. 30

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

- 54 The Criminal Justice and Court Services Act 2000 has effect subject to the following amendments.
- 55 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 2007)”. 35
- 56 Section 70(5) (interpretation, etc.) is omitted.

*Criminal Justice Act 2003 (c. 44)*

- 57 Part 12 of the Criminal Justice Act 2003 (sentencing) has effect subject to the following amendments. 40

- 
- 58 (1) Section 147 (meaning of “community sentence” etc.) is amended as follows.
- (2) In subsection (1)–
- (a) omit paragraph (b), and
- (b) after that paragraph insert –
- “(c) a youth rehabilitation order.” 5
- (3) Omit subsection (2).
- 59 (1) Section 148 (restrictions on imposing community sentences) is amended as follows.
- (2) In subsection (2)–
- (a) omit “which consists of or includes a community order”, and 10
- (b) in paragraph (a), after “community order” insert “, or, as the case may be, youth rehabilitation order, comprised in the sentence”.
- (3) After that subsection insert –
- “(2A) Subsection (2) is subject to paragraph 3(4) of Schedule 1 to the Criminal Justice and Immigration Act 2007 (youth rehabilitation order with intensive supervision and surveillance).” 15
- (4) Omit subsection (3).
- 60 In section 149(1) (passing of community sentence on offender remanded in custody) for “youth community order” substitute “youth rehabilitation order”. 20
- 61 In section 150 (community sentence not available where sentence fixed by law etc.) for “youth community order” substitute “youth rehabilitation order”.
- 62 (1) Section 151 (community order for persistent offender previously fined) is amended as follows. 25
- (2) In the title, after “community order” insert “or youth rehabilitation order”.
- (3) For subsection (2) substitute –
- “(2) The court may –
- (a) where the offender is aged under 18 at the time of conviction, make a youth rehabilitation order in respect of the current offence instead of imposing a fine, or 30
- (b) where the offender is aged 18 or over at the time of conviction, make a community order in respect of the current offence instead of imposing a fine,
- if the court considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to do so.” 35
- 63 (1) Section 156 (pre-sentence reports and other requirements) is amended as follows.
- (2) In subsection (1)– 40
- (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 2007 (youth rehabilitation orders with intensive supervision and surveillance or fostering),”.
- (3) In subsection (2) omit “or (3)(a)”.
- (4) In subsection (3)(b) – 5
- (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 2007;”, and
- (b) after “community order” insert “or youth rehabilitation order”.
- 64 (1) Section 166 (savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders) is amended as follows. 10
- (2) In subsection (1), after paragraph (d) add –
- “(e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2007 (youth rehabilitation order with intensive supervision and surveillance), or
- (f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering),”.
- (3) In subsections (3) and (5), for “(d)” substitute “(f)”.
- 65 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”, 20
- (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 –
- “(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 2007, state that it is of the opinion that section 1(4)(a) to (c) of that Act and section 148(1) of this Act apply and why it is of that opinion, 25
- (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 2007 and section 148(1) of this Act apply and why it is of that opinion,”. 30
- 66 In section 176 (interpretation of Chapter 1) –
- (a) omit the definition of “youth community order”, and
- (b) at the end add – 40
- ““youth rehabilitation order” has the meaning given by section 1(1) of the Criminal Justice and Immigration Act 2007;
- “youth rehabilitation order with fostering” has the meaning given by paragraph 4 of Schedule 1 to that Act; 45



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	“youth rehabilitation order with intensive supervision and surveillance has the meaning given by paragraph 3 of Schedule 1 to that Act.”	
67	In section 177(1) (community orders) for “16” substitute “18”.	
68	In section 197(1)(b) (meaning of “the responsible officer”), omit “the offender is aged 18 or over and”.	5
69	In section 199 (unpaid work requirement) – (a) in subsection (3), for “appropriate officer” substitute “officer of a local probation board”, and (b) omit subsection (4).	10
70	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”.	
71	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”.	15
72	In section 203(2), for paragraphs (a) and (b) substitute “an officer of a local probation board”.	
73	In section 209(2)(c) (drug rehabilitation requirement), for sub-paragraphs (i) and (ii) substitute “by an officer of a local probation board, and”.	20
74	In section 211 (periodic review of drug rehabilitation requirement), omit subsection (5).	
75	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.”	25
76	In section 217(1)(b) (requirement to avoid conflict with religious beliefs etc.), for “school or any other” substitute “any”.	30
77	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 2007,” and (c) omit paragraph (b).	35
78	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 2007,”.	40
79	Section 279 (drug treatment and testing requirement in action plan order or supervision order) ceases to have effect.	

- 80 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).
- 81 Schedule 24 (drug treatment and testing requirement in action plan order or supervision order) ceases to have effect. 5

*Violent Crime Reduction Act 2006 (c. 38)*

- 82 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 – 10  
“(b) a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2007;”.

*Offender Management Act 2007*

- 83 In section 1(4) of the Offender Management Act 2007 (meaning of “the probation purposes”), in the definition of “community order” – 15  
(a) after paragraph (a) insert –  
“(aa) a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2007 (see section 1 of that Act);”, and  
(b) after paragraph (b) insert – 20  
“(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 2007 comes into force)”.

PART 2 25

RELATED AMENDMENTS

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

- 84 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”. 30

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

- 85 (1) Section 32 of the Children and Young Persons Act 1969 (detention of absentees) is amended as follows.
- (2) In subsection (1A) – 35  
(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)(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”. 40
- (3) In subsection (1C) (as substituted by paragraph 12(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
- (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”. 5

*Bail Act 1976 (c. 63)*

- 86 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 17(b) of this Schedule) insert – 10
- “(za) Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders: referral back to appropriate court),
- (zb) Schedule 8 to that Act (breach of reparation order);”.

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

- 87 In Schedule 6A to the Magistrates’ Courts Act 1980 (fines that may be altered under section 143), at the end insert – 15

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

*Child Abduction Act 1984 (c. 37)*

- 88 In paragraph 2(1) of the Schedule to the Child Abduction Act 1984 (modifications of section 1 for children in certain cases) – 20
- (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
- (b) in paragraph (b), before “or” (as inserted by paragraph 25(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”. 25

*Children Act 1989 (c. 41)*

- 89 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 subparagraph (i) insert – 30
- “(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);” 35

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

- 90 The Powers of Criminal Courts (Sentencing) Act 2000 has effect subject to the following amendments. 40
- 91 In Schedule 1 (youth offender panels: further court proceedings), after

paragraph 9 insert –

*“Power to adjourn hearing and remand offender*

- 9ZA (3) 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. 5
- (4) 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.
- (5) Where the court remands the offender under sub-paragraph (4) –
- (a) it must fix the time and place at which the hearing is to be resumed, and 10
  - (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.
- (6) Where the court adjourns the hearing under sub-paragraph (4) but does not remand the offender – 15
- (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 (7) have had adequate notice of the time and place for the resumed hearing. 20
- (7) The persons referred to in sub-paragraph (6)(b) are –
- (a) the offender,
  - (b) if the offender is aged under 14, a parent or guardian of the offender, and 25
  - (c) a member of the youth offending team specified under section 18(1)(a) as responsible for implementing the order.
- (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 (c. 43). 30
- (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 35
  - (b) is not to be taken to affect the application of that section to hearings of any other description.”
- 92 (1) Schedule 8 (breach, revocation and amendment of action plan orders and reparation orders) is amended as follows. 40
- (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 5
- (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 10
- (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) In paragraph 6— 15
- (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)””,
- (c) in sub-paragraph (5), for “the appropriate court” substitute “the relevant court”, and 20
- (d) in sub-paragraph (7), for “the appropriate court”, in each place it occurs, substitute “the relevant court”.
- (6) After paragraph 6 insert—
- “Power to adjourn hearing and remand offender”* 25
- 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—
- (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 (4) 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— 45

- (a) the offender,
  - (b) if the offender is aged under 14, a parent or guardian of the offender, and
  - (c) the responsible officer.
- (6) 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 (c. 43). 5
- (7) 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 10
  - (b) is not to be taken to affect the application of that section to hearings of any other description.”
- Criminal Justice Act 2003 (c. 44)* 15
- 93 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 – 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 (4) 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 offender and the responsible officer have had adequate notice of the time and place for the resumed hearing. 35
  - (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 – 40
    - (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.” 45

## SCHEDULE 5

Section 23(6)

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

- 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. 5

*Unpaid work requirement*

- 2 (1) In its application to a youth default order, paragraph 10 of Schedule 1 (unpaid work requirement) is modified as follows. 10
- (2) Sub-paragraph (2) has effect as if for paragraphs (a) and (b) there were substituted—
- “(a) not less than 20, 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. 15

TABLE

<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”.	25

- (3) Sub-paragraph (7) has effect as if after “Unless revoked” there were inserted “(or section 23(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. 30
- (2) Sub-paragraph (2) has effect as if—
- (a) in paragraph (a), for the words following “convicted” 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.

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”, and

5

- (b) in paragraph (b), for “must not be more than 18” 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.

10

TABLE

<i>Amount</i>	<i>Number of hours</i>
An amount not exceeding £250	8
An amount exceeding £250 but not exceeding £500	12
An amount exceeding £500	16”.

15

*Curfew requirement*

20

- 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.

25

TABLE

<i>Amount</i>	<i>Number of days</i>
An amount not exceeding £200	20

30



TABLE

<i>Amount</i>	<i>Number of days</i>
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”.

*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.
- (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. 5
- (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 court which made the youth default order could deal with him for his default in paying the sum in question. 10
- (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 – 15
- (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).

*Power to alter amount of money or number of hours or days*

- 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. 20

*Transfer of youth default order to Northern Ireland*

- 7 (1) In its application to a youth default order, Schedule 3 is modified as follows. 25

- (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 23(7) to a youth default order made or amended in accordance with paragraph 1 or 2.”
- (3) Paragraph 12 has effect as if, after paragraph (b) there were inserted – 5
- “(bb) any power to impose a fine on the offender”.

## SCHEDULE 6

Section 29

## 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. 10
- 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.
- (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 reappointment is desirable in the public interest. 15
- 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. 20
- (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*

- 4 *The Secretary of State shall pay the Commissioner such remuneration and such travelling and other allowances as the Secretary of State may determine.* 25
- 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* 30

- 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 – 35
- (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.
- 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. 5
- 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
- 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).
- (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. 15
- 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. 20
- (2) The Commissioner may pay fees or allowances to any person in relation to the provision of advice under this paragraph.
- 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”); 25
- (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. 30
- (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, 35
- and shall do so as soon as practicable after receiving a copy of the report concerned.

SCHEDULE 7

Section 30

THE COMMISSIONER’S COMPLAINTS REMIT

PART 1

THE SPECIFIED MATTERS

- |   |   |                          |
|---|---|--------------------------|
| 1 | Any matter relating to the way in which a person has been treated at any applicable premises while being held there.  | 5                        |
| 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.<br><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.   | 10                       |
| 3 | Any matter relating to the exercise –<br>(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<br>(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.  | 15<br><br><br><br><br>20 |
| 4 | 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.<br><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).                | 25                       |
| 5 | 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.<br><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. | 30<br><br><br><br><br>35 |
| 6 | 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 the Immigration Act 1971 (c. 77) or under section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41).   |                          |
| 7 | 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).   | 40                       |

## PART 2

## SUPPLEMENTARY

- 8 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). 5
- 9 In paragraph 3 the references to the Secretary of State are references to the Secretary of State having responsibility for prisons.

## SCHEDULE 8

Section 35

## THE COMMISSIONER’S DEATHS REMIT

- 1 A death of a person at any applicable premises while being held there. 10
- 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.
- 4 A death of a person at any immigration detention premises (other than excepted premises or premises in Scotland) while being detained there under the Immigration Act 1971 (c. 77) or under section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41). 20
- 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 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 – 25
- (a) at any immigration detention premises (other than excepted premises or premises in Scotland) while that person was being detained there; or
- (b) while that person was in the custody, or under the control or escort, of immigration custody officers anywhere in the world (other than immigration detention premises). 30

## SCHEDULE 9

Section 48

## CONSEQUENTIAL AMENDMENTS RELATING TO PART 4

- Parliamentary Commissioner Act 1967 (c. 13)* 35
- 1 (1) In subsection (2) of section 11 of the Parliamentary Commissioner Act 1967

- (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 42 of the Criminal Justice and Immigration Act 2007;
  - (ac) for the purposes of any co-operation under subsection (3) of that section;”.
- (2) After subsection (5) of that section insert –
- “(6) 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 42 of the Criminal Justice and Immigration Act 2007 or for the purposes of any co-operation under subsection (3) of that section, and
    - (b) is protected information within the meaning of section 44 of that Act,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.”
- (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 2007).”
- (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)*

- 2 (1) In subsection (2) of section 32 of the Local Government Act 1974 (restrictions on disclosure of information) after paragraph (a) insert –
- “(aa) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 42 of the Criminal Justice and Immigration Act 2007, or
  - (ab) 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 42 of the Criminal Justice and Immigration Act 2007 or for the purposes of any co-operation under subsection (3) of that section, and

(b) is protected information within the meaning of section 44 of that Act,  
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.”

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*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 –

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“(ab) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 42 of the Criminal Justice and Immigration Act 2007;

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

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(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 42 of the Criminal Justice and Immigration Act 2007 or for the purposes of any co-operation under subsection (3) of that section, and

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(b) is protected information within the meaning of section 44 of that Act,

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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.”

*Data Protection Act 1998 (c. 29)*

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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;”.

*Care Standards Act 2000 (c. 14)*

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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 –

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(a) any consultation of the kind mentioned in subsection (1) or (2) of section 44 of the Criminal Justice and Immigration Act 2007; or

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

*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 2007.”	5
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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”. 10

*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.

- (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 42 of the Criminal Justice and Immigration Act 2007;

(ab) the purposes of any co-operation under subsection (3) of that section;”.

- (3) After subsection (8) insert – 20

“(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 42 of the Criminal Justice and Immigration Act 2007 or for the purposes of any co-operation under subsection (3) of that section, and 25

(b) is protected information within the meaning of section 44 of that Act,

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.” 30

- (4) In subsection (9), for “such information” substitute “information within subsection (8) or (8A)”.

*Public Services Ombudsman (Wales) Act 2005 (c. 10)* 35

- 8 (1) Section 26 of the Public Services Ombudsman (Wales) Act 2005 (disclosure of information) is amended as follows.

- (2) In subsection (1), after paragraph (ba) insert –

“(bb) protected information (within the meaning of section 44 of the Criminal Justice and Immigration Act 2007) obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any 40



- consultation of the kind mentioned in section 42(1) or (2) of that Act or for the purposes of any co-operation under section 42(3) of that Act;”.
- (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 42 of the Criminal Justice and Immigration Act 2007 or for the purposes of any co-operation under subsection (3) of that section;”.
- (4) In subsection (6), for “or (b)” substitute “, (b) or (bb)”.

## SCHEDULE 10

Section 50

10

## CONTROLLING AUTHORITIES

The Secretary of State.

Governors and directors of prisons, young offender institutions and secure training centres.

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. 15

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

The Youth Justice Board. 20

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).

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. 25

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. 30

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).

Persons with whom the Secretary of State has made arrangements under section 156 of the Immigration and Asylum Act 1999. 35

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

SCHEDULE 11

Section 53

ALTERNATIVES TO PROSECUTION FOR PERSONS UNDER 18

- 1 The Crime and Disorder Act 1998 (c. 37) has effect subject to the following amendments.
- 2 (1) Section 65 (reprimands and warnings) is amended as follows. 5
- (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 10
- (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”. 15
- (4) In subsection (6), in paragraph (a)(i) after “to be brought” insert “or a youth conditional caution to be given”.
- (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 – 20
- “(8) No caution, other than a youth conditional caution, shall be given to a child or young person.”
- 3 After section 66 insert –
- “Youth conditional cautions”* 25
- 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 –
- (a) the offender has not previously been convicted of an offence, and 30
- (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. 35
- (3) The conditions which may be attached to such a caution are those which have one or more of the following objects –
- (a) facilitating the rehabilitation of the offender;
- (b) ensuring that the offender makes reparation for the offence;
- (c) punishing the offender. 40

- (4) The conditions that may be attached to a youth conditional caution include—
- (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. 5
- “Specified” means specified by a relevant prosecutor.
- (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. 10
- (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, 15
  - (b) an investigating officer, or
  - (c) a person authorised by a relevant prosecutor for the purposes of this section.

#### **66B The five requirements**

- (1) The first requirement is that the authorised person has evidence that the offender has committed an offence. 20
- (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. 25
- (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. 30
- (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— 35
- (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. 40

#### **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). 5
- (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 – 10
  - (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). 15
- (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. 20

#### **66D Variation of conditions**

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. 25

#### **66E Failure to comply with conditions**

- (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. 30
- (2) The document mentioned in section 66B(6) is to be admissible in such proceedings.
- (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). 35
- (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). 40

**66F Restriction on sentencing powers where youth conditional caution given**

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 – 5

- (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 10
- (b) where it does make such an order, must state in open court that it is of that opinion and why it is.

**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. 15
- (2) The code may, in particular, make provision as to –
  - (a) the circumstances in which youth conditional cautions may be given,
  - (b) the procedure to be followed in connection with the giving of such cautions, 20
  - (c) the conditions which may be attached to such cautions and the time for which they may have effect,
  - (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, 25
  - (f) the form which such cautions are to take and the manner in which they are to be given and recorded,
  - (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), 30
  - (i) the monitoring of compliance with conditions attached to such cautions,
  - (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), 35
  - (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).
- (3) After preparing a draft of the code the Secretary of State – 40
  - (a) must publish the draft,
  - (b) must consider any representations made to him about the draft, and
  - (c) may amend the draft accordingly,
 but he may not publish or amend the draft without the consent of the Attorney General. 45
- (4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament.

- (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.

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### *Interpretation of Chapter 1*

#### **66H Interpretation**

In this Chapter –

- (a) “appropriate adult” has the meaning given by section 65(7);
  - (b) “authorised person” has the meaning given by section 66A(7); 10
  - (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); 15
  - (d) “the offender” has the meaning given by section 66A(1);
  - (e) “relevant prosecutor” means –
    - (i) the Attorney General,
    - (ii) the Director of the Serious Fraud Office, 20
    - (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; 25
  - (f) “youth conditional caution” has the meaning given by section 66A(2).”
- 4 (1) Section 114 (orders and regulations) is amended as follows.
- (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)”. 30
  - (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.” 35
  - (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)”. 40
  - (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.”

## SCHEDULE 12

Section 54

## 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 – 5
- “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 – 10
- (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);
- (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; 15
- (c) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18); 20
- (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.”
- 4 After section 9 (unauthorised disclosure of spent convictions) insert – 25
- “9A Unauthorised disclosure of spent cautions**
- (1) In this section –
- (a) “official record” means a record which – 30
- (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 35
- (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. 40
- (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 45

- discloses it, otherwise than in the course of those duties, to another person.
- (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 –
- (a) to the named person or to another person at the express request of the named person; 5
  - (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. 10
- (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. 15
- (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. 20
- (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.
- (8) Proceedings for an offence under subsection (2) shall not be instituted except by or on behalf of the Director of Public Prosecutions.” 25
- 5 The Schedule (service disciplinary proceedings) is re-numbered as Schedule 1.
- 6 After that Schedule insert – 30

## “SCHEDULE 2

### PROTECTION FOR SPENT CAUTIONS

#### *Preliminary*

- 1 (1) For the purposes of this Schedule a caution shall be regarded as a spent caution – 35
- (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;
  - (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. 40
- (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
- (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. 5
- 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; 10
- (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);
- (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); 15
- (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; 20
- (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. 25
- (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. 30
- (3) In this Schedule “proceedings before a judicial authority” has the same meaning as in section 4.

*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 – 35
- (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 40
- (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. 45

- (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 – 5
- (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 10
- (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.
- (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). 15
- (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. 20
- (6) This paragraph has effect subject to paragraphs 4 to 6. 25
- 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; 30
- (b) provide for exceptions from the provisions of sub-paragraphs (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.
- 5 Nothing in paragraph 3 affects – 35
- (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. 40
- 6 (1) Section 7(2), (3) and (4) apply for the purposes of this Schedule as follows.
- (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. 45

- (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 –
- (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) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3(1).”

### SCHEDULE 13

Section 56

#### 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. 20
- 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.”. 25
- 4 In paragraph 8, in sub-paragraph (2)(a) for “trial on indictment” substitute “summary trial”. 30
- 5 (1) Paragraph 9 is amended as follows.
- (2) In sub-paragraph (3) after “(1A)” insert “, 1B”.
- (3) After sub-paragraph (3) insert – 35
- “(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 5
- (b) omit paragraph (b) (and the word “or” immediately preceding it). 10
- (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”. 15
- 10 In paragraph 24 after sub-paragraph (4) insert –
- “(4A) In subsection (2) for “committed” substitute “sent”.”

SCHEDULE 14

Section 72(4) 20

SCHEDULE TO THE STREET OFFENCES ACT 1959

“SCHEDULE

Section 1A(11)

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

PART 1

PRELIMINARY

25

*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; 30
- “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. 35

## 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. 5
- (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 – 10
- (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 – 15
- (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.
- (4) In sub-paragraph (3) “the relevant local justice area” means – 20
- (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.

*Failure to answer to a summons* 25

- 3 (1) This paragraph applies where the offender does not appear in answer to a summons issued under paragraph 3 (“the summons”).
- (2) The magistrates' court may issue a warrant for the arrest of the offender.
- (3) Any warrant issued under sub-paragraph (2) must require the offender to 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 magistrates' court acting under sub-paragraph (2) that the offender resides in another local justice area, that local justice area. 40

*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
  - (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the order. 5
- (2) The court—
- (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. 10
- (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. 15
- (4) A person sentenced under sub-paragraph (2)(b) may appeal to the Crown Court against the sentence.

PART 3

AMENDMENT OF ORDER 20

*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. 25
- (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. 30
- (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
  - (b) if the offender is aged 18 or over, a magistrates' court (other than a youth court) acting in the relevant local justice area. 35
- (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
  - (b) if the offender resides in another local justice area, that local justice area. 40

- 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)). 5
- (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.
- (3) A person sentenced under sub-paragraph (1) may appeal to the Crown Court against the sentence. 10

*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.
- (2) An application under sub-paragraph (1) may only be made if the offender resides or will reside in the other local justice area. 15
- (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.
- (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. 20

*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 court and, if the offender does not appear in answer to the summons, may issue a warrant for the arrest of the offender. 25
- (2) An order may not be amended under this Part of this Schedule while an appeal against the order is pending.

PART 4 30

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"). 35
- (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 – 40
- (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 5
  - (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). 10
- (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). 15
- (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. 20
- (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 – 25
- (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. 30
- (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. 35

### *Adjournments*

- 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 – 40
- (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 45



- (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 – 5
- (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, where appropriate, the supervisor have had adequate notice of the time and place for the resumed hearing. 10
- (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 – 15
- (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. 20

*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 – 25
- (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 30
- (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. 35
- (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. 40
- (4) In this paragraph “proper officer” means the designated officer for the court.”

SCHEDULE 15

Section 74

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 (1) Section 1 (extended scope of certain offences) is amended as follows.
- (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”. 10
- (3) After subsection (1) insert –
- “(1A) If –
- (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, 15
- (b) the act causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material, and
- (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, 20
- 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.” 25
- (4) Omit subsection (2) (definition of “act”).
- 3 After section 1 insert –
- “1A Increase in penalties for offences committed in relation to nuclear material etc.**
- (1) If – 30
- (a) a person is guilty of an offence to which subsection (2), (3) or (4) applies, and
- (b) the penalty provided by this subsection would not otherwise apply,
- the person shall be liable, on conviction on indictment, to imprisonment for life. 35
- (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 –
- (a) the act was done in relation to or by means of nuclear material, or 40
- (b) the act –

- 
- (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, the matter is to be treated as an assigned matter within the meaning of CEMA 1979 (see section 1(1) of that Act). 30
- (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) 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) – 20  
(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;  
(b) an offence mentioned in section 1(1)(a) or (b) above, the commission of which involves (or would have involved) an act – 25  
(i) directed at a nuclear facility, or which interferes with the operation of such a facility, and  
(ii) which causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material; 30  
(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 (c. 2) 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) and (c) –  
(i) a blackmail offence, the commission of which is in relation to or by means of nuclear material; 40  
(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).
- (4) In subsection (3) “a blackmail offence” means – 45  
(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      After section 3 (supplemental) insert—
- “3A Application to activities of armed forces”** 5
- (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  
(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. 10
- (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.” 15
- 6      (1) Section 6 (material to which the Act applies) is amended as follows.
- (2) Before subsection (1) insert—  
“(A1) This section applies for the purposes of this Act.” 20
- (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. 25  
(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  
(b) a facility is not used for peaceful purposes if it contains any nuclear material which is used or retained for military purposes.” 30
- (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”. 35
- (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). 40  
(7) “The environment” includes land, air and water and living organisms supported by any of those media.

- (9) “Radioactive material” means nuclear material or any other radioactive substance which –
- (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 5
  - (b) is capable, owing to its radiological or fissile properties, of –
    - (i) causing bodily injury to a person,
    - (ii) causing damage or destruction to property, 10
    - (iii) endangering a person’s life, or
    - (iv) causing damage to the environment.”
- (7) For the sidenote, substitute “Interpretation”.
- 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 15

AMENDMENTS TO CUSTOMS AND EXCISE MANAGEMENT ACT 1979

- 8 (1) The Customs and Excise Management Act 1979 (c. 2) is amended as follows.
- (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);” 20
- (3) In section 50 (penalty for improper importation of goods) –
- (a) in subsection (4) (penalty for offence) for “or (5B)” substitute “, (5B) or (5C)”;
  - (b) after subsection (5B) insert – 25
- “(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”.” 30
- (4) In section 68 (offences in relation to exportation of prohibited or restricted goods) –
- (a) in subsection (3) (penalty for offence) for “or (4A)” substitute “, (4A) or (4B)”;
  - (b) after subsection (4A) insert – 35
- “(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”.” 40
- (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 –

“(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”.” 5

- 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, the Isle of Man or any British overseas territory. 10
- (2) Section 123(2) applies in relation an Order in Council under sub-paragraph (1) as it applies in relation to an order made by the Secretary of State.

## SCHEDULE 16

Section 80(1)

### GROUNDS FOR REFUSAL TO ENFORCE FINANCIAL PENALTIES 15

#### PART 1

##### THE GROUNDS FOR REFUSAL

- 1 A penalty (of any kind) has been imposed on the offender 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). 20
- 2 A penalty (of any kind) has been imposed on the offender 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 The decision was made in respect of conduct – 25
- (a) that is not specified in Part 2 of this Schedule, and
- (b) would not constitute an offence under the law of England and Wales if it occurred in England and Wales.
- 4 The decision was made in respect of conduct – 30
- (a) that occurred outside the territory of the issuing State, and
- (b) would not constitute an offence under the law of England and Wales if it occurred outside England and Wales.
- 5 The decision was made in respect of conduct that took place when the offender was under the age of 10.
- 6 The certificate does not confirm that – 35
- (a) if the proceedings in which the decision was made were conducted in writing, the offender was informed of the right to contest the proceedings and of the time limits that applied to the exercise of that right; 40
- (b) if those proceedings provided for a hearing to take place and the offender did not attend, the offender was informed of the proceedings or indicated an intention not to contest them.

- 7 (1) The financial penalty is for an amount less than 70 euros.
- (2) For the purpose of determining whether a financial penalty specified in a currency other than the euro is less than 70 euros, the magistrates' court must use the exchange rate prevailing on the date on which the decision was made. 5
- (3) The Lord Chancellor may by order substitute a different amount for the amount for the time being specified in sub-paragraphs (1) and (2).

## PART 2

### EUROPEAN FRAMEWORK LIST (FINANCIAL PENALTIES)

Participation in a criminal organisation.	10
Terrorism.	
Trafficking in human beings.	
Sexual exploitation of children and child pornography.	
Illicit trafficking in narcotic drugs and psychotropic substances.	
Illicit trafficking in weapons, munitions and explosives.	15
Corruption.	
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.	
Laundering of the proceeds of crime.	20
Counterfeiting currency, including of the euro.	
Computer-related crime.	
Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.	
Facilitation of unauthorised entry and residence.	25
Murder, grievous bodily injury.	
Illicit trade in human organs and tissue.	
Kidnapping, illegal restraint and hostage-taking.	
Racism and xenophobia.	
Organised or armed robbery.	30
Illicit trafficking in cultural goods, including antiques and works of art.	
Swindling.	
Racketeering and extortion.	
Counterfeiting and piracy of products.	
Forgery of administrative documents and trafficking therein.	35

Forgery of means of payment.	
Illicit trafficking in hormonal substances and other growth promoters.	
Illicit trafficking in nuclear or radioactive materials.	
Trafficking in stolen vehicles.	
Rape.	5
Arson.	
Crimes within the jurisdiction of the International Criminal Court.	
Unlawful seizure of aircraft or ships.	
Sabotage.	
Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods.	10
Smuggling of goods.	
Infringement of intellectual property rights.	
Threats and acts of violence against persons, including violence during sport events.	15
Criminal damage.	
Theft.	
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.	20

### PART 3

#### INTERPRETATION

1 (1) Any expression used in this Schedule and section 78 has the same meaning in this Schedule as in that section.	25
(2) In this Schedule –	
(a) “issuing State” means the member State by whose central authority or competent authority the Lord Chancellor is given the certificate;	
(b) “offender” means the person required to pay the financial penalty.	30

### SCHEDULE 17

Section 103

#### CLOSURE ORDERS: PREMISES ASSOCIATED WITH PERSISTENT DISORDER OR NUISANCE

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**

- |     |  |    |
|-----|--|----|
| (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 –  | 5  |
|     | (a) that at any time during the relevant period a person has engaged in anti-social behaviour on the premises, and   |    |
|     | (b) that the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public.   | 10 |
| (2) | The authorising officer may authorise the issue of a Part 1A closure notice in respect of the premises if the officer is satisfied –   |    |
|     | (a) that the local authority has been consulted; and   | 15 |
|     | (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 –  | 20 |
|     | (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.  |    |
| (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. | 25 |
| (5) | A Part 1A closure notice must –  |    |
|     | (a) give notice that an application will be made under section 11B for the closure of the premises;  | 30 |
|     | (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;   |    |
|     | (c) specify the date and time when, and the place at which, the application will be heard;   | 35 |
|     | (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  | 40 |
|     | (f) give information about relevant advice providers.  |    |
| (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.   | 45 |

- (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, 5
  - (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 10
  - (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. 15
- (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. 20
- (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. 25
- (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; 30
  - “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. 35

#### **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 – 40
- (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). 45

- (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 –
- (a) a person has engaged in anti-social behaviour on the premises in respect of which the Part 1A closure notice was issued; 5
  - (b) the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public;
  - (c) the making of the order is necessary to prevent the occurrence of such disorder or nuisance for the period specified in the order. 10
- (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.
- (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. 15
- (7) The magistrates' court may adjourn the hearing on the application for a period of not more than 14 days to enable –
- (a) the occupier of the premises, 20
  - (b) the person who has control of or responsibility for the premises, or
  - (c) any other person with an interest in the premises, to 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. 25
- (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. 30

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

- (1) This section applies if a magistrates' court makes an order under section 11B.
- (2) A relevant person may –
- (a) enter the premises in respect of which the order is made; 35
  - (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. 40
- (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. 45
- (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;
- (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. 5

**11D Closure of premises associated with persistent disorder or nuisance: offences**

- (1) A person who remains on or enters premises in contravention of a Part 1A closure notice commits an offence. 10
- (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. 15
- (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. 20
- (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).
- (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. 25

**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 30
  - (b) the local authority if the order is a local authority Part 1A closure order,
 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 –
  - (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 40
  - (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 – 45

- (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 5
  - (b) is satisfied that the appropriate chief officer has been consulted about the intention to make the complaint.
- (4) If a complaint is made to a justice of the peace under subsection (1), the justice may issue a summons directed to—
  - (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 10
  - (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, 15requiring 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. 20
- (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—
  - (a) a constable if the Part 1A closure order is a police Part 1A closure order; 25
  - (b) the local authority if the Part 1A closure order is a local authority Part 1A closure order; 30
  - (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;
  - (d) a person who has an interest in the closed premises but on whom the Part 1A closure notice was not served. 35
- (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, 40the 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.
- (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. 45



- (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—
- (a) if the summons is issued under subsection (4), the persons to whom it is directed; 5
  - (b) if the summons is issued under subsection (8), the persons mentioned in subsection (7)(c) and (d) (other than the complainant);
  - (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); 10
  - (d) if the complaint relates to a local authority Part 1A closure order, the local authority (unless it is the complainant).

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

- (1) This section applies to— 15
- (a) an order under section 11B or 11E;
  - (b) a decision by a court not to make an order under either of those sections.
- (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. 20
- (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 25
  - (b) a person who has an interest in the closed premises but on whom the Part 1A closure notice was not served.
- (4) An appeal against the decision of a court not to make such an order may be brought by— 30
- (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.
- (5) On an appeal under this section the Crown Court may make such order as it thinks appropriate. 35

#### 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—
- (a) in which closed premises are situated, and 40
  - (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—
- (a) the magistrates' court in respect of an order made under section 11B or 11E, or 45

- (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 – 5
  - (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 10
  - (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. 15
- (5) It is immaterial whether any provision has been made as mentioned in section 11B(6).

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

- (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. 20
- (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). 25
- (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.
- (4) An application under this section must be served on – 30
  - (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
  - (c) the owner of the premises. 35

**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.
- (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. 40
- (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 45

done by or on behalf of the authority in the performance or purported performance of functions under this Part.

- (4) Subsections (1) to (3) do not apply –
- (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
- (5) This section does not affect any other exemption from liability for damages (whether at common law or otherwise). 10
- (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 –
- (a) the issue of a Part 1A closure notice, or
  - (b) a Part 1A closure order having effect. 15
- (2) A person to whom this section applies may apply to –
- (a) the magistrates’ court which considered the application for a Part 1A closure order; 20
  - (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.
- (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; 25
  - (c) the day the Part 1A closure order ceases to have effect. 30
- (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), 35
  - (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,
  - (c) that the person has incurred financial loss as mentioned in subsection (1), and 40
  - (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.

### 11K Interpretation

- (1) This section applies for the purposes of this Part. 45

- (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.
- (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. 5
- (4) “Closed premises” means premises in respect of which a Part 1A closure order has effect. 10
- (5) “Local authority”, in relation to England, means –  
(a) a district council;  
(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;  
(e) the Council of the Isles of Scilly. 15
- (6) “Local authority”, in relation to Wales, means –  
(a) a county council;  
(b) a county borough council. 20
- (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 25
- (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. 30 35
- (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;  
(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). 40
- (12) “A police Part 1A closure order” means a Part 1A closure order made or extended on the application of a constable. 45

- (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 18

Section 107

## NUISANCE OR DISTURBANCE ON HSS PREMISES

5

*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, 10
  - (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. 15
- (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 20
  - (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 – 25
- “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 30
    - (c) the hospital grounds,
  - “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), 35
  - “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
  - “vehicle” includes an air ambulance. 40

*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.
- (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.
- (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 –
  - (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.
- (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.

*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.
- (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,
  - (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,
  - (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
- (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. 5
- (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. 10
- (5) In this paragraph –  
“authorised officer” has the same meaning as in paragraph 2, and  
“HSS premises”, “HSS staff member” and “HSS trust” have the same meaning as in paragraph 1.

## SCHEDULE 19

Section 111 15

## POLICE MISCONDUCT AND PERFORMANCE PROCEDURES

## 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* 20

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

*Regulations for police forces*

- 3 (1) Section 50 (regulations for police forces) is amended as follows.
- (2) For subsection (3) substitute – 25
- “(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, 30
- 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.”
- (3) In subsection (4) omit “, subject to subsection (3)(b),”.

*Regulations for special constables* 35

- 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 –

“(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.”

5

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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.

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

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

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

7 For section 84 substitute –

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

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

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(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 counsel or a solicitor or another person falling within any prescribed description of persons.

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(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 counsel or a solicitor);

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(b) specifying the circumstances in which the officer concerned or a relevant authority is entitled to be represented by a person (other than counsel or a solicitor) who falls within any prescribed description of persons;

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(c) for securing that –

(i) a relevant authority may be legally represented, and



- (ii) the panel conducting the proceedings may receive advice from counsel or a solicitor,  
 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 a police force or special constable 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 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; 25
- (b) where the officer concerned is a senior officer, the police authority for the police force of which the officer is a member; 30
- “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. 35
- (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.” 40

*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 regulations make provision specifying the cases in which a member of a police force or a special constable may appeal to a police appeals tribunal. 45

- (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.”
- (3) For subsection (4) substitute – 5
- “(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;
- (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented – 10
- (i) by counsel or a solicitor, or
- (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. 15
- (4A) Regulations or rules under this section may make different provision for different cases and circumstances.” 20
- (4) After subsection (5) insert –
- “(5A) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 25
- 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 – 30
- (a) police authorities,
- (b) chief officers of police,
- (c) other members of police forces, and
- (d) special constables.
- (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).” 35
- (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* 40
- 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 sub-paragraph (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,
    - (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).
- (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
    - (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 –
      - (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, as the case may be.”
- (b) for sub-paragraph (c) substitute –
  - “(c) “appropriate staff association” means – 5
    - (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 10
    - (ii) in any other case, the Police Federation of England and Wales.”

## 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. 15

#### *Defence Police Federation*

- 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”. 20

#### *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 – 25
  - (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 – 30
  - (a) establish, or
  - (b) make provision for the establishment of, 35procedures 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 – 40
  - (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 –

**“4 Representation etc. at disciplinary proceedings**

- |  |    |
|--|----|
| (1) The Secretary of State shall by regulations make provision for or in connection with –   | 5  |
| (a) enabling the officer concerned or the relevant authority to be represented in proceedings conducted under regulations made in pursuance of section 3A;   |    |
| (b) enabling the panel conducting such proceedings to receive advice from a relevant lawyer or another person falling within any prescribed description of persons.  | 10 |
| (2) Regulations under this section may in particular make provision –  |    |
| (a) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a relevant lawyer;  | 15 |
| (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; | 20 |
| (c) for securing that –  |    |
| (i) the relevant authority may be legally represented, and   |    |
| (ii) the panel conducting the proceedings may receive advice from a relevant lawyer,   | 25 |
| 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 –       | 30 |
| (a) for securing that the officer is notified of his right to such representation;   |    |
| (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.  | 35 |
| (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;   | 40 |
| “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;   |    |
| “prescribed” means prescribed by regulations under this section;   | 45 |
| “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;
  - (b) where the officer concerned is a senior officer, the Ministry of Defence Police Committee; 5
- “relevant lawyer” means –
- (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 10
  - (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. 15
- (5) But in prescribed circumstances “relevant authority” also includes –
- (a) in relation to England and Wales, the Independent Police Complaints Commission;
  - (b) in relation to Scotland, the Police Complaints Commissioner for Scotland; 20
  - (c) in relation to Northern Ireland, the Police Ombudsman for Northern Ireland.
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 25

*Appeals against dismissal etc.*

16 For section 4A substitute –

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

- (1) The Secretary of State shall by regulations – 30
  - (a) make provision specifying the cases in which a member of the Ministry of Defence Police may appeal to a police appeals tribunal;
  - (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). 35
- (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. 40
- (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 – 45

- (a) for enabling a police appeals tribunal, in such circumstances as are specified in the regulations, to determine a case without a hearing;
- (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented – 5
  - (i) by a relevant lawyer, or
  - (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, 10  
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.
- (5) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (6) In this section – 20
  - “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

#### 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* 25
- 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 – 30
- “(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).”
- Police regulations: special constables* 35
- 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 – 40
- (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 –
- “(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 – 5
- (a) sections 84 and 85 of that Act (representation etc. at disciplinary and other proceedings, and appeal), and
  - (b) Schedule 6 to that Act (appeals to police appeals tribunals).”

*Regulations: further appeal* 10

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

SCHEDULE 20

Section 112

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. 15
- 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.”
- 3 After paragraph 19 insert – 20
- “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 – 25
- (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.
- (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. 30
- (3) The person investigating a recordable conduct matter must make a severity assessment in relation to the conduct to which the investigation relates – 35
- (a) as soon as is reasonably practicable after his appointment or designation, or



- (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 – 5
- (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. 10
- (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). 15
- (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; 20
- (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. 25
- (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). 30
- (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. 35
- (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); 40
- (b) in relation to an investigation of a recordable conduct matter, means the person to whose conduct the investigation relates; 45
- “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;
- “relevant statement” means an oral or written statement relating to any complaint or matter under investigation.

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*Duty to consider submissions from person whose conduct is being investigated*

- 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.
- (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
  - (b) any person of a prescribed description provides that person with a relevant document,
- that person must consider the statement or document.

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*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 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—
- (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.

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*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).
- (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—

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- (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. 5
- (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”.
- (4) In sub-paragraph (7) (definition of special conditions) – 10
- (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;” 15
- (b) in paragraph (c), for “is the subject matter of the investigation” substitute “it is”.
- (5) Omit sub-paragraph (8) (interpretation).
- 5 (1) Paragraph 20B (investigations managed or carried out by Commission: action by appropriate authority) is amended as follows. 20
- (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 – 25
- (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.” 30
- (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”. 35
- 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 – 40
- “(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.” 5
- (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”. 10
- 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. 15
  - (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 20
      - (b) the other provisions of this Schedule shall apply in relation to that matter accordingly.” 25
- 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”;
    - (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)”. 30
  - (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) – 35
      - (a) to include such matters as are specified in the regulations;
      - (b) to be accompanied by such documents or other items as are so specified. 40
    - (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. 45

- (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 –
- (a) considers that the document or item is of relevance to the investigation, and 5
  - (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 –
- (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; 10
  - (b) ensuring that any such person receives a fair hearing at any disciplinary proceedings in respect of any such conduct of his.” 15
- 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) –
- (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”;
  - (c) in paragraph (d), after “appropriate authority” insert “and the persons mentioned in sub-paragraph (5)”. 25
- (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. 30
  - (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 35
    - (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 –
- “(6) On receipt of the report, the Commission shall also notify the appropriate authority that it must – 40
    - (a) in accordance with regulations under section 50 or 51 of the 1996 Act, determine –
      - (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 45

- (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
    - (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.” 5
  - (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 –
    - (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.” 10
  - (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)”. 15
- 12 (1) Paragraph 24 (action by the appropriate authority in response to investigation report) is amended as follows.
- (2) In sub-paragraph (2) (action to be taken on receipt of report) –
  - (a) for paragraph (a) substitute – 20
    - “(a) shall determine whether the conditions set out in sub-paragraphs (2A) and (2B) are satisfied in respect of the report;”;
  - (b) in paragraph (b), for “the report does so indicate” substitute “those conditions are so satisfied”; 25
  - (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).” 30
- (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.
  - (2B) The second condition is that – 35
    - (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
    - (b) any matters dealt with in the report fall within any prescribed category of matters.” 40
- (4) In sub-paragraph (5) (persons to be notified) for “Those” substitute “The”.
- (5) After sub-paragraph (5) insert –
  - “(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). 45

- (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 –
- (a) shall make its own determination as to whether those conditions are so satisfied, and 5
  - (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.
- (5C) It shall be the duty of the appropriate authority to comply with any direction given to it under sub-paragraph (5B).” 10
- (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 – 15
    - (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 20
    - (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
  - (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.” 25
- (7) In sub-paragraph (7) (appropriate authority to give notice on making a determination under sub-paragraph (6)) for “a determination” substitute “the determinations”.
- (8) In sub-paragraph (8) (contents of notification authority is required to give of its determination) for paragraphs (b) and (c) substitute – 30
- “(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”. 35
- 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. 40
  - (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) –
      - (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 45

- (b) the other provisions of this Schedule shall apply in relation to that matter accordingly.”
- 15 (1) Paragraph 25 (appeals to Commission with respect to an investigation) is amended as follows.
- (2) In sub-paragraph (2) (rights of appeal) – 5
- (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;” 10
- (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; 15
- (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 20
- (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;” 25
- (3) In sub-paragraph (3) (power of Commission to require appropriate authority to submit memorandum on an appeal) –
- (a) before paragraph (a) insert –
- “(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;” 30
- (b) for paragraphs (a) and (b) substitute – 35
- “(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;”;
- (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”; 40
- (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;” 45
- (4) In sub-paragraph (5) (determinations to be made by Commission on an appeal) – 50



- (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 –
- (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
- (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.”
- (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”.
- (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 27 insert –

*“Minor definitions*

28 In this Part of this Schedule –

“gross misconduct” and “misconduct” have the meanings  
given in regulations made by the Secretary of State; 5

“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.” 10

## SCHEDULE 21

Section 124

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

#### FINE DEFAULTERS 15

*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 23 of the Criminal Justice  
and Immigration Act 2007; or” 20

*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 25

(d) youth default orders under section 23 of the Criminal Justice  
and Immigration Act 2007.”

(3) In section 300 (power to impose unpaid work requirement or curfew  
requirement on fine defaulter) –

(a) in subsection (1) – 30

(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 35

of default order) after paragraph 3 insert—

*“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— 5
- (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. 10

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
An amount exceeding £500 but not exceeding £1,000	24 hours
An amount exceeding £1,000 but not exceeding £2,500	30 hours
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)”. 15
- (6) In paragraph 5 of that Schedule, for “or 3” substitute “, 3 or 3A”. 20

PART 2 25

OTHER AMENDMENTS

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

- 3 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”. 30

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

- 4 (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)— 35
- (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
  - (b) in paragraph (b), for “of the Crime and Disorder Act 1998” substitute “of that Act”. 5
- (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”. 10
- Criminal Justice Act 1988 (c. 33)*
- 5 In section 160(1) of the Criminal Justice Act 1988 (offence of possession of indecent photographs of children) for “Subject to subsection (1A),” substitute “Subject to section 160A,”. 15
- Criminal Justice (Evidence, Etc.) (Northern Ireland Order) 1988 (S.I. 1988/1847 (N.I. 17))*
- 6 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)”. 20
- Criminal Justice Act 1991 (c. 53)*
- 7 (1) The Criminal Justice Act 1991 is amended as follows.
- (2) In section 44(6) (disapplication of certain provisions for prisoners serving extended sentences) for “section 46” substitute “section 46(2)”.
  - (3) 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”. 25
  - (4) 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”. 30
- Crime and Disorder Act 1998 (c. 37)*
- 8 (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. 35
- (2) After paragraph (a) insert –
    - “(aa) the provision of assistance to persons determining whether reprimands or warnings should be given under section 65 below;”.
  - (3) After paragraph (b) insert – 40
    - “(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;	
	(bb) the supervision and rehabilitation of persons to whom such cautions are given;”.	
	<i>Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)</i>	5
9	In section 19(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (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;”.	10
	<i>Criminal Justice and Court Services Act 2000 (c. 43)</i>	
10	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	15
	(b) in subsection (4) for ““authorised person” and “conditional caution” have” substitute ““conditional caution” has”.	
	<i>Police Reform Act 2002 (c. 30)</i>	
11	In section 36(1) of the Police Reform Act 2002 (further provision which may be made in regulations relating to disciplinary proceedings) omit paragraph (c).	20
	<i>Sexual Offences Act 2003 (c. 42)</i>	
12	(1) In section 133(1) of the Sexual Offences Act 2003 (interpretation) in paragraph (a) of the definition of “cautioned”, omit the words “by a police officer”.	25
	(2) The repeal made by sub-paragraph (1) and the corresponding entry in Part 3 of Schedule 23 extend to England and Wales only.	
	<i>Criminal Justice Act 2003 (c. 44)</i>	
13	The Criminal Justice Act 2003 has effect subject to the following amendments.	30
14	(1) Section 23A (financial penalties) is amended as follows.	
	(2) In subsection (5), for paragraphs (b) and (c) substitute—	
	“(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).”	35
	(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) Omit subsections (7) to (9).

15 After section 23A insert –

**“23B Variation of conditions**

5

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.”

16 In section 25 (codes of practice) in subsection (2) after paragraph (g) insert – 10  
“(ga) the provision which may be made by a relevant prosecutor under section 23A(5)(b),”.

17 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”. 15

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

18 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 – 20  
“(da) section 19XB(1) and (4) (offences in connection with enforcement powers);”.

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

19 (1) The Police and Justice Act 2006 is amended as follows.  
(2) In subsection (1) of section 49 (orders and regulations) – 25  
(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).

*Offender Management Act 2007 (c. )*

20 In section 1 of the Offender Management Act 2007 (meaning of “the probation purposes”) – 30  
(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”. 35

SCHEDULE 22

Section 124

TRANSITORY, TRANSITIONAL AND SAVING PROVISIONS

PART 1

YOUTH JUSTICE

- |   |  |                      |
|---|--|----------------------|
|   | <i>Abolition of certain youth orders and related amendments</i>  | 5                    |
| 1 | <p>(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 23 do not have effect in relation to –</p> <ul style="list-style-type: none"> <li>(a) any offence committed before they come into force, or</li> <li>(b) any failure to comply with an order made in respect of an offence committed before they come into force.</li> </ul> <p>(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 –</p> <ul style="list-style-type: none"> <li>(a) a referral order made under the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);</li> <li>(b) a reparation order made under that Act;</li> <li>(c) a community order made under section 177 of the Criminal Justice Act 2003 (c. 44).</li> </ul>  | 10                   |
|   | <i>Reparation orders</i>   | 20                   |
| 2 | <p>(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 92(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 51 of that Schedule.</p> <p>(2) After paragraph 92(1) to (5) of Schedule 4 comes into force, and until paragraph 51 of that Schedule comes into force, paragraph 3 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 has effect as if –</p> <ul style="list-style-type: none"> <li>(a) in sub-paragraph (5)(a) and (c), for “the appropriate court” there were substituted “a youth court”, and</li> <li>(b) in sub-paragraph (6), for “appropriate” there were substituted “youth”.</li> </ul> <p>(3) Sub-paragraph (4) 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 51 of Schedule 4 come into force before the amendments of Schedule 8 to that Act made by paragraph 92(1) to (5) of that Schedule (reparation orders: court before which offender to appear or be brought).</p> <p>(4) After paragraph 51 of Schedule 4 comes into force, and until paragraph 92(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 –</p> <ul style="list-style-type: none"> <li>(a) for “an action plan order or” there were substituted “a”, and</li> <li>(b) the words “69(8) or, as the case may be,” were omitted.</li> </ul> | 25<br>30<br>35<br>40 |

*Making of youth rehabilitation orders: other existing orders*

- 3 In paragraph 28(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 58 of Schedule 4 to this Act). 5

*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 58 of Schedule 4 to this Act). 10

*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 23 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— 15
- (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. 20

*Attendance centre rules*

- 6 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 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). 25

PART 2 30

SENTENCING

*Abolition of suspended sentences*

- 7 If section 10 is to come into force before the day on which section 61 of the Criminal Justice and Court Services Act 2000 (c. 43) (abolition of sentences of detention in a young offender institution, custody for life, etc.) comes into force (or fully into force) the provision that may be made by order under section 124 includes provision modifying section 10 with respect to sentences passed, or other things done, at any time before section 61 of that Act comes into force (or fully into force). 35
- 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. 40



*Fine defaulters*

- 9 (1) Section 23 and Schedule 5 do not apply –
- (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. 5
- (2) Section 24 and paragraph 2(4) and (6) of Schedule 21 do not apply –
- (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 10
  - (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.

PART 3

OTHER CRIMINAL JUSTICE PROVISIONS 15

*Alternatives to prosecution for offenders under 18*

- 10 The amendments made by Schedule 11 do not apply in relation to offences that are committed wholly or partly before the commencement of section 53.

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

- 11 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 12) 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. 20

*Trial or sentencing in absence of accused in magistrates' court* 25

- 12 Section 29(5) of the Criminal Justice Act 2003 (references to information or summons to include references to written charge or requisition) shall continue to apply to section 11 of the Magistrates' Courts Act 1980 (c. 43) as amended by section 57.

*Extension of powers of non-legal staff* 30

- 13 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 58 comes into force continues to have effect on and after that date as if made under section 7A as amended by that section.

*Compensation for miscarriages of justice* 35

- 14 (1) Section 62(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. 40

- (2) Section 62(4), (6) and (7) 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 133(3) of the 1988 Act. 5
- (3) Section 62(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) Section 62(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 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;
  - “the commencement date” means the date on which section 62 comes into force; 30
  - “reversed” has the same meaning as in section 133 of the 1988 Act (as amended by section 62(5)).

#### PART 4

#### CRIMINAL LAW

#### *Penalties for possession of extreme pornographic images* 35

- 15 In section 67(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).

#### *Indecent photographs of children*

- 16 (1) Section 68(3) applies in relation to things done as mentioned in – 40
- (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),

after the commencement of section 68.

- (2) Section 69(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 69.

5

*Maximum penalty for publication etc. of obscene articles*

10

- 17 Section 70 does not apply to offences committed before the commencement of that section.

*Loitering etc. for purposes of prostitution*

- 18 In determining for the purposes of section 1 of the Street Offences Act 1959 (c. 57) (as amended by section 71) whether a person's conduct is persistent, any conduct that takes place before the commencement of section 71 is to be disregarded.

15

*Offences relating to nuclear material and nuclear facilities*

- 19 The new section 2 inserted into the Nuclear Material (Offences) Act 1983 (c. 18) by paragraph 4 of Schedule 15 and the repeal in Part 4 of Schedule 23 of section 14 of the Terrorism Act 2006 (c. 11) do not apply in relation to anything done before the date on which Schedule 15 comes into force.

20

*Imprisonment for unlawfully obtaining etc. personal data*

- 20 The amendments made by section 75 do not apply in relation to an offence committed before the commencement of that section.

25

PART 5

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

*Mutual recognition of financial penalties*

- 21 (1) The amendments made by subsection (1) of section 76, 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 78 does not apply in relation to financial penalties (within the meaning of that section) imposed before that section comes into force.

30

PART 6

VIOLENT OFFENDER ORDERS

*Penalties for offences*

- 22 In section 98(6)(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). 5

PART 7

ANTI-SOCIAL BEHAVIOUR

*Review of anti-social behaviour orders etc.*

- 23 (1) The amendments made by section 108 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 (c. 37). 15

*Individual support orders*

- 24 (1) The amendments made by section 109 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. 20
- (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 8

25

SPECIAL IMMIGRATION STATUS

*Conditions on designated persons*

- 25 In the application of section 118 to England and Wales in relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (51 week maximum term of sentences) the reference in section 118(6)(b) to 51 weeks is to be read as a reference to six months. 30

## SCHEDULE 23

Section 125

## REPEALS AND REVOCATIONS

## PART 1

## YOUTH REHABILITATION ORDERS

<i>Title</i>	<i>Extent of repeal</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”.	5
	In section 49 –	
	(a) in subsection (4A), paragraph (d) (but not the word “and” immediately following it);	10
	(b) in subsection (13)(c), sub-paragraph (i) together with the word “and” immediately following it.	15
Children and Young Persons Act 1969 (c. 54)	In section 70(1), the definition of “supervision order”.	
Bail Act 1976 (c. 63)	In section 4(3), the words “to be dealt with”.	
Magistrates’ Courts Act 1980 (c. 43)	In Schedule 6A, 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)	In section 14, the subsection (2A) inserted by the Criminal Justice Act 1982 (c. 48).	
Criminal Justice Act 1982 (c. 48)	In Schedule 13 –	
	(a) in paragraph 7(2)(b), the words “(within the meaning of Part 12 of the Criminal Justice Act 2003)”;	25
	(b) in paragraph 7(3)(b), the words “within the meaning of Part 12 of the Criminal Justice Act 2003”;	30
	(c) in paragraph 9(3)(a), the words “under section 177 of the Criminal Justice Act 2003”;	
	(d) in paragraph 9(4)(a), the words “(within the meaning of Part 12 of the Criminal Justice Act 2003)”;	35
	(e) in paragraph 9(5), the words “(within the meaning of the Part 12 of the Criminal Justice Act 2003)”;	
	(f) in paragraph 9(6), the words “(within the meaning of Part 12 of the Criminal Justice Act 2003)”.	40
	In Schedule 14, paragraph 60.	
Mental Health Act 1983 (c. 20)	In section 37(8)(c), the words “a supervision order (within the meaning of that Act) or”.	45

<i>Title</i>	<i>Extent of repeal</i>	
Health and Social Services and Social Security Adjudications Act 1983 (c. 41)	In Schedule 2, paragraph 16.	
Children Act 1989 (c. 41)	In section 21(2)(c), in sub-paragraph (i), the words “paragraph 7(5) of Schedule 7 to the Powers of Criminal Courts (Sentencing) Act 2000 or” and the word “or” at the end of that sub-paragraph.	5
Criminal Justice Act 1991 (c. 53)	In section 105(6), in paragraph (b), the words from “or an” to the end of that paragraph.	10
	In paragraph 11 of Schedule 3 –	
	(a) in sub-paragraph (2)(a), the words “under section 177 of the Criminal Justice Act 2003”;	15
	(b) in sub-paragraph (4), the words “under section 177 of the Criminal Justice Act 2003”.	
	In Schedule 11, paragraph 3.	
Prisoners (Return to Custody) Act 1995 (c. 16)	Section 2(2)(b).	20
Crime and Disorder Act 1998 (c. 37)	In section 38(4) –	
	(a) paragraph (g);	
	(b) in paragraph (h), the words “or a supervision order”.	25
	In Schedule 8, paragraph 13(1).	
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”.	30
	In section 75, the words “action plan orders and” and “so far as relating to reparation orders”.	
	In section 137(2) –	35
	(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”.	40
	In section 160 –	
	(a) subsection (2);	45
	(b) in subsection (3)(a), “40(2)(a)”;	
	(c) subsection (5).	

<i>Title</i>	<i>Extent of repeal</i>	
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) – <i>cont.</i>	In section 163, the definitions of –	
	(a) “action plan order”;	
	(b) “affected person”;	
	(c) “attendance centre”;	5
	(d) “attendance centre order”;	
	(e) “community sentence”;	
	(f) “curfew order”;	
	(g) “exclusion order”;	
	(h) “supervision order”;	10
	(i) “supervisor”;	
(j) “youth community order”;		
and paragraphs (a), (aa) and (f) of the definition of “responsible officer”.		
Schedules 3 and 5 to 7.		15
In Schedule 8 –		
(a) in the heading, the words “action plan orders and”;		
(b) paragraph 1 and the heading preceding that paragraph;		20
(c) in the cross-heading before paragraph 2, the words “action plan order or”;		
(d) in paragraph 2 –		
(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”;		25
(ii) in sub-paragraphs (5) and (7), the words “action plan order or”;		30
(iii) in sub-paragraph (8), the words “or action plan order” in both places;		
(e) paragraphs 3 and 4;		
(f) in the cross-heading before paragraph 5, the words “action plan order or”;		35
(g) in paragraph 5(1)(a), the words “action plan order or”;		
(h) in paragraph 6(9)(a), (b) and (c), the words “action plan order or”.		40
In Schedule 9, paragraphs 1, 2(2), (3)(a) and (4), 28(2), 33, 41, 42, 49, 80, 93(a), 126(b), 127, 129 and 131.		
In Schedule 10, paragraphs 4 to 6 and 12 to 15.		
In Schedule 11, paragraphs 4(1)(a), (2) and (3) and 5.		45
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 28(3).	
Criminal Justice and Court Services Act 2000 (c. 43)	Section 46. Section 52. Section 70(5).	50

<i>Title</i>	<i>Extent of repeal</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 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), 64(3)(a)(ii), 73, 89(2), 95 to 105, 106(2), 107, 122, 123(3), (5) and (8), 125, 127, 128, 129 and 138.	40
PART 2		
SENTENCING		45
<i>Title</i>	<i>Extent of repeal or revocation</i>	
Criminal Justice Act 1991 (c. 53)	Section 46(1).	





PART 3

OTHER CRIMINAL JUSTICE PROVISIONS

<i>Title</i>	<i>Extent of repeal</i>	
Magistrates' Courts Act 1980 (c. 43)	Section 13(5). Section 24(1B).	5
Prosecution of Offences Act 1985 (c. 23)	In section 7A – (a) in subsection (2)(a)(ii), the words “other than trials”; (b) subsection (6).	
Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40)	Section 8.	10
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”.	15
Sexual Offences Act 2003 (c. 42)	In section 133(1), in paragraph (a) of the definition of “cautioned”, the words “by a police officer”.	20
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. 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”.	25

PART 4

CRIMINAL LAW

<i>Title</i>	<i>Extent of repeal</i>	
Street Offences Act 1959 (c. 57)	Section 2.	
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”.	35
Sexual Offences Act 2003 (c. 42)	In Schedule 1, paragraph 3.	
Terrorism Act 2006 (c. 11)	Section 14.	

## PART 5

## 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.	5

## PART 6

## ANTI-SOCIAL BEHAVIOUR

<i>Title</i>	<i>Extent of repeal</i>	
Police and Justice Act 2006 (c. 48)	In Schedule 14, paragraph 55(5).	10

## PART 7

## 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),”.	15
	In section 97 –	
	(a) in subsection (6), in each of paragraphs (b) and (c), the words “or is required to resign as an alternative to dismissal”;	20
	(b) in subsection (7), the words “, or required to resign as an alternative to dismissal,”.	
	In Schedule 6, paragraph 6.	
Greater London Authority Act 1999 (c. 29)	In Schedule 27, paragraphs 95 and 107.	25
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.	30
Police Reform Act 2002 (c. 30)	Section 36(1)(c).	

<i>Title</i>	<i>Extent of repeal</i>	
Police Reform Act 2002 (c. 30) – <i>cont.</i>	In Schedule 3 – (a) paragraphs 20A(8), 20B(5) and 20E(5); (b) paragraph 20G together with the cross heading immediately preceding it; (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); (e) in paragraph 25, the word “and” immediately after each of subparagraphs (2)(b), (3)(b) and (5)(b).	5       10
Railways and Transport Safety Act 2003 (c. 20)	Section 43.	15
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.	
Legal Services Act 2007	In Schedule 21, paragraph 73.	20

# Criminal Justice and Immigration Bill

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## 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 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 make provision for a new immigration status in certain cases involving criminality; and for connected purposes.

*Presented by Mr David Hanson  
supported by  
The Prime Minister,  
Mr Chancellor of the Exchequer,  
Mr Secretary Darling, Secretary John Reid,  
Ms Secretary Hewitt and Mr Secretary Hain.*

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*Ordered, by The House of Commons,  
to be Printed, 26th June 2007.*

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